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**Reader Aids**

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Federal Register

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## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

### 7 CFR Parts 771, 772, 773, and 774

### Rural Business-Cooperative Service

### Rural Housing Service

### Rural Utilities Service

### Farm Service Agency

### 7 CFR Parts 1806, 1901, 1910, 1924, 1925, 1927, 1940, 1941, 1943, 1950, 1951, 1955, 1956, 1962, and 1965

**RIN 0560–AF60**

## Regulatory Streamlining of the Farm Service Agency's Direct Farm Loan Programs; Conforming Changes

**AGENCIES:** Farm Service Agency, Rural Business-Cooperative Service; Rural Housing Service; and Rural Utilities Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule removes the Farm Service Agency's direct Farm Loan Programs regulations from the Rural Development's mission area loan program regulations. In addition, it makes conforming changes to FSA's regulations for the boll weevil eradication loan program, the servicing of minor program loans, the special apple loan program, and the emergency loan for seed producers program.

**DATES:** *Effective Date:* December 31, 2007.

**FOR FURTHER INFORMATION CONTACT:** William D. Cobb, USDA, FSA, DAFLP, STOP 0520, 1400 Independence Avenue, SW., Washington, DC 20250–0520; telephone (202) 720–1059; electronic mail: *bill_cobb@wdc.usda.gov*.

**SUPPLEMENTARY INFORMATION:**

### Discussion of the Final Rule

FSA proposed to move the majority of its Farm Loan Programs direct loan making and servicing rules from Chapter XVIII to Chapter VII of the Code of Federal Regulations (CFR) in a proposed rule it published on February 9, 2004 (69 FR 6055–6121). Prior to the Department of Agriculture Reorganization Act of 1994 (1994 Act), Chapter XVIII contained the former Farmers Home Administration (FmHA) program regulations and Chapter VII contained the former Agricultural Stabilization and Conservation Service (ASCS) program regulations. The 1994 Act abolished both FmHA and ASCS and consolidated FmHA's Farm Loan Programs and ASCS programs under the newly created FSA, while the remaining FmHA programs were transferred to the Rural Development mission area agencies. With the exceptions listed below, this final rule removes from Chapter XVIII references to FmHA Farm Loan Programs, now operated by FSA.

As a result of the 1994 Act, some of the CFR subparts published by FmHA were used by FSA and one or more of the Rural Development mission area agencies, while others were used exclusively by FSA. The Farm Loan Programs direct loan making and servicing rules were dispersed throughout Chapter XVIII, making their use difficult for all but the most well-informed user. Therefore, in a final rule published on November 8, 2007 (72 FR 63241–63361), FSA is moving its Farm Loan Programs regulations from Chapter XVIII to Chapter VII, and is consolidating and reorganizing them in a logical manner making them easier to use by the general public, applicants and borrowers, and FSA. In the proposed rule of February 9, 2004, FSA stated that when the final rule was published, it would remove the Chapter XVIII subparts used only by FSA. However, as provided in the prefatory remarks to the final rule published on November 8, 2007, FSA will continue to use subpart G of 7 CFR part 1940, subpart C of 7 CFR part 1951, and subpart B of 7 CFR part 1956 until it publishes a final rule revising 7 CFR 799 for environmental procedures and 7 CFR part 792 for debt settlement policies and procedures.

Lastly, FSA is amending 7 CFR parts 771, 772, 773, and 774 to remove CFR citations that no longer are valid.

### Executive Order 12866

This rule has been determined to be not significant under Executive Order 12866 and was not reviewed by OMB.

### Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–602), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. This rule does not impose any new requirements on FSA applicants and borrowers. In some cases, existing information collections and regulatory requirements have been reduced as a result of streamlining the loan making and servicing application processes.

### Environmental Assessment

FSA has completed an Environmental Assessment (EA) in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4347, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508) and the FSA regulations for compliance with NEPA, 7 CFR part 1940, subpart G. A finding of no significant impact (FONSI) was determined as a result of the EA process. The final EA and FONSI are available for review at *http://www.fsa.usda.gov/FSA/webapp?area=home&subject=ecrc&topic=enl-ea*. FSA will accept comments on the final EA and FONSI for a period of 30 days from the date of publication of this rule.

### Executive Order 13132

The policies contained in this rule do 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. Nor does this final rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the States is not required.

### Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. In accordance with this Executive Order: (1) All state and local laws and regulations that are in conflict with this rule will be

preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR parts 11 and 780 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

**Executive Order 12372**

For reasons contained in the Notice regarding 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs within this rule are excluded from the scope of E.O. 12372, which requires intergovernmental consultation with State and local officials.

**Unfunded Mandates**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, requires Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments or the private sector of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA requires FSA to prepare a written statement, including a cost benefit assessment, for proposed and final rules with ''Federal mandates'' that may result in such expenditures for state, local, or tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates, as defined under Title II of the UMRA, for state, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

**Paperwork Reduction Act**

The amendments to 7 CFR 1806, 1901, 1924, 1925, 1927, 1951, and 1955 contained in this final rule have been approved by OMB under control numbers 0575–0042, 0575–0075, 0575–0087, 0575–0088, 0575–0093, 0575–0147, 0575–0158, and 0575–0172. In accordance with 5 CFR 1320, FSA submitted to OMB correction worksheets to transfer applicable information collections to FSA-assigned OMB control numbers.

**E-Government Act Compliance**

FSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

FSA has posted on the e-Gov Web site at *http://www.sc.egov.usda.gov* all the forms an applicant or borrower has to complete in their entirety, or review and execute. Further, FSA has made available its handbooks at *http://www.fsa.usda.gov/FSA/webapp?area=home&subject=lare&topic=hbk*. Applicants or borrowers may download and review any agency handbook through the ''Laws and Regulations'' link, and become familiar with the requirements for applying for benefits.

**Federal Assistance Programs**

These changes affect the following FSA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans

**List of Subjects**

*7 CFR Part 771*

Loan programs—agriculture, Pesticides and pests, Cotton.

*7 CFR Part 772*

Agriculture, Credit, Rural areas.

*7 CFR Part 773*

Fruits, Loan programs—agriculture.

*7 CFR Part 774*

Seeds, Loan programs—agriculture.

*7 CFR Part 1806*

Buildings, Community development, Disaster assistance, Flood plains, Housing, Loan programs—Housing and Community Development, Insurance, Loan programs—Agriculture, Real property insurance, Rural areas.

*7 CFR Part 1901*

Finance, Historic preservation, Loan Programs—Agriculture, Loan programs—Housing and community development, Natural resources, Rural areas.

*7 CFR Part 1910*

Administrative practice and procedures, Applications, Credit, Government contracts, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing, Marital status discrimination, Reporting requirements, Sex discrimination.

*7 CFR Part 1924*

Agriculture, Construction management, Construction and repair, Energy conservation, Housing, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing.

*7 CFR Part 1925*

Real property taxes, Taxes.

*7 CFR Part 1927*

Loan programs—Agriculture, Loan programs—Housing and community development, Mortgages.

*7 CFR Part 1940*

Administrative practice and procedure, Agriculture, Allocations, Grant programs—Housing and community development, Loan programs—Agriculture, Rural areas.

*7 CFR Parts 1941 and 1943*

Applicant eligibility, Beginning farmers and ranchers, Loan programs—agriculture.

*7 CFR Part 1950*

Accounting, Loan programs—Agriculture, Military personnel.

*7 CFR Part 1951*

Accounting, Account servicing, Credit, Debt restructuring, Foreclosure, Government acquired property, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing, Mortgages, Rural areas, Sale of government acquired property, Surplus government property.

*7 CFR Part 1955*

Foreclosure, Government acquired property, Government property management, Sale of government acquired property, Surplus government property.

*7 CFR Part 1956*

Accounting, Loan programs—Agriculture, Rural areas.

*7 CFR Part 1962*

Crops, Government property, Livestock, Loan programs—Agriculture, Rural areas.

*7 CFR Part 1965*

Foreclosure, Loan programs—Agriculture, Rural areas.

■ Accordingly, 7 CFR Chapters VII and XVIII are amended as follows:

## PART 771—BOLL WEEVIL ERADICATION LOAN PROGRAM

■ 1. The authority citation for part 771 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; and Pub. L. 104–180, 110 Stat. 1569.

■ 2. Revise the first sentence of § 771.15(c) introductory text to read as follows:

**§ 771.15 Loan servicing.**

* * * * *

(c) *Restructuring*. The provisions of 7 CFR part 766 are not applicable to loans made under this section. * * *

* * * * *

## PART 772—SERVICING MINOR PROGRAM LOANS

■ 3. The authority citation for part 772 continues to read as follows:

**Authority:** 5 U.S.C. 301, 7 U.S.C. 1989, 25 U.S.C. 490.

■ 4. Revise the second sentence of § 772.9 (b) to read as follows:

**§ 772.9 Releases.**

* * * * *

(b) *Borrower liability*. * * * IMP borrowers who have had previous debt forgiveness on a farm loan program loan as defined in 7 CFR part 761, however, cannot be released from liability by FSA until the previous loss to the Agency has been repaid with interest from the date of debt forgiveness. * * *

* * * * *

■ 5. Revise the first sentence of § 772.11 to read as follows:

**§ 772.11 Transfer and assumption—IMP loans.**

Transfers and assumptions for IMP loans are processed in accordance with 7 CFR part 765. * * *

■ 6. Revise the first sentence of § 772.12 (b)(2) to read as follows:

**§ 772.12 Graduation.**

* * * * *

(b) * * *

(1) * * *

(2) All IMP borrowers classified as ''commercial'' or ''standard'' by the agency must be reviewed at least every 2 years. * * *

* * * * *

■ 7. Revise § 772.13 (b) to read as follows:

**§ 772.12 Delinquent account servicing.**

* * * * *

(b) *IMP loans*. Delinquent IMP borrowers will be serviced according to 7 CFR part 3, part 766, and part 1951, subpart C, concerning internal agency offset and referral to the Department of the Treasury Offset Program and Treasury Cross-Servicing (or successor regulations).

* * * * *

■ 8. Revise the second sentence of § 772.16 to read as follows:

**§ 772.16 Liquidation.**

* * * If such a transfer or voluntary sale is not carried out, the loan will be liquidated according to 7 CFR part 766. * * *

■ 9. Revise § 772.17 to read as follows:

**§ 772.17 Equal opportunity and non-discrimination requirements.**

With respect to any aspect of a credit transaction, the Agency will comply with the requirements of the Equal Credit Opportunity Act and the Department's civil rights policy in 7 CFR part 15d.

## PART 773—SPECIAL APPLE LOAN PROGRAM

■ 10. The authority citation for part 773 continues to read as follows:

**Authority:** Pub. L. 106–224.

■ 11. Revise § 773.22 to read as follows:

**§ 773.22 Loan servicing.**

Loans will be serviced as a Non-program loan in accordance with 7 CFR part 766 during the term of the loan. If the loan is not paid in full during this term, servicing will proceed in accordance with 7 CFR part 766, subpart H.

## PART 774—EMERGENCY LOAN FOR SEED PRODUCERS PROGRAM

■ 12. The authority citation for part 774 continues to read as follows:

**Authority:** Pub. L. 106–224.

■ 13. Revise the second sentence of § 774.18(b)(2) to read as follows:

**§ 774.18 Interest rate, terms and security requirements.**

* * * * *

(b) * * *

(2) * * * If the loan is not paid in full during this time and default occurs, servicing will proceed in accordance with 7 CFR part 766, subpart H.

* * * * *

■ 14. Revise § 774.23 to read as follows:

**§ 774.23 Loan servicing.**

Loans will be serviced as a Non-program loan in accordance with 7 CFR part 766. If the loan is not repaid as agreed and default occurs, servicing will proceed in accordance with 7 CFR part 766, subpart H.

## PART 1806—INSURANCE

■ 15. The authority citation for part 1806 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480; 42 U.S.C. 2942.

### Subpart A—Real Property Insurance

■ 16. Section 1806.1(a) is amended by removing the text ''the Farm Credit Programs of the Farm Service Agency (FSA) or'' in the first sentence; and adding a new last sentence to read as follows:

**§ 1806.1 General.**

(a) * * * This subpart is inapplicable to Farm Service Agency, Farm Loan Programs.

* * * * *

### Subpart B—National Flood Insurance

■ 17. Section 1806.21(a) is amended by revising the last sentence to read as follows:

**§ 1806.21 General.**

(a) * * * This subpart does not apply to Farm Service Agency, Farm Loan Programs and to Rural Rental Housing, Rural Cooperative Housing, or Farm Labor Housing programs of the Rural Housing Service.

* * * * *

## PART 1901—PROGRAM-RELATED INSTRUCTIONS

■ 18. The authority citation for part 1901 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

### Subpart F—Procedures for the Protection of Historical and Archeological Properties

■ 19. Section 1901.251 is amended by adding a new last sentence to read as follows:

**§ 1901.251 Purpose.**

* * * This subpart is inapplicable to Farm Service Agency, Farm Loan Programs.

### Subpart K—Certificates of Beneficial Ownership and Insured Notes

■ 20. Section 1901.501 is amended by adding a new last sentence to read as follows:

**§ 1901.501 Purpose.**

* * * This subpart is inapplicable to Farm Service Agency, Farm Loan Programs.

### Subpart N [Removed]

■ 21. Subpart N is removed and reserved.

## PART 1910—GENERAL

■ 22. The authority citation for part 1910 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

### Subpart A [Removed]

■ 23. Subpart A is removed and reserved.

### Subpart B—Credit Reports (Individual)

■ 24. Amend § 1910.51 by adding a new last sentence to read as follows:

**§ 1910.51 Purpose.**

* * * This subpart is inapplicable to Farm Service Agency, Farm Loan Programs.

### Subpart C—Commercial Credit Reports

■ 25. Amend § 1910.101 by adding a new last sentence to read as follows:

**§ 1910.101 Preface.**

* * * This subpart is inapplicable to Farm Service Agency, Farm Loan Programs.

## PART 1924—CONSTRUCTION AND REPAIR

■ 26. The authority citation for part 1924 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

### Subpart A—Planning and Performing Construction and Other Development

■ 27. Section 1924.1 is amended by removing the text ‘‘, insured Farm Ownership (FO), Soil and Water (SW), Softwood Timber (ST)’’ and the text ‘‘, and Emergency (EM) loans for individuals’’ from the first sentence; and adding a new last sentence to read as follows:

**§ 1924.1 Purpose**

* * * This subpart is inapplicable to Farm Service Agency, Farm Loan Programs.

### Subpart B—[Removed]

■ 28. Subpart B is removed and reserved.

## PART 1925—TAXES

■ 29. The authority citation for part 1925 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

### Subpart A—Real Estate Tax Servicing

■ 30. Section 1925.1 is amended by removing the text ‘‘a Farm Ownership (FO), Operating Loan (OL), Soil and Water (SW), Recreation Loan (RL), Emergency (EM), Economic Opportunity (EO),’’ and ‘‘Softwood Timber (ST),’’ in the first sentence; and adding a new last sentence to read as follows:

**§ 1925.1 General.**

* * * This subpart is inapplicable to Farm Service Agency, Farm Loan Programs.

## PART 1927—TITLE CLEARANCE AND LOAN CLOSING

■ 31. The authority citation for part 1927 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

### Subpart B—Real Estate Title Clearance and Loan Closing

■ 32. Section 1927.51(a) is amended by removing the text ‘‘and Farm Service Agency (FSA) loans: Farm Ownership (FO), Nonfarm Enterprise (FO–NFE), Emergency (EM), Operating (OL)’’ in the first sentence; removing the text ‘‘Soil and Water (SW), Indian Land acquisition loan involving nontrust property,’’ in the first sentence; and adding a new last sentence to read as follows:

**§ 1927.51 General.**

(a) * * * This subpart is inapplicable to Farm Service Agency, Farm Loan Programs.

## PART 1940—GENERAL

■ 33. The authority citation for part 1940 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

### Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

■ 34. Section 1940.551(a) is amended by adding a new last sentence to read as follows:

**§ 1940.551 Purpose and general policy.**

(a) * * * This subpart is inapplicable to Farm Service Agency, Farm Loan Programs.

* * * * *

**§§ 1940.555 through 1940.559 [Removed]**

■ 35. Remove and reserve §§ 1940.555 through 1940.559.

## PART 1941—[REMOVED]

■ 36. Remove and reserve part 1941.

## PART 1943—[REMOVED]

■ 37. Remove and reserve part 1943.

## PART 1950—GENERAL

■ 38. The authority citation for part 1950 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

### Subpart C—Servicing Accounts of Borrowers Entering the Armed Forces

■ 39. Section 1950.101 is amended by adding a new last sentence to read as follows:

**§ 1950.101 Purpose.**

* * * This subpart is inapplicable to Farm Service Agency, Farm Loan Programs.

## PART 1951—SERVICING AND COLLECTIONS

■ 40. The authority citation for part 1951 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C 1932 Note; 7 U.S.C. 1989; 31 U.S.C. 3716; 42 U.S.C. 1480.

### Subpart A—Account Servicing Policies

■ 41. Section 1951.1 is amended by removing the text ‘‘Farmer Program loans (FP) which include Softwood Timber (ST), Operating Loan (OL), Farm Ownership (FO), Soil and Water (SW), Recreation Loan (RL), Emergency Loan (EM), Economic Emergency Loan (EE), Special Livestock Loan (SL), Economic Opportunity Loan (EO), and Rural Housing Loan for farm service buildings (RHF)’’; and adding a new last sentence to read as follows:

**§ 1951.1 Purpose.**

* * * In addition, this subpart is inapplicable to Farm Service Agency, Farm Loan Programs.

### Subpart C—Offsets of Federal Payments to USDA Agency Borrowers

■ 42. Revise the fourth and fifth sentences of the introductory text of § 1951.111 and the third sentence of § 1951.111(d)(1) to read as follows:

**§ 1951.111 Salary offset.**

* * * For delinquent Farm Loan Programs direct loans, salary offset will not begin until the borrower has been notified of servicing options in accordance with 7 CFR part 766. In addition, for Farm Loan Programs direct loans, salary offset will not be instituted if the Federal salary has been considered on the farm operating plan, and it was determined the funds were to be used for another purpose other than payment on the USDA Agency loan. * * *

* * * * *

(d) * * *

(1) * * * For Farm Loan Programs direct loans, this notice will be sent after the borrower is over 90 days past due and immediately after sending notification of servicing rights in accordance with 7 CFR part 766. * * *

* * * * *

## Subpart D—Final Payment on Loans

■ 43. Section 1951.151 is amended by removing the text ''Farm Service Agency (FSA),'' in the first sentence; and adding a new last sentence to read as follows:

**§ 1951.151 Purpose.**

* * * In addition, this subpart is inapplicable to Farm Service Agency, Farm Loan Programs.

## Subpart F—Analyzing Credit Needs and Graduation of Borrowers

■ 44. Section 1951.251 is amended by removing the text ''Farm Service Agency (FSA)'', in the third sentence; and revising the fourth sentence to read as follows:

**§ 1951.251 Purpose.**

* * * This subpart does not apply to Farm Service Agency, Farm Loan Programs and to RHS direct single family housing (SFH) customers. * * *

* * * * *

## Subparts J, L, S, and T—[Removed]

■ 45. Subparts J, L, S, and T are removed and reserved.

## PART 1955—PROPERTY MANAGEMENT

■ 46. The authority citation for part 1955 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

## Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

■ 47. Section 1955.1 is amended by removing the text ''Farm Credit programs of the Farm Service Agency (FSA),'' in the second sentence; and revising the fourth sentence to read as follows:

**§ 1955.1 Purpose.**

* * * This subpart does not apply to Farm Service Agency, Farm Loan Programs, to RHS single family housing loans, or to CF loans sold without insurance in the private sector. * * *

* * * * *

## Subpart B—Management of Property

■ 48. Section 1955.51 is amended by removing the comma immediately following ''(RBS)'' and adding the word ''and'' in its place; by removing the text '', and Farm Service Agency (FSA),'' in the first sentence of the introductory paragraph; and revising the second sentence of the introductory paragraph to read as follows:

**§ 1955.51 Purpose.**

* * * This subpart does not apply to Farm Service Agency, Farm Loan Programs, or to RHS single family housing loans or community program loans sold without insurance to the private sector. * * *

* * * * *

## Subpart C—Disposal of Inventory Property

■ 49. Section 1955.101 is amended by revising the fifth sentence to read as follows:

**§ 1955.101 Purpose.**

* * * This subpart does not apply to Farm Service Agency, Farm Loan Programs, Single Family Housing (SFH) inventory property, or to the Rural Rental Housing, Rural Cooperative Housing, and Farm Labor Housing Programs. * * *

* * * * *

## PART 1956—DEBT SETTLEMENT

■ 50. The authority citation for part 1956 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 31 U.S.C. 3711; 42 U.S.C. 1480.

## Subpart B—Debt Settlement—Farm Loan Programs and Multi-Family Housing

■ 51. Revise the second sentence of the ''debt forgiveness'' definition in § 1956.54 to read as follows:

**§ 1956.54 Definitions.**

* * * * *

*Debt forgiveness.* * * * Included, but not limited to, are losses from a writedown or writeoff under 7 CFR part 766, debt settlement, after discharge under the provisions of the bankruptcy code, and associated with release of liability. * * *

* * * * *

## PART 1962—PERSONAL PROPERTY

■ 52. The authority citation for part 1962 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

## Subpart A—Servicing and Liquidation of Chattel Security

■ 53. Section 1962.1 is amended by adding a new last sentence to read as follows:

**§ 1962.1 Purpose.**

* * * This subpart is inapplicable to Farm Service Agency, Farm Loan Programs.

## PART 1965—REAL PROPERTY

## Subpart A—[Removed]

■ 54. Subpart A is removed and reserved.

Dated: November 5, 2007.

**Mark Keenum,**

*Under Secretary for Farm and Foreign Agricultural Services.*

Dated: November 2, 2007.

**Thomas C. Dorr,**

*Under Secretary for Rural Development.*

[FR Doc. 07–5659 Filed 11–14–07; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## 7 CFR Part 966

**[Docket No. AMS–FV–07–0114; FV07–966–2 IFR]**

## Tomatoes Grown in Florida; Decreased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule decreases the assessment rate established for the Florida Tomato Committee (Committee) for the 2007–08 and subsequent fiscal periods from $0.035 to $0.0325 per 25-pound carton of tomatoes handled. The Committee locally administers the marketing order which regulates the handling of tomatoes grown in Florida. Assessments upon tomato handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective November 16, 2007. Comments received by January 14, 2008, will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be

sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov*. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** William G. Pimental, Marketing Specialist or Christian D. Nissen, Regional Manager, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (863) 324–3375 Fax: (863) 325–8793, or E-mail: *William.Pimental@usda.gov* or *Christian.Nissen@usda.gov*.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in Florida, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Florida tomato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable tomatoes beginning August 1, 2007, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Committee for the 2007–08 and subsequent fiscal periods from $0.035 per 25-pound carton to $0.0325 per 25-pound carton of tomatoes.

The Florida tomato marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of Florida tomatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2006–07 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on August 23, 2007, and unanimously recommended 2007–08 expenditures of $2,101,000.00 and an assessment rate of $0.0325 per 25-pound carton of tomatoes. In comparison, last year's budgeted expenditures were $2,193,700. The assessment rate of $0.0325 is $0.0025 lower than the rate currently in effect. Last season the industry shipped 2.6 million 25-pound cartons more than the Committee had anticipated, providing greater revenues than expected from assessments. The Committee's 2006–07 expenses were $200,000 less than budgeted, and they utilized less from reserves than anticipated. The Committee also recommended a reduced budget for 2007–08. Therefore, the Committee voted to recommend a reduced assessment rate.

The major expenditures recommended by the Committee for the 2007–08 year include $900,000 for education and promotion, $467,000 for salaries, $320,000 for research, and $71,000 for employee retirement. Budgeted expenses for these items in 2006–07 were $1,000,000, $445,900, $320,000, and $67,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses, less carry-in and reserve revenues totaling $476,000, by expected shipments of Florida tomatoes. Tomato shipments for the year are estimated at 50 million 25-pound cartons, which should provide $1,625,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve will be adequate to cover budgeted expenses. Funds in the reserve (currently approximately $780,000) will be kept within the maximum permitted by § 966.44 of the order, which states that excess funds cannot exceed one fiscal period's expenses.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2007–08 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

## Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly,

AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 100 producers of tomatoes in the production area and approximately 70 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,500,000.

Based on industry and Committee data, the average annual price for fresh Florida tomatoes during the 2006–07 season was approximately $7.69 per 25-pound container, and total fresh shipments for the 2006–07 season were 52,505,687 25-pound cartons of tomatoes. Committee data indicates that approximately 25 percent of the handlers handle 94 percent of the total volume shipped outside the regulated area. Based on the average price, about 75 percent of handlers could be considered small businesses under SBA's definition. In addition, based on production data, grower prices as reported by the National Agricultural Statistics Service, and the total number of Florida tomato growers, the average annual grower revenue is below $750,000. Thus, the majority of handlers and producers of Florida tomatoes may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2007–08 and subsequent fiscal periods from $0.035 to $0.0325 per 25-pound carton of tomatoes. The Committee unanimously recommended 2007–08 expenditures of $2,101,000 and an assessment rate of $0.0325 per 25-pound carton. The assessment rate of $0.0325 is $0.0025 lower than the 2006–07 rate. The quantity of assessable tomatoes for the 2007–08 season is estimated at 50 million 25-pound cartons. Thus, the $0.0325 rate should provide $1,625,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve will be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2007–08 year include $900,000 for education and promotion, $467,000 for salaries, $320,000 for research, and $71,000 for employee retirement. Budgeted expenses for these items in 2006–07 were $1,000,000, $445,900, $320,000, and $67,000, respectively.

Last season the industry shipped 2.6 million 25-pound cartons more than the Committee had anticipated, providing greater revenues than expected from assessments. The Committee's 2006–07 expenses were $200,000 less than budgeted, and they utilized less from reserves than anticipated. The Committee also recommended a reduced budget 2007–08. Therefore, the Committee voted to recommend a reduced assessment rate.

The Committee reviewed and unanimously recommended 2007–08 expenditures of $2,101,000, which included a decrease in the education and promotion budget. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Executive Subcommittee, Finance Subcommittee, Research Subcommittee, and Education and Promotion Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research projects to the tomato industry. The assessment rate of $0.0325 per 25-pound carton of assessable tomatoes was then determined by dividing the total recommended budget, less carry-in and reserve revenues totaling $476,000, by the quantity of tomatoes, estimated at 50 million 25-pound cartons for the 2007–08 fiscal period.

A review of historical information and preliminary information pertaining to the upcoming 2007–08 fiscal period indicates that the grower price for the 2007–08 season could range between $3.89 and $16.05 per 25-pound carton of tomatoes. Therefore, the estimated assessment revenue for the 2007–08 fiscal period as a percentage of total grower revenue could range between 0.2 and 0.8 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the Florida tomato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the August 23, 2007, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this interim final rule, including the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large Florida tomato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2007–08 fiscal period began on August 1, 2007, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable tomatoes handled during such fiscal period; (2) this action decreases the assessment rate for assessable tomatoes beginning with the 2007–08 fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment

period, and all comments timely received will be considered prior to finalization of this rule.

**List of Subjects in 7 CFR Part 966**

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

■ For the reasons set forth in the preamble, 7 CFR part 966 is amended as follows:

## PART 966—TOMATOES GROWN IN FLORIDA

■ 1. The authority citation for 7 CFR part 966 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 966.234 is revised to read as follows:

**§ 966.234 Assessment rate.**

On and after August 1 2007, an assessment rate of $0.0325 per 25-pound carton is established for Florida tomatoes.

Dated: November 8, 2007.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E7–22277 Filed 11–14–07; 8:45 am]

**BILLING CODE 3410–02–P**

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 98

**[Docket No. APHIS–2006–0120]**

**RIN 0579–AC58**

### Importation of Sheep and Goat Semen

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations regarding the importation of animal germplasm by removing specific restrictions on sheep semen from regions where scrapie exists and requiring the inclusion of additional information on the international health certificate accompanying sheep and goat semen. Experience and research have convinced us that sheep and goat semen pose a minimal risk of transmitting scrapie. This action will relieve restrictions on imported sheep semen while continuing to provide safeguards against the introduction and dissemination of scrapie.

**DATES:** *Effective Date:* December 17, 2007.

**FOR FURTHER INFORMATION CONTACT:** Dr. James P. Davis, Senior Staff Veterinarian, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–0694.

**SUPPLEMENTARY INFORMATION:**

**Background**

On August 9, 2006, we published a proposed rule in the **Federal Register** (71 FR 45444–45447) in which we proposed to amend the regulations in 9 CFR part 98 regarding the importation of animal germplasm by removing specific restrictions on sheep semen from regions where scrapie exists and requiring the inclusion of additional information on the international health certificate accompanying sheep and goat semen. This action would relieve restrictions on imported sheep semen while continuing to provide safeguards against the introduction and dissemination of scrapie.

Comments were required to be received by October 10, 2006. We received seven comments by that date, from the Canadian Food Inspection Agency, a sheep industry association, sheep breeders, and private citizens. One commenter supported the proposed rule as written. Another commenter stated that there should be a ban on all imports of animal semen into the United States, but did not offer specific comments on the provisions of the proposed rule. The remaining commenters were generally supportive of the proposed rule but made suggestions or raised issues about its provisions.

The Canadian Food Inspection Agency stated that it believed Canada's scrapie program is equivalent to the United States' program and, therefore, sheep semen from Canada should be allowed to be imported without restrictions. The commenter stated that the risk of new strains of scrapie being introduced into the United States from Canada is minimal.

As we stated in the proposed rule, in 1996, when the regulations allowing semen to be imported from Canada without restrictions were established, Canada had a scrapie control program that we regarded as equivalent to that in the United States. In 2001, however, the United States went from a control program to an eradication program which is now in full implementation. Canada has not conducted a scrapie prevalence study and does not conduct national slaughter surveillance for the disease. To fully evaluate Canada's program we would need a complete description of the program, including numbers and geographic representation of their surveillance and efforts to monitor for unusual strains. We are making no changes to the rule as a result of this comment.

One commenter stated that semen imported from any country should be distributed only to flocks listed in the Scrapie National Database to provide for better traceability in the event of a disease outbreak.

APHIS notes that semen imported from regions not recognized as scrapie-free—at this time, everywhere in the world except Australia and New Zealand—will still be required to be distributed only to listed flocks. We believe the new recordkeeping requirements for first generation (F1) progeny resulting from imported semen will provide sufficient information to conduct traceback investigations in the event of a disease outbreak. We are making no changes as a result of this comment.

One commenter stated that the requirement that only flocks in the Scrapie Flock Certification Program may receive imported semen should be eliminated entirely.

The intent of the proposed rule is to allow all flocks listed in the Scrapie National Database to use semen imported from anywhere in the world; there will be no restrictions on distribution of semen imported from regions recognized as scrapie-free. This does not unreasonably limit distribution of imported semen since there is a high compliance rate for flock premises listing through the National Scrapie Eradication Program, and because any flock may be listed by making a toll-free phone call. To further facilitate distribution of imported semen, we have added a provision in this final rule that allows imported semen to be further distributed to any other listed flock with written notification to the Veterinary Services area office.

One commenter suggested that the identification and recordkeeping requirements for F1 progeny resulting from imported semen should be made a condition of the import permit rather than a separate agreement. The commenter further stated that APHIS should distribute special eartags for identifying F1 progeny at the time the permit is approved. The commenter stated that these suggestions would reduce the burden on both producers and APHIS.

We agree with this commenter and have made changes in this final rule to incorporate these suggestions. Since there will be no written agreement separate from the permit, this final rule also includes a provision that APHIS

may view and copy records of F1 progeny during normal business hours.

One commenter stated that any imported semen should be accompanied by a certificate of genetic testing of the donor ram for resistance to scrapie.

While we agree that information from genetic testing may be useful to sheep breeders, we do not believe that requiring genetic testing of donor rams as a condition for importing semen into the United States is warranted because it would put excessive restrictions on the importation of semen for some breeds in which the scrapie-resistant genotypes do not exist. If an importer wants to see results of genetic testing from a donor ram, that individual should request it from the seller.

One commenter asked that the restriction of selling rams born as a result of artificial insemination using imported semen only to listed flocks be relaxed. The commenter stated that sheep breeders currently are too limited as to whom they may sell such rams.

Although there will be identification and recordkeeping requirements for F1 progeny resulting from the use of imported semen, the proposed rule, when finalized, will remove other restrictions on the sale of F1 progeny. This will apply both to existing F1 progeny from imported semen as well as to F1 lambs born after the new regulations take effect.

One commenter questioned the accuracy of the statement in the proposed rule's economic analysis that only 114 farms of the estimated 43,891 engaged in sheep and goat farming in 2002 had a market value of $500,000 or more per year in agricultural products sold and Government payments.

APHIS believes this estimate to be accurate. The figures were obtained from the 2002 Census of Agriculture, which is the most recent year for which we have data.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

**Executive Order 12866 and Regulatory Flexibility Act**

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

The regulations in § 98.37 have restricted the importation of sheep semen from regions other than Australia, Canada, and New Zealand due to scrapie concerns. These restrictions have included provisions requiring the semen to be transferred only to females in a United States flock that participates in the Scrapie Flock Certification Program (SFCP), the semen originates from a donor animal participating in a program equivalent to the United States SFCP and that the semen is accompanied by a certificate attesting to the above conditions. Additionally, the regulations have required the importer to provide APHIS with information regarding control programs, surveillance, and disease incidence in the exporting region, as well as information on the health status of other ruminants in the region in order to export sheep semen to the United States.

All these restrictions on imports of sheep and goat semen were put in place due to scrapie concerns and with the goal of preventing the spread of scrapie in domestic animals. However, further scientific research, as well as experience, has demonstrated to APHIS that sheep and goat semen pose a minimal risk of transmitting scrapie. Therefore, this final rule will eliminate restrictions on sheep semen being imported from regions other than Australia, Canada, and New Zealand by removing the provisions of § 98.37 from our regulations. In their place, we will require that sheep or goat semen from scrapie-affected regions be accompanied by an international veterinary certificate as recommended in the World Organization for Animal Health's (OIE) Terrestrial Animal Health Code. Consequently, this final rule will bring the United States' import standards for sheep and goat semen in harmony with recognized international standards, while still protecting against scrapie introduction into the United States.

These changes in the regulations will have a direct effect on importers of sheep semen and those businesses involved in support activities for animal production, which includes, among other activities, establishments providing breeding services. The number of establishments engaged in support activities for animal breeding is tracked by the U.S. Census Bureau. In 2001, the latest year for which information is available, there were 3,999 establishments in the North American Industry Classification System (NAICS) subsector 1152, which comprises establishments primarily engaged in performing activities related to raising livestock.[1] The annual payroll for these 3,999 establishments was $452.3 million, which translates into an average annual payroll per establishment of $113,106. The U.S. Small Business Administration (SBA) size standard for this particular sector is $6 million or less in annual receipts.[2] Unfortunately, the Census data do not include annual receipts for these establishments; however, based on the annual payroll per establishment, it is reasonable to conclude that the majority of these businesses would be considered small by SBA definitions.

A variety of animal production support activities other than artificial insemination for sheep are included in NAICS subsector 1152. APHIS does not have specific information on the number and size of businesses providing artificial insemination services. Based on the data for all NAICS 1152 businesses, we believe they are primarily small entities with annual receipts of not more than $6 million.

Additionally, it is possible this final rule may indirectly affect domestic sheep and goat producers. The Census of Agriculture for 2002, the most recent year for which we have data, estimated that there were 43,891 farms engaged in sheep and goat farming.[3] The SBA size standard for sheep and goat farming (NAIS subsector 1124) is $750,000 or less in annual receipts. The 2002 Census estimates the total market value of all agricultural products sold by domestic sheep and goat farmers to be over $445 million, which translates into an average of $10,147 per farm. When combined with Government payments, the average per-farm market value agricultural products sold is $10,815.[4] Only 114 farms are classified as having $500,000 or more in market value of agricultural products sold and Government payments. So, at least 43,777, or 99 percent, of farms engaged in sheep and goat farming would be considered small by SBA standards.

Foreign exporters of sheep semen from countries other than Australia, Canada, and New Zealand might also benefit from the removal of import restrictions on sheep semen. However, as non-U.S. entities, they lie outside the scope of the Regulatory Flexibility Act and are not considered in this economic analysis.

As this rule will lift some of the import restrictions on imported semen from regions that are not considered

[1] *Statistics of U.S. Businesses: 2001: Support Activities for Animal Production—United States.* Washington, DC: U.S. Census Bureau.

[2] Table of Size Standards based on NAICS 2002. Washington, DC: Small Business Administration, 2004.

[3] USDA, *2002 Census of Agriculture—United States Data,* Table 50, Washington, DC: National Agricultural Statistics Service.

[4] USDA, *2002 Census of Agriculture,* Table 59, under column heading ''Sheep and Goat Farming (1124).''

scrapie-free, there will be a reduction in compliance requirements. In place of the current requirements, imported sheep or goat semen will have to be accompanied by an international veterinary certificate consistent with OIE standards. This certificate will have to be completed by a veterinary officer prior to being exported to the United States, and as such would not pose any compliance requirements for domestic entities.

*Benefits*

Importers of sheep semen, as well as firms engaged in agricultural support activities, specifically those providing artificial insemination services, could possibly benefit from the final rule. Imports of sheep semen are not tracked as a separate line item by USDA's Foreign Agricultural Service. However, Veterinary Services of APHIS tracks raw data and estimates there were 2,491 straws of sheep semen imported in 2004 and only 1 straw in 2003, with Australia being the primary exporter.[5] It is possible that the changes to the regulations will encourage exports of sheep and goat semen to the United States in response to reduced import restrictions. Laws of supply and demand dictate that increased supply will result in lower prices. However, if this happens it will be over the long run because currently there is not a large demand for sheep semen in the United States, as evidenced by the number of imports. In fact, domestic sheep and goat producers rarely rely on artificial insemination as a means of breeding animals because it is too expensive. Artificial insemination technology is primarily practiced by the seedstock industry. Thus, the market for imported sheep semen is small, consisting primarily of producers that raise less common breeds and desire imported semen to improve and diversify their genetics.[6]

*Costs*

It is possible these changes to the regulations could have an indirect effect on domestic sheep and goat breeders over the long run. However, a variety of conditions would have to be met for this situation to materialize. These conditions include, but are not limited to, artificial insemination technology becoming a more cost effective approach to sheep and goat production versus using breeding animals. Essentially, the only way sheep and goat breeders would be affected over the long run is if the process of artificial insemination becomes cheaper than purchasing or maintaining replacement breeding animals. As of January 1, 2005, there were inventories of 4.53 million head of breeding sheep and goats in the United States. Thus, it is possible that, as the process of artificial insemination becomes more cost effective and as imported sheep semen becomes more readily available and technologies improve, sheep and goat producers will substitute away from buying replacement breeding animals and use artificial insemination instead. However, as stated previously, this situation is long term in nature and highly conditional.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Executive Order 12988**

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 9 CFR Part 98**

Animal diseases, Imports.

■ Accordingly, we are amending 9 CFR part 98 as follows:

## PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS AND ANIMAL SEMEN

■ 1. The authority citation for part 98 continues to read as follows:

**Authority:** 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 2. In § 98.34, a new paragraph (d) is added to read as follows:

**§ 98.34 Import permits for poultry semen and animal semen.**

* * * * *

(d) *Sheep and goat semen from regions where scrapie exists.* Importation of semen of sheep and goats is subject to the requirements in § 98.35(e). Applications for a permit to import sheep and goat semen must include statements that:

(1) All first generation (F1) progeny resulting from imported semen will be identified with a permanent official identification consistent with the provisions of § 79.2 of this chapter; and

(2) Records of any sale of F1 progeny, including the name and address of the buyer, will be kept for a period of 5 years. APHIS may view and copy these records during normal business hours.

■ 3. In § 98.35, paragraphs (e)(1), (e)(2), and (e)(3) are revised to read as follows:

**§ 98.35 Declaration, health certificate, and other documents for animal semen.**

(e) * * *

(1) The donor animals:

(i) Are permanently identified, to enable traceback to their establishment of origin; and

(ii) Have been kept since birth in establishments in which no case of scrapie had been confirmed during their residency; and

(iii) Neither showed clinical signs of scrapie at the time of semen collection nor developed scrapie between the time of semen collection and the export of semen to the United States; and

(iv) The dam of the semen donor is not, nor was not, affected with scrapie.

(2) In the region where the semen originates:

(i) Scrapie is a compulsorily notifiable disease; and

(ii) An effective surveillance and monitoring system for scrapie is in place; and

(iii) Affected sheep and goats are slaughtered and completely destroyed; and

(iv) The feeding of sheep and goats with meat-and-bone meal or greaves derived from ruminants has been banned and the ban effectively enforced in the whole region; and

(3) Semen originating in regions other than Australia and New Zealand is to be transferred to females in a flock that is listed in the Scrapie National Database as part of the Scrapie Program in the United States. Imported semen may be further distributed to any other listed flock with written notification to the APHIS Veterinary Services area office.

* * * * *

**§ 98.37 [Removed]**

■ 4. Section 98.37 is removed and reserved.

[5] Elizabeth McKenna, Data Manager (APHIS).

[6] Susan Schoenian, Area Agent, Sheep & Goats Western Maryland Research & Education Center, University of Maryland Cooperative Extension; via email communication and article ''An Update on Sheep A.I.'' Maryland Small Ruminant page. *http://www.sheepandgoat.com/articles/ai.html,* Maryland Sheep News, 1999.

Done in Washington, DC, this 8th day of November 2007.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E7–22279 Filed 11–14–07; 8:45 am]

**BILLING CODE 3410–34–P**

## FARM CREDIT ADMINISTRATION

## 12 CFR Part 630

**RIN 3052–AC40**

## Disclosure to Investors in System-Wide and Consolidated Bank Debt Obligations of the Farm Credit System

**AGENCY:** Farm Credit Administration.

**ACTION:** Direct final rule.

**SUMMARY:** The Farm Credit Administration (FCA or we) issues this direct final rule amending our regulation on the external auditor's assessment of internal control over financial reporting concerning the System-wide annual report to investors. The effect of the amended rule is to require the external auditor of the Federal Farm Credit Banks Funding Corporation (Funding Corporation) to express an opinion on the effectiveness of internal control over financial reporting instead of reporting on management's assessment of internal control over financial reporting. The amended rule implements recent changes in industry practices.

**DATES:** If no significant adverse comment is received on or before December 17, 2007, these regulations shall be effective upon the expiration of 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. We will publish notice of the effective date in the **Federal Register**. If we receive significant adverse comment on an amendment, paragraph, or section of this rule, and that provision may be addressed separately from the remainder of the rule, we will withdraw that amendment, paragraph, or section and adopt as final those provisions of the rule that are not the subject of a significant comment. In such a case, we would then tell you how we expect to continue further rulemaking on the provisions that were the subject of significant adverse comment.

**ADDRESSES:** We offer a variety of methods for you to submit comments. For accuracy and efficiency reasons, we encourage commenters to submit comments by e-mail, through the Agency's Web site, or the Federal eRulemaking Portal. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *E-mail:* Send us an e-mail at *reg-comm@fca.gov*.
- *Agency Web site: http://www.fca.gov*. Once you are at the Web site, select ''Public Commenters,'' then ''Public Comments.''
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Gary K. Van Meter, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.
- *Fax:* (703) 883–4477. Posting and processing of faxes may be delayed. As faxes are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, please consider another means to submit your comment if possible.

You may review copies of comments we receive at our office in McLean, Virginia, or from our Web site at *http://www.fca.gov*. Once you are in the Web site, select ''Public Commenters,'' then select ''Public Comments,'' then select ''Submitting a Comment'' and follow the instructions there. We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

**FOR FURTHER INFORMATION CONTACT:** Wade Wynn, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4414, TTY (703) 883–4434, or Laura McFarland, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The FCA adopted a final rule on December 20, 2006, amending our disclosure and reporting requirements for Farm Credit System (System) institutions.[1] As part of that rulemaking, we added a requirement in § 630.5(d) to include a report by management assessing the effectiveness of internal control over financial reporting in the System-wide annual report to investors. We also added a requirement that the external auditor of the Funding Corporation review, attest, and report on management's assessment of internal control over financial reporting. The December 2006 rulemaking adding § 630.5(d) did not receive any objections to requiring an external auditor to report on management's assessment of internal control over financial reporting in the System-wide annual report to investors. Commenters did ask that the attestation reporting requirement be similar to that of Public Company Accounting Oversight Board (PCAOB) auditing standards, and we agreed. We further explained that the external auditor's attestation report should conform to other applicable industry standards, which we identified as those regulations of the Securities and Exchange Commission (SEC) implementing the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley).[2] Although the System is not covered by the provisions of Sarbanes-Oxley, nor regulated by the SEC, we generally regard SEC rules as the industry standard in this area, and we continue to follow this same general approach with consideration given to the unique cooperative structure of the System.

On June 27, 2007, the SEC revised its requirement regarding the external auditor's attestation report.[3] The SEC now requires the external auditor to express an opinion directly on the effectiveness of internal control over financial reporting instead of reporting on management's assessment of internal control over financial reporting. The SEC continues to require external auditors to evaluate whether management has included appropriate disclosures in its assessment report. Further, on July 25, 2007, the SEC approved PCAOB Auditing Standard No. 5, ''An Audit of Internal Control Over Financial Reporting That Is Integrated With an Audit of Financial Statements.''[4] Auditing Standard No. 5 is intended to increase the accuracy of financial reports and reduce costs by making audits more risk-based and scalable to company size and complexity. Auditing Standard No. 5 requires the external auditor to form an opinion on the effectiveness of internal control over financial reporting except in the circumstance of a scope limitation that would result in the auditor disclaiming an opinion. The

[1] 71 FR 76111 (December 20, 2006).

[2] Pub. L. 107–204 (July 30, 2002).

[3] 72 FR 35310 (June 27, 2007).

[4] Auditing Standard No. 5 supersedes Auditing Standard No. 2, ''An Audit of Internal Control Over Financial Reporting Performed in Conjunction With an Audit of Financial Statements'' for all audits of internal control ending on or after November 15, 2007.

external auditor generally disclaims an opinion when significant limitations prevent him from performing all the tests necessary to complete the audit and render an opinion. Auditing Standard No. 5 also requires the external auditor to modify his or her opinion on the effectiveness of internal control over financial reporting if the auditor determines that management's assessment is not fairly stated.

### II. Funding Corporation External Auditor's Attestation of Internal Control Over Financial Reporting

The FCA is amending § 630.5(d)(2) to conform with applicable industry standards for auditor attestations on internal control over financial reporting. The requirement in § 630.5(d)(2) for the external auditor of the Funding Corporation to review, attest, and report on management's assessment of internal control over financial reporting is no longer consistent with industry standards. Industry standards now require attestation reports to opine on the effectiveness of internal control over financial reporting. The amendment in this rulemaking will conform with these new standards.

The provision of § 630.5(d)(2), as amended by this direct final rulemaking, requires the external auditor of the Funding Corporation to include in the attestation report, an opinion on the effectiveness of internal control over financial reporting. The revised requirement reduces confusion, clarifies reporting, and more effectively communicates the external auditor's responsibility in relation to management's process and necessarily conveys whether management's assessment is fairly stated.

### III. Direct Final Rule

We are amending § 630.5(d)(2) by a direct final rulemaking. The Administrative Conference of the United States recommends direct final rulemaking for Federal agencies to enact noncontroversial regulations on an expedited basis, without the usual notice and comment period.[5] This process enables us to reduce the time and resources we need to develop, review, and publish a final rule while still affording the public an adequate opportunity to comment or object to the rule.

In a direct final rulemaking, we notify the public that the rule will become final on a specified future date unless we receive significant adverse comment during the comment period. A significant adverse comment is one where the commenter explains why the rule would be inappropriate (including challenges to its underlying premise or approach), ineffective, or unacceptable without a change. In general, a significant adverse comment would raise an issue serious enough to warrant a substantive response from the agency in a notice-and-comment proceeding.

We believe that a direct final rulemaking is the appropriate method for amending § 630.5(d)(2) to conform to new industry standards. We do not anticipate there will be significant adverse comments. We received no objectionable comments to the December 2006 rulemaking that added the requirement for an external auditor attestation, which conformed with SEC requirements at the time. Further, we stated at that time our intent to remain consistent with industry standards in this area, and commenters agreed. If, however, we receive a significant adverse comment during the comment period, we will publish a notice of withdrawal of the relevant provisions of this rule that will also indicate how further rulemaking will proceed. If we receive no significant adverse comment, we will publish notice of the effective date of the rule following the required Congressional waiting period under section 5.17(c)(1) of the Farm Credit Act of 1971, as amended.

### IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that the direct final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, Farm Credit System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

### List of Subjects in 12 CFR Part 630

Accounting, Agriculture, Banks, banking, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Rural areas.

■ For the reasons stated in the preamble, part 630 of chapter VI, title 12 of the Code of Federal Regulations is amended as follows:

## PART 630—DISCLOSURE TO INVESTORS IN SYSTEM-WIDE AND CONSOLIDATED BANK DEBT OBLIGATIONS OF THE FARM CREDIT SYSTEM

■ 1. The authority citation for part 630 continues to read as follows:

**Authority:** Secs. 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2252, 2254).

### Subpart A—General

■ 2. Revise § 630.5(d)(2) to read as follows:

**§ 630.5 Accuracy of reports and assessment of internal control over financial reporting.**

* * * * *

(d) *Management assessment of internal control over financial reporting.*

* * * * *

(2) The Funding Corporation must require its external auditor to issue an attestation report, which must express an opinion on the effectiveness of internal control over financial reporting. The resulting attestation report must accompany management's assessment and be included in the annual report.

Dated: November, 8, 2007.

**Roland E. Smith,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. E7–22312 Filed 11–14–07; 8:45 am]

BILLING CODE 6705–01–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2007–28380; Directorate Identifier 2007–NM–088–AD; Amendment 39–15254; AD 2007–23–08]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 747–400, 747–400D, and 747–400F Series Airplanes; Model 757–200 Series Airplanes; and Model 767–200, 767–300, and 767–300F Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 747–400, 747–400D, 747–400F, 757–200, 767–200, 767–300, and 767–300F series airplanes. This AD requires inspecting to determine the date code of the time delay relay for the cargo fire suppression system, and

[5] Recommendation 95–4, referencing the Administrative Procedure Act ''good cause'' exemption at 5 U.S.C. 553(b)(B), (adopted June 15, 1995).

replacing the relay if necessary. This AD results from a report indicating that failure of a time delay relay on an ELMS (electrical load management system) panel led to testing of other time delay relays at Boeing and at the supplier. Similar relays are used in the cargo fire suppression system. The time delay relay controls when the secondary fire bottles discharge. We are issuing this AD to ensure there is sufficient fire suppressant to control a cargo fire if the airplane is more than the relay delay time from a suitable airport, which could result in an uncontrollable fire in the cargo compartment.

**DATES:** This AD becomes effective December 20, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of December 20, 2007.

**ADDRESSES:** For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

## Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Binh V. Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6485; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

## Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 747–400, 747–400D, 747–400F, 757–200, 767–200, 767–300, and 767–300F series airplanes. That NPRM was published in the **Federal Register** on July 3, 2007 (72 FR 36378). That NPRM proposed to require inspecting to determine the date code of the time delay relay for the cargo fire suppression system, and replacing the relay if necessary.

## Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

## Request To Revise Applicability

ABX Air states that it removed the affected relay from its Boeing Model 767–200 airplanes in accordance with Boeing Service Bulletin 767–26–0016, and therefore cannot perform the proposed requirements. ABX requests that we state in the AD that the proposed requirements apply only to airplanes with the time delay relay installed.

We agree that the AD does not apply to airplanes that do not have the time delay relay installed. However, we disagree with the request to change the AD to specify that it does not apply to airplanes with the relay removed. Paragraph (g) of the AD requires an inspection of specific relays and notes the part numbers. If that part number is not installed on the airplane, the airplane is not subject to the replacement requirements of paragraph (h) of the AD. We have not changed the AD in this regard.

## Request To Revise Summary

Boeing requests that we revise the Summary section of the NPRM to clarify which bottles are discharged by the time delay relay. Specifically Boeing requests that we add the word ''secondary'' as shown in the following sentence: ''The time delay relay controls when the secondary fire bottles discharge.''

We agree that the addition of the word ''secondary'' clarifies the sentence. We have changed the Summary section of the AD as requested. We have also added the sentence to paragraph (d) of the AD for clarity.

## Request To Clarify Discussion Section

Boeing requests that we clarify the second paragraph of the Discussion section of the NPRM because that paragraph states that the listed airplanes have two halon bottles. Boeing states that some of the systems have more than two halon bottles.

We agree that Boeing's clarification improves the paragraph. However, since that section of the preamble does not reappear in the final rule, no change to the final rule is necessary.

## Explanation of Editorial Changes

As requested by Boeing, we have added an ''in'' before the words ''Table 1'' in paragraph (c) of this AD, and we have added the word ''an'' before the words ''uncontrollable fire'' in paragraph (d) of this AD.

## Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

## Costs of Compliance

There are about 1,871 airplanes of the affected design in the worldwide fleet. This AD affects about 702 airplanes of U.S. registry. The inspection takes about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $56,160, or $80 per airplane.

## Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

## Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD 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.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

**2007–23–08 Boeing:** Amendment 39–15254. Docket No. FAA–2007–28380; Directorate Identifier 2007–NM–088–AD.

**Effective Date**

(a) This AD becomes effective December 20, 2007.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to the Boeing airplane models, certificated in any category, identified in the service bulletins specified in Table 1 of this AD.

TABLE 1.—APPLICABILITY OF THIS AD

| Boeing model— | As identified in Boeing Special Attention Service Bulletin— |
|---|---|
| 747–400, 747–400D, and 747–400F series airplanes | 747–26–2281, dated July 24, 2006. |
| 757–200 series airplanes | 757–26–0051, dated July 28, 2006. |
| 767–200, –300, and –300F series airplanes | 767–26–0131, dated July 24, 2006. |

**Unsafe Condition**

(d) This AD results from a report indicating that failure of a time delay relay on a Boeing Model 777 ELMS (electrical load management system) panel led to testing of other time delay relays at Boeing and at the supplier. Similar relays are used in the cargo fire suppression system. The time delay relay controls when the secondary fire bottles discharge. We are issuing this AD to ensure there is sufficient fire suppressant to control a cargo fire if the airplane is more than the relay delay time from a suitable airport, which could result in an uncontrollable fire in the cargo compartment.

**Compliance**

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

**Service Bulletin Reference**

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the following service bulletins, as applicable:

(1) For Model 747–400, 747–400D, and 747–400F series airplanes: Boeing Special Attention Service Bulletin 747–26–2281, dated July 24, 2006;

(2) For Model 757–200 series airplanes: Boeing Special Attention Service Bulletin 757–26–0051, dated July 28, 2006; and

(3) For Model 767–200, –300, and –300F series airplanes: Boeing Special Attention Service Bulletin 767–26–0131, dated July 24, 2006.

**Inspection**

(g) Within 24 months after the effective date of this AD: Do a general visual inspection of the part number (P/N) TDH6103–1204, –1804, and –6003 time delay relay, as applicable, in the main equipment center to determine if the relay was manufactured during a certain date range, in accordance with the applicable service bulletin.

**Replacement**

(h) Within 30 days after finding a relay manufactured during the date range specified in the service bulletin, as required by paragraph (g) of this AD: Replace the relay with a relay that was not manufactured during the specified date range, or with a relay that has been tested by the supplier and found to be unaffected by thermal expansion, in accordance with the applicable service bulletin.

**Parts Installation**

(i) As of the effective date of this AD, no person may install a time delay relay, P/N TDH6103–1204, –1804, or –6003, on any airplane if the relay has a date code between 0000 and 0343 and does not have an additional date code with the letter ''T.''

**Alternative Methods of Compliance (AMOCs)**

(j)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

**Material Incorporated by Reference**

(k) You must use the service bulletins listed in Table 2 of this AD, as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

| Boeing Special Attention Service Bulletin | Date |
|---|---|
| 747–26–2281 | July 24, 2006. |
| 757–26–0051 | July 28, 2006. |
| 767–26–0131 | July 24, 2006. |

Issued in Renton, Washington, on November 2, 2007.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E7–21991 Filed 11–14–07; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–28376; Directorate Identifier 2007–NM–108–AD; Amendment 39–15255; AD 2007–23–09]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 767–200, –300, and –300F Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 767–200, –300, and –300F series airplanes. This AD requires a one-time inspection of each fuel quantity indication system (FQIS) wire harness connector for corrosion of the shield-to-backshell connection, corrosion on the ground jumper, and damage to the ground jumper; a loop resistance test of each FQIS wire harness; and related investigative and corrective actions if necessary. This AD results from reports of corrosion of the out-tank wire harness of the spar connector backshell for the FQIS. We are issuing this AD to detect and correct corrosion of the out-tank wire harness, which could prevent correct grounding of the lightning shield and result in total loss of the electrical grounding between the lightning shield and the airplane structure. This condition, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

**DATES:** This AD becomes effective December 20, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 20, 2007.

**ADDRESSES:** For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

## Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Philip Sheridan, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6441; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

## Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 767–200, –300, and –300F series airplanes. That NPRM was published in the **Federal Register** on June 20, 2007 (72 FR 33926). That NPRM proposed to require a one-time inspection of each fuel quantity indication system (FQIS) wire harness connector for corrosion of the shield-to-backshell connection, corrosion on the ground jumper, and damage to the ground jumper; a loop resistance test of each FQIS wire harness; and related investigative and corrective actions if necessary.

## Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

## Requests To Revise Compliance Threshold

Florida West International Airways requests that we revise the compliance threshold from 48 months to 60 months in order to ''stay standard with'' the compliance time for Boeing special attention service bulletins.

An anonymous private citizen notes that corrosion gets worse over time, so it is appropriate to give a longer compliance threshold to newer aircraft. The commenter suggests maintaining the 48-month threshold for airplanes that have 12 or more years' time-in-service, and revising the compliance threshold to 16 years from airplane delivery for airplanes that have less than 12 years' time-in-service.

We do not agree with the requests to revise the compliance threshold. In Boeing Special Attention Service Bulletin 767–28–0087, dated February 5, 2007, the manufacturer recommended that the inspections begin within 48 months after the release of the service bulletin. Although Boeing might have a standard compliance threshold for special attention service bulletins, that threshold can change based upon the nature of a given unsafe condition.

In addition, the goal of the inspection at the 48-month threshold is to detect and correct any corrosion in the affected area, and to do all applicable actions to prevent it from happening in the future. While it is true that corrosion worsens over time, we consider it inappropriate to allow airplanes to fly for up to 16 years with the potential for corrosion to continue to progress in this area.

In developing an appropriate compliance time for this AD, we considered the serious nature of the unsafe condition as well as the recommendations of the manufacturer, the availability of any necessary repair parts, and the practical aspect of accomplishing the required inspection within an interval of time that corresponds to the normal maintenance schedules of most affected operators. In light of these factors, we have determined that the 48-month initial compliance threshold, as proposed, is appropriate. We do not find it necessary to change the AD in this regard. However, under the provisions of paragraph (g) of the final rule, we will consider requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

## Request To Revise Note 1 of the NPRM Regarding Cinch Service Bulletin

Boeing requests that we revise Note 1 of the NPRM and the Relevant Service Information section of the NPRM to remove the words ''* * * and replacing the wire harness,'' in reference to the procedures in Cinch Service Bulletin CN1156–28–02, Revision C, dated July 31, 2006. Boeing explains that the Cinch service bulletin does not contain information about replacing the wire harness; that information is in Boeing Special Attention Service Bulletin 767–28–0087.

Boeing also requests that we remove the date and revision level from the reference to the Cinch service bulletin. Boeing states that a date is not appropriate because Boeing Special Attention Service Bulletin 767–28–0087 does not specify a date when it refers to the Cinch service bulletin. In addition, Boeing points out that the Cinch service bulletin could be revised by the time the AD is issued, and the information would then be out of date.

We agree with the request to remove the words ''* * * and replacing the wire harness,'' from Note 1 of the NPRM for the reasons provided.

We also agree with the request to remove the date and revision level from the Cinch service bulletin identified in Note 1 of the NPRM. It is our general practice, as specified by the Office of the Federal Register, to put a date and revision level (if applicable) on all documents incorporated by reference into an AD. However, in this case, the Cinch service bulletin is described only in a note, and therefore it is not incorporated by reference into the AD. Therefore, it is not necessary for us to put a date on documents that we refer to only in a note, though in most cases a date is appropriate or important.

We have revised Note 1 of the final rule to make the requested changes. However, since the Relevant Service Information section of the NPRM does

not reappear in the final rule, no other change to the final rule is necessary.

**Conclusion**

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the change described previously. We have determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

**Costs of Compliance**

There are about 482 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

| Action | Work hours | Average labor rate per hour | Cost per airplane | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|
| Detailed inspection | 1 | $80 | $80 | 202 | $16,160 |
| Loop resistance test | 2 to 3 | $80 | $160 to $240 | 202 | $32,320 to $48,480 |

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD 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.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

**2007–23–09 Boeing:** Amendment 39–15255. Docket No. FAA–2007–28376; Directorate Identifier 2007–NM–108–AD.

**Effective Date**

(a) This AD becomes effective December 20, 2007.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Boeing Model 767–200, –300, and –300F series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 767–28–0087, dated February 5, 2007.

**Unsafe Condition**

(d) This AD results from reports of corrosion of the out-tank wire harness of the spar connector backshell for the fuel quantity indication system (FQIS). We are issuing this AD to detect and correct corrosion of the out-tank wire harness, which could prevent correct grounding of the lightning shield and result in total loss of the electrical grounding between the lightning shield and the airplane structure. This condition, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

**Compliance**

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

**Inspection, Test, and Related Investigative and Corrective Actions**

(f) Within 48 months after the effective date of this AD, do the actions in paragraphs (f)(1) and (f)(2) of this AD, and do all applicable related investigative and corrective actions, by accomplishing all the actions specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 767–28–0087, dated February 5, 2007. Do all applicable related investigative and corrective actions before further flight.

(1) A detailed inspection of each FQIS wire harness connector for corrosion of the shield-to-backshell connection, corrosion on the ground jumper, and damage to the ground jumper.

(2) A loop resistance test of each FQIS wire harness.

**Note 1:** Boeing Special Attention Service Bulletin 767–28–0087, dated February 5, 2007, refers to Cinch Service Bulletin CN1156–28–02 as an additional source of service information for installing a backshell and assembly upgrade kit.

**Alternative Methods of Compliance (AMOCs)**

(g)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

**Material Incorporated by Reference**

(h) You must use Boeing Special Attention Service Bulletin 767–28–0087, dated

February 5, 2007, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on November 2, 2007.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E7–21993 Filed 11–14–07; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–0190; Directorate Identifier 2007–NM–234–AD; Amendment 39–15259; AD 2007–23–13]**

**RIN 2120–AA64**

## Airworthiness Directives; Cessna Model 560 Airplanes

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

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Cessna Model 560 airplanes. This AD requires installing new minimum airspeed placards to notify the flightcrew of the proper airspeeds for operating in both normal and icing conditions. This AD also requires revising the airplane flight manual to provide limitations and procedures for operating in icing conditions, for operating with anti-ice systems selected ''on'' independent of icing conditions, and for recognizing and recovering from inadvertent stall. This AD also provides an optional terminating action for the placard installation. This AD results from an evaluation of in-service airplanes following an accident. The evaluation indicated that some airplanes may have an improperly adjusted stall warning system. We are issuing this AD to prevent an inadvertent stall due to the inadequate stall warning margin provided by an improperly adjusted stall warning system, which could result in loss of controllability of the airplane.

**DATES:** This AD becomes effective November 30, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of November 30, 2007.

We must receive comments on this AD by January 14, 2008.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277.

### Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Bob Busto, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4157; fax (316) 946–4107.

**SUPPLEMENTARY INFORMATION:**

### Discussion

We have evaluated five in-service airplanes to examine the settings for the angle-of-attack (AOA)/stall warning system, following an accident that occurred on a Cessna Model 560 (Citation V) airplane during an instrument landing approach in icing conditions. The evaluation indicated that some airplanes may have an improperly adjusted stall warning system. All five of the airplanes exhibited an out-of-tolerance condition with respect to the margin between the stall warning and pre-stall roll-off. On two of the airplanes, the stall warning system provided an inadequate airspeed margin between the stall warning and stall. An inadvertent stall due to the inadequate stall warning margin provided by an improperly adjusted stall warning system, if not corrected, could result in loss of controllability of the airplane.

### Relevant Service Information

Cessna has issued temporary changes (TCs) to the Cessna Model 560 Citation Ultra Airplane Flight Manual (AFM), as identified in the ''Cessna Model 560 (Citation Ultra) TCs'' table.

CESSNA MODEL 560 (CITATION ULTRA) TCS

| Airplanes | TC | Date |
|---|---|---|
| Cessna Model 560 (Citation Ultra) airplanes, serial numbers (S/Ns) 560–0260 through –0538 inclusive. | 56FMA TC–R11–16 .. | August 31, 2007. |
| | 56FMA TC–R11–17 .. | August 31, 2007. |
| | 56FMA TC–R11–19 .. | August 31, 2007. |
| | 56FMA TC–R11–20 .. | August 31, 2007. |
| | 56FMA TC–R11–21 .. | August 31, 2007. |
| | 56FMA TC–R11–23 .. | October 2, 2007. |
| | 56FMA TC–R11–24 .. | October 2, 2007. |
| | 56FMA TC–R11–25 .. | October 2, 2007. |
| | 56FMA TC–R11–26 .. | October 2, 2007. |
| | 56FMA TC–R11–27 .. | October 2, 2007. |
| | 56FMA TC–R11–28 .. | October 2, 2007. |
| | 56FMA TC–R11–29 .. | October 2, 2007. |

CESSNA MODEL 560 (CITATION ULTRA) TCS—Continued

| Airplanes | TC | Date |
|---|---|---|
| | 56FMA TC–R11–30 .. | October 2, 2007. |

Cessna has also issued TCs to the Cessna Model 560 Citation V AFM, as identified in the ''Cessna Model 560 (Citation V) TCs'' table.

CESSNA MODEL 560 (CITATION V) TCS

| Airplanes | TC | Date |
|---|---|---|
| Cessna Model 560 (Citation V) airplanes, S/Ns 560–0001 through –0259 inclusive ..... | 560FM TC–R13–08 ... | August 31, 2007. |
| | 560FM TC–R13–09 ... | August 31, 2007. |
| | 560FM TC–R13–10 ... | August 31, 2007. |
| | 560FM TC–R13–12 ... | August 31, 2007. |
| | 560FM TC–R13–13 ... | August 31, 2007. |
| | 560FM TC–R13–14 ... | October 2, 2007. |
| | 560FM TC–R13–15 ... | October 2, 2007. |
| | 560FM TC–R13–16 ... | October 2, 2007. |
| | 560FM TC–R13–17 ... | October 2, 2007. |
| | 560FM TC–R13–18 ... | October 2, 2007. |
| | 560FM TC–R13–19 ... | October 2, 2007. |
| | 560FM TC–R13–20 ... | October 2, 2007. |

TCs 56FMA TC–R11–16, 56FMA TC–R11–20, 560FM TC–R13–08, and 560FM TC–R13–09 provide procedures for exterior inspection of the wings. TCs 56FMA TC–R11–17 and 560FM TC–R13–10 provide procedures for the surface deice system. TCs 56FMA TC–R11–19 and 560FM TC–R13–12 provide emergency procedures for an inadvertent stall (buffet/roll-off). TCs 56FMA TC–R11–21 and 560FM TC–R13–13 provide procedures for safe flight under icing conditions. TCs 56FMA TC–R11–23, 56FMA TC–R11–24, 56FMA TC–R11–25, 56FMA TC–R11–26, 560FM TC–R13–14, 560FM TC–R13–15, 560FM TC–R13–16, and 560FM TC–R13–17 provide procedures for determining approach and landing data. TCs 56FMA TC–R11–27 and 560FM TC–R13–18 provide operational limitations for minimum airspeeds in normal and icing conditions. TCs 56FMA TC–R11–28, 56FMA TC–R11–29, 56FMA TC–R11–30, 560FM TC–R13–19, and 560FM TC–R13–20 provide procedures for determining landing speed and distance factors with residual ice or anti-ice systems selected ''on'' independent of icing conditions.

We have reviewed Cessna Service Bulletin SB560–34–143, dated September 7, 2007, including Attachment and Service Bulletin Supplemental Data. The service bulletin describes procedures for installing new minimum airspeed placards to notify the flightcrew of the proper airspeeds for operating in normal and icing conditions. The service bulletin also describes procedures for incorporating certain TCs into the AFM and sending a maintenance transaction report to the manufacturer.

We have also reviewed Cessna Alert Service Letters ASL560–34–34 (for airplanes equipped with a single AOA system) and ASL560–34–35 (for airplanes equipped with a dual AOA system), both Revision 1, both dated October 2, 2007, both including Attachments. The service letters describe procedures for doing a functional test of the AOA system, which involves determining whether the calibration of the AOA system is correct and adjusting the calibration settings if necessary. The service letters also describe procedures for removing the temporary airspeed placard installed in accordance with Cessna Service Bulletin SB560–34–143 and submitting the AOA system test data sheet and a maintenance transaction report to the manufacturer.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

## FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. For this reason, we are issuing this AD to prevent an inadvertent stall due to the inadequate stall warning margin provided by an improperly adjusted stall warning system, which could result in loss of controllability of the airplane. This AD requires accomplishing the actions specified in the service information described previously, except as discussed under ''Difference between the AD and Service Information.''

## Difference Between the AD and Service Information

Although the Accomplishment Instructions of Cessna Service Bulletin SB560–34–143 and Cessna Alert Service Letters ASL560–34–34 and ASL560–34–35 describe procedures for submitting a maintenance transaction report to the manufacturer, this AD does not require that action. However, if operators accomplish the functional test as specified in Cessna Alert Service Letters ASL560–34–34 and ASL560–34–35, this AD requires submitting the AOA system test data sheet to the manufacturer.

## Interim Action

We consider this AD interim action. We are currently considering requiring a functional test of the AOA system to adjust the calibration settings of the AOA system, which, in addition to the AFM revisions, would constitute terminating action for the placard installation required by this AD. However, the planned compliance time for the functional test would allow enough time to provide notice and opportunity for prior public comment on the merits of the functional test.

## FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and

that good cause exists to make this AD effective in less than 30 days.

### Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0190; Directorate Identifier 2007–NM–234–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

### Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

### Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD 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.

For the reasons discussed above, I certify that the regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

**2007–23–13 Cessna Aircraft Company:** Amendment 39–15259. Docket No. FAA–2007–0190; Directorate Identifier 2007–NM–234–AD.

**Effective Date**

(a) This AD becomes effective November 30, 2007.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Cessna Model 560 airplanes, certificated in any category, serial numbers (S/Ns) 560–0001 through –0538 inclusive.

**Unsafe Condition**

(d) This AD results from an evaluation of in-service airplanes following an accident. The evaluation indicated that some airplanes may have an improperly adjusted stall warning system. We are issuing this AD to prevent an inadvertent stall due to the inadequate stall warning margin provided by an improperly adjusted stall warning system, which could result in loss of controllability of the airplane.

**Compliance**

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

**Airplane Flight Manual (AFM) Revision**

(f) Within 14 days after the effective date of this AD, revise the Operating Limitations, Normal Procedures, Emergency Procedures, and the Approach and Landing sections of the AFM to include the information in the temporary changes (TCs) identified in Table 1 of this AD, as applicable. These TCs provide limitations and procedures for operating in icing conditions, for operating with anti-ice systems selected ''on'' independent of icing conditions, and for recognizing and recovering from inadvertent stall. Operate the airplane according to the limitations and procedures in the applicable TCs.

**Note 1:** This may be done by inserting a copy of the applicable TCs into the applicable AFM. When these TCs have been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, provided the relevant information in the general revision is identical to that in the applicable TCs.

TABLE 1.—CESSNA MODEL 560 TCS

| Airplanes | Applicable TC |
|---|---|
| Model 560 airplanes, S/Ns 560–0001 through –0259 inclusive ..... | 560FM TC–R13–08, dated August 31, 2007, to the Cessna Model 560 Citation V AFM.<br>560FM TC–R13–09, dated August 31, 2007, to the Cessna Model 560 Citation V AFM.<br>560FM TC–R13–10, dated August 31, 2007, to the Cessna Model 560 Citation V AFM.<br>560FM TC–R13–12, dated August 31, 2007, to the Cessna Model 560 Citation V AFM.<br>560FM TC–R13–13, dated August 31, 2007, to the Cessna Model 560 Citation V AFM. |

TABLE 1.—CESSNA MODEL 560 TCS—Continued

| Airplanes | Applicable TC |
|---|---|
| Model 560 airplanes, S/Ns 560–0260 through –0538 inclusive ..... | 560FM TC–R13–14, dated October 2, 2007, to the Cessna Model 560 Citation V AFM.<br>560FM TC–R13–15, dated October 2, 2007, to the Cessna Model 560 Citation V AFM.<br>560FM TC–R13–16, dated October 2, 2007, to the Cessna Model 560 Citation V AFM.<br>560FM TC–R13–17, dated October 2, 2007, to the Cessna Model 560 Citation V AFM.<br>560FM TC–R13–18, dated October 2, 2007, to the Cessna Model 560 Citation V AFM.<br>560FM TC–R13–19, dated October 2, 2007, to the Cessna Model 560 Citation V AFM.<br>560FM TC–R13–20, dated October 2, 2007, to the Cessna Model 560 Citation V AFM.<br>56FMA TC–R11–16, dated August 31, 2007, to the Cessna Model 560 Citation Ultra AFM.<br>56FMA TC–R11–17, dated August 31, 2007, to the Cessna Model 560 Citation Ultra AFM.<br>56FMA TC–R11–19, dated August 31, 2007, to the Cessna Model 560 Citation Ultra AFM.<br>56FMA TC–R11–20, dated August 31, 2007, to the Cessna Model 560 Citation Ultra AFM.<br>56FMA TC–R11–21, dated August 31, 2007, to the Cessna Model 560 Citation Ultra AFM.<br>56FMA TC–R11–23, dated October 2, 2007, to the Cessna Model 560 Citation Ultra AFM.<br>56FMA TC–R11–24, dated October 2, 2007, to the Cessna Model 560 Citation Ultra AFM.<br>56FMA TC–R11–25, dated October 2, 2007, to the Cessna Model 560 Citation Ultra AFM.<br>56FMA TC–R11–26, dated October 2, 2007, to the Cessna Model 560 Citation Ultra AFM.<br>56FMA TC–R11–27, dated October 2, 2007, to the Cessna Model 560 Citation Ultra AFM.<br>56FMA TC–R11–28, dated October 2, 2007, to the Cessna Model 560 Citation Ultra AFM.<br>56FMA TC–R11–29, dated October 2, 2007, to the Cessna Model 560 Citation Ultra AFM.<br>56FMA TC–R11–30, dated October 2, 2007, to the Cessna Model 560 Citation Ultra AFM. |

**Placard Installation**

(g) Within 30 days after the effective date of this AD, install new minimum airspeed placards to notify the flightcrew of the proper airspeeds for operating in normal and icing conditions, in accordance with the Accomplishment Instructions of Cessna Service Bulletin SB560–34–143, dated September 7, 2007, including Attachment and Service Bulletin Supplemental Data. The placards must be installed above or near the pilot and copilot attitude indicators or primary flight displays and must be in clear view of the pilot and copilot. The placards may be removed when the actions specified in paragraphs (h) and (i) of this AD have been accomplished.

**Optional Terminating Action**

(h) Doing the functional test of the AOA system and adjusting the calibration settings of the AOA system as applicable, in accordance with Cessna Alert Service Letter ASL560–34–34 (for airplanes equipped with a single AOA system) or ASL560–34–35 (for airplanes equipped with a dual AOA system), both Revision 1, both dated October 2, 2007, both including Attachments, as applicable, and submitting the AOA system test data as specified in paragraph (i) of this AD, terminates the placard installation required by paragraph (g) of this AD.

**Reporting AOA System Test Data**

(i) Submit the AOA system test data report for the functional test specified in paragraph (h) of this AD to Glenn Todd, Citation Customer Support Engineer, Department 572, P.O. Box 7706, Wichita, KS 67277–7706, e-mail: *gatodd@cessna.textron.com*, fax: 1–316–517–8500 or 1–316–206–2337, at the applicable time specified in paragraph (i)(1) or (i)(2) of this AD. The report must include the AOA test data, the airplane serial number and registration number, and the number of landings and flight hours on the airplane. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the functional test was done after the effective date of this AD: Submit the report within 30 days after the functional test.

(2) If the inspection was accomplished prior to the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

**No Maintenance Transaction Report Required**

(j) Although Cessna Service Bulletin SB560–34–143, dated September 7, 2007, including Attachment and Service Bulletin Supplemental Data, referred to in paragraph (g) of this AD; and Cessna Alert Service Letters ASL560–34–34 and ASL560–34–35, both Revision 1, both dated October 2, 2007, both including Attachments, referred to in paragraph (h) of this AD; specify to submit a maintenance transaction report to the manufacturer, this AD does not include that requirement.

**Alternative Methods of Compliance (AMOCs)**

(k)(1) The Manager, Wichita Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on

any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

**Material Incorporated by Reference**

(l) You must use the service information identified in Table 2 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. If you accomplish the optional actions specified in this AD, you must use Cessna Alert Service Letter ASL560–34–34, Revision 1, dated October 2, 2007, including Attachments; or Cessna Alert Service Letter ASL560–34–35, Revision 1, dated October 2, 2007, including Attachments; as applicable; unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

| Service information | Date |
|---|---|
| Cessna Service Bulletin SB560–34–143, including Attachment and Service Bulletin Supplemental Data | September 7, 2007. |
| Cessna Temporary Change 56FMA TC–R11–16 to the Cessna Model 560 Citation Ultra Airplane Flight Manual | August 31, 2007. |
| Cessna Temporary Change 56FMA TC–R11–17 to the Cessna Model 560 Citation Ultra Airplane Flight Manual | August 31, 2007. |
| Cessna Temporary Change 56FMA TC–R11–19 to the Cessna Model 560 Citation Ultra Airplane Flight Manual | August 31, 2007. |
| Cessna Temporary Change 56FMA TC–R11–20 to the Cessna Model 560 Citation Ultra Airplane Flight Manual | August 31, 2007. |
| Cessna Temporary Change 56FMA TC–R11–21 to the Cessna Model 560 Citation Ultra Airplane Flight Manual | August 31, 2007. |
| Cessna Temporary Change 56FMA TC–R11–23 to the Cessna Model 560 Citation Ultra Airplane Flight Manual | October 2, 2007. |
| Cessna Temporary Change 56FMA TC–R11–24 to the Cessna Model 560 Citation Ultra Airplane Flight Manual | October 2, 2007. |
| Cessna Temporary Change 56FMA TC–R11–25 to the Cessna Model 560 Citation Ultra Airplane Flight Manual | October 2, 2007. |
| Cessna Temporary Change 56FMA TC–R11–26 to the Cessna Model 560 Citation Ultra Airplane Flight Manual | October 2, 2007. |
| Cessna Temporary Change 56FMA TC–R11–27 to the Cessna Model 560 Citation Ultra Airplane Flight Manual | October 2, 2007. |
| Cessna Temporary Change 56FMA TC–R11–28 to the Cessna Model 560 Citation Ultra Airplane Flight Manual | October 2, 2007. |
| Cessna Temporary Change 56FMA TC–R11–29 to the Cessna Model 560 Citation Ultra Airplane Flight Manual | October 2, 2007. |
| Cessna Temporary Change 56FMA TC–R11–30 to the Cessna Model 560 Citation Ultra Airplane Flight Manual | October 2, 2007. |
| Cessna Temporary Change 560FM TC–R13–08 to the Cessna Model 560 Citation V Airplane Flight Manual | August 31, 2007. |
| Cessna Temporary Change 560FM TC–R13–09 to the Cessna Model 560 Citation V Airplane Flight Manual | August 31, 2007. |
| Cessna Temporary Change 560FM TC–R13–10 to the Cessna Model 560 Citation V Airplane Flight Manual | August 31, 2007. |
| Cessna Temporary Change 560FM TC–R13–12 to the Cessna Model 560 Citation V Airplane Flight Manual | August 31, 2007. |
| Cessna Temporary Change 560FM TC–R13–13 to the Cessna Model 560 Citation V Airplane Flight Manual | August 31, 2007. |
| Cessna Temporary Change 560FM TC–R13–14 to the Cessna Model 560 Citation V Airplane Flight Manual | October 2, 2007. |
| Cessna Temporary Change 560FM TC–R13–15 to the Cessna Model 560 Citation V Airplane Flight Manual | October 2, 2007. |
| Cessna Temporary Change 560FM TC–R13–16 to the Cessna Model 560 Citation V Airplane Flight Manual | October 2, 2007. |
| Cessna Temporary Change 560FM TC–R13–17 to the Cessna Model 560 Citation V Airplane Flight Manual | October 2, 2007. |
| Cessna Temporary Change 560FM TC–R13–18 to the Cessna Model 560 Citation V Airplane Flight Manual | October 2, 2007. |
| Cessna Temporary Change 560FM TC–R13–19 to the Cessna Model 560 Citation V Airplane Flight Manual | October 2, 2007. |
| Cessna Temporary Change 560FM TC–R13–20 to the Cessna Model 560 Citation V Airplane Flight Manual | October 2, 2007. |

Issued in Renton, Washington, on November 5, 2007.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E7–22179 Filed 11–14–07; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–27619; Directorate Identifier 2005–NM–164–AD; Amendment 39–15257; AD 2007–23–11]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 777 Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 777 airplanes. This AD requires repetitive measurements of the freeplay of certain joints of the trailing edge flap supports; repetitive lubrication of the support joints; and related investigative and corrective actions if necessary. This AD also provides for modifying certain components of the trailing edge flap supports, which extends the intervals for the repetitive measurements, and revising the maintenance practices of the maintenance planning data document. This AD results from reports of excessive wear of the pins, bushings, and bearings, and corrosion at the joints of the outboard trailing edge flap supports. We are issuing this AD to prevent wear and corrosion at the flap support joints, which could result in loss of the trailing edge flap and possible loss of control of the airplane.

**DATES:** This AD becomes effective December 20, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of December 20, 2007.

**ADDRESSES:** For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

**Examining the Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Gary Oltman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind

Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6443; fax (425) 917–6590.

**Discussion**

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 777 airplanes. That NPRM was published in the **Federal Register** on March 20, 2007 (72 FR 13048). That NPRM proposed to require repetitive measurements of the freeplay of certain joints of the trailing edge flap supports; repetitive lubrication of the support joints; and related investigative and corrective actions if necessary. That NPRM also provides for modifying certain components of the trailing edge flap supports, which extends the intervals for the repetitive measurements, and revising the maintenance practices of the maintenance planning data document.

**Comments**

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

**Request To Change Paragraph (f)(1) of the NPRM**

Boeing asks that paragraph (f)(1) be changed to read ''For airplanes that have accumulated 6,000 total flight cycles or more on or before the effective date of this AD and on which a teardown inspection has not been accomplished before the effective date of this AD.'' Boeing states that with the use of the word ''or'' in place of the word ''and'' as noted above, the NPRM could include ''For airplanes on which a teardown inspection has not been accomplished before the effective date of this AD'' and could be interpreted as including new airplanes. Boeing adds that this may be confusing as the NPRM provides coverage for airplanes that have accumulated fewer than 6,000 cycles, or new airplanes.

We agree with changing ''or'' to ''and'' as requested by Boeing because the use of the word ''or'' could be interpreted as applying to all Model 777 airplanes in the applicability, regardless of the total flight cycles, if a teardown inspection has not been done. We have changed paragraph (f)(1) of this AD accordingly.

We disagree with the interpretation that the AD applicability could include new airplanes, because Boeing Service Bulletin 777–27A0066, Revision 1, dated May 18, 2006, clearly identifies affected airplanes as having line numbers 1 through 546 only, and we refer to that service bulletin in paragraph (c), ''Applicability,'' of the NPRM. We have made no change to the AD in this regard.

**Request To Change Description of Relevant Service Information Section**

Air France asks that certain language specified in the Relevant Service Information section of the NPRM be changed. Air France states that the last paragraph of the description of Service Bulletin 777–27A0066, Revision 1, specifies that accomplishing the actions in Boeing Alert Service Bulletin 777–27A0071, Revision 1, dated October 16, 2006, eliminates the need for the repetitive measurements and lubrications of certain trailing edge flap supports. Air France notes that Alert Service Bulletin 777–27A0071, Revision 1, does not eliminate the need for the repetitive inspections, but only extends the interval for the repetitive inspections.

We acknowledge the commenter's concern; however, that section of the preamble does not reappear in the final rule. We have provided clarification as follows: Service Bulletin 777–27A0071, Revision 1, specifies that accomplishing the modification in that service bulletin constitutes terminating action for the actions specified in Service Bulletin 777–27A0066, Revision 1, for the associated trailing edge flap support only. The actions required by paragraph (l) of the AD require continuing periodic inspections and maintenance of the support joints of the trailing edge flap, which is part of the maintenance inspection program. Those are the inspections that are not terminated by the AD. As part of the maintenance program, those inspections would generally be accomplished at the same time or in combination with normally scheduled airplane inspections and other maintenance program tasks. In light of these facts, we have made no change to the AD.

Japan Airlines International (JAL) asks that the NPRM be changed to allow modification of the flap support mechanism by incorporating Service Bulletin 777–27A0071, Revision 1, dated October 16, 2006, instead of doing a support teardown inspection or temporary return to service inspection. JAL refers to the Relevant Service Information section of the NPRM, which describes procedures for disassembling any joint that exceeds the freeplay limits specified in Service Bulletin 777–27A0066, Revision 1, and doing the related investigative and corrective actions in the ''support teardown inspection.'' JAL also refers to the teardown inspections required by paragraphs (h)(1), (h)(2), and (h)(3) of the NPRM. JAL notes that as an option to the support teardown inspection, for certain airplanes, the service bulletin describes procedures for a ''temporary return to service'' inspection.

We agree with JAL that allowing operators to accomplish the modification specified in Alert Service Bulletin 777–27A0071, Revision 1, instead of the teardown inspection or temporary return to service is an acceptable option. However, we do not agree to change the AD because that option is already specified in this AD. We have made no change to the AD in this regard.

**Requests To Clarify Actions in Paragraph (k) of the NPRM**

Air France asks that we include in paragraph (k) of the NPRM the extension interval of 16,000 flight cycles for the repetitive measurements allowed by the application of Alert Service Bulletin 777–27A0071, Revision 1, dated October 16, 2006. Air France notes that paragraph (k) should specify accomplishing the actions in Alert Service Bulletin 777–27A0071, Revision 1; or make a reference to maintenance review board (MRB) and maintenance planning document (MPD) item 27–460–01, which is the item created in the MRB and MPD; or take into account airplanes on which Service Bulletin 777–27A0071, Revision 1, has been accomplished at the extended 16,000 flight cycle intervals.

JAL states that paragraph (k) of the NPRM should be clarified to include the extended interval of 16,000 flight cycles.

We agree with the commenters that paragraph (k) of the AD should provide the extended interval for the repetitive measurements so it corresponds with the interval specified in paragraph (j) of the AD. We have included that interval in paragraph (k) for clarification.

Air France also asks that paragraph (k) of the NPRM include terminating action. Air France states that paragraph (k) does not specify that application of Alert Service Bulletin 777–27A0071, Revision 1, is terminating action for the actions specified in paragraphs (f), (g), (h), and (i) of the NPRM, for the associated trailing edge flap support only. Air France adds that paragraph (k) should correspond with paragraph (j) of the NPRM.

We agree with Air France for the reasons provided, and we have included the terminating action in paragraph (k) of the AD for clarification.

**Request To Change Compliance Times**

JAL asks that the compliance times specified in paragraph (h)(1)(i) and (h)(3) of the NPRM be extended from 12

to 18 months after the first freeplay measurement of 0.020 inch to 0.100 inch inclusive, and that the repetitive freeplay inspection (measurement) interval be reduced to 500 flight cycles. JAL provides the following reasons for the request:

• All flap support mechanisms are modified at the same time to avoid complexity and save time with the freeplay inspection interval. There are many Model 777 airplanes planned for flap-related modifications, but once the freeplay value exceeds 0.020 inch, the actions must be done within 12 months. The 12-month compliance time makes it difficult to schedule additional airplanes because of inflexibility; however, 18 months provides more flexibility for scheduling flap modifications. Reducing the freeplay inspection interval to 500 flight cycles would support the compliance time extension.

• Since the freeplay inspection procedure is not precise, it frequently measures freeplay data containing human errors. If the freeplay measurement value exceeds 0.020 inch the actions should be done within 12 months. The teardown inspection must be done before further flight if the freeplay value exceeds 0.020 inch. On the next measurement the value can get within 0.020 inch, but the actions must still be done within 12 months. This is not economical and JAL should be allowed an additional 6-month buffer for flexibility.

• Since repetitive inspections are done at intervals of 500 flight cycles, JAL monitors the freeplay data for the joints. Due to the freeplay (wear) value of all joints being monitored, the trend of the freeplay value of specific joints is known. For Model 777 airplanes utilized for domestic flight (high utilization in terms of flight cycles), the 500 flight-cycle freeplay inspection is done within 3 months, and the normal 1,000 flight-cycle freeplay inspection is done at around 6 months.

In developing an appropriate compliance time for these actions, we considered the urgency associated with the subject unsafe condition, the availability of required parts, and the practical aspect of accomplishing the required modification within a period of time that corresponds to the normal scheduled maintenance for most affected operators. Additionally, the compliance times were in part based on observed wear properties of the applicable parts. We recognize that JAL may have data to show that its wear rates are different than that used in the manufacturer's analysis. If this is the case, we recommend that JAL submit its data in the form of an alternative method of compliance because JAL provides no technical justification for changing the compliance times. According to the provisions of paragraph (n) of the AD, we may approve requests to adjust the compliance time if the request includes data that show that the new compliance time would provide an acceptable level of safety. We have made no change to the AD in this regard.

**Conclusion**

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

**Costs of Compliance**

There are about 546 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

| Action | Work hours | Average labor rate per hour | Parts cost | Cost per airplane | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|---|
| Freeplay measurement | 28 | $80 | 0 | $2,240, per cycle | 145 | $324,800, per cycle. |
| Lubrication | 2 | 80 | 0 | $160, per cycle | 145 | $23,200 per cycle. |
| Modification for flap support No. 3 and 6. | 135 | 80 | $58,521 | $69,321 | 145 | $10,051,545. |

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD 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.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

**2007–23–11 Boeing:** Amendment 39–15257. Docket No. FAA–2007–27619; Directorate Identifier 2005–NM–164–AD.

**Effective Date**

(a) This AD becomes effective December 20, 2007.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Boeing Model 777–200, –200LR, –300, and –300ER series airplanes, certificated in any category; as identified in Boeing Service Bulletin 777–27A0066, Revision 1, dated May 18, 2006.

**Unsafe Condition**

(d) This AD results from reports of excessive wear of the pins, bushings, and bearings, and corrosion at the joints of the outboard trailing edge flap supports. We are issuing this AD to prevent wear and corrosion at the flap support joints, which could result in loss of the trailing edge flap and possible loss of control of the airplane.

**Compliance**

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

**Initial Freeplay Measurement**

(f) At the applicable time in paragraph (f)(1) or (f)(2) of this AD: Measure the freeplay of support joints A, B, C, and D of the trailing edge flap supports, numbers 1 through 3 inclusive and 6 through 8 inclusive, and of joint B of the trailing edge flap supports, numbers 4 and 5; in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–27A0066, Revision 1, dated May 18, 2006.

(1) For airplanes that have accumulated 6,000 total flight cycles or more on or before the effective date of this AD and on which a teardown inspection has not been accomplished before the effective date of this AD: At the earlier of the times in paragraph (f)(1)(i) or (f)(1)(ii) of this AD.

(i) Prior to the accumulation of 10,000 total flight cycles, or within 9 months after the effective date of this AD, whichever occurs later.

(ii) Within 30 months after the effective date of this AD.

(2) For airplanes that have accumulated fewer than 6,000 total flight cycles on or before the effective date of this AD: At the later of the times in paragraph (f)(2)(i) or (f)(2)(ii) of this AD.

(i) Prior to the accumulation of 6,000 total flight cycles, or within 120 months after the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, whichever occurs first.

(ii) Within 30 months after the effective date of this AD.

**Repetitive Intervals if the Freeplay Measurement is Less Than 0.020 Inch**

(g) If, during any freeplay measurement required by paragraph (f), (g), or (h) of this AD, the freeplay measurement is less than 0.020 inch: Repeat the freeplay measurement required by paragraph (f) of this AD at the applicable interval in paragraph (g)(1) or (g)(2) of this AD. Accomplishing the actions specified in paragraph (j) or (k) of this AD, as applicable, extends the intervals for the repetitive measurements for the associated flap support only.

(1) At intervals not to exceed 1,000 flight cycles.

(2) At intervals not to exceed 6,000 flight cycles or 120 months, whichever occurs first, if a review of airplane maintenance records can conclusively determine that the joints have been lubricated with only BMS 3–33 grease at the earlier of intervals not to exceed 1,000 flight cycles or 240 days since the last support teardown inspection, or since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.

**Related Investigative and Corrective Actions, and Repetitive Intervals if the Freeplay Measurement is 0.020 Inch or Greater**

(h) If, during any freeplay measurement required by paragraph (f), (g), or (h) of this AD, the freeplay measurement is 0.020 inch or greater: Do the applicable action in paragraph (h)(1), (h)(2), or (h)(3) of this AD. Accomplishing the actions specified in paragraph (j) or (k) of this AD, as applicable, extends the intervals for repetitive measurements for the associated flap support only. Do all actions in accordance with the Accomplishment Instructions and note (e) of Table 1 in paragraph 1.E., ''Compliance.'' of Boeing Service Bulletin 777–27A0066, Revision 1, dated May 18, 2006.

(1) For airplanes that have accumulated 6,000 total flight cycles or more as of the effective date of this AD, and for which the freeplay measurement is 0.020 inch to 0.100 inch inclusive: Repeat the freeplay measurement required by paragraph (f) of this AD thereafter at intervals not to exceed 500 flight cycles until the support teardown inspection in paragraph (h)(1)(i) or (h)(1)(ii) of this AD is done.

(i) Within 12 months after the first freeplay measurement of 0.020 inch to 0.100 inch inclusive, do the applicable related investigative and corrective actions specified in the service bulletin as the ''Support Teardown Inspection,'' and repeat the freeplay measurement required by paragraph (f) of this AD thereafter at intervals not to exceed 6,000 flight cycles or 120 months, whichever occurs first.

(ii) Before further flight after the first freeplay measurement of 0.020 inch to 0.100 inch inclusive, do the applicable related investigative and corrective actions specified in the service bulletin as the ''Temporary Return to Service Inspection'' and, within 24 months after the first freeplay measurement of 0.020 inch to 0.100 inch inclusive, do the applicable related investigative and corrective actions specified in the service bulletin as the ''Support Teardown Inspection.'' Repeat the freeplay measurement required by paragraph (f) of this AD thereafter at intervals not to exceed 6,000 flight cycles, or 120 months, whichever occurs first.

(2) For airplanes that have accumulated 6,000 total flight cycles or more as of the effective date of this AD, and the freeplay measurement is greater than 0.100 inch: Do the action in paragraph (h)(2)(i) or (h)(2)(ii) of this AD.

(i) Before further flight after the first freeplay measurement of greater than 0.100 inch, do the applicable related investigative and corrective actions specified in the service bulletin as the ''Support Teardown Inspection.'' Repeat the freeplay measurement required by paragraph (f) of this AD thereafter at intervals not to exceed 6,000 flight cycles or 120 months, whichever occurs first.

(ii) Before further flight after the first freeplay measurement of greater than 0.100 inch, do applicable related investigative and corrective actions in the ''Temporary Return to Service Inspection,'' and within 6 months after the first freeplay measurement of greater than 0.100 inch, do the applicable related investigative and corrective actions in the ''Support Teardown Inspection.'' Repeat the freeplay measurement required by paragraph (f) of this AD thereafter at intervals not to exceed 6,000 flight cycles or 120 months, whichever occurs first.

(3) For airplanes that have accumulated fewer than 6,000 total flight cycles as of the effective date of this AD: Before further flight after the first freeplay measurement of 0.020 inch or greater, do the related investigative and corrective actions specified in the service bulletin as the ''Support Teardown Inspection.'' Repeat the freeplay measurement required by paragraph (f) of this AD thereafter at intervals not to exceed 6,000 flight cycles or 120 months, whichever occurs first.

**Repetitive Lubrications**

(i) Within 12 months after the effective date of this AD: Lubricate the joints of the trailing edge flap supports using BMS 3–33 grease. Repeat the lubrication thereafter at intervals not to exceed 1,000 flight cycles, or 240 days, whichever occurs first. Do all actions in accordance with the Accomplishment Instructions, and note (d) of Table 1 in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 777–27A0066, Revision 1, dated May 18, 2006.

**Modification/Repetitive Freeplay Measurements for Flap Support Numbers 3 and 6**

(j) Before the accumulation of 23,000 total flight cycles or within 24 months after the effective date of this AD, whichever is later: Replace the pins, ball sets, and bushings on

the joints of the trailing edge flap at support numbers 3 and 6 with new, improved components by doing all the applicable actions, including all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–27A0071, Revision 1, dated October 16, 2006. Before further flight after doing the actions, do a detailed inspection of the components that interface with the flap support pins for discrepancies (corrosion, damage, or excessive wear), and a general visual inspection for any blocked lubrication paths; and do all applicable corrective actions. Repeat the freeplay measurements for the associated trailing edge flap support at intervals not to exceed 16,000 flight cycles in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–27A0071, Revision 1, dated October 16, 2006. Accomplishing the actions in this paragraph constitutes terminating action for the actions specified in paragraphs (f), (g), (h), and (i) of this AD, for the associated trailing edge flap support only.

**Optional Modification for Flap Support Numbers 1, 2, 4, 5, 7, and 8**

(k) Accomplishing the actions specified in paragraph (j) of this AD at support numbers 1, 2, 4, 5, 7, and 8, extends the repetitive intervals for the freeplay measurements required by paragraph (g) of this AD to an interval not to exceed 16,000 flight cycles for the associated trailing edge flap support. Accomplishing the actions in this paragraph constitutes terminating action for the actions specified in paragraphs (f), (g), (h), and (i) of this AD, for the associated trailing edge flap support only.

**Revise Maintenance Planning Data (MPD) Document**

(l) Within 12 months after the effective date of this AD: Revise the maintenance practices for performing periodic inspections and maintenance of the support joints of the trailing edge flap for the maintenance inspection program of the Boeing 777 MPD Document by doing the actions specified in paragraphs 1 and 3 only of Part 7 of the Accomplishment Instructions of Boeing Alert Service Bulletin 777–27A0071, Revision 1, dated October 16, 2006.

**Actions Accomplished Previously**

(m) Actions done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 777–27A0066, dated July 28, 2005, are acceptable for compliance with the actions specified in paragraphs (f), (g), (h), and (i) of this AD, as applicable. Actions done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 777–27A0071, dated March 30, 2006, are acceptable for compliance with the actions specified in paragraphs (j), (k), and (l) of this AD, as applicable.

**Alternative Methods of Compliance (AMOCs)**

(n)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

**Material Incorporated by Reference**

(o) You must use Boeing Service Bulletin 777–27A0066, Revision 1, dated May 18, 2006; and Boeing Alert Service Bulletin 777–27A0071, Revision 1, dated October 16, 2006; as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on November 2, 2007.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E7–21999 Filed 11–14–07; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–27740; Directorate Identifier 2006–NM–290–AD; Amendment 39–15256; AD 2007–23–10]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 737–600, –700, –700C, –800 and –900 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 737–600, –700, –700C, –800 and –900 series airplanes. This AD requires an inspection of the fillet sealant at the inboard and outboard sides of the receptacles in the wheel wells of the main landing gear, and related investigative/corrective actions if necessary. This AD results from reports of in-production airplanes with missing or insufficient fillet sealant around the receptacles at the disconnect bracket. We are issuing this AD to prevent corrosion damage due to missing or insufficient fillet sealant. Such corrosion could result in insufficient electrical bonding between the connectors and the disconnect bracket, and consequent loss of the shielding that protects the wire bundles from lightning, electromagnetic interference (EMI), and high intensity radiated field (HIRF). Loss of lightning, EMI, and HIRF protection at those receptacles could cause failure of multiple electrical systems and subsequent loss of several critical control systems that are necessary for safe flight. In addition, a lightning strike could cause arcing in the fuel tank; this potential ignition source, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

**DATES:** This AD becomes effective December 20, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 20, 2007.

**ADDRESSES:** For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Binh Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton,

Washington 98057–3356; telephone (425) 917–6485; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

### Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground floor of the West Building at the DOT street address stated in the **ADDRESSES** section.

### Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 737–600, –700, –700C, –800 and –900 series airplanes. That NPRM was published in the **Federal Register** on March 30, 2007 (72 FR 15073). That NPRM proposed to require an inspection of the fillet sealant at the inboard and outboard sides of the receptacles in the wheel wells of the main landing gear, and related investigative/corrective actions if necessary.

### Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

### Support for NPRM

Boeing and AirTran Airways support the NPRM's proposed actions.

### Request for Parts Availability Accounting

AirTran Airways requests that the expected parts usage and parts availability be reviewed and addressed for feasibility prior to the release of the final rule to ensure that parts shortages will not necessitate requests for unnecessary alternative means of compliance or adjustments of the compliance time. The commenter adds that there are 36 part numbers that could possibly need replacement if there is corrosion beyond the acceptable limits in the service bulletin. Of these 36 connectors, 9 part numbers are not available; of those, 5 do not appear to be in the production pipeline. Quite a few part numbers show less than a dozen available.

We agree with the request and have coordinated with Boeing regarding AirTran's concern. The NPRM cited Boeing Special Attention Service Bulletin 737–24–1169, dated December 15, 2006. Since we issued the NPRM, Boeing has revised the service bulletin. Revision 1, dated August 6, 2007, provides optional connector part numbers, which will ensure adequate replacement parts for the specified corrective actions. The remaining information in Revision 1 is essentially unchanged. We have revised paragraphs (c) and (f) of this final rule to refer to Revision 1 of the service bulletin as the appropriate source of service information for the applicability and the required actions. We have included credit for actions previously performed in accordance with the original service bulletin.

### Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

### Costs of Compliance

There are about 333 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

| Work hours | Average labor rate per hour | Cost per airplane | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|
| 1 | $80 | $80 | 118 | $9,440 |

### Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

### Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD 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.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

**2007–23–10 Boeing:** Amendment 39–15256. Docket No. FAA–2007–27740; Directorate Identifier 2006–NM–290–AD.

**Effective Date**

(a) This AD becomes effective December 20, 2007.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Boeing Model 737–600, –700, –700C, –800 and –900 series airplanes; certificated in any category; as identified in Boeing Special Attention Service Bulletin 737–24–1169, Revision 1, dated August 6, 2007.

**Unsafe Condition**

(d) This AD results from reports of in-production airplanes with missing or insufficient fillet sealant around the receptacles installed in the wheel wells of the main landing gear (MLG). We are issuing this AD to prevent corrosion damage due to missing or insufficient fillet sealant. Such corrosion could result in insufficient electrical bonding between the connectors and the disconnect bracket, and consequent loss of the shielding that protects the wire bundles from lightning, electromagnetic interference (EMI), and high intensity radiated field (HIRF). Loss of lightning, EMI, and HIRF protection at those receptacles could cause failure of multiple electrical systems and subsequent loss of several critical control systems that are necessary for safe flight. In addition, a lightning strike could cause arcing in the fuel tank; this potential ignition source, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

**Compliance**

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

**Inspection**

(f) Within 24 months after the effective date of this AD, perform a detailed inspection to determine if there is sufficient fillet sealant at the inboard and outboard sides of the receptacles in the MLG wheel wells, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–24–1169, Revision 1, dated August 6, 2007. Do all applicable related investigative and corrective actions before further flight in accordance with the service bulletin.

(g) Accomplishment of an inspection and applicable related investigative and corrective actions done before the effective date of this AD in accordance with Boeing Special Attention Service Bulletin 737–24–1169, dated December 15, 2006, is considered acceptable for compliance with the corresponding requirements of paragraph (f) of this AD.

**Alternative Methods of Compliance (AMOCs)**

(h)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

**Material Incorporated by Reference**

(i) You must use Boeing Special Attention Service Bulletin 737–24–1169, Revision 1, dated August 6, 2007, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on November 2, 2007.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E7–22000 Filed 11–14–07; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2007–28366; Airspace Docket No. 07–ASO–11]**

## Amendment of Class E Airspace; Mooresville, NC

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

**ACTION:** Final rule.

**SUMMARY:** This action amends class E5 airspace at Mooresville, NC. Due to the establishment of two Copter Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) helicopter point in space approaches at Lowe's Mooresville Heliport, Mooresville, NC, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAPs and for Instrument Flight Rules (IFR) operations at Lowe's Mooresville Heliport.

**DATES:** *Effective Date:* 0901 UTC, February 14, 2008. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Melinda Giddens, System Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

**SUPPLEMENTARY INFORMATION:**

### History

On June 27, 2007, the FAA proposed to amend Title 14 of the Code of Federal Regulations (14 CFR part 71) by amending Class E5 airspace at Mooresville, NC, (72 FR 35209). This action provides adequate Class E5 airspace for IFR operations at Lowe's Mooresville Heliport, Mooresville, NC. Designations for Class E are published in FAA Order 7400.9R, dated August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

### The Rule

This amendment to part 71 of the Code of Federal Regulations (14 CFR part 71) amends the Class E5 airspace at Mooresville, NC.

The FAA has determined that this rule only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when

promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional Class E airspace at Mooresville, NC.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

### Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

## PART 71—[AMENDED]

■ 1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, dated August 15, 2007, and effective September 15, 2007, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.*

* * * * *

**ASO NC E5 Mooresville, NC [REVISED]**

Lake Norman Airpark, NC
(Lat.35°36′50″ N., long. 80°53′58″ W.)
Lowe's Mooresville Heliport Point In Space Coordinates
(Lat.35°32′32″ N., long. 80°50′29″ W.)
(Lat.35°32′51″ N., long. 80°52′02″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-radius of Lake Norman Airpark and that airspace within a 6-mile radius of the points in space (Lat.35°32′32″ N., long. 80°50′29″ W) and (Lat.35°32′51″ N., long. 80°52′02″ W) serving Lowe's Mooresville Heliport, excluding that airspace within the Statesville, NC, Class E airspace area and the Concord, NC, Class E airspace area.

* * * * *

Issued in College Park, Georgia, on October 5, 2007.

**Mark D. Ward,**

*Manager, System Support Group, Eastern Service Center.*

[FR Doc. 07–5646 Filed 11–14–07; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2007–28400; Airspace Docket No. 07–ANM–11]**

## Amendment to Class E Airspace; Helena, MT

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

**ACTION:** Final rule.

**SUMMARY:** This action will modify Class E airspace at Helena, MT. Additional controlled airspace is necessary to accommodate aircraft using a new Localizer (LOC) Back Course (BC)–C Standard Instrument Approach Procedures (SIAP) at Helena Regional Airport. The FAA is taking this action to enhance the safety and management of aircraft operations at Helena Regional Airport, Helena, MT. Also, this action makes a minor correction to the airspace description.

**DATES:** *Effective Date:* 0901 UTC, February 14, 2008. The Director of the **Federal Register** approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Eldon Taylor, Federal Aviation Administration, Western Service Area Office, System Support Group, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 917–6726.

**SUPPLEMENTARY INFORMATION:**

### History

On August 21, 2007, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at Helena, MT (72 FR 46584). This action would improve the safety of IFR aircraft executing this new LOC/BC–C SIAP approach procedure at Helena Regional Airport, Helena, MT. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9R signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace at Helena, MT. Additional controlled airspace is necessary to accommodate IFR aircraft executing a new LOC/BC–C SIAP approach procedure at Helena Regional Airport, Helena, MT

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Helena Regional Airport, Helena, MT.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR part 71.1 of the Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, signed August 15, 2007, and effective September 15, 2007, is amended as follows:

*Paragraph 6005. Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**ANM MT E5 Helena, MT [Modified]**

Helena Regional Airport, MT
(Lat. 46°36′25″ N., long. 111°58′58″ W.)
Helena VORTAC
(Lat. 46°36′25″ N., long. 111°57′13″ W.)

That airspace extending upward from 700 feet above the surface within a 10.5-mile radius of the Helena VORTAC, and within 5.3 miles northwest and 3.5 miles southeast of the Helena VORTAC 104° radial extending from the 10.5-mile radius to 18.3 miles southeast of the Helena VORTAC, and within 4.0 miles either side of Helena VORTAC 282° radial extending from the 10.5-mile radius to 25 miles west of the Helena VORTAC; that airspace extending upward from 1,200 feet above the surface within a 20.9-mile radius of the Helena VORTAC, and within 5.3 miles south and 10 miles north of the Helena VORTAC 272° radial extending from the 20.9-mile radius to 39.2 miles west of the VORTAC, and within 13.5 miles west and parallel to the Helena VORTAC 352° radial extending from the 20.9-mile radius to 27 miles north of the VORTAC, and within 4.3 miles east and 7.9 miles west of the Helena VORTAC 023° radial extending from the 20.9-mile radius to 31.4 miles northeast of the VORTAC, and within 5.3 miles south and 8.3 miles north of the Helena VORTAC 102° radial extending from the 20.9-mile radius to 24.8 miles east of the VORTAC.

* * * * *

Issued in Seattle, Washington, on October 18, 2007.

**Clark Desing,**

*Manager, System Support Group, Western Service Center.*

[FR Doc. E7–22205 Filed 11–14–07; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[TD 9366]**

**RIN 1545–BG38**

## Notification Requirement for Tax-Exempt Entities Not Currently Required to File

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary regulations describing the time and manner in which certain tax-exempt organizations not currently required to file an annual information return under section 6033(a)(1) are required to submit an annual electronic notice including certain information required by section 6033(i)(1)(A) through (F). The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

**DATES:** *Effective Date:* These regulations are effective on November 15, 2007.

*Applicability Date:* These regulations are applicable to taxable years beginning after December 31, 2006.

**FOR FURTHER INFORMATION CONTACT:** Monice Rosenbaum at (202) 622–6070 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 6033(i)(1) relating to the notification requirement for entities not currently required to file an annual information return under section 6033(a)(1). Section 6033(i)(1) was added by section 1223(a) of the Pension Protection Act of 2006, Public Law 109–208 (120 Stat. 1090 (2006)) (PPA 2006), effective for annual periods beginning after 2006. Section 6033(i)(1) requires the Treasury Secretary to promulgate regulations that describe the time and manner in which certain tax-exempt organizations not currently required to file an annual information return are to submit an annual electronic notice including information set forth in section 6033(i)(1)(A) through (F). Section 1223 of the PPA 2006 also contains new rules for termination, loss of exempt status, and reinstatement. These new rules do not require regulations for implementation and are therefore not addressed in this temporary regulation but are discussed in this preamble. Substantive and administrative rules related to termination, loss of exempt status, and reinstatement will be considered in separate guidance and other publications.

Prior to the PPA 2006, either by operation of law or through discretionary exceptions, certain organizations were not required to file an information return (for example, Form 990, ''Return of Organization Exempt From Income Tax''). Section 6033(a)(3)(A)(ii) provided a mandatory exception from filing by certain organizations (other than private foundations) described in section 6033(a)(3)(C), whose annual gross receipts were normally not more than $5,000. Section 6033(a)(3)(B) provided a discretionary exception under which the Secretary relieved certain other organizations from filing. Exercising this discretionary authority, the IRS published Announcement 82–88 (1982–25 IRB 23 (June 21, 1982)), which provided an exception for organizations whose annual gross receipts were not normally in excess of $25,000 from filing Form 990 for tax years ending on or after December 31, 1982. The new electronic notice provision of section 6033(i)(1) applies to organizations whose gross receipts are low enough that they are not required to file information returns under sections (a)(3)(A)(ii) or (a)(3)(B). The substance of this electronic notice is discussed below in this preamble. See § 601.601(d)(2)(ii)(*b*).

Section 6033(i)(2) provides that organizations required to submit annual electronic notification are also required to provide notice of termination upon the termination of the existence of the organization. The time and manner of the notice of termination is not specified in the statute.

Section 6033(j), added by section 1223(b) of the PPA 2006, provides that if an organization required to file an annual information return under section 6033(a)(1) or submit an electronic notice under section 6033(i) fails to provide the required return or notice for three consecutive years, the organization's tax-exempt status is revoked. The revocation is effective from the date the Secretary determines was the last day the organization could have timely filed the third required information return or submitted the notice. Any organization whose tax-exempt status is revoked under section 6033(j)(1) must apply in order to obtain reinstatement of that status regardless of whether such organization was originally required to make an application for tax-exempt

status. If, upon application for reinstatement of tax-exempt status, an organization can show to the satisfaction of the Secretary evidence of reasonable cause for the failure to file the information return or submit the notice, the organization's tax-exempt status may, in the discretion of the Secretary, be reinstated retroactive to the date of revocation.

Section 7428(b), regarding limitations on declaratory judgments relating to status and classification of certain tax-exempt organizations, was amended by section 1223(c) of the PPA 2006 and provides that no action may be brought under section 7428 with respect to any revocation of tax-exempt status described in section 6033(j)(1), for failure to provide the required return under section 6033(a)(1) or notice under section 6033(i) for three consecutive years.

Section 6652(c)(1)(E), added by section 1233(d) of the PPA 2006, provides that there is no monetary penalty for failure to submit any notice required under section 6033(i).

**Explanation of Provisions**

*Annual Electronic Notice Requirements and Other General Requirements Related to Maintaining Tax-Exempt Status*

Section 6033(i)(1) provides that the annual notification, in electronic form, shall set forth: (A) The legal name of the organization, (B) any name under which the organization operates or does business, (C) the organization's mailing address and Internet Web site address (if any), (D) the organization's taxpayer identification number, (E) the name and address of a principal officer, and (F) evidence of the continuing basis for the organization's exemption from the filing requirements under section 6033(a)(1). The temporary regulations also provide that additional information necessary to process the notification may be required. For example, an organization will be required to state the tax period for which it is submitting the electronic notification.

The mailing address required by section 6033(i)(1)(C) and submitted in the annual electronic notification shall be the organization's last known address as provided by § 301.6212–2(a) of the Regulations on Procedure and Administration. This last known address may be updated as provided under § 301.6212–2 or by clear and concise notification as described in Rev. Proc. 2001–18 (2001–1 CB 708). The IRS will use this last known address as the organization's address of record and will direct all mailings to this address. See § 601.601(d)(2)(ii)(*b*).

By submitting the annual electronic notification described in this paragraph, an organization acknowledges that it is not required to file a return under section 6033(a) because its gross receipts are not normally in excess of $25,000. In order to make this determination, the organization must keep records that enable it to calculate its gross receipts. All organizations are required to maintain records under section 6001. These records will provide evidence of the continuing basis for the organization's exemption from the filing requirements under section 6033(a)(1).

The temporary regulations restate that an organization, even though relieved from filing a return under section 6033(a), is still required under § 1.6033–2(i) and (j) to inform the IRS in writing of any changes in the organization's character, operation, or purpose; provide additional information; and file other returns of information and unrelated business tax returns. Organizations are also reminded that if the organization is required to file an unrelated business tax return, Form 990–T, ''Exempt Organization Business Income Tax Return,'' the filing of the Form 990–T does not relieve the organization from the requirement of submitting the annual electronic notification under section 6033(i).

The statute requires that the annual notification be submitted electronically. There is no provision in the temporary regulations for any paper notification. However, if an organization that is required to submit an annual electronic notification files a complete Form 990 or Form 990EZ, ''Short Form Return of Organization Exempt From Income Tax,'' the annual notification requirement of section 6033(i) shall be deemed satisfied. The annual notification requirement is not satisfied if the Form 990 or Form 990–EZ contains only those items of information that would have been required by submitting the notification in electronic form.

The notification shall be submitted on or before the 15th day of the fifth calendar month following the close of the period for which the notification is required to be submitted. Thus, an organization with an accounting period ending December 31, 2007, is required to submit the annual notification by May 15, 2008.

*Annual Electronic Notification Is Not a Return*

The electronic notification is not a return because it does not contain sufficient data to calculate tax liability or determine tax-exempt status. Moreover, the electronic notification does not purport to be a return. The electronic notification simply identifies an organization and indicates the basis for it not having to file an information return under section 6033(a)(1). Because the electronic notification is not a tax or information return, submission of the notification does not trigger the period of limitations for assessment under section 6501(g)(2). However, the filing of a complete Form 990 or Form 990–EZ, as noted in this preamble, will start the period of limitations for assessment under section 6501(g)(2). Furthermore, there is no monetary penalty for failure to file under section 6033(i). To further distinguish the electronic notification from a tax or information return, the temporary regulations provide that the electronic notification is submitted to the IRS, rather than filed or furnished, the terms used in connection with tax and information returns.

The notifications required by section 6033(i) are subject to public disclosure and inspection. See section 6104 (generally applicable to Form 990 information returns). Further, this provision does not affect any other obligations an organization may have to file other required information and or tax returns, or penalties for failure to file such returns.

*Form 990–N, Electronic Notification (e-Postcard) For Tax-Exempt Organizations Not Required to File Form 990 or 990–EZ*

Form 990–N, ''Electronic Notification (e-Postcard) for Tax-Exempt Organizations Not Required To File Form 990 or 990–EZ,'' has been developed to satisfy the requirements of section 6033(i)(1). The IRS plans to deliver a simple, Internet based process for submitting the e-Postcard, Form 990–N. It is anticipated that organizations that do not have access to a computer can use their local public library to file the e-Postcard. Because the system will be Internet based, organizations should not need to purchase software to file the e-Postcard. The temporary regulations provide that the annual electronic notification shall be submitted in accordance with instructions and publications, including those provided at the IRS Web site for exempt organizations.

*Organizations Required To File Returns or Submit Electronic Notice*

In general, every organization exempt from taxation under section 501(a) that is not required to file a return described in § 1.6033–2(a)(2), other than an organization described in section 401(a)

(qualified pension, profit-sharing, and stock bonus plans) or section 501(d) (religious and apostolic organizations), is required to submit an annual electronic notice under section 6033(i). However, a organization that is required to file or files an annual information return under section 6033(a)(1) should not submit an annual electronic notification under section 6033(i). This includes any organization included in a group return as provided in § 1.6033–2 for that year; all private foundations required to file Form 990–PF, ''Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation''; section 509(a)(3) supporting organizations required to file Form 990 or Form 990–EZ; a section 501(c)(21) black lung trust required to file Form 990–BL, ''Information and Initial Excise Tax Return for Black Lung Benefit Trusts and Certain Related Person''; and any organization that is required to file or files an annual information return under section 6033(a)(1) on any other form prescribed by the IRS for that purpose.

Neither annual information returns under section 6033(a)(1) nor annual electronic notices under section 6033(i) are required to be filed or submitted by an organization exemption from taxation under section 501(a) that is a church, an interchurch organization of local units of a church, a convention or association of churches, or an integrated auxiliary of a church (as defined in § 1.6033–2(h)); an exclusively religious activity of any religious order; a mission society sponsored by or affiliated with one or more churches or church denominations, more than half of the activities of which society are conducted in, or directed at persons in, foreign countries; an educational organization (below college level) that is described in section 170(b)(1)(A)(ii), that has a program of a general academic nature, and that is affiliated (within the meaning of § 1.6033–2(h)(2)) with a church or operated by a religious order; a State institution, the income of which is excluded from gross income under section 115(a); an organization described in section 501(c)(1); or an organization that is a governmental unit or an affiliate of a governmental unit exempt from Federal income tax under section 501(a) as described in Rev. Proc. 95–48 (1995–2 CB 418). See § 601.601(d)(2)(ii)(*b*).

If an organization exempt from taxation under section 501(a) is not exempted in either of the two preceding paragraphs, the organization must submit an annual electronic notice. Thus, a black lung trust that normally has gross receipts of $25,000 or less is not required to file Form 990–BL but is required to submit an electronic notification. A section 509(a)(3) supporting organization of a religious organization that normally has gross receipts of $5,000 or less is not required to file Form 990 or Form 990–EZ but is required to submit an electronic notification.

## Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act, please refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

## Drafting Information

The principal author of these regulations is Monice Rosenbaum, of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

## List of Subjects 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

## Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

## PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

**Authority:** 26 U.S.C. 7805 * * *
Section 1.6033–6 also issued under 26 U.S.C. 6033(i)(1). * * *

■ **Par. 2.** Section 1.6033–6T is added to read as follows:

### § 1.6033–6T Notification requirement for entities not required to file an annual information return under section 6033(a)(1) (taxable years beginning after December 31, 2006).

(a) *In general.* Except as otherwise provided in this paragraph, every organization exempt from taxation under section 501(a) that is not required to file a return described in § 1.6033–2(a)(2), other than an organization described in section 401(a) or 501(d), shall submit annually, in electronic form, a notification setting forth the items described in paragraph (b) of this section and such other information as may be prescribed in the instructions and publications issued with respect to the notification.

(b) *Organizations not required to submit annual notification.* (1) An organization exempt from taxation under section 501(a) that is required to file or files an annual information return under section 6033(a)(1) shall not submit an annual notification under section 6033(i). This includes the following types of organizations:

(i) Any organization included in a group return for that year under § 1.6033–2(d).

(ii) All private foundations required to file under § 1.6033–2(a)(2)(i) Form 990–PF, ''Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation.''

(iii) Section 509(a)(3) supporting organizations required to file under § 1.6033–2(a)(2)(i) Form 990, ''Return of Organization Exempt From Income Tax,'' or Form 990–EZ, ''Short Form Return or Organization Exempt From Income Tax.''

(iv) A section 501(c)(21) black lung trust required to file under § 1.6033–2(a)(2)(i) Form 990–BL.

(v) Any organization that is required to file or files an annual information return under section 6033(a)(1) on any other form prescribed by the Internal Revenue Service for that purpose.

(2) An organization exempt from taxation under section 501(a) that is not required to file a return under section 6033(a)(1) is also not required to submit an annual notification under section 6033(i). This includes the following types of organizations:

(i) A church, an interchurch organization of local units of a church, a convention or association of churches, or an integrated auxiliary of a church (as defined in § 1.6033–2(h)).

(ii) An exclusively religious activity of any religious order.

(iii) A mission society sponsored by or affiliated with one or more churches or church denominations, more than one-half of the activities of which society are conducted in, or directed at persons in, foreign countries.

(iv) An educational organization (below college level) described in section 170(b)(1)(A)(ii), that has a program of a general academic nature, and that is affiliated (within the

meaning of § 1.6033–2(h)(2)) with a church or operated by a religious order.

(v) A State institution, the income of which is excluded from gross income under section 115(a);

(vi) An organization described in section 501(c)(1).

(vii) An organization that is a governmental unit or an affiliate of a governmental unit exempt from Federal income tax under section 501(a).

(3) If an organization exempt from taxation under section 501(a) is not described in paragraph (b)(1) or (2) of this section, the organization must submit an annual notification. Thus, a black lung trust that normally has gross receipts of $25,000 or less is not required to file Form 990–BL but is required to submit electronic notification. A section 509(a)(3) supporting organization of a religious organization that normally has gross receipts of $5,000 or less is not required to file Form 990 or Form 990–EZ but is required to submit electronic notification.

(c) *Additional notification requirements*—(1) *In general.* Any organization described in paragraph (a)(1) of this section shall submit an annual notification described in section 6033(i)(1). The annual notification shall—

(i) Be in electronic form; and

(ii) Set forth—

(A) The legal name of the organization;

(B) Any name under which the organization operates or does business;

(C) The organization's mailing address and Internet Web site address (if any);

(D) The organization's taxpayer identification number;

(E) The name and address of a principal officer;

(F) Evidence of the continuing basis for the organization's exemption from the filing requirements under section 6033(a)(1); and

(G) Additional information necessary to process the notification.

(2) The mailing address required by section 6033(i)(1)(C) and submitted in the annual notification shall be the organization's last known address as provided by § 301.6212–2(a) of this chapter. This last known address may be updated as provided under § 301.6212–2 of this chapter, or by clear and concise notification. The Internal Revenue Service will use this last known address as the organization's address of record and will direct all mailings to this address.

(3) By submitting the annual notification described in this paragraph (c)(1), an organization acknowledges that it is not required to file a return under section 6033(a) because its annual gross receipts are not normally in excess of $25,000. In order to make this determination, the organization must keep records that enable it to calculate its gross receipts. All organizations are required to maintain records under section 6001. These records will provide evidence of the continuing basis for the organization's exemption from the filing requirements under section 6033(a)(1).

(4) If an organization that is required to submit an annual electronic notification files a complete Form 990 or Form 990–EZ the annual notification requirement shall be deemed satisfied. The annual notification requirement is not satisfied if the Form 990 or Form 990–EZ contains only those items of information that would have been required by submitting the notification in electronic form. Also, the filing of a complete Form 990 or Form 990–EZ, rather than the submission of an annual electronic notification, is the filing of a return that starts the period of limitations for assessment under section 6501(g)(2).

(d) *No effect on other filing requirements.* An organization that is relieved from filing an information return under section 6033(a) is still subject to the requirements of § 1.6033–2(i) and (j), concerning notice regarding changes in character, operations, or purpose; providing additional information; duty to file other returns of information; and duty to file unrelated business tax returns. If an organization is required to file an unrelated business tax return, Form 990–T, ''Exempt Organization Business Income Tax Return,'' the filing of that return does not relieve the organization from the requirement of submitting notification under section 6033(i).

(e) *Accounting period for submitting electronic notification.* An annual notification required by this section shall be on the basis of the established annual accounting period of the organization. If the organization has no established accounting period, annual notification shall be on the basis of the calendar year.

(f) *Time and place for submitting electronic notification.* The annual notification required by this section shall be submitted on or before the 15th day of the fifth calendar month following the close of the period for which the notification is required to be submitted. Thus, an organization with an accounting period ending December 31, 2007, is required to submit annual notification by May 15, 2008. The notification shall be submitted in accordance with instructions and publications, including those provided at the Internal Revenue Service Web site for exempt organizations.

(g) *Effective/applicability date.* These regulations are applicable to annual periods beginning after 2006.

(h) *Expiration date.* These regulations expire November 15, 2010.

**Linda E. Stiff,**

*Deputy Commissioner for Services and Enforcement.*

Approved: November 6, 2007.

**Eric Solomon,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. E7–22299 Filed 11–14–07; 8:45 am]

**BILLING CODE 4830–01–P**

## PENSION BENEFIT GUARANTY CORPORATION

### 29 CFR Parts 4022 and 4044

### Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in December 2007. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

**DATES:** Effective December 1, 2007.

**FOR FURTHER INFORMATION CONTACT:** Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

**SUPPLEMENTARY INFORMATION:** The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to part 4022).

This amendment (1) adds to Appendix B to part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during December 2007, (2) adds to Appendix B to part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during December 2007, and (3) adds to Appendix C to part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during December 2007.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 5.37 percent for the first 20 years following the valuation date and 5.04 percent thereafter. These interest assumptions represent a decrease (from those in effect for November 2007) of 0.09 percent for the first 20 years following the valuation date and 0.09 percent for all years thereafter.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to partaves\rules.xml 4022) will be 3.00 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent a decrease (from those in effect for November 2007) of 0.25% in the immediate annuity rate and are otherwise unchanged. For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during December 2007, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

**List of Subjects**

*29 CFR Part 4022*

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

*29 CFR Part 4044*

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

## PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

**Authority:** 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 170, as set forth below, is added to the table.

**Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments**

* * * * *

| Rate set | For plans with a valuation date | | Immediate annuity rate (percent) | Deferred annuities (percent) | | | | |
|---|---|---|---|---|---|---|---|---|
| | On or after | Before | | $i_1$ | $i_2$ | $i_3$ | $n_1$ | $n_2$ |
| * | * | | * | * | * | * | | * |
| 170 | 12–1–07 | 01–1–08 | 3.00 | 4.00 | 4.00 | 4.00 | 7 | 8 |

■ 3. In appendix C to part 4022, Rate Set 170, as set forth below, is added to the table.

**Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments**

* * * * *

| Rate set | For plans with a valuation date | | Immediate annuity rate (percent) | Deferred annuities (percent) | | | | |
|---|---|---|---|---|---|---|---|---|
| | On or after | Before | | $i_1$ | $i_2$ | $i_3$ | $n_1$ | $n_2$ |
| * | * | | * | * | * | * | | * |
| 170 | 12–1–07 | 01–1–08 | 3.00 | 4.00 | 4.00 | 4.00 | 7 | 8 |

## PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

**Authority:** 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry for December 2007, as set forth below, is added to the table.

### Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

| For valuation dates occurring in the month— | The values of $i_t$ are: | | | | | |
|---|---|---|---|---|---|---|
| | $i_t$ | for t = | $i_t$ | for t = | $i_t$ | for t = |
| * * * | * | | * | | * | * |
| December 2007 | .0537 | 1–20 | .0504 | >20 | N/A | N/A |

Issued in Washington, DC, on this 8th day of November 2007.

**Vincent K. Snowbarger,**

*Deputy Director, Pension Benefit Guaranty Corporation.*

[FR Doc. E7–22326 Filed 11–14–07; 8:45 am]

BILLING CODE 7709–01–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[CGD08–07–032]**

## Drawbridge Operation Regulations; Liberty Bayou, Slidell, LA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations; request for comments.

**SUMMARY:** The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the State Route 433 (S433) bridge across Liberty Bayou, mile 2.0, at Slidell, St. Tammany Parish, Louisiana. This deviation will test a change to the drawbridge operation schedule to determine whether a permanent change to the schedule is needed.

**DATES:** This deviation is effective from November 15, 2007 until May 13, 2008.

**ADDRESSES:** You may mail comments and related material to Commander (dpb), Eighth Coast Guard District, 500 Poydras Street, New Orleans, Louisiana 70130–3310. The Commander, Eighth Coast Guard District, Bridge Administration Branch maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Bridge Administration office between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Phil Johnson, Bridge Administration Branch, telephone (504) 671–2128.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

We encourage you to participate in evaluating this test schedule by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this deviation CGD08–07–032, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. Comments must be received by January 14, 2008.

### Background and Purpose

The Louisiana Department of Transportation and Development has requested that the operating regulation of the S433 pontoon span bridge, located on Liberty Bayou at mile 2.0 in Slidell, St. Tammany Parish, Louisiana, be changed in order to make more efficient use of operating resources. Currently, the draw of the S433 Bridge opens on signal, except that from 9 p.m. to 5 a.m. the draw opens on signal if at least 12 hours notice is given, as required by 33 CFR 117.469. The Coast Guard previously published a notice of proposed rulemaking [CGD08–06–10] on May 4, 2006 (86 FR 26290). The proposed rule would have changed the regulation governing the operation of the (S433) pontoon span bridge across Liberty Bayou, mile 2.0, at Slidell, St. Tammany Parish, Louisiana. The rule, as previously proposed, would have changed the notice required for an opening from 12 hours to 4 hours. A final rule for that proposed change was not published. Subsequently, the bridge owner has requested that the notice for an opening be changed so that the bridge will open on signal, except that from 7 p.m. to 7 a.m., the bridge will open on signal if at least 2 hours notice is given.

A Supplemental Notice of Proposed Rulemaking [CGD08–06–010], is being issued in conjunction with this Temporary Deviation to obtain public comments. The Coast Guard will evaluate public comments from this Test Deviation and the above referenced Supplemental Notice of Proposed Rulemaking to determine if a permanent special drawbridge operating regulation is warranted.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 6, 2007.

**David M. Frank,**

*Bridge Administrator.*

[FR Doc. E7–22364 Filed 11–14–07; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[CGD08–07–037]**

## Drawbridge Operation Regulations; Tchefuncta River, Madisonville, LA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations; request for comments.

**SUMMARY:** The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the State Route 22 (SR 22) Bridge across Tchefuncta River, mile 2.5, at

Madisonville, St. Tammany Parish, Louisiana. This deviation will test a change to the drawbridge operation schedule to determine whether a permanent change to the schedule is needed.

**DATES:** This deviation is effective from November 15, 2007 until May 13, 2008.

**ADDRESSES:** You may mail comments and related material to Commander (dpb), Eighth Coast Guard District, 500 Poydras Street, New Orleans, Louisiana 70130–3310. The Commander, Eighth Coast Guard District, Bridge Administration Branch maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Bridge Administration office between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Phil Johnson, Bridge Administration Branch, telephone (504) 671–2128.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

We encourage you to participate in evaluating this test schedule by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this deviation [CGD08–07–037], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. Comments must be received by January 14, 2008.

### Background and Purpose

The Louisiana Department of Transportation and Development has requested that the operating regulation of the SR 22 swing span bridge, located on the Tchefuncta River at mile 2.5 in Madisonville, St. Tammany Parish, Louisiana, be changed in order accommodate the flow of vehicular traffic at rush hour peaks. Currently, the draw of the SR 22 Bridge in Madisonville opens on signal, except that, from 5 a.m. to 8 p.m., the draw need open only on the hour and half-hour.

This Temporary Deviation from Drawbridge Operating Regulations allows the bridge to operate as follows: The draw of the SR 22 Bridge, mile 2.5 at Madisonville, shall open on signal from 7 p.m. to 6 a.m. From 6 a.m. to 7 p.m., the draw need only open on the hour and half hour, except that, from 6 a.m. to 9 a.m. and from 4 p.m. to 7 p.m. Monday through Friday except Federal holidays, the draw need only open on the hour.

A Notice of Proposed Rulemaking [CGD08–07–38] is being issued in conjunction with this Temporary Deviation to obtain public comments. The Coast Guard will evaluate public comments from this Temporary Deviation and the above referenced Notice of Proposed Rulemaking to determine if a permanent special drawbridge operating regulation is warranted.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 6, 2007.

**David M. Frank,**

*Bridge Administrator.*

[FR Doc. E7–22366 Filed 11–14–07; 8:45 am]

BILLING CODE 4910–15–P

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

## 36 CFR Part 1228

**[FDMS Docket NARA–07–0004]**

**RIN 3095–AB43**

## Federal Records Management; Media Neutral Schedules

**AGENCY:** National Archives and Records Administration

**ACTION:** Final rule.

**SUMMARY:** The National Archives and Records Administration (NARA) is revising its regulations on scheduling Federal records to make future records schedules and certain existing approved records schedules applicable to series of records regardless of the medium in which the records are created and maintained. Both the agency (in submitting the schedule) and NARA (in approving the schedule) would be able to specify that certain disposition authorities are valid only for the current media/format of the records. Although agencies currently are permitted to submit ''media-neutral'' records schedules, most existing records schedules were developed for hard-copy (usually paper) recordkeeping systems and do not state that they apply to records in other formats. Therefore, agencies have been required to submit new schedules when they convert from a hard-copy system of records, including special media records (such as still pictures, aerial photography, maps, charts, drawings, motion picture film, analog videotape, and analog sound recordings), to an electronic system. This rule makes all new schedules media neutral unless otherwise specified and allows schedules previously approved for hard copy records to be applied to electronic versions of the files if certain conditions are met. The new rule will reduce the workload for both agencies and NARA, allowing them to focus resources on critical records management needs.

**DATES:** This rule is effective December 17, 2007.

**FOR FURTHER INFORMATION CONTACT:** Laurence Brewer, Director, Life Cycle Management Division, at 301–837–1539 or via fax at 301–837–3697.

**SUPPLEMENTARY INFORMATION:**

### Background

On November 19, 2004, at 69 FR 67692, NARA published a proposed rule making schedules media neutral. In response, we received comments from five Federal agencies and from a private firm that does records management work for Federal agencies. Four public interest groups submitted comments on a related proposed records disposition schedule modifying the General Records Schedules (GRS) to implement the proposed rule insofar as the rule applies to previously approved schedules. The notice inviting public comment on the proposed disposition schedule N1–GRS–05–1 was published on November 16, 2004 (69 FR 67182). We considered the comments on both the proposed rule and the proposed disposition schedule in developing this final rule.

### Discussion of Comments Received on the Proposed Rule

All five agencies and the consulting firm generally endorsed NARA's proposals regarding media neutrality. However, three of the agencies and the consulting firm felt that the new regulations should allow agencies more than 45 days to notify NARA when they convert previously scheduled permanent records to an electronic format. One of these agencies suggested allowing agencies up to 90 days, while another agency suggested that NARA require annual updates. The third agency that addressed this issue suggested that the regulation require notification ''as soon as possible.'' The

consulting firm suggested that notifying NARA be done as part of annual or other periodic reviews conducted by agency records managers to identify new or modified recordkeeping systems. NARA agrees that 45 days is probably not sufficient. Consequently, the final regulation allows agencies up to 90 days to notify NARA when permanent records are converted to an electronic format.

One agency commented on the wording in the regulation regarding records maintained on agency web sites. This agency thought the term ''web version,'' which NARA used in the proposed rule, was not sufficiently clear. In response to this comment, NARA has used the expression ''copies of records that are maintained on an agency web site.'' We believe that this wording clarifies NARA's intent.

The agency which commented on web site records also questioned why the proposed regulations did not allow previously approved schedules to be applied to temporary program records with retention periods of 20 years or more or to records containing observational and social science raw data. (The consulting firm which submitted comments also questioned these exclusions.) This agency suggested instead that ''the provisions for media neutral schedules [in 36 CFR 1228.24(b)(3)] should be grandfathered to include all previously approved records schedules and not limited to those approved after the final date of this ruling.'' We did not adopt either suggestion. Based on our analysis of all comments on the proposed rule and disposition schedule, instead, the regulations now allow retrospective media neutrality for temporary program records only when the records are converted to scanned images or, in the case of temporary audiovisual records, from traditional media to any digital format. This matter is addressed in more detail in the following discussion of the comments NARA received from several public interest organizations.

**Discussion of Comments Received on the Disposition Schedule**

Four public interest groups also addressed NARA's media neutral proposals. These organizations did not comment on the regulations directly but provided comments on the NARA-prepared disposition schedule (Disposition Job N1–GRS–05–1) that modified GRS 20 to reflect the proposed regulations. Their comments on the proposed GRS 20 revisions concerning retrospective media neutrality as they relate to the provisions of the proposed rule are discussed below.

None of the public interest groups commented on NARA's proposal to make previously approved schedule items media neutral in the case of permanent records. However, all of these groups were critical of retrospective media neutrality as it relates to temporary program records, arguing that the enhanced search capabilities and manipulability of electronic records might increase the value of records that were appropriately temporary if maintained in paper form. In their view, if the proposed GRS modifications and regulations pertaining to media neutrality were implemented, records warranting permanent retention or a longer temporary retention period if maintained electronically could be destroyed without NARA review.

Both this final rule and the approved schedule modifying GRS 20 now allow for retrospective media neutrality for temporary program records only if records are converted to scanned images in the case of textual records or to digital media in the case of sound recordings, moving images, and still photography. We note that this action reflects long-standing NARA policy on conversion to scanned images. Since the 1990s, NARA has authorized agencies to dispose of scanned images of temporary hard copy records in accordance with previously approved schedules so long as the basic content and function of the records remain the same.

While scanned images of hard copy records can with proper indexing be searched more easily than the original documents, the information in the records cannot be manipulated in the same fashion as a database. It is this manipulability that renders some databases of historical value even if the related paper records are temporary. Hence, the final rule and the related changes to GRS 20 now mandate the submission of a new schedule to NARA when an agency converts temporary program records that are textual in nature to an electronic format other than scanned image. This will afford NARA the opportunity to assess the value of the electronic records to determine if their manipulability renders them potentially permanent. This consideration, enhanced manipulability, does not apply if an agency uses a digital format for its still pictures or other temporary audiovisual records. In all instances, therefore, where an agency converts temporary audiovisual records to a digital format, the previously approved retention period may be applied.

The GRS and the regulations, as initially proposed, would have allowed agencies to apply retrospectively previously approved schedules to electronic systems that merge information drawn from more than one previously scheduled temporary record series so long as the electronic records are maintained for the longest retention period specified in the previously approved schedules. Two of the public interest groups took issue with this, arguing that electronic systems that merge information from multiple hard copy files are likely to be more valuable than the component hard copy series considered individually. NARA agrees and has revised the final rule to allow agencies to apply previously approved schedules to electronic records drawn from multiple temporary series only if the records are housekeeping in nature and are either covered by temporary items in the GRS or by agency schedules for administrative records. In the case of temporary program records, agencies must submit a new schedule if an electronic system is drawn from multiple previously scheduled series.

One public interest group commented that NARA's proposals did not take into account that converting hard copy records to an electronic format, by decreasing storage costs and increasing search capabilities and manipulability might justify retaining the electronic versions longer than the previously approved hard copy documents. NARA is well aware that how long temporary records should be retained may change over time, even absent a change in the recordkeeping medium. NARA expects agencies to re-evaluate their needs periodically. If agencies determine that a series of records warrants a longer retention period for any reason, they should submit a schedule to NARA. Even though the General Records Schedules are mandatory, agencies can submit schedules requesting an exception if the retention periods specified in the GRS do not meet their needs.

We have modified the provisions of the proposed rule and the disposition schedule to address the comments. NARA published a notice for the revised NARA-prepared disposition schedule on August 9, 2007 (72 FR 44875), and approved the schedule on September 26, 2007.

This rule is a significant regulatory action for the purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities because it affects Federal agencies. This regulation does not have any federalism

implications. This rule is not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking.

**List of Subjects in 36 CFR Part 1228**

Archives and Records.

■ For the reasons set forth in the preamble, NARA amends part 1228 of title 36, Code of Federal Regulations, as follows:

## PART 1228—DISPOSITION OF FEDERAL RECORDS

■ 1. The authority citation for part 1228 continues to read as follows:

**Authority:** 44 U.S.C. chs. 21, 29, and 33.

■ 2. Amend § 1228.24 by redesignating paragraphs (b)(3) and (b)(4) as paragraphs (b)(4) and (b)(5) respectively, and adding new paragraph (b)(3) to read as follows:

**§ 1228.24 Formulation of agency records schedules.**

(b) * * *

(3) Records schedules submitted to NARA for approval on or after [the effective date of the final rule] are media neutral, i.e., the disposition instructions apply to the described records in all media, unless the schedule identifies a specific medium for a specific series.

* * * * *

■ 3. Add § 1228.31 to read as follows:

**§ 1228. 31 Applying previously approved schedules to electronic records.**

(a) *When must an agency submit a new schedule for electronic versions of previously scheduled hard copy records?* Agencies must submit a new schedule to NARA for electronic versions of previously scheduled records if:

(1) The content and function of the records have changed significantly (e.g., the electronic records contain information that is substantially different from the information included in the hard copy series or are used for different purposes).

(2) The previously approved schedule explicitly excludes electronic records.

(3) The electronic records consist of program records maintained on an agency web site.

(4) The electronic records consist of program records maintained in a format other than scanned image AND the previously approved schedule is not media neutral.

(b) *When can an agency apply a previously approved schedule to electronic versions of the records?* If the conditions specified in paragraph (a) of this section do not apply, the conditions in paragraph (b) apply:

(1) *Permanent records.* (i) The agency may apply a previously approved schedule for hard copy records to electronic versions of the permanent records when the electronic records system replaces a single series of hard copy permanent records or the electronic records consist of information drawn from multiple previously scheduled permanent series. Agencies must notify NARA (NWM) in writing of records that have been previously scheduled as permanent in hard copy form, including special media records as described in 36 CFR 1228.266 and 36 CFR 1228.268. The notification must be submitted within 90 days of when the electronic recordkeeping system becomes operational and must contain the:

(A) Name of agency;

(B) Name of the electronic system;

(C) Organizational unit(s) or agency program which records support;

(D) Current disposition authority reference; and

(E) Format of the records (e.g., database, scanned images, digital photographs, etc.).

(ii) If the electronic records include information drawn from both temporary and permanent hard copy series, an agency either may apply a previously approved permanent disposition authority, after submitting the notification required by paragraph (b)(1)(i) or may submit a new schedule if the agency believes the electronic records do not warrant permanent retention.

(2) *Temporary still pictures, sound recordings, motion picture film, and video recordings.* The agency must apply the previously approved schedule to digital versions. If changes in the approved schedule are required, follow § 1228.32.

(3) *Scanned images of temporary records, including temporary program records.* The agency must apply the previously approved schedule. If changes in the approved schedule are required, follow § 1228.32.

(4) *Other temporary records maintained in an electronic format other than scanned images.* (i) For temporary records that are covered by an item in a General Records Schedule or an agency-specific schedule that pertains to administrative/housekeeping activities, apply the previously approved schedule. If the electronic records consist of information drawn from multiple hard copy series, apply the previously approved schedule item with the longest retention period.

(ii) For temporary program records covered by a NARA-approved media neutral schedule item (*i.e.*, the item appears on a schedule approved before December 17, 2007 that is explicitly stated to be media neutral, or it appears on any schedule approved on or after December 17, 2007 that is not explicitly limited to a specific recordkeeping medium), apply the previously approved schedule.

Dated: September 27, 2007.

**Allen Weinstein,**

*Archivist of the United States.*

[FR Doc. E7–22376 Filed 11–14–07; 8:45 am]

BILLING CODE 7515–01–P

## POSTAL REGULATORY COMMISSION

## 39 CFR Part 301, 3010, 3015 and 3020

**[Docket No. RM2007–1; Order No. 43]**

## Administrative Practice and Procedure, Postal Service; Correction

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** The Postal Regulatory Commission published a final rule in the **Federal Register** of November 9, 2007 implementing certain provisions in the Postal Accountability and Enhancement Act. The effective date should have read December 10, 2007, rather than November 9, 2007.

**DATES:** The effective date for FR Doc. E7–21596, published on November 9, 2007 (72 FR 63662) is corrected to December 10, 2007.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov.*

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of November 9, 2007, page 72 FR 63662, in the first column in the ''Dates'' entry, correct the reference ''*Effective date:* November 9, 2007'' to read ''*Effective date:* December 10, 2007.''

**Steven W. Williams,**

*Secretary.*

[FR Doc. 07–5683 Filed 11–9–07; 12:24 pm]

BILLING CODE 7710–FW–M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA–R09–OAR–2007–1003; FRL–8492–3]**

## Revisions to the California State Implementation Plan, Imperial County and Monterey Bay Unified Air Pollution Control Districts

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Imperial County Air Pollution Control District (ICAPCD) and the Monterey Bay Unified Air Pollution Control District (MBUAPCD) portions of the California State Implementation Plan (SIP). This action revises and adds various definitions of terms used by the ICAPCD and MBUAPCD. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are approving local rules that are administrative and address changes for clarity and consistency.

**DATES:** This rule is effective on January 14, 2008 without further notice, unless EPA receives adverse comments by December 17, 2007. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

**ADDRESSES:** Submit comments, identified by docket number EPA–R09–OAR–2007–1003, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.
2. *E-mail: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

*Docket:* The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Cynthia G. Allen, EPA Region IX, (415) 947–4120, *allen.cynthia@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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## I. The State's Submittal

### *A. What rules did the State submit?*

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

| Local agency | Rule # | Rule title | Adopted | Submitted |
|---|---|---|---|---|
| ICAPCD | 101 | Definitions | 10/10/06 | 08/24/07 |
| MBUAPCD | 101 | Definitions | 02/21/07 | 08/24/07 |

On September 17, 2007, these rules were found to meet the completeness criteria in 40 CFR part 51, Appendix V, which must be met before formal EPA review.

### *B. Are there other versions of these rules?*

We approved a version of these rules into the SIP on the dates listed: ICAPCD Rule 101 on November 23, 2005 and MBUAPCD Rule 101 on July 23, 2004.

### *C. What is the purpose of the submitted rule revisions?*

Section 110(a) of the CAA requires states to submit regulations that control volatile organic compounds, oxides of nitrogen, particulate matter, and other air pollutants which harm human health and the environment. These rules were developed as part of the local agency's program to control these pollutants.

Imperial Rule 101, Definitions, is amended by adding new definitions associated with Rule 207.1, Federal Major Modification, Rule 214.1, Mobile Source Emission Reduction Credit Banking, and Rule 217, Large Confined Animal Facilities. In addition, definitions that became obsolete because of the newly adopted regulations were removed.

Monterey Rule 101, Definitions, is amended by revising the definition of *'Exempt Compounds and Volatile Organic Compounds'* to be consistent with the federal definition and by updating the definition of *'Household Rubbish, Garbage, Trash'* to match the definition in Rule 438, Open Outdoor Fires.

EPA's technical support document (TSD) has more information about these rules.

## II. EPA(s Evaluation and Action

### *A. How is EPA evaluating the rules?*

These rules describe administrative provisions and definitions that support emission controls found in other local agency requirements. In combination with the other requirements, these rules must be enforceable (see section 110(a) of the Act) and must not relax existing requirements (see sections 110(l) and 193). EPA policy that we used to help evaluate enforceability requirements consistently includes the Bluebook ((Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, (EPA, May 25, 1988) and the Little

Bluebook ((Guidance Document for Correcting Common VOC & Other Rule Deficiencies, (EPA Region 9, August 21, 2001). However, EPA approval of these definitions in Rule 101 should not be interpreted as EPA approval of the other rules in which these definitions are used.

*B. Do the rules meet the evaluation criteria?*

We believe these rules are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. The TSDs have more information on our evaluation.

*C. Public comment and final action*

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by December 17, 2007, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on January 14, 2008. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## III. Statutory and Executive Order Reviews

*A. Executive Order 12866, Regulatory Planning and Review*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

*B. Paperwork Reduction Act*

These rules do not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

These rules will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

*D. Unfunded Mandates Reform Act*

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*E. Executive Order 13132, Federalism*

*Federalism* (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

These rules will not have substantial direct effects 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, as specified in Executive Order 13132, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*F. Executive Order 13175, Coordination With Indian Tribal Governments*

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have

substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

*G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

*Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

These rules are not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a State rule implementing a Federal standard.

*H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use*

These rules are not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

*J. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective December 17, 2007.

*K. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 14, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 11, 2007.

**Alexis Strauss,**

*Acting Regional Administrator, Region IX.*

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

■ 1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

## Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(351) to read as follows:

### § 52.220 Identification of plan.

* * * * *

(c) * * *

(351) New and amended regulation for the following APCDs were submitted on August 24, 2007, by the Governor's designee.

(i) Incorporation by reference.

(A) Imperial County Air Pollution Control District.

(*1*) Rule 101, Adopted 7/28/81; revised 9/14/99; 1/16/2001; 12/11/2001; 08/13/02; 01/11/2005; 10/10/2006.

(B) Monterey Bay Unified Air Pollution Control District.

(*1*) Rule 101, Adopted 9–1–74; Revised 12–21–83; 12–13–84; 11–13–96; 11–12–98; and 12–15–1999; and 4–16–03; and 2–21–07.

* * * * *

[FR Doc. E7–21811 Filed 11–14–07; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[FRL–8495–1]**

## Availability of Federally Enforceable State Implementation Plans for All States

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** Section 110(h) of the Clean Air Act, as amended in 1990 (the ''Act''), requires EPA by November 15, 1995, and every three years thereafter, to assemble the requirements of the Federally enforceable State Implementation Plans (SIPs) in each State and to publish notice in the **Federal Register** of the availability of such documents. This notice of availability fulfills the three-year requirement of making these SIP compilations for each State available to the public.

**DATES:** *Effective Date:* November 15, 2007.

**ADDRESSES:** You may contact the appropriate EPA Regional Office regarding the requirements of the applicable implementation plans for each State in that region. The list below identifies the appropriate regional office for each state. The State Implementation Plan (SIP) compilations are available for public inspection during normal business hours at the appropriate EPA Regional Office. If you want to view these documents, you should make an appointment with the appropriate EPA office and arrange to review the SIP at a mutually agreeable time.

*Region 1:* Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

*Regional Contact:* Donald Cooke (617/918–1668), EPA, Office of Ecosystem Protection (CAQ), Suite 1100, One Congress Street, Boston, MA 02114–2023. See also: *http://www.epa.gov/region1/topics/air/sips.html.*

*Region 2:* New Jersey, New York, Puerto Rico, and Virgin Islands.

*Regional Contact:* Paul Truchan (212/637–3711), EPA, Air Programs Branch, 290 Broadway, New York, NY 10007–1866. See also: *http://www.epa.gov/region02/air/sip/.*

*Region 3:* Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.

*Regional Contact:* Harold A. Frankford (215/814–2108), EPA, Office of Air Programs (3AP20), Air Protection Division, 1650 Arch Street, Philadelphia, PA 19103–2029. See also: *http://yosemite.epa.gov/r3/r3sips.nsf/MidAtlanticSIPs?openform.*

*Region 4:* Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

*Regional Contact:* Sean Lakeman (404/562–9043), EPA, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, GA 30303. See also: *http://www.epa.gov/region4/air/sips/.*

*Region 5:* Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

*Regional Contacts:* Christos Panos (312/353–8328), EPA, Air and Radiation Division (AR–18J), 77 West Jackson Boulevard, Chicago, IL 60604–3507. See also: *http://www.epa.gov/region5/air/sips/index.html.*

*Region 6:* Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

*Regional Contact:* Bill Deese (214/665–7253), EPA, Multimedia Planning and Permitting Division, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, TX 75202–2733. See also: *http://www.epa.gov/earth1r6/6pd/air/sip/sip.htm.*

*Region 7:* Iowa, Kansas, Missouri, and Nebraska.

*Regional Contact:* Evelyn VanGoethem (913/551–7659), EPA, Air and Waste Management Division, Air Planning and Development Branch, 901 North 5th Street, Kansas City, KS 66101. See also: *http://www.epa.gov/region07/programs/artd/air/rules/fedapprv.htm.*

*Region 8:* Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

*Regional Contact:* Laurie Ostrand (303/312–6437), EPA, Air and Radiation Program, Office of Partnership and Regulatory Assistance, 1595 Wynkoop Street, Denver, CO 80202–2466. See also: *http://www.epa.gov/region8/air/sip.html.*

*Region 9:* Arizona, California, Hawaii, Nevada, American Samoa, and Guam.

*Regional Contacts:* Julie Rose (415/947–4126), and Cynthia Allen (415/947–4120), EPA, Air Division, Rulemaking Office, (AIR–4), 75 Hawthorne Street, San Francisco, CA 94105. See also: *http://www.epa.gov/region9/air/sips/.*

*Region 10:* Alaska, Idaho, Oregon, and Washington.

*Regional Contact:* Claudia Vaupel (206/553–6121), EPA, Office of Air Waste and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101–3140. See also: *http://www.epa.gov/r10earth/sips.htm.*

**FOR FURTHER INFORMATION CONTACT:** Donald Cooke, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, telephone number (617) 918–1668, fax number (617) 918–0668, e-mail *cooke.donald@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

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## I. Availability of SIP Compilations

This notice identifies the appropriate EPA Regional Offices to which you may address questions of SIP availability and SIP requirements. In response to the 110(h) requirement following the 1990 Clean Air Act Amendments, the first notice of availability was published in the **Federal Register** on November 1, 1995 at 60 FR 55459. The second notice of availability was published in the **Federal Register** on November 18, 1998 at 63 FR 63986. The third notice of availability was published in the **Federal Register** on November 20, 2001 at 66 FR 58070. The fourth notice of availability was published in the **Federal Register** on December 22, 2004 at 69 FR 76617. This is the fifth notice of availability of the compilations of Federally-enforceable State Implementation Plans for each state.

In addition, information on the content of EPA-approved SIPs is available on the Internet through the EPA Regional Web sites. Regional Web site addresses for Regional information are provided in the regional contacts list above.

## II. What Is the Basis for This Document?

Section 110(h)(1) of the Clean Air Act mandates that not later than 5 years after the date of enactment of the Clean Air Act Amendments of 1990, and every three years thereafter, the Administrator shall assemble and publish a comprehensive document for each State setting forth all requirements of the applicable implementation plan for such State and shall publish notice in the **Federal Register** of the availability of such documents.

Section 110(h) recognizes the fluidity of a given State SIP. The SIP is a living document which can be revised by the State with EPA approval as necessary to address the unique air pollution problems in the State. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations. On May 31, 1972 (37 FR 10842), EPA approved, with certain exceptions, the initial SIPs for 50 states, four territories and the District of Columbia. [**Note:** EPA approved an additional SIP—for the Northern Mariana Islands—on November 10, 1986 (51 FR 40799)]. Since 1972, each State and territory has submitted numerous SIP revisions, either on their own initiative, or because they were required to as a result of various amendments to the Clean Air Act. This notice of availability informs the public that the SIP compilation has been updated to include the most recent requirements approved into the SIP. These approved requirements are Federally-enforceable.

## III. What Is Being Made Available Under This Document?

The Federally-enforceable SIP is indeed a complex document, containing both many regulatory requirements and non-regulatory items such as plans and emission inventories. Regulatory requirements include State-adopted rules and regulations, source-specific requirements reflected in consent orders, and in some cases, provisions in the enabling statutes. Following the 1990 Clean Air Act Amendments, the first section 110(h) SIP compilation availability notice was published on November 1, 1995 (61 FR 55459). At that time, EPA announced that the SIP compilations, comprised of the regulatory portion of each State SIP, were available at the EPA Regional Office serving that particular State. In general, the compilations made available in 1995 did not include the source-specific requirements or other documents and materials associated

with the SIP. With the second notice of availability in 1998, the source-specific requirements and the ''non-regulatory'' documents [e.g., attainment plans, rate of progress plans, emission inventories, transportation control measures, statutes demonstrating legal authority, monitoring networks, etc.] were made available and will remain available for public inspection at the respective regional office listed in the **ADDRESSES** section above. If you want to view these documents, please make an appointment with the appropriate EPA Regional Office and arrange for a mutually agreeable time.

## IV. What Are the Documents and Materials Associated With the SIP?

EPA-approved non-regulatory control measures include control strategies (such as transportation control measures, local ordinances, state statutes, and emission inventories, or may include regulations provided on other sections of the State-specific subpart of 40 CFR part 52), which have been submitted for inclusion in the SIP by the state. These control measures must have gone through the state rulemaking process and the public given an opportunity to participate in the rulemaking. EPA also took rulemaking action on these control measures and those which have been EPA-approved or conditionally approved are listed along with any limitations on their approval, if any. Examples of EPA-approved documents and materials associated with the SIP include, but are not limited to, the following subject matter: SIP Narratives; Particulate Matter Plans; Carbon Monoxide Plans; Ozone Plans; Maintenance plans; Vehicle Inspection and Maintenance (I/M) SIPs; Emissions Inventories; Monitoring Networks; State Statutes submitted for the purposes of demonstrating legal authority; Part D nonattainment area plans; Attainment demonstrations; Transportation control measures (TCMs); Committal measures; Contingency Measures; Non-regulatory and Non-TCM Control Measures; 15% Rate of Progress Plans; Emergency episode plans; Visibility plans. As stated above the ''non-regulatory'' documents are available for public inspection at the appropriate EPA Regional Office.

## V. Background

### *A. Relationship of National Ambient Air Quality Standards (NAAQS) to SIPs*

EPA has established National Ambient Air Quality Standards (NAAQS) for six criteria pollutants, which are widespread common pollutants known to be harmful to human health and welfare. The present criteria pollutants are: Carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur oxides. See 40 CFR part 50 for a technical description of how the levels of these standards are measured and attained. State Implementation Plans provide for implementation, maintenance, and enforcement of the NAAQS in each state. Areas within each state that are designated nonattainment are subject to additional planning and control requirements. Accordingly, different regulations or programs in the SIP will apply to different areas. EPA lists the designation of each area at 40 CFR part 81.

### *B. What Is a State Implementation Plan?*

The State Implementation Plan is a plan for each State which identifies how that State will attain and/or maintain the primary and secondary National Ambient Air Quality Standards (NAAQS) set forth in section 109 of the Clean Air Act and 40 Code of Federal Regulations 50.4 through 50.12 and which includes Federally-enforceable requirements. Each State is required to have a SIP which contains control measures and strategies which demonstrate how each area will attain and maintain the NAAQS. These plans are developed through a public process, formally adopted by the State, and submitted by the Governor's designee to EPA. The Clean Air Act requires EPA to review each plan and any plan revisions and to approve the plan or plan revisions if consistent with the Clean Air Act.

SIP requirements applicable to all areas are provided in section 110. Part D of title I the Clean Air Act specifies additional requirements applicable to nonattainment areas. Section 110 and part D describe the elements of a SIP and include, among other things, emission inventories, a monitoring network, an air quality analysis, modeling, attainment demonstrations, enforcement mechanisms, and regulations which have been adopted by the State to attain or maintain NAAQS. EPA has adopted regulatory requirements which spell out the procedures for preparing, adopting and submitting SIPs and SIP revisions; that are codified in 40 CFR part 51.

EPA's action on each State's SIP is promulgated in 40 CFR part 52. The first section in the subpart in 40 CFR part 52 for each State is generally the ''Identification of plan'' section which provides chronological development of the State SIP. Or if the state has undergone the new Incorporation by Reference format process (see 62 FR 27968; May 22, 1997), the identification of plan section identifies the State-submitted rules and plan elements which have been Federally approved. The goal of the State-by-State SIP compilation is to identify those rules under the ''Identification of plan'' section which are currently Federally-enforceable. In addition, some of the SIP compilations may include control strategies, such as transportation control measures, local ordinances, State statutes, and emission inventories, or may include regulations provided in other sections of the State-specific subpart of part 52. Some of the SIP compilations may not identify these other Federally-enforceable elements.

The contents of a typical SIP fall into three categories: (1) State-adopted control measures which consists of either rules/regulations or source-specific requirements (e.g., orders and consent decrees); (2) State-submitted ''non-regulatory'' components (e.g., attainment plans, rate of progress plans, emission inventories, transportation control measures, statutes demonstrating legal authority, monitoring networks, etc.); and (3) additional requirements promulgated by EPA (in the absence of a commensurate State provision) to satisfy a mandatory section 110 or part D (Clean Air Act) requirement.

### *C. What Is Federally-Enforceable?*

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, EPA is authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the Clean Air Act.

You should note that, when States have submitted their most current State regulations for inclusion into Federally-enforceable SIPs, EPA will begin its review process of submittals as soon as possible. Until EPA approves a submittal by rulemaking action, State-submitted regulations will be State-enforceable only; therefore, State-enforceable SIPs may exist which differ from Federally-enforceable SIPs. As EPA approves these State-submitted regulations, the regional offices will continue to update the SIP compilations to include these applicable requirements.

Dated: November 8, 2007.

**Stephen L. Johnson,**

*Administrator.*

[FR Doc. E7–22361 Filed 11–14–07; 8:45 am]

**BILLING CODE 6560–50–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

**42 CFR Part 411**

**[CMS–1810–F2]**

**RIN 0938–AK67**

# Medicare Program; Delay of the Date of Applicability for Certain Provisions of Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships (Phase III)

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule delays the date of applicability of certain specified compensation arrangements only, until December 4, 2008.

**DATES:** *Effective Date:* The provisions of this final rule are effective December 4, 2007 as specified in the September 5, 2007 final rule (72 FR 51012). However, the date of applicability of the provisions of § 411.354(c)(1)(ii), § 411.354(c)(2)(iv), and § 411.354(c)(3) with respect to certain compensation arrangements involving physician organizations and academic medical centers or integrated section 501(c)(3) health care systems, as described herein, are delayed until December 4, 2008.

**FOR FURTHER INFORMATION CONTACT:** Lisa Ohrin, (410) 786–4565.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The final rule, entitled ''Medicare Programs; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships (Phase III),'' published in the **Federal Register** on September 5, 2007 (72 FR 51012), interpreted and implemented certain provisions of section 1877 of the Social Security Act (the Act). Under section 1877 of the Act, if a physician or a member of a physician's immediate family has a financial relationship with a health care entity, the physician may not make referrals to that entity for the furnishing of designated health services (DHS) payable under the Medicare program, and the entity may not bill for the services, unless an exception applies.

## II. Provisions of the Final Regulations

The Phase III final rule includes provisions under which referring physicians will be treated as ''standing in the shoes'' of their physician organizations for purposes of applying the rules that describe direct and indirect compensation arrangements in § 411.354 (72 FR 51026 through 51030). A ''physician organization'' is defined at § 411.351 as ''a physician (including a professional corporation of which the physician is the sole owner), a physician practice, or a group practice that complies with the requirements of § 411.352.'' Therefore, for purposes of determining whether a direct or indirect compensation arrangement exists between a physician and an entity to which the physician refers Medicare patients for DHS, the referring physician stands in the shoes of: (1) Another physician who employs the referring physician; (2) his or her wholly-owned professional corporation; (3) a physician practice (that is, a medical practice) that employs or contracts with the referring physician; or (4) a group practice of which the referring physician is a member or independent contractor. The referring physician is considered to have the same compensation arrangements (with the same parties and on the same terms) as the physician organization in whose shoes the referring physician stands.

Subsequent to the publication of Phase III, we received informal comments on the Phase III ''stand in the shoes'' provisions from affected industry stakeholders. These comments addressed the application of the Phase III ''stand in the shoes'' provisions in the academic medical center (AMC) setting or similar settings (such as a nonprofit integrated health care system in which each affiliated organization qualifies for exemption from federal income taxation under section 501(c)(3) of the Internal Revenue Code (for purposes of this final rule, referred to as an ''integrated section 501(c)(3) health care system'')) where ''support payments'' or other similar monetary transfers are common. The commenters asserted that, under Phase III, support payments that previously did not trigger application of the physician self-referral law will need to satisfy the requirements of an exception if, for example, a DHS entity component (for example, a hospital) of an AMC transfers funds to the faculty practice plan component of the AMC. Specifically, in the situation where a physician stands in the shoes of his or her faculty practice plan, the compensation arrangement between the AMC component providing the support payment and the faculty practice plan will be considered to be a direct compensation arrangement between the component and the physician. If the component making the support payment is a DHS entity to which the physician refers Medicare patients, the arrangement between the component and the faculty practice plan would need to satisfy the requirements of a direct compensation arrangement exception if the physician were to continue referring Medicare patients to the component for DHS. A similar analysis applies in the case of an integrated section 501(c)(3) health care system that includes both a hospital affiliate and a nonprofit physician practice affiliate. According to the commenters, it is unlikely that the requirements of any available exception could be satisfied given the nature of support payments (that is, support payments usually are not tied to specific items or services provided by the faculty practice plan (or nonprofit group practice within the health system), but rather are intended to support the overall mission of the AMC or nonprofit integrated health system).

We understand the commenters' concerns and intend to review the application of the Phase III ''stand in the shoes'' provisions in the situations described above. In addition, we are cognizant of the special nature of AMCs and nonprofit integrated health care systems, specifically with respect to their community service and teaching missions. In order to evaluate fully the impact of the Phase III ''stand in the shoes'' provisions on remunerative relationships within AMCs and nonprofit integrated health care systems that, prior to Phase III, did not trigger application of the physician self-referral laws, we are delaying the date of applicability of the provisions in § 411.354(c)(1)(ii), § 411.354(c)(2)(iv), and § 411.354(c)(3) for 12 months after the effective date of Phase III (that is, until December 4, 2008) as to the following compensation arrangements between the following physician organizations and entities ONLY:

- With respect to an AMC as described in § 411.355(e)(2), compensation arrangements between a faculty practice plan and another component of the same AMC; and
- With respect to an integrated section 501(c)(3) health care system, compensation arrangements between an affiliated DHS entity and an affiliated physician practice in the same integrated section 501(c)(3) health care system.

We note that, in a prior rulemaking (Phase I), in response to a comment that compensation arrangements between organizations regulated under the IRS rules pose minimal risk of program or patient abuse, we indicated that regulation under IRS rules, though

beneficial, is not necessarily sufficient to prevent fraud or abuse (66 FR 917). Our action delaying the date of applicability of the Phase III provisions in § 411.354(c)(1)(ii), § 411.354(c)(2)(iv), and § 411.354(c)(3) with respect to integrated section 501(c)(3) health care systems should not be read as a reversal of our previous position. As stated above, we are delaying the date of applicability of these provisions in a targeted manner in order to evaluate any unintended impact of the Phase III ''stand in the shoes'' provisions.

## III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking and invite public comment on the proposed rule. The notice and comment rulemaking procedure is not required, however, if the rule is interpretive or procedural in nature, and it may be waived if there is good cause that it is impracticable, unnecessary, or contrary to the public interest and we incorporate in the rule a statement of such a finding and the reasons supporting that finding. Likewise, we ordinarily provide for a delayed date of applicability of a final rule, but we are not required to do so if the rule is procedural or interpretive. Where a delayed date of applicability is required, this requirement may be waived for good cause. Although we believe that this rule is procedural in nature and, therefore, prior notice and comment and a delayed date of applicability are not necessary, to the extent that it could be considered to be a substantive rule, we set forth below our finding of good cause for the waiver of notice and comment rulemaking and the waiver of a delayed date of applicability.

Our implementation of this action without opportunity for public comment and without a delayed date of applicability is based on the good cause exceptions in 5 U.S.C. 553(b)(3)(B) and (d), respectively. We find that seeking public comment on this action is impracticable, unnecessary, and contrary to the public interest. We are implementing this delayed date of applicability as a result of our review of the informal comments on the Phase III ''stand in the shoes'' provisions from various stakeholders. As discussed above, we understand from those comments that, unless we delay the date of applicability of § 411.354(c)(1)(ii), § 411.354(c)(2)(iv), and § 411.354(c)(3) with respect to the compensation arrangements described herein only, compensation arrangements that previously did not trigger application of the physician self-referral law may need to satisfy the requirements of an exception, requiring renegotiation of a large number of contracts, or the restructuring of many common arrangements involving AMCs and integrated 501(c)(3) health care systems, potentially causing significant disruption within the health care industry. We are concerned that the disruption could unnecessarily inconvenience Medicare beneficiaries or interfere with their medical care and treatment. Likewise, if we do not make this final rule effective upon publication, arrangements described herein that have been in compliance may fall temporarily out of compliance.

## IV. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

## V. Regulatory Impact Statement

We do not believe that this delay in the date of applicability will result in any significant economic impact on any small entity. Until the effective date of the provisions of § 411.354(c)(1)(ii), § 411.354(c)(2)(iv), and § 411.354(c)(3) with respect to the types of compensation arrangements described herein as subject to the delayed date of applicability, physicians, AMCs, and certain nonprofit integrated health care systems do not have to comply with the requirements of the ''stand in the shoes'' provisions of the Phase III final rulemaking and may continue to rely on whichever appropriate exceptions they used before the creation of the new provisions.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 2, 2007.

**Kerry Weems,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

Approved: November 6, 2007.

**Michael O. Leavitt,**

*Secretary.*

[FR Doc. 07–5655 Filed 11–9–07; 2:46 pm]

BILLING CODE 4120–01–P

# Proposed Rules

Federal Register
Vol. 72, No. 220
Thursday, November 15, 2007

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 AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Parts 305 and 318

**[Docket No. APHIS–2007–0050]**

**RIN 0579–AC62**

### Interstate Movement of Fruit From Hawaii

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the Hawaiian fruits and vegetables regulations to allow mangosteen, dragon fruit, melon, pods of cowpea and its relatives, breadfruit, jackfruit, and fresh moringa pods to be moved interstate from Hawaii under certain conditions. This action would allow the movement of these tropical fruits from Hawaii to the continental United States while continuing to provide protection against the spread of plant pests from Hawaii to the continental United States.

**DATES:** We will consider all comments that we receive on or before January 14, 2008.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov,* select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2007–0050 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- *Postal Mail/Commercial Delivery*: Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2007–0050, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0050.

*Reading Room:* You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

*Other Information:* Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. David B. Lamb, Import Specialist, Commodity Import Analysis and Operations, PPQ, VS, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–8758.

**SUPPLEMENTARY INFORMATION:**

## Background

The Hawaiian fruits and vegetables regulations, contained in 7 CFR 318.13 through 318.13–17 (referred to below as the regulations), govern, among other things, the interstate movement of fruits and vegetables from Hawaii to the continental United States. The regulations are necessary to prevent the spread of plant diseases and pests that occur in Hawaii but not in the continental United States.

The regulations in § 318.13–4f identify specific fruits and vegetables that are allowed to be moved interstate from Hawaii if, among other things, they are treated with irradiation in accordance with our phytosanitary treatments regulations in 7 CFR part 305. The regulations in part 305 require that:

1. Irradiation treatment must be carried out only in Hawaii or in non-fruit-fly supporting areas of the United States (i.e., States other than Alabama, Arizona, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Texas, or Virginia);
2. The irradiation treatment facility and treatment protocol must be approved by the Animal and Plant Health Inspection Service (APHIS);
3. In order to be approved, a facility must be able to administer the minimum absorbed ionizing radiation doses specified in paragraph (a) of § 305.34 to the articles, be constructed so as to provide physically separate locations for treated and untreated fruits and vegetables, complete a compliance agreement with APHIS, and be certified by Plant Protection and Quarantine, APHIS, for initial use and annually for subsequent use;
4. Irradiation treatment must be monitored by an inspector, who may be either an APHIS employee or a designated State plant regulatory official;
5. If treated in Hawaii, the fruits and vegetables must be packaged in pest-proof cartons and must be sealed with seals that will visually indicate if the cartons have been opened. Then, the pallet-load of pest-proof cartons must be wrapped, before leaving the irradiation facility, in one of the following ways: (1) With polyethylene sheet wrap; (2) with net wrapping; or (3) with strapping so that each carton on an outside row of the pallet load is constrained by a metal or plastic strap. In addition, pallet loads must be labeled before leaving the irradiation facility with treatment lot numbers, packaging, and treatment facility identification and location, and dates of packing and treatment;
6. If moving to the mainland for treatment, the untreated fruits and vegetables must be shipped in shipping containers sealed prior to interstate movement with seals that will visually indicate if the shipping containers have been opened;
7. The fruits and vegetables must receive the minimum absorbed ionizing radiation doses specified in paragraph (a) of § 305.34;
8. Dosimetry systems in the irradiation facility must map, control, and record the absorbed doses;
9. The absorbed dose must be measured by a dosimeter that can accurately measure the absorbed doses specified in paragraph (a) of § 305.34;
10. The number and placement of dosimeters must be in accordance with American Society of Testing and Materials standards;
11. The irradiation facility must keep records or invoices for each treatment lot for a period that exceeds the shelf

life of the irradiated food product by 1 year and must make those records available to an inspector for inspection; and

12. An inspector will issue a certificate for the interstate movement of fruits and vegetables treated and handled in Hawaii in accordance with the regulations in § 305.34. An inspector will issue a limited permit for the interstate movement of untreated fruits and vegetables from Hawaii for irradiation treatment on the continental United States in accordance with the regulations in § 305.34.

Paragraphs (c) and (d) of § 305.34 set forth procedures for applying for approval and inspection of a treatment facility, and procedures for denial and withdrawal of approval.

Paragraph (e) of § 305.34 further provides that the U.S. Department of Agriculture and its inspectors are not responsible for any loss or damage resulting from any treatment prescribed or supervised.

The State of Hawaii has requested that APHIS amend the regulations to allow the interstate movement of commercial shipments of Hawaiian breadfruit (*Artocarpus altilis*), fresh pods of cowpea (*Vigna unguiculata*) and its relatives, dragon fruit (species of *Hylocereus* and *Selenicereus*), jackfruit (*Artocarpus heterophyllus*), mangosteen (*Garcinia mangostana*), melon (*Cucumis melo*), and fresh moringa pods (*Moringa oleifera*) following irradiation treatment. All of these tropical fruits are currently prohibited from being moved to the continental United States from the State of Hawaii.

As part of our evaluation of that request, we have prepared pest risk assessments (PRAs) for the commodities under consideration and a risk management document that proposes risk mitigation measures to prevent the plant pests associated with each fruit from being introduced into the continental United States. Copies of the PRAs and the risk management document can be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

The risk management document considered the protections that would be afforded by compliance with the provisions of § 305.34 (i.e., the requirements described previously), determined that they were appropriate to address the risks presented by some of the pests of concern, and suggested some additional mitigations to address the remaining identified risks. Based on those suggestions in the risk management document, we propose the following measures be applied to breadfruit, fresh pods of cowpea and its relatives, dragon fruit, jackfruit, mangosteen, melon, and fresh moringa pods moved from the State of Hawaii to the continental United States.

*Breadfruit and Jackfruit*

The PRA for breadfruit and jackfruit identified 13 quarantine pests which could potentially follow the pathway from Hawaii to the continental United States. These included several species of fruit fly, scale insects, mealybugs, and thrips. The PRA also identified the fungus *Phytophthora tropicalis* as a pathogen likely to follow the pathway.

We have found that irradiation at the 150 gray dose is effective against all fruit flies and certain other pests.[1] To protect against the introduction of other insect pests into the continental United States, we would require that breadfruit and jackfruit to be treated with the 150 gray dose would have to either receive a post-harvest dip in accordance with treatment schedule T102–c (warm soapy water and brushing) as provided in § 305.42(b), or originate from an orchard or growing area that was previously treated with a broad-spectrum insecticide during the growing season and a pre-harvest inspection of the orchard or growing area found the fruit free of any surface pests as prescribed in a compliance agreement. The fruit would also have to be inspected after harvest by an APHIS inspector in Hawaii and found free of spiraling whitefly (*Aleurodicus disperses*), inornate scale (*Aonidiella inornata*), green scale (*Coccus viridis*), red wax scale (*Ceroplastes rubens*), gray pineapple mealybug (*Dysmicoccus neobrevipes*), pink hibiscus mealybug (*Maconellicoccus hirsutus*), spherical mealybug (*Nipaecoccus viridis*), citrus mealybug (*Pseudococcus cryptus*), and melon thrips (*Thrips palmi*). The fruit would also have to be inspected for signs of thrip damage.

The 400 gray dose has been found to be effective against all insect pests, excluding adults and pupae of the order Lepidoptera, which are the stages that generally do not feed on fruit or pods. The PRA for breadfruit and jackfruit did not identify any quarantine significant Lepidopteran pests likely to follow the pathway. Therefore, breadfruit and jackfruit receiving treatment at the 400 gray dose in Hawaii would not be required to undergo additional inspection in Hawaii for insect pests.

[1] There is no data regarding the radio-tolerance of breadfruit and jackfruit at the dose levels used by USDA approved irradiation treatments.

Fruit to be moved interstate for treatment on the mainland would have to be treated with a minimum absorbed dose of 400 gray.

However, neither the 150 gray nor the 400 gray dose has been determined to be effective against the fungus *Phytophthora tropicalis*. Therefore, in addition to irradiation, breadfruit and jackfruit would have to receive a post-harvest fungicidal dip appropriate for the fungus *Phytophthora tropicalis* or originate from an orchard that was previously treated with an appropriate fungicide during the growing season and a pre-harvest inspection of the orchard found the fruit free of symptoms of the fungus.

Regardless of the irradiation dose applied, the fruit would have to be free of leaves and stems. Breadfruit and jackfruit moved into the continental United States after treatment in Hawaii would be subject to inspection upon arrival in accordance with § 318.13–8 if inspectors determine that such inspection is necessary.

*Cowpea and Its Relatives*

The PRA for fresh pods of cowpea and its relatives identified 11 quarantine pests which could potentially follow the pathway from Hawaii to the continental United States. These included several species of fruit flies, mealybugs, and thrips, as well as cassava red mite (*Oligonychus biharensis*) and several Lepidopteran pests.

Fresh pods of cowpea and its relatives would have to be treated with a minimum absorbed dose of 400 gray because the 150 gray dose is not known to be effective against the internal stages of pests of the order Lepidoptera. The 400 gray dose is effective against all insect pests, excluding adults and pupae of the order Lepidoptera. However, neither the 150 gray nor the 400 gray dose have been determined to be effective against the cassava red mite. Therefore, fresh pods of cowpea and its relatives would have to be inspected after harvest by an APHIS inspector in Hawaii and found free of adults and pupae of the order Lepidoptera and the cassava red mite.

The pods would have to be free of leaves and stems. Pods moved into the continental United States after treatment in Hawaii would be subject to inspection upon arrival in accordance with § 318.13–8 if inspectors determine that such inspection is necessary.

*Dragon Fruit*

The PRA for dragon fruit identified five quarantine significant pests which could potentially follow the pathway from Hawaii to the continental United

States. These included two species of fruit fly, Oriental fruit fly (*Bactrocera dorsalis*), and Mediterranean fruit fly (*Ceratitis capitata*), and three species of mealybug.

We have found that irradiation at the 150 gray dose is effective against all fruit flies and certain other pests. To protect against the introduction of other insect pests into the continental United States, we would require that dragon fruit to be treated with the 150 gray dose would have to either receive a post-harvest dip in accordance with treatment schedule T102-c (warm soapy water and brushing) as provided in § 305.42(b), or originate from an orchard or growing area that was previously treated with a broad-spectrum insecticide during the growing season and a pre-harvest inspection of the orchard or growing area found the fruit free of any surface pests as prescribed in a compliance agreement. We would also require dragon fruit to be treated with the 150 gray dose to be inspected after harvest by an APHIS inspector in Hawaii and found free of gray pineapple mealybug, pink hibiscus mealybug, and citrus mealybug. Sepals, if present on the fruit sampled for inspection, would have to be removed during the pre-departure inspection.

The 400 gray dose is effective against all insect pests, excluding adults and pupae of the order Lepidoptera. The PRA for dragon fruit did not identify any Lepidopteran quarantine pests likely to follow the pathway. Dragon fruit receiving treatment at the 400 gray dose in Hawaii would not be required to undergo additional inspection in Hawaii for insect pests. Fruit to be moved interstate for treatment on the continental would have to be treated with a minimum absorbed dose of 400 gray.

Regardless of the irradiation dose applied, the fruit would have to be free of leaves and stems. Dragon fruit moved into the continental United States after treatment in Hawaii would be subject to inspection upon arrival in accordance with § 318.13–8 if inspectors determine that such inspection is necessary.

*Mangosteen*

The PRA for mangosteen identified six quarantine pests which could potentially follow the pathway from Hawaii to the continental United States, including fruit flies, mealybugs, and *Thrips florum*.

We have found that irradiation at the 150 gray dose is effective against all fruit flies and certain other pests. To protect against the introduction of other insect pests into the continental United States, we would require that mangosteen to be treated with the 150 gray dose would have to either receive a post-harvest dip in accordance with treatment schedule T102-c (warm soapy water and brushing) as provided in § 305.42(b), or originate from an orchard or growing area that was previously treated with a broad-spectrum insecticide during the growing season and a pre-harvest inspection of the orchard or growing area found the fruit free of any surface pests as prescribed in a compliance agreement. We would also require mangosteen to be inspected after harvest by an APHIS inspector in Hawaii and found free of gray pineapple mealybug, pink hibiscus mealybug, citrus mealybug, and *Thrips florum*. Sepals, if present on the fruit sampled for inspection, would have to be removed during the pre-departure inspection.

The 400 gray dose is effective against all insect pests, excluding adults and pupae of the order Lepidoptera. The PRA for mangosteen did not identify any quarantine significant Lepidopteran pests likely to follow the pathway. Mangosteen receiving treatment at the 400 gray dose in Hawaii would not be required to undergo additional inspection for insect pests. Fruit to be moved interstate for treatment on the continental would have to be treated with a minimum absorbed dose of 400 gray.

Regardless of the irradiation dose applied, the fruit would have to be free of leaves and stems. Mangosteen moved into the continental United States from Hawaii would be subject to inspection upon arrival in accordance with § 318.13–8 if inspectors determine that such inspection is necessary.

*Melon*

The PRA for melon identified four quarantine significant pests which could potentially follow the pathway from Hawaii to the continental United States, including fruit flies and spiraling whitefly.

We have found that irradiation at the 150 gray dose is effective against all fruit flies and certain other pests. To protect against the introduction of other insect pests into the continental United States, we would require that melons to be treated with the 150 gray dose would have to either receive a post-harvest dip in accordance with treatment schedule T102-c (warm soapy water and brushing) as provided in § 305.42(b), or originate from an orchard or growing area that was previously treated with a broad-spectrum insecticide during the growing season and a pre-harvest inspection of the orchard or growing area found the fruit free of any surface pests as prescribed in a compliance agreement. We would also require Hawaiian melons to be inspected after harvest by an APHIS inspector in Hawaii and found free of spiraling whitefly.

The 400 gray dose is effective against all insect pests, excluding adults and pupae of the order Lepidoptera. The PRA for melon did not identify any quarantine significant Lepidopteran pests likely to follow the pathway. Melons receiving treatment at the 400 gray dose in Hawaii would not be required to undergo additional inspection for insect pests. Fruit to be moved interstate for treatment on the continental would have to be treated with a minimum absorbed dose of 400 gray.

Regardless of the irradiation dose applied, the fruit would have to be washed to remove dirt and be free of leaves and stems. Melons moved into the continental United States after treatment in Hawaii would be subject to inspection upon arrival in accordance with § 318.13–8 if inspectors determine that such inspection is necessary.

*Moringa Pods*

The PRA for fresh moringa pods identified seven quarantine significant pests which could potentially follow the pathway from Hawaii to the continental United States, including fruit flies, spiraling whitefly, scale insects, and citrus mealybug.

We have found that irradiation at the 150 gray dose is effective against all fruit flies and certain other pests. To protect against the introduction of other insect pests into the continental United States, we would require that moringa pods to be treated with the 150 gray dose would have to be either receive a post-harvest dip in accordance with treatment schedule T102-c (warm soapy water and brushing) as provided in § 305.42(b), or originate from an orchard or growing area that was previously treated with a broad-spectrum insecticide during the growing season and a pre-harvest inspection of the orchard or growing area found the fruit free of any surface pests as prescribed in a compliance agreement. We would also require moringa pods to be inspected after harvest by an APHIS inspector in Hawaii and found free of spiraling whitefly, inornate scale, green scale, and citrus mealybug.

The 400 gray dose is effective against all insect pests, excluding adults and pupae of the order Lepidoptera. The PRA for moringa pods did not identify any Lepidopteran quarantine pests likely to follow the pathway. Moringa pods receiving treatment at the 400 gray

dose in Hawaii would not be required to undergo additional inspection or treatment for insect pests. Moringa pods to be moved interstate for treatment on the continental would have to be treated with a minimum absorbed dose of 400 gray.

Regardless of the irradiation dose applied, moringa pods moved into the continental United States would be subject to inspection upon arrival in accordance with § 318.13–8 if inspectors determine that such inspection is necessary.

We believe the mitigations described above will allow these tropical fruits to move from Hawaii to the continental United States while continuing to prevent plant pests from entering the continental United States from Hawaii.

*Irradiation Treatments for Three Additional Pests*

Paragraph (a) of § 305.31 currently provides approved irradiation doses against the specific plant pests that may be present on fruits and vegetables that are imported into the United States. Studies by the Department's Agricultural Research Service have found that a minimum absorbed dose of 150 gray is adequate to treat commodities in which coconut scale (*Aspidiotus destructor*) [2] and white peach scale (*Pseudaulacaspis pentagona*) [3] may be present, and that a minimum absorbed dose of 100 gray is adequate to treat commodities in which *Copitarsia decolora* (Lepidoptera: Noctuidae) [4] may be present. Therefore, we propose to amend § 305.31(a) to add these irradiation doses for these three plant pests.

**Executive Order 12866 and Regulatory Flexibility Act**

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule would allow the interstate movement mangosteen, dragon fruit, melon, fresh pods of cowpea and its relatives, breadfruit, jackfruit, and moringa pods from Hawaii after irradiation treatment. As a condition of entry, these fruits would have to meet certain other inspection and treatment requirements. This action would allow for the interstate movement of these fruits into the continental United States while continuing to provide protection against the introduction of quarantine pests.

Tropical specialty fruit production in Hawaii has been increasing rapidly in recent years.[5] Hawaii's growers produced and sold an estimated 1.5 million pounds of tropical specialty fruit in 2005, the highest sales on record and 50 percent more than was produced and sold in 2004.[6] Higher yields from maturing orchards and expansion of the harvested area have contributed to the increased production. Sales in 2005 were valued at $2.7 million, 40 percent more than in 2004.

This proposed rule, if finalized, is not expected to result in significant economic effects on mainland U.S. producers. The tropical specialty fruits included in this proposed rule are not commercially grown in the continental United States. The proposed rule would benefit Hawaiian producers by providing a broader market for these fruits. Their movement from Hawaii would compete against imports from other countries, and the only effects for U.S. producers would be the benefits that accrue to Hawaiian producers.

Melons and cowpeas are produced in the continental United States, but effects of allowing the interstate movement of melons from Hawaii on U.S. mainland producers of these products are expected to be minimal.

*Melons*

The predominant U.S. melon varieties are cantaloupes, honeydews, and watermelons, for which the value of U.S. production was approximately $866 million in 2006 (table 1). Over 80 percent of melon production takes place in five States. California is the leading domestic producer of all melons, accounting for 33 percent of total acreage; followed by Texas, with 15 percent; Georgia, with 12 percent; Arizona, with 11 percent, and Florida, with 10 percent. The United States is a net importer of melons. In 2006, the total value of melons imported into the United States was $350 million, compared to $189 million worth of melons exported.[7] Nearly all (99 percent) melon farmers have receipts of not more than $750,000 annually, and are therefore classified by the Small Business Administration (SBA) as small entities.

TABLE 1.—VALUE OF U.S. MELON PRODUCTION, 2004–2006

| Commodity | 2004 | 2005 | 2006 |
|---|---|---|---|
| Cantaloupe | $322,188,000 | $335,818,000 | $340,677,000 |
| Honeydews | 92,133,000 | 91,569,000 | 90,600,000 |
| Watermelons | 313,217,000 | 445,917,000 | 434,861,000 |
| Total | 727,538,000 | 873,304,000 | 866,138,000 |

Source: National Agricultural Statistics Service.

We do not know the quantity or type of melons that would be moved from Hawaii to the continental United States under this rule, but we do not expect the quantity to be significant in relation to our total domestic supply. For example, the most recent NASS data on the farm value of watermelon produced in Hawaii show a value of $2.4 million in 2004, which is less than 1 percent of the value of U.S. melon imports of all types.

Entry of Hawaiian melons into markets in the continental United States is not expected to have a significant

[2] Follett, P.A. ''Irradiation as a phytosanitary treatment for *Aspidiotus destructor* Signoret (Homoptera: Diaspididae).'' *Journal of Economic Entomology* 99: 1138–1142.

[3] Follett, P.A. ''Irradiation as a phytosanitary treatment for White Peach Scale (Homoptera: Diaspididae).'' *Journal of Economic Entomology* 99: 1974–1978.

[4] Maldonado, Marisela Huamán. ''Final report: Gamma irradiation as a quarantine treatment against *Copitarsia decolora* (Guenée) in fresh asparagus.'' Copies of this technical report can be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

[5] Tropical specialty fruits include: Abiu, atemoya, breadfruit, caimito, canistel, cherimoya, durian, jaboticaba, jackfruit, langsat, longan, loquat, litchi, mango, mangosteen, persimmon, poha, rambutan, rollina, sapodilla, soursop, starfruit, and white sapote.

[6] The statistics in this paragraph are taken from USDA National Agricultural Statistics Service (NASS), ''Hawaii Tropical Specialty Fruits,'' released August 8, 2006. *http://www.nass.usda.gov/hi/fruit/tropfrt.pdf.*

[7] World Trade Atlas 2006.

economic impact on mainland prices or production, especially given the irradiation treatment costs and transport costs that merchants of Hawaiian melons would have to bear. Moreover, depending on the type of melon, relative prices, and quality, shipments from Hawaii to the continental United States may at least partially substitute for imports, thereby further reducing any effects on mainland producers.

*Fresh Cowpea Pods*

The 2002 Census of Agriculture (the most recent year for which data are available) states that 151 farms harvested 13,651 acres of cowpeas in 2002. Cowpeas, also known as southern peas, blackeye peas, or crowder, are not routinely harvested as fresh cowpea pods but are allowed to dry before harvesting. Nearly all (99 percent) cowpea farmers have receipts of not more than $750,000 annually, and therefore are small entities according to SBA standards.

Fresh cowpea pods are not sold commercially by producers in the continental United States; only dried cowpea pods are marketed. Since fresh cowpea pods are not generally used as a substitute for dried cowpeas, interstate movement of fresh cowpea pods from Hawaii would not significantly impact the mainland's commercial production of cowpeas. Rather, the fresh cowpea pods from Hawaii are expected to be sold as a fresh or frozen vegetable. Immature snapped cowpea pods are used in the same way as snap beans, often mixed with other foods.[8] Green cowpea seeds can be boiled as a fresh vegetable.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

**National Environmental Policy Act**

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with importation of tropical fruits from Hawaii into the continental United States, we have prepared an environmental assessment. The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment may be viewed on the Regulations.gov Web site or in our reading room. (Instructions for accessing Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

**Paperwork Reduction Act**

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2007–0050. Please send a copy of your comments to: (1) Docket No. APHIS–2007–0050, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would amend the Hawaiian fruit and vegetable regulations to allow mangosteen, dragon fruit, pods of cowpea and its relatives, breadfruit, jackfruit, and fresh moringa pods to be moved interstate from Hawaii under certain conditions. This action would allow the movement of these tropical fruits from Hawaii to the continental United States while continuing to provide protection against the spread of plant pest from Hawaii to the continental United States.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 0.2000 hours per response.

*Respondents:* Importers of fruits and vegetables.

*Estimated annual number of respondents:* 110.

*Estimated annual number of responses per respondent:* 24.7636.

*Estimated annual number of responses:* 2,724.

*Estimated total annual burden on respondents:* 545 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

**E-Government Act Compliance**

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related

[8] Alternative Field Crops Manual, ''Cowpea,'' *http://www.hort.purdue.edu/newcrop/afcm/cowpea.html.*

to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

**Lists of Subjects**

*7 CFR Part 305*

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

*7 CFR Part 318*

Cotton, Cottonseeds, Fruits, Guam, Hawaii, Plant diseases and pests, Puerto Rico, Quarantine, Transportation, Vegetables, Virgin Islands.

Accordingly, we propose to amend 7 CFR parts 305 and 318 to read as follows:

## PART 305—PHYTOSANITARY TREATMENTS

1. The authority citation for part 305 continues to read as follows:

**Authority:** 7 U.S.C. 7701–7772 and 7781–7786; 21 U.S.C. 136 and 136a; 7 U.S.C. 2.22, 2.80, and 371.3.

2. In § 305.31, paragraph (a), the table is amended by adding new entries, in alphabetical order, for ''*Aspidiotus destructor*'', ''*Copitarsia decolora*'', and ''*Pseudaulacaspis pentagona*'' to read as follows:

**§ 305.31 Irradiation treatment of imported regulated articles for certain plant pests.**

(a) * * *

IRRADIATION FOR CERTAIN PLANT PESTS IN IMPORTED REGULATED ARTICLES [1]

| Scientific name | Common name | Dose (gray) |
|---|---|---|
| * * * * | * * * | |
| *Aspidiotus destructor* | Coconut scale | 150 |
| * * * * | * * * | |
| *Copitarsia decolora* | (No common name) | 100 |
| * * * * | * * * | |
| *Pseudaulacaspis pentagona* | White peach scale | 150 |
| * * * * | * * * | |

[1] There is a possibility that some cut flowers could be damaged by such irradiations. See paragraph (n) of this section.

3. Section 305.34 is amended as follows:

a. By adding, in alphabetical order, new entries to the table in paragraph (a) for breadfruit, cowpea pods (and its relatives), dragon fruit, jackfruit, mangosteen, melon, and moringa pods to read as set forth below.

b. In the table in paragraph (a), by revising footnote 1 and adding a new footnote 2 to read as set forth below.

c. By revising paragraph (b)(7) to read as set forth below.

**§ 305.34 Irradiation treatment of certain regulated articles from Hawaii, Puerto Rico, and the U.S. Virgin Islands.**

(a) * * *

IRRADIATION FOR PLANT PESTS IN HAWAIIAN FRUITS AND VEGETABLES

| Commodity | Dose (gray) |
|---|---|
| * * * * | * |
| Breadfruit [1 2] | 400 or 150. |
| * * * * | * |
| Cowpea pods (and its relatives) [1]. | 400. |
| * * * * | * |
| Dragon fruit [1 2] | 400 or 150. |

IRRADIATION FOR PLANT PESTS IN HAWAIIAN FRUITS AND VEGETABLES—Continued

| Commodity | Dose (gray) |
|---|---|
| * * * * | * |
| Jackfruit [1 2] | 400 or 150. |
| * * * * | * |
| Mangosteen [1 2] | 400 or 150. |
| Melon [1 2] | 400 or 150. |
| * * * * | * |
| Moringa pods [1 2] | 400 or 150. |
| * * * * | * |

[1] Breadfruit, cowpea pods, dragon fruit, jackfruit, litchi, mangosteen, melon, moringa pods, and sweetpotato are also subject to the additional inspection and treatment requirements in paragraph (b)(7) of this section.

[2] Breadfruit, dragon fruit, jackfruit, mangosteen, melon, and moringa pods moving to the continental United States for treatment under limited permit in accordance with the requirements of paragraph (b)(7)(ii) of this section must be treated with the 400 gray dose.

* * * * *

(b) * * *

(7)(i) *Certification on basis of treatment.* A certificate shall be issued by an inspector for the movement of articles from Hawaii that have been treated and handled in accordance with this section.

(A) To be certified for interstate movement under this section, litchi from Hawaii must be inspected in Hawaii and found free of the litchi fruit moth (*Cryptophlebia* spp.) and other plant pests by an inspector before undergoing irradiation treatment in Hawaii for fruit flies.

(B) To be certified for interstate movement under this section, sweetpotato from Hawaii must be inspected in Hawaii and found free of the gray pineapple mealybug (*Dysmicoccus neobrevipes*), and the Kona coffee-root knot nematode (*Meloidogyne konaensis*) by an inspector before undergoing irradiation treatment in Hawaii. In addition, sweetpotato from Hawaii to be treated with irradiation at a dose of 150 Gy must be sampled, cut, and inspected in Hawaii and found to be free of the ginger weevil (*Elytrotreinus subtruncatus*) by an inspector before undergoing irradiation treatment in Hawaii. Sampling, cutting, and inspection must be performed under conditions that will prevent any pests that may emerge from the sampled sweetpotatoes from infesting any other sweetpotatoes intended for interstate movement in accordance with this section.

(C) To be certified for interstate movement under this section, breadfruit and jackfruit from Hawaii must be inspected in Hawaii and found free of spiraling whitefly (*Aleurodicus dispersus*), inornate scale (*Aonidiella inornata*), red wax scale (*Ceroplastes rubens*), green scale (*Coccus viridis*), gray pineapple mealybug (*Dysmicoccus neobrevipes*), pink hibiscus mealybug (*Maconellicoccus hirsutus*), spherical mealybug (*Nipaecoccus viridis*), citrus mealybug (*Pseudococcus cryptus*), melon thrips (*Thrips palmi*) and signs of thrip damage before undergoing irradiation treatment in Hawaii at the 150 gray dose. Fruit receiving the 150 gray dose also must either receive a post-harvest dip in accordance with treatment schedule T102–c as provided in § 305.42(b) or originate from an orchard or growing area that was previously treated with a broad-spectrum insecticide during the growing season and a pre-harvest inspection of the orchard or growing area found the fruit free of any surface pests as prescribed in a compliance agreement. Post-treatment inspection in Hawaii is not required if the fruit undergoes irradiation treatment at the 400 gray dose. Regardless of irradiation dose, the fruit must be free of stems and leaves and must originate from an orchard that was previously treated with a fungicide appropriate for the fungus *Phytophthora tropicalis* during the growing season and the fruit must be inspected prior to harvest and found free of the fungus or, after irradiation treatment, must receive a post-harvest fungicidal dip appropriate for *Phytophthora tropicalis*.

(D) To be certified for interstate movement under this section, fresh pods of cowpea and its relatives from Hawaii must be inspected in Hawaii and found free of the cassava red mite (*Oligonychus biharensis*) and adults and pupae of the order Lepidoptera before undergoing irradiation treatment. The pods must be free of stems and leaves.

(E) To be certified for interstate movement under this section, dragon fruit from Hawaii presented for inspection must have the sepals removed and must be inspected in Hawaii and found free of gray pineapple mealybug (*Dysmicoccus neobrevipes*), pink hibiscus mealybug (*Maconellicoccus hirsutus*), and citrus mealybug (*Pseudococcus cryptus*) before undergoing irradiation treatment in Hawaii at the 150 gray dose. Fruit receiving the 150 gray dose also must either receive a post-harvest dip in accordance with treatment schedule T102–c as provided in § 305.42(b) or originate from an orchard or growing area that was previously treated with a broad-spectrum insecticide during the growing season and a pre-harvest inspection of the orchard or growing area found the fruit free of any surface pests as prescribed in a compliance agreement. Post-treatment inspection in Hawaii is not required if the fruit undergoes irradiation treatment at the 400 gray dose. Regardless of irradiation dose, the fruit must be free of stems and leaves.

(F) To be certified for interstate movement under this section, mangosteen from Hawaii must have the sepals removed and must be inspected in Hawaii and found free of gray pineapple mealybug (*Dysmicoccus neobrevipes*), pink hibiscus mealybug (*Maconellicoccus hirsutus*), citrus mealybug (*Pseudococcus cryptus*), and *Thrips florum* before undergoing irradiation treatment in Hawaii at the 150 gray dose. Fruit receiving the 150 gray dose also must either receive a post-harvest dip in accordance with treatment schedule T102–c as provided in § 305.42(b) or originate from an orchard or growing area that was previously treated with a broad-spectrum insecticide during the growing season and a pre-harvest inspection of the orchard or growing area found the fruit free of any surface pests as prescribed in a compliance agreement. Post-treatment inspection in Hawaii is not required if the fruit undergoes irradiation treatment at the 400 gray dose. Regardless of irradiation dose, the fruit must be free of stems and leaves.

(G) To be certified for interstate movement under this section, melon from Hawaii must be inspected in Hawaii and found free of spiraling whitefly (*Aleurodicus dispersus*) before undergoing irradiation treatment in Hawaii at the 150 gray dose. Fruit receiving the 150 gray dose also must either receive a post-harvest dip in accordance with treatment schedule T102–c as provided in § 305.42(b) or originate from an orchard or growing area that was previously treated with a broad-spectrum insecticide during the growing season and a pre-harvest inspection of the orchard or growing area found the fruit free of any surface pests as prescribed in a compliance agreement. Post-treatment inspection in Hawaii is not required if the fruit undergoes irradiation treatment at the 400 gray dose. Regardless of irradiation dose, melons must be washed to remove dirt and must be free of stems and leaves.

(H) To be certified for interstate movement under this section, moringa pods from Hawaii must be inspected in Hawaii and found free of spiraling whitefly (*Aleurodicus dispersus*), inornate scale (*Aonidiella inornata*), green scale (Coccus viridis), and citrus mealybug (*Pseudococcus cryptus*) before undergoing irradiation treatment in Hawaii at the 150 gray dose. Fruit receiving the 150 gray dose also must either receive a post-harvest dip in accordance with treatment schedule T102–c as provided in § 305.42(b) or originate from an orchard or growing area that was previously treated with a broad-spectrum insecticide during the growing season and a pre-harvest inspection of the orchard or growing area found the fruit free of any surface pests as prescribed in a compliance agreement. Post-treatment inspection in Hawaii is not required if the fruit undergoes irradiation treatment at the 400 gray dose.

(ii) *Limited permit.* A limited permit shall be issued by an inspector for the interstate movement of untreated articles from Hawaii into the continental United States for treatment in accordance with this section.

(A) To be eligible for a limited permit under this section, untreated litchi from Hawaii must be inspected in Hawaii and found free of the litchi fruit moth (*Cryptophlebia* spp.) and other plant pests by an inspector.

(B) To be eligible for a limited permit under this section, untreated sweetpotato from Hawaii must be inspected in Hawaii and found free of the gray pineapple mealybug (*Dysmicoccus neobrevipes*) and the Kona coffee-root knot nematode (*Meloidogyne konaensis*) by an inspector. In addition, sweetpotato from Hawaii to be treated with irradiation at a dose of 150 Gy must be sampled, cut, and inspected in Hawaii and found free of the ginger weevil (*Elytrotreinus subtruncatus*) by an inspector. Sampling, cutting, and inspection must be performed under conditions that will prevent any pests that may emerge from the sampled sweetpotatoes from infesting any other sweetpotatoes intended for interstate movement in accordance with this section.

(C) To be eligible for a limited permit under this section, breadfruit and jackfruit from Hawaii must be free of stems and leaves and must originate from an orchard that was previously treated with a fungicide appropriate for the fungus *Phytophthora tropicalis* during the growing season and the fruit must be inspected prior to harvest and found free of the fungus or, after irradiation treatment, must receive a post-harvest fungicidal dip appropriate for *Phytophthora tropicalis*.

(D) To be eligible for a limited permit under this section, fresh pods of cowpea and its relatives from Hawaii must be

free of stems and leaves and must be inspected in Hawaii and found free of the cassava red mite (*Oligonychus biharensis*) and adults and pupae of the order Lepidoptera.

* * * * *

## PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

4. The authority citation for part 318 continues to read as follows:

**Authority:** 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

### § 318.13–4f [Amended]

5. Section 318.13–4f is amended as follows:

a. By adding the word ''breadfruit,'' before the words ''Capsicum spp. (peppers)''.

b. By adding the words ''cowpea pods,'' before the words ''Cucurbita spp. (squash)''.

c. By adding the word ''dragon fruit,'' before the word ''eggplant''.

d. By adding the word ''jackfruit,'' before the word ''litchi''.

e. By adding the words ''mangosteen, melon, moringa pods'' before the word ''papaya''.

Done in Washington, DC, this 8th day of November 2007.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E7–22278 Filed 11–14–07; 8:45 am]

**BILLING CODE 3410–34–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Chapters I and III

**[Docket No. FAA–2007–29291]**

## Review of Existing Regulations

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

**ACTION:** Request for comments.

**SUMMARY:** The FAA requests comments from the public to identify those regulations currently in effect that we should amend, remove, or simplify. We are publishing this notice under our ongoing regulatory review program required by Executive Order 12866. Getting public comments is a necessary element of our effort to make our regulations more effective and less burdensome.

**DATES:** Send us your comments no later than January 14, 2008.

**ADDRESSES:** You may send comments identified by Docket Number FAA–2007–29291 using any of the following methods:

- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- Fax: Fax comments to the Docket Management Facility at 202–493–2251.
- Hand Delivery: Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

*Privacy:* We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

*Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Adrian D. Wright, Office of Rulemaking, ARM–103, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3317; e-mail *adrian.d.wright@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

Congress has authorized the Secretary of Transportation, and by delegation, the Administrator of the Federal Aviation Administration (FAA) to do the following, among other things:

- Develop and maintain a sound regulatory system that is responsive to the needs of the public,
- Regulate air commerce in a way that best promotes safety and fulfills national defense requirements, and
- Oversee, license, and regulate commercial launch and reentry activities and the operation of launch and reentry sites as carried out by U.S. citizens or within the United States.

Anyone interested in further information about FAA's authority and responsibilities should refer to Title 49 of the United States Code, particularly Subtitle VII, Aviation Programs.

*For many years, the FAA has maintained an active regulatory review program:*

- In 1992, the President announced a regulatory review to ''weed out unnecessary and burdensome government regulations, which impose needless costs on consumers and substantially impede economic growth.'' In response to a request for public comments published in the **Federal Register** (57 FR 4744, February 7, 1992), the FAA received more than 300 comments.
- In August 1993, the National Commission to Ensure a Strong Competitive Airline Industry (the Commission) recommended the FAA undertake a short-range regulatory review to remove or amend existing regulations to reduce regulatory burdens consistent with safety and security considerations.
- In September 1993, section 5 of Executive Order 12866 (58 FR 51735, October 4, 1993) required each agency to submit a program to the Office of Management and Budget by December 31, 1993, under which the agency will periodically review its existing significant regulations to determine whether any should be changed or removed.
- In January 1994, the FAA published a request for public comments in response to the Commission recommendation and to facilitate the review envisioned by E.O. 12866 (59 FR 1362, January 10, 1994). We received more than 400 comments from 184 commenters.
- In August 1995, the FAA published its proposed plan for periodic regulatory reviews for comment (60 FR 44142, August 24, 1995).
- In October 1996, the FAA adopted its current plan for periodic regulatory reviews based on a three-year cycle (61 FR 53610, October 15, 1996).
- In February 1997, the White House Commission on Aviation Safety and Security recommended the FAA simplify its regulations.
- In May 1997, the FAA published its first request for comments under the three-year review program and in accord

with the Commission recommendation (62 FR 26894, May 15, 1997). We received 82 comments and published results of the review in October 1998 (63 FR 56539, October 22, 1998).

• In July 2000, the FAA began the second round of regulatory review under the three-year program (65 FR 43265, July 13, 2000). We received 476 comments and published results of the review in January 2002 (67 FR 4680, January 31, 2002).

• In February 2004, the FAA began the third round of regulatory review under the three-year program (65 FR 8575, February 25, 2004). We received 97 comments from 30 different commenters and published results of the review in June 2007 (72 FR 34999, June 26, 2007).

In summary, since 1992 the FAA has completed five rounds of regulatory review and has received approximately 1,350 comments.

**Request for Comments**

As part of its ongoing plan for periodic regulatory reviews, the FAA is requesting the public identify three regulations, in priority order, that it believes we should amend or eliminate.

Our goal is to identify regulations that impose undue regulatory burden; are no longer necessary; or overlay, duplicate, or conflict with other Federal regulations. In order to focus on areas of greatest interest, and to effectively manage agency resources, the FAA asks that commenters responding to this notice limit their input to three issues they consider most urgent, and to list them in priority order.

The FAA will review the issues addressed by the commenters against its regulatory agenda and rulemaking program efforts and adjust its regulatory priorities consistent with its statutory responsibilities. At the end of this process, the FAA will publish a summary and general disposition of comments and indicate, where appropriate, how we will adjust our regulatory priorities.

Also, we request the public provide any specific suggestions where rules could be developed as performance-based rather than prescriptive, and any specific plain-language that might be used, and provide suggested language on how those rules should be written.

Issued in Washington, DC, on November 7, 2007.

**Nick Sabatini,**

*Associate Administrator for Aviation Safety.*

[FR Doc. E7–22346 Filed 11–14–07; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2001–NM–40–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 747 Series Airplanes Powered by General Electric (GE) CF6–45/50, Pratt & Whitney (P&W) JT9D–70, or JT9D–7 Series Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes powered by GE CF6–45/50, P&W JT9D–70, or JT9D–7 series engines. That action would have required repetitive inspections to find cracks and broken fasteners of the inboard and outboard nacelle struts of the rear engine mount bulkhead, and repair, if necessary. For certain airplanes, that action would have provided for an optional terminating modification for the inspections of the outboard nacelle struts. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has received new data of other issues related to the unsafe condition. The data include many new reports of additional web and frame cracks and sheared attachment fasteners, and reports of cracks on the outboard struts of airplanes not identified in the applicability of the NPRM, in addition to the comments received for the NPRM. We have determined from these data that the corrective actions required by the NPRM are inadequate for addressing the identified unsafe condition. Accordingly, the proposed rule is withdrawn.

**FOR FURTHER INFORMATION CONTACT:** Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6421; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes powered by General Electric (GE) CF6–45/50, Pratt & Whitney (P&W) JT9D–70, or JT9D–7 series engines, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on January 9, 2002 (67 FR 1167). The proposed rule would have required repetitive inspections to find cracks and broken fasteners of the inboard and outboard nacelle struts of the rear engine mount bulkhead, and repair, if necessary. For certain airplanes, the proposed rule would have provided for an optional terminating modification for the inspections of the outboard nacelle struts. That action was prompted by reports indicating that fatigue cracking of the inboard and outboard nacelle struts of the rear engine mount bulkhead was found. The proposed actions were intended to find and fix cracks and broken fasteners of the inboard and outboard nacelle struts, which could result in possible loss of the bulkhead load path and consequent separation of the engine from the airplane.

**Actions That Occurred Since the NPRM Was Issued**

Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has received new data of other issues related to the unsafe condition. The data include many new reports of additional web and frame cracks and sheared attachment fasteners, and reports of cracks on the outboard struts of airplanes not identified in the applicability of the NPRM, in addition to the comments received for the NPRM. We have determined from these data that the corrective actions required by the NPRM are inadequate for addressing the identified unsafe condition. Therefore, we are issuing a new rulemaking to adequately address the identified unsafe condition.

**FAA's Conclusions**

Upon further consideration, the FAA has determined that the corrective actions required by the NPRM are inadequate for addressing the identified unsafe condition. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing another action in the future, nor does it commit the agency to any course of action in the future.

**Regulatory Impact**

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Withdrawal**

Accordingly, the notice of proposed rulemaking, Docket 2001–NM–40–AD, published in the **Federal Register** on January 9, 2002 (67 FR 1167), is withdrawn.

Issued in Renton, Washington, on November 7, 2007.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E7–22329 Filed 11–14–07; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–0157; Directorate Identifier 2001–NE–23–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Turbomeca Makila 1 A and 1 A1 Turboshaft Engines

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to supersede an existing airworthiness directive (AD) for Turbomeca Makila 1 A, 1 A1, and 1 A2 turboshaft engines. That AD currently requires replacing certain digital electronic control units (DECUs) and electronic control units (ECUs) with modified DECUs and ECUs. This proposed AD would apply only to Makila 1 A and 1 A1 turboshaft engines, and would require replacing the selector-comparator board in the ECU with a board incorporating Turbomeca modification TU 250. This proposed AD results from recent unexplained reversions of the ECU to the 65% N1 back-up mode. We are proposing this AD to prevent dual-engine reversion of the ECU to the 65% N1 back-up mode, which could lead to inability to continue safe flight, emergency autorotation landing, or an accident.

**DATES:** We must receive any comments on this proposed AD by January 14, 2008.

**ADDRESSES:** Use one of the following addresses to comment on this proposed AD.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Contact Turbomeca, 40220 Tarnos, France; telephone (33) 05 59 74 40 00; fax (33) 05 59 74 45 15 for the service information identified in this proposed AD.

**FOR FURTHER INFORMATION CONTACT:** Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *Christopher.spinney@faa.gov*; telephone (781) 238–7175; fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2007–0157; Directorate Identifier 2001–NE–23–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

### Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

### Discussion

On July 23, 2002, we issued AD 2002–15–05, Amendment 39–12833 (67 FR 49859, August 1, 2002). That AD requires replacing certain DECUs and ECUs with modified DECUs and ECUs, on Turbomeca Makila 1 A, 1 A1, and 1 A2 turboshaft engines. The Direction Generale De L'Aviation Civile, which is the airworthiness authority for France, advised that incorporating Turbomeca Modification TU 203 to the ECUs that are used on the Makila 1 A and 1 A1 turboshaft engines, and incorporating Turbomeca Modification TU 205C to the DECUs used on the Makila 1 A2 turboshaft engines, improves failure detection of the ECU and simulates a fixed power turbine speed (Npt) if two of the three channels fail.

### Actions Since AD 2002–15–05 Was Issued

Since AD 2002–15–05 was issued, The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, notified us that an unsafe condition may exist on Turbomeca Makila 1 A and 1 A1 turboshaft engines. EASA advises that recent unexplained reversions of the ECU to the 65% N1 back-up mode have occurred on these engines. Turbomeca postulates that these events can be caused by corruption of the engine N2 speed signals by short disturbances, such as electromagnetic interference, which can threaten both engines at the same time. The replacement of the selector-comparator board will allow recovery from the ECU 65% N1 back-up mode for temporary interruptions of the N2 signal.

### Relevant Service Information

We have reviewed and approved the technical contents of Turbomeca Mandatory Service Bulletin (MSB) No. 298 73 0250, dated March 23, 2007, that describes procedures for replacing the selector-comparator board in the ECU with a board incorporating Turbomeca modification TU 250. The replacement board makes the ECU less sensitive to electromagnetic interference. EASA classified this service bulletin as mandatory and issued AD 2007–0144,

dated May 18, 2007, in order to ensure the airworthiness of these Makila 1 A and 1 A1 turboshaft engines in Europe.

### Makila 1 A2 Turboshaft Engines Excluded From This Proposed AD

Although Makila 1 A2 turboshaft engines, which were also listed in the previous AD, are affected by this unsafe condition, they are addressed by a different EASA AD. We will address those engines in another proposed AD.

### Bilateral Agreement Information

These Makila 1 A and 1 A1 turboshaft engines are manufactured in France and are type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Under this bilateral airworthiness agreement, EASA kept us informed of the situation described above. We have examined the findings of EASA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

### FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require replacing the selector-comparator board in the ECU with a board incorporating Turbomeca Modification TU 250.

### Costs of Compliance

We estimate that this proposed AD would affect 10 Makila 1 A and 1 A1 turboshaft engines installed on helicopters of U.S. registry. We also estimate that it would take about 1 work-hour per engine to perform the proposed actions, and that the average labor rate is $80 per work-hour. Required parts would cost about $3,500 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $35,800.

### Authority for this Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

### Docket Number Change

We are transferring the docket for this AD to the Federal Docket Management System as part of our on-going docket management consolidation efforts. The new Docket No. is FAA–2007–0157. The old Docket No. became the Directorate Identifier, which is 2001–NE–23–AD.

### Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD 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.

For the reasons discussed above, I certify that the proposed AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–12833 (67 FR 49859, August 1, 2002) and by adding a new airworthiness directive, to read as follows:

**Turbomeca:** Docket No. FAA–2007–0157; Directorate Identifier 2001–NE–23–AD.

#### Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by January 14, 2008.

#### Affected ADs

(b) This AD supersedes AD 2002–15–05, Amendment 39–12833.

#### Applicability

(c) This AD applies to Turbomeca Makila 1 A and 1 A1 turboshaft engines. These engines are installed on, but not limited to, Eurocopter France model AS 332C, AS 332L, and AS 332L1 helicopters.

#### Unsafe Condition

(d) This AD results from recent unexplained reversions of the ECU to the 65% N1 back-up mode. The actions specified in this AD are intended to prevent dual-engine reversion of the ECU to the 65% N1 back-up mode, which could lead to inability to continue safe flight, emergency autorotation landing, or an accident.

#### Compliance

(e) You are responsible for having the actions required by this AD performed before June 30, 2008, unless the actions have already been done.

(f) Replace the Selector-Comparator board in the ECU with a board incorporating Turbomeca Modification TU 250. Information on Modification TU 250 can be found in Turbomeca Mandatory Service Bulletin No. 298 73 0250, dated March 23, 2007.

#### Alternative Methods of Compliance

(g) The Manager, Engine Certification Office, FAA, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

#### Related Information

(h) European Aviation Safety Agency AD 2007–0144, dated May 18, 2007, also addresses the subject of this AD.

(i) Contact Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *Christopher.spinney@faa.gov*; telephone (781) 238–7175; fax (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on November 8, 2007.

**Peter A. White,**

*Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. E7–22330 Filed 11–14–07; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

**[REG–104942–07]**

**RIN 1545–BG37**

## Notification Requirement for Tax-Exempt Entities Not Currently Required To File

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

**SUMMARY:** In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations describing the time and manner in which certain tax-exempt organizations not currently required to file an annual information return under section 6033(a)(1) are required to submit an annual electronic notice including certain information required by section 6033(i)(1)(A) through (F). The text of those regulations also serves as the text of these proposed regulations.

**DATES:** Written or electronic comments and requests for a public hearing must be received by February 13, 2008.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG–104942–07), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA: LPD:PR (REG–104942–07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *www.regulations.gov* (IRS–REG–104942–07).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Monice Rosenbaum at (202) 622–6070 (not a toll-free number); concerning submission of comments and requests for a public hearing, Richard Hurst, *Richard.A.Hurst@irscounsel.treas.gov.*

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collection of information contained in these proposed regulations has been reviewed by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The information that is required to be collected for purposes of § 1.6033–6(c) is required to be submitted on Form 990–N, ''Electronic Notice (e-Postcard) for Tax-Exempt Organizations not Required To File Form 990 or 990–EZ,'' under control number 1545–2085. The estimated number of recordkeepers that will submit electronic notification is approximately 520,000. The estimated paperwork burden for taxpayers submitting Form 990–N is 15 minutes per taxpayer.

Books and records relating to the collection of information must be retained as long as their contents may become material in the administration of any internal revenue law.

### Background and Explanation of Provision

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 6033(i)(1). The temporary regulations describe the time and manner in which certain tax-exempt organizations not currently required to file are required to provide an annual electronic notice including certain information set forth in the section 6033(i)(1)(A) through (F). The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in § 1.6033–6T will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601) (RFA) is not required.

The effect of these proposed regulations on small entities flows directly from the statute these regulations implement. Section 6033(i)(1) requires that certain entities submit annual notification, in electronic form, setting forth: the legal name of the organization; any name under which such organization operates or does business; the organization's mailing address and Internet Web site address (if any); the organization's taxpayer identification number; the name and address of a principal officer; and evidence of the continuing basis for the organization's exemption from the filing requirements under section 6033(a)(1).

Pursuant to section 7805(f) of the Code, this regulation as been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Comments and Requests for Public a Hearing

Before the proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed rule and how it may be made easier to understand. Comments are requested on all aspects of the proposed regulations. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

### Drafting Information

The principal author of these regulations is Monice Rosenbaum of the Office of the Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

**Authority:** 26 U.S.C. 7805 * * *

Section 1.6033–6 also issued under 26 U.S.C. 6033(i)(1). * * *

**Par. 2.** Section 1.6033–6 is proposed to be added to read as follows:

**§ 1.6033–6 Notification requirement for entities not required to file an annual information return under section 6033(a)(1) (taxable years beginning after December 31, 2006).**

[The text of proposed § 1.6033–6 is the same as the text of § 1.6033–6T published elsewhere in this issue of the **Federal Register**].

**Linda E. Stiff,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. E7–22280 Filed 11–14–07; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[CGD08–07–038]**

**RIN 1625–AA09**

## Drawbridge Operation Regulations; Tchefuncta River, Madisonville, LA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to change the regulation governing the operation of the State Route 22 (SR 22) swing span bridge across Tchefuncta River, mile 2.5, at Madisonville, St. Tammany Parish, Louisiana. The Louisiana Department of Transportation and Development has requested changes to the present drawbridge operating regulations in 33 CFR 117.500 to enhance the flow of vehicles across the bridge during peak traffic hours.

**DATES:** Comments and related material must reach the Coast Guard on or before January 14, 2008.

**ADDRESSES:** You may mail comments and related material to Commander (dpb), Eighth Coast Guard District, 500 Poydras Street, New Orleans, Louisiana 70130–3310. The Commander, Eighth Coast Guard District, Bridge Administration Branch maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Bridge Administration office between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Phil Johnson, Bridge Administration Branch, telephone (504) 671–2128.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD08–07–038], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

### Public Meeting

We do not now plan to hold a public meeting. You may submit a request for a meeting by writing to Commander, Eighth Coast Guard District, Bridge Administration Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

### Background and Purpose

The Louisiana Department of Transportation and Development has requested that the operating regulation of the SR 22 swing span bridge be changed in order to better accommodate the vehicular traffic crossing the bridge during peak, weekday rush hours. Currently 33 CFR 117.500 reads: ''The draw of the SR 22 Bridge, mile 2.5, at Madisonville shall open on signal except that, from 5 a.m. to 8 p.m., the draw need open only on the hour and half-hour.''

The bridge owner has requested that the operating regulation be changed to read as follows: The draw of the SR 22 Bridge, mile 2.5 at Madisonville, shall open on signal from 7 p.m. to 6 a.m. From 6 a.m. to 7 p.m., the draw need only open on the hour and half hour, except that, from 6 a.m. to 9 a.m. and from 4 p.m. to 7 p.m. Monday through Friday except Federal holidays, the draw need only open on the hour. The Louisiana Department of Transportation and Development believes that the proposed operating regulation will accommodate most vehicular traffic, and that the needs of navigation will also be met. Most of the vessels that request openings are recreational powerboats and sailboats that routinely transit this waterway and are able to adjust their schedules to coincide with the proposed drawbridge operating schedule.

Concurrent with the publication of the Notice of Proposed Rulemaking, a Test Deviation [CGD08–07–037] has been issued to allow the Louisiana Department of Transportation and Development to test the proposed schedule and to obtain data and public comments. The test period will be in effect during the entire Notice of Proposed Rulemaking comment period. The Coast Guard will review the logs of the drawbridge and evaluate public comments from this Notice of Proposed Rulemaking and the above referenced Temporary Deviation to determine if a change to the permanent special drawbridge operating regulation is warranted.

The Test Deviation allows the draw of the SR 22 Bridge to open on signal from 7 p.m. to 6 a.m. From 6 a.m. to 7 p.m., the draw need only open on the hour and half hour, except that, from 6 a.m. to 9 a.m. and from 4 p.m. to 7 p.m. Monday through Friday except Federal holidays, the draw need only open on the hour.

### Discussion of Proposed Rule

The proposed rule change to 33 CFR 117.500 would extend the time between openings from 30 minutes to an hour, but only during the morning rush hours between 6 a.m. and 9 a.m. and the afternoon rush hours between 4 p.m. and 7 p.m. This additional time would allow commuters and school buses to cross the bridge freely and prevent vehicular traffic from backing up.

### Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. This is because the current and historical waterway traffic is comprised almost entirely of recreational vessels that can easily adjust schedules for transits through the bridge.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered

whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect a limited number of small entities. These entities include operators of pleasure powerboats and sailboats using the waterway. This proposed rule would have no impact on any small entities because they are able to schedule transits through this bridge.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the Eighth Coast Guard District Bridge Administration Branch at the address above. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

**Collection of Information**

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

**Indian Tribal Governments**

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**Energy Effects**

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Technical Standards**

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

**Environment**

We have analyzed this proposed rule under Commandant Instruction M16475.1D and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, (32)(e), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), an ''Environmental Analysis Check List'' or ''Categorical Exclusion Determination'' is not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

**List of Subjects in 33 CFR Part 117**

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

2. § 117.500 is revised to read as follows:

**§ 117.500 Tchefuncta River.**

The draw of the SR 22 Bridge, mile 2.5, at Madisonville, shall open on signal from 7 p.m. to 6 a.m. From 6 a.m. to 7 p.m., the draw need only open on the hour and half hour, except that, from 6 a.m. to 9 a.m. and from 4 p.m. to 7 p.m. Monday through Friday except Federal holidays, the draw need only open on the hour.

Dated: November 6, 2007.

**J.H. Korn,**

*Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard Dist.*

[FR Doc. E7–22363 Filed 11–14–07; 8:45 am]

**BILLING CODE 4910–15–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[CGD08–06–010]**

**RIN 1625–AA09**

## Drawbridge Operation Regulations; Liberty Bayou, Slidell, LA

**AGENCY:** Coast Guard, DHS.

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

**SUMMARY:** The Coast Guard is proposing to change the operating schedule for the State Route 433 (S433) pontoon span bridge across Liberty Bayou, mile 2.0, at Slidell, St. Tammany Parish, Louisiana. The proposed rule would allow the Louisiana Department of Transportation and Development, owner of the bridge, to reduce the hours of manned operation of the bridge in order to make more efficient use of personnel and operating resources.

**DATES:** Comments and related material must reach the Coast Guard on or before January 14, 2008.

**ADDRESSES:** You may mail comments and related material to Commander (dpb), Eighth Coast Guard District, 500 Poydras Street, New Orleans, Louisiana 70130–3310. The Commander, Eighth Coast Guard District, Bridge Administration Branch maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Bridge Administration office between 7 a.m. and 3 p.m., Monday through Friday except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Phil Johnson, Bridge Administration Branch, telephone (504) 671–2128.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD08–06–010], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

### Public Meeting

We do not now plan to hold a public meeting. You may submit a request for a meeting by writing to Commander, Eighth Coast Guard District, Bridge Administration Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

### Background and Purpose

The Coast Guard previously published a Notice of Proposed Rulemaking in the **Federal Register** [CGD08–06–010] on May 4, 2006 (86 FR 26290). The proposed rule would have changed the notice required for an opening from 12 hours to 4 hours. The Coast Guard did not receive any comments as a result of the Notice of Proposed Rulemaking, but a final rule was not published. Subsequently, the bridge owner requested that the operating regulation for the bridge again be revised so that the bridge will open on signal, except that from 7 p.m. to 7 a.m., the bridge will open on signal if at least 2 hours notice is given.

The Louisiana Department of Transportation and Development has requested that the operating regulation of the S433 pontoon span bridge be changed in order to make more efficient use of operating resources. Currently, the draw of the S433 Bridge opens on signal except that from 9 p.m. to 5 a.m. the draw will open on signal if at least 12 hours notice is given, as required by 33 CFR 117.469.

Traffic counts indicate that an average of 6000 vehicles cross the bridge daily and approximately 1025, or 17.1% of those, cross between the hours of 7 p.m. and 7 a.m. Bridge tender logs for a three-month period show that the bridge opened 540 times, or an average of 6 times per day, to pass vessels. Of those vessel openings during the three-month period, 56, or 10.2% of them, were between the hours of 7 p.m. and 7 a.m. Most of the boats requesting openings are recreational fishing vessels, recreational powerboats and sailboats that routinely transit this waterway and are able to give advance notice.

Concurrent with the publication of the Notice of Proposed Rulemaking, a Test Deviation [CGD08–07–032] has been issued to allow the Louisiana Department of Transportation and Development to test the proposed schedule and to obtain data and public comments. The test period will be in effect during the entire Notice of Proposed Rulemaking comment period. The Coast Guard will review the logs of the drawbridge and evaluate public comments from this Supplemental Notice of Proposed Rulemaking and the above referenced Test Deviation to determine if a permanent special drawbridge operating regulation is warranted.

The Test Deviation allows the draw of the S433 Bridge to open on signal, except that between 7 p.m. and 7 a.m. daily, the bridge will open on signal if at least 2 hours notice is given.

On November 24, 2006 a Coast Guard Bridge Permit was issued approving the construction of a new swing span bridge to be constructed to replace the existing pontoon span bridge. Upon completion of construction, the new bridge will provide a vertical clearance of 7.59 feet above the 2% flow line. While this vertical clearance will accommodate many small recreational boats, larger vessels will still require an opening of the draw for passage. The schedule proposed in this SNPRM would be carried over to this new bridge.

### Discussion of Proposed Rule

The proposed rule change to 33 CFR 117.469 would require that, between the hours of 7 p.m. and 7 a.m., a 2-hour notice be given for the Louisiana Department of Transportation and Development to open the draw of the S433 Bridge. This change would reduce the amount of time that a bridge tender would need to man the bridge, making more efficient use of operating resources.

**Regulatory Evaluation**

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

This conclusion is based on the fact that all vessel traffic will still be able to transit through the bridge between 7 p.m. and 7 a.m. after providing the two-hour advance notice for bridge openings.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect a limited number of small entities. These entities include operators of recreational fishing vessels, powerboats and sailboats using the waterway. This proposed rule will have no impact on any small entities because they are able to give notice prior to transiting through this bridge and most vessel operators that require an opening are currently providing advance notice.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the Eighth Coast Guard District Bridge Administration Branch at the address above. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

**Collection of Information**

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

**Indian Tribal Governments**

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**Energy Effects**

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Technical Standards**

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

**Environment**

We have analyzed this proposed rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination

that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, (32)(e), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), an ''Environmental Analysis Check List'' or ''Categorical Exclusion Determination'' is not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

**List of Subjects in 33 CFR Part 117**

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

2. § 117.469 is revised to read as follows:

**§ 117.469 Liberty Bayou.**

The draw of the S433 Bridge, mile 2.0 at Slidell, shall open on signal, except that between 7 p.m. and 7 a.m., the draw shall open on signal if at least 2 hours notice is given.

Dated: November 6, 2007.

**J.H. Korn,**

*Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard Dist.*

[FR Doc. E7–22365 Filed 11–14–07; 8:45 am]

BILLING CODE 4910–15–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R09–OAR–2007–1003; FRL–8492–2]**

### Revisions to the California State Implementation Plan, Imperial County and Monterey Bay Unified Air Pollution Control Districts

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the Imperial County Air Pollution Control District (ICAPCD) and the Monterey Bay Unified Air Pollution Control District (MBUAPCD) portions of the California State Implementation Plan (SIP). This action revises and adds various definitions of terms used by the ICAPCD and MBUAPCD. We are proposing to approve these local rules under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** Any comments on this proposal must arrive by *December 17, 2007.*

**ADDRESSES:** Submit comments, identified by docket number EPA–R09–OAR–2007–1003, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.
2. *E-mail: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Cynthia G. Allen, EPA Region IX, (415) 947–4120, *allen.cynthia@epa.gov.*

**SUPPLEMENTARY INFORMATION:** This proposal addresses the following local rules: ICAPCD 101, ''Definitions'' and MBUAPCD 101, ''Definitions.'' In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: October 11, 2007.

**Alexis Strauss,**

*Acting Regional Administrator, Region IX.*

[FR Doc. E7–21810 Filed 11–14–07; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

**[WC Docket No. 07–135; FCC 07–176]**

### 47 CFR Parts 61 and 69

### Establishing Just and Reasonable Rates for Local Exchange Carriers

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** In the Notice of Proposed Rulemaking (NPRM), the Federal Communications Commission (Commission) initiates a proceeding to examine whether its existing rules governing the setting of tariffed rates by local exchange carriers (LECs) provide incentives and opportunities for carriers to increase access demand endogenously with the result that the tariff rates are no longer just and reasonable. The Commission tentatively concludes that it must revise its tariff rules so that it can be confident that tariffed rates remain just and reasonable even if a carrier experiences or induces significant increases in access demand. The Commission seeks comment on the types of activities that are causing the

increases in interstate access demand and the effects of such demand increases on the cost structures of LECs. The Commission also seeks comment on several means of ensuring just and reasonable rates going forward. The NPRM invites comment on potential traffic stimulation by rate-of-return local exchange carriers (LECs), price cap LECs, and competitive LECs, as well as other forms of intercarrier traffic stimulation.

**DATES:** Comments are due on or before December 17, 2007. Reply comments are due on or before December 31, 2007.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Douglas Slotten, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1572.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking in WC Docket No. 07–135, adopted on October 2, 2007, and released on October 2, 2007. The complete text of this Notice of Proposed Rulemaking is available for public inspection Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. in the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text is available also on the Commission's Internet site at *www.fcc.gov.* Alternative formats are available for persons with disabilities by contacting the Consumer and Governmental Affairs Bureau, at (202) 418–0531, TTY (202) 418–7365, or at *fcc504@fcc.gov.* The complete text of the decision may be purchased from the Commission's duplicating contractor, Best Copying and Printing, Inc., Room CY–B402, 445 12th Street, SW., Washington, DC 20554, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, or e-mail at *fcc@bcpiweb.com.*

## Synopsis of Notice of Proposed Rulemaking

1. In the Notice of Proposed Rulemaking (NPRM), the Commission initiates a rulemaking proceeding to examine whether its existing rules governing the setting of tariffed rates by local exchange carriers (LECs) provide incentives and opportunities for carriers to increase access demand endogenously with the result that the tariff rates are no longer just and reasonable. Several interexchange carriers (IXCs) have filed complaints, either with the Commission or with United States federal district courts pursuant to sections 206–209 of the Act, alleging that such increases in access traffic have caused the involved LECs to earn a rate of return grossly in excess of the maximum allowed rate of return. The Commission tentatively concludes that it must revise its tariff rules so that it can be confident that tariffed rates remain just and reasonable even if a carrier experiences or induces significant increases in access demand.

2. The Commission observes that recent increases in switched access traffic appear to have been caused by the deployment of chat lines, conference bridges, or other similar high call volume operations in the service areas of certain rate-of-return or competitive LECs. Users of these services make interstate calls to the services and the LECs assess interstate access charges on the IXCs that deliver the calls. The applicable per minute access charge rates are often high because many of the carriers involved in these arrangements are small carriers whose rates were set based on higher than average costs and a low volume of traffic based on historical levels. It is alleged that the LECs experiencing or creating this access growth share the access revenues they receive with the service providers whose services are generating the demand growth. As a direct result of the increase in traffic volume, the LECs are alleged to be earning returns on these access services that are substantially above the maximum rate of return authorized by the Commission.

3. The Commission seeks to establish a more complete record as to the activities that are occurring, how the services are provided, and how compensation occurs between the involved parties. The Commission invites parties to comment on the prevalence of these types of operations and to describe in detail how each type of service is provisioned. The Commission asks parties to explain what fees, including both interstate and intrastate fees, the service provider pays to the LEC. The Commission also asks parties to describe what monies or other benefits the LEC provides to the provider of the stimulating activity, including, for example, direct payments, revenue sharing, commissions, or free services. The Commission asks that carriers complaining about the access stimulation arrangements explain how they provide each of the above mentioned services, including what charges they assess on the provider, whether access charges are assessed on such calls, and what compensation, if any, is paid to such provider.

4. The Commission observes that, if the average revenue per minute remains constant as demand grows, but the average cost per minute falls (which occurs if the marginal cost per minute is less than the average cost per minute), then profits (or return) will rise. In such circumstances, when a carrier experiences significant increases in access traffic, its realized rates of return are likely to exceed the authorized rate of return and thus the tariffed rates become unjust and unreasonable at some point. The Commission invites parties to comment on this analysis. It asks parties to identify and quantify the projected increase in investment and plant-related expenses associated with increases in switched access minutes.

5. Noting allegations that some LECs involved in access stimulation activities have been sharing revenues or paying some other form of compensation to the entity stimulating the terminating traffic, the Commission observes that, if compensation costs are included in a LEC's operating expense and thus bundled with access costs, the IXCs are paying for the costs of the stimulating service through the higher access charges assessed by the exchange carrier. The Commission tentatively concludes that a rate-of-return carrier that shares revenue, or provides other compensation to an end user customer, or directly provides the stimulating activity, and bundles the costs of such sharing, other compensation, or direct provisioning with its exchange access costs as part of its revenue requirement is engaging in an unreasonable practice that violates section 201(b) and the prudent expenditure standard. On its face, the compensation paid by the exchange carrier to the entity stimulating the traffic is unrelated to the provision of exchange access. The Commission invites parties to comment on this tentative conclusion. The Commission also asks parties to comment on whether, if the costs are not included in revenue requirements, the Commission has satisfied its obligation to ensure that just, reasonable, and non-discriminatory rates are maintained, or whether the payments may be an unlawful rebate.

6. The Commission tentatively concludes that average per minute switching costs do not increase proportionately to average per minute revenues as access demand increases, and that, as a result, rates that may be just and reasonable given a specific level of access demand may not be just and reasonable at a higher level of access demand. The type of increased demand under consideration in this proceeding occurs after the tariffs

become effective and was not included in the development of the carrier's filed switched access charges. Thus, the pre-review of the filed tariff may not enable the Commission to identify, prior to the time the tariff becomes effective, those cases in which significant increases in access demand will occur after the effective date of the tariff and will result in unreasonable rates. In these circumstances, the deemed lawful provisions of the Communications Act would be protecting rates that are unjust and unreasonable rather than protecting customers. The Commission tentatively concludes that it should have the opportunity to review the relationship between rates and average costs through the filing of a revised tariff when a section 61.38 or 61.39 carrier experiences significant increases in traffic to ensure that just and reasonable rates are maintained. Accordingly, the Commission tentatively concludes that section 61.38 and 61.39 carriers that file their own tariffs should be required to include language in their traffic-sensitive tariffs to the effect that, if their monthly local switching minutes exceed a given percent of the local switching demand of the same month of the preceding year, the carriers will file revised local switching and transport tariff rates to reflect this increased demand within a stated period of time. The Commission invites parties to comment on whether this conceptual approach is adequate to address the problems identified, or whether another approach would be more effective. The Commission seeks comment on whether any additional or revised reporting is necessary. Recognizing that establishing a tariffed trigger to require a new tariff filing is unlikely to address any cases of access stimulation by carriers participating in the National Exchange Carrier Association (NECA) pooling process, given the higher access demand of the NECA traffic-sensitive pool, the Commission invites parties to comment on the incentives of carriers in the NECA traffic-sensitive pool to engage in traffic stimulation and the methods they could employ to realize the benefits of the stimulation. Parties are also invited to address what steps, if any, should be adopted to address possible traffic stimulation by carriers in the NECA traffic-sensitive pool.

7. The Commission invites parties to comment on the traffic growth rate that should require a carrier to make a new tariff filing and on how the demand should be measured, e.g., over what period of time and/or should the demand level vary by the size of the carrier. The Commission asks parties to comment on whether the Commission should adopt a rule requiring carriers to file revised tariffs whenever they enter into an arrangement that would have the effect of stimulating switched access traffic by some percentage. If such a rule is adopted, parties should address whether the Commission should forbear from applying deemed lawful status to the new tariff rates. Finally, parties should address how the proposals contained in this order can be applied to carriers who are engaged in access stimulation activities today, or how such proposals can be adapted to address that situation.

8. The Commission invites parties to comment on the appropriate period of time within which a carrier should be required to file a revised tariff after it learns it has exceeded the growth trigger. The Commission also asks parties to address what cost support materials should be required of section 61.38 carriers to ensure that the Commission will have the data necessary to prescribe just and reasonable rates, if that becomes necessary. Parties should comment on what additional data would be necessary if they believe that incremental cost factors will be necessary to establish revised rates that will be just and reasonable. Parties should also comment on how the demand estimates used in the revised tariff filing should be determined.

9. The Commission also asks about the tariff support materials that should be required of a section 61.39 carrier using historical average schedule demand. The formulas are developed based on an examination of the costs and demand of comparably sized cost companies and are designed to produce disbursements to an average schedule company that simulate the disbursements that would be received by a cost company that is representative of the average schedule company. The Commission tentatively concludes that the average schedule formulas can only yield reasonable estimates of an average schedule carrier's cost when the demand is within the range used to develop the formulas. The Commission invites parties to comment on the validity of this tentative conclusion with respect to both section 61.39 average schedule carriers and to average schedule carriers in the NECA traffic-sensitive pool that experience increased traffic that is beyond the demand observed in establishing the average schedule formulas. If parties believe that the average schedule formulas produce an incorrect estimate of an average schedule carrier's costs when demand has increased dramatically over some baseline period, they should suggest ways the Commission could revise section 61.39 or other rules to address average schedule carriers in the NECA traffic-sensitive pool. Parties should also comment on the extent to which historical and prospective demand should be used in establishing revised rates.

10. Parties are also invited to comment on two alternatives for establishing rates for section 61.39 average schedule carriers or average schedule carriers in the NECA traffic-sensitive pool that experience significant increases in demand. First, the Commission could require NECA, as part of its development of the average schedule formulas, to define the range over which the formulas were valid. Once a carrier's demand reached the top of the range, it would be presumed to have recovered all of its costs. The carrier's settlement would be set at the amount produced by the formula at that demand level. That amount would then be used to calculate the carrier's switched access rates. Alternatively, the Commission could require NECA to extend the range of the formulas in a manner that addressed the reduced incremental costs of increased traffic.

11. The Commission also seeks comment on proposals that section 61.39 carriers be required to certify as part of their tariff filing that they are not currently stimulating traffic and will not do so during the tariff period. The Commission invites parties to comment on this idea, either as a stand-alone proposition, or as part of a broader package of rule revisions. Alternatively, the Commission could make clear that by filing a tariff, a carrier is making certain representations. For example, the Commission could adopt a rule providing that by filing under section 61.39, a carrier is certifying that its use of historical average schedule settlement data to establish its rates is in fact a reasonable proxy for its future costs. More broadly, the Commission could establish an ongoing requirement that carriers bring to the Commission's attention all significant operational changes that could materially affect the reasonableness of their rates. Parties should comment on the need for requirements such as these and should provide rule language that would specify the extent of a carrier's obligation. The Commission contemplates that a finding that a carrier had failed to disclose any required information could be the basis for denying deemed lawful status to the carrier's rates.

12. Without reasonable and reliable methods of establishing new cost and

demand levels, the Commission could be unable to determine whether revised switched access rates filed based on a higher demand will be just and reasonable. Parties should address whether it would be appropriate for the Commission, on its own motion, to forbear from enforcing the deemed lawful provision of section 204(a)(3) for the remainder of the two-year tariff period if a mid-course tariff filing is triggered by a sufficient increase in demand. The Commission also asks whether it should forbear from enforcing the deemed lawful provision of section 204(a)(3) with respect to a carrier's rates if it fails to file a revised tariff when required. Each of these approaches would have the effect of excluding such tariffs from the streamlined filing process. Parties are also asked to comment on what reporting requirements, if any, should be established for any carrier whose rates may no longer be deemed lawful if the Commission adopts this proposal.

13. If the Commission was to forbear from deemed lawful in these limited circumstances, carriers may be subject to refunds because deemed lawful would not apply to their tariffed rates. Parties should comment on what approach the Commission should use in determining whether section 61.38 and 61.39 carriers should be required to make a refund and how to determine the amount of any such refund. In addition, commenters are encouraged to suggest alternative means besides forbearance to eliminate the prohibition on refunds resulting from deemed lawful. For example, parties should comment on the possibility of requiring carriers to file revised tariffs on a notice period such that deemed lawful status would not apply, rather than forbearing from its application.

14. Section 61.39(b)(2)(ii) requires the use of the ''most recent average schedule formulas approved by the Commission.'' This language may be ambiguous in its reference to the appropriate formula to use and does not mention demand at all. To clarify the application of this rule, the Commission invites parties to comment on when a carrier should switch from one year's formula to the next. Parties should also consider whether a calendar year should be used as the period for measurement in order to get more recent historical data.

15. The IXCs allege that the section 61.39 carriers have exhibited a pattern of exiting the NECA traffic-sensitive pool when their demand is low, thus establishing a high rate for the two-year effective period of the tariff. The IXCs further allege that, after a single two-year period as a section 61.39 carrier, the carriers reenter the NECA traffic-sensitive pool to avoid basing rates for the next two years on the high demand realized while they were not in the NECA pool. To address this, the Commission could make the section 61.39 election one-way, could require that carriers remain out of the NECA traffic-sensitive pool for a stated number of tariff cycles, or could eliminate the section 61.39 option altogether. The Commission invites parties to comment on these and other options the Commission has to ensure that rates remain just and reasonable and that section 61.39 does not itself provide incentives for carriers to engage in regulatory arbitrage.

16. Although the complaints to date about access stimulation have generally been directed at section 61.38 and 61.39 carriers, the Commission is interested in understanding the full breadth of possible access stimulation activities. The Commission, therefore, invites parties to indicate the extent to which price cap carriers have an incentive to engage in or are engaging in access stimulation. If price cap carriers are engaging, or can economically engage in access stimulation, the Commission invites parties to address what actions it should take to ensure that their rates are just and reasonable.

17. Finally, the Commission addresses the potential for access stimulation by competitive LECs. Competitive LECs may file access tariffs if their rates comply with the benchmarking requirements of section 61.26. That section allows competitive LECs to file tariffs if the rates are no higher than those charged by the incumbent LEC serving the same area, or, in the case of rural competitive LECs competing against a non-rural incumbent LEC, to charge a rate no higher than NECA's access rate, assuming the highest band for local switching. Under these rules, a competitive LEC has the same incentive to stimulate access traffic as does an incumbent LEC.

18. The Commission invites parties to comment on several proposals for addressing the incentives for and abilities of competitive LECs to engage in access stimulation activities, including requiring a competitive LEC relying on the rural exemption to file quarterly reports of interstate access minutes and modify its tariffs if it exceeds defined volume thresholds. The Commission asks parties to comment on how competitive LEC access traffic should be measured and how such traffic measures could be verified. The Commission asks parties to comment on whether a competitive LEC should be subject to any of the other remedies on which comment is sought in the NPRM when a competitive LEC enters into an access stimulation arrangement. Parties should also address how the proposals contained in this order can be applied to competitive LECs who are engaged in access stimulation activities today, or how such proposals could be adapted to address that situation. The Commission also invites parties to address whether special rules are necessary when the competitive LEC is affiliated with an incumbent LEC. Finally, a competitive LEC may be benchmarking to the rates of an incumbent LEC that has stimulated traffic and been required to file a revised tariff or take some other action to reduce its rates. Parties should comment on whether a competitive LEC that benchmarks against an incumbent LEC should be affected by any of the changes in the incumbent LEC's tariffs that are the result of the incumbent LEC's access stimulation activities.

19. Finally, while the previous sections have addressed stimulation in the context of access charges, the Commission is also interested in understanding the full breadth of possible traffic stimulation activities. The Commission, therefore, invites parties to address whether carriers are adopting traffic stimulation strategies with respect to forms of intercarrier compensation other than interstate access charges. The Commission asks parties to identify situations in which this is occurring and to explain the physical provisioning and compensation arrangements that make these strategies work. Parties should also address what remedies may be available to the Commission to address such activities.

*Ex Parte Presentations*

20. This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written presentations are set forth in Section 1.1206(b) of the Commission's rules as well.

*Comment Filing Procedures*

21. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or

before the dates indicated on the first page of this document. All filings related to this Notice of Proposed Rulemaking should refer to WC Docket No. 07–135. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's rulemaking Portal, or (3) by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998).

• *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.

○ For ECFS filers, if multiple dockets or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.

• *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

○ The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

○ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

○ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

22. Comments and reply comments and any other filed documents in this matter may be obtained from Best Copy and Printing, Inc., in person at 445 12th Street, SW., Room CY–B402, Washington, DC 20554, via telephone at (202) 488–5300, via facsimile at (202) 488–5563, or via e-mail at *fcc@bcpiweb.com.* The pleadings will also be available for public inspection and copying during regular business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554, and through the Commission's Electronic Comment Filing System (ECFS) accessible on the Commission's Web site, *http://www.fcc.gov/cgb/ecfs.*

23. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

24. Commenters who file information that they believe should be withheld from public inspection may request confidential treatment pursuant to Section 0.459 of the Commission's rules. Commenters should file both their original comments for which they request confidentiality and redacted comments, along with their request for confidential treatment. Commenters should not file proprietary information electronically. Even if the Commission grants confidential treatment, information that does not fall within a specific exemption pursuant to the Freedom of Information Act (FOIA) must be publicly disclosed pursuant to an appropriate request. *See* 47 CFR 0.461; 5 U.S.C. 552. The Commission may grant requests for confidential treatment either conditionally or unconditionally. As such, The Commission has the discretion to release information on public interest grounds that does fall within the scope of a FOIA exemption.

*Initial Paperwork Reduction Act of 1995 Analysis*

25. The NPRM discusses potential new or revised information collection requirements. The reporting requirements, if any, that might be adopted pursuant to this NPRM are too speculative at this time to request comment from the OMB or interested parties under section 3507(d) of the Paperwork Reduction Act, 44 U.S.C. 3507(d). Therefore, if the Commission determines that reporting is required, it will seek comment from the OMB and interested parties prior to any such requirements taking effect. Nevertheless, interested parties are encouraged to comment on whether any new or revised information collection is necessary, and if so, how the Commission might minimize the burden of any such collection.

*Initial Regulatory Flexibility Analysis*

26. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities that might result from this Notice. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided above. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

*Need for, and Objectives of, the Proposed Rules*

27. In the Notice, the Commission initiates a rulemaking proceeding to consider whether the current rules governing the tariffing of traffic-sensitive switched access services by local exchange carriers (LECs) are ensuring that rates remain just and reasonable, as required by section 201(b). In particular, the Commission focuses on allegations that substantial growth in terminating access traffic may be causing carriers' rates to become unjust and unreasonable because the increased demand is increasing carriers' rates of return to levels significantly higher than the maximum allowed rate. In the Notice, the Commission seeks comment on the causes for the increased terminating access demand and the effect that the increase in demand has on a carrier's cost of providing switched access service. The Commission also tentatively concludes that average per minute switching costs do not increase proportionately to average per minute revenues as access demand increases, and that, as a result, rates that may be just and reasonable given a specific level of access demand may not be just and reasonable at a higher level of access demand.

28. We tentatively conclude that a rate-of-return carrier that shares revenue

with, or provides other compensation to, an end user customer that is engaged in access stimulating activity, or itself provides the access stimulating activity, and bundles the costs of obtaining or providing an access stimulating activity with its costs for access is engaging in an unreasonable practice that violates section 201(b). The Commission tentatively concludes that to ensure that just and reasonable rates are maintained, the Commission should have the opportunity to review the relationship between rates and average costs through the filing of a revised tariff when a section 61.38 or 61.39 carrier experiences significant increases in traffic. The Commission seeks comment on whether tariff language should be included in a tariff that would require a carrier to file a revised tariff if a specified increase in traffic occurs, the level of increased demand that should trigger any such filing, when that filing should be made, and whether revised tariff support should be required. The Commission also seeks comment on whether it would be appropriate for the Commission to forbear from enforcing the deemed lawful provision of section 204(a)(3) if a mid-course tariff filing is triggered by a sufficient increase in demand, or if a carrier fails to file a revised tariff when required. The Commission also seeks comment on whether carriers should be required to certify that they are not, and do not intend to, stimulate traffic, or whether some general rules should be adopted regarding a carrier's representations as to the reasonableness of the historical data submitted in support of its tariff filings. The Notice also seeks comment on whether section 61.39(b)(2)(ii) should be clarified.

29. We also invite comment on whether price cap LECs and competitive LECs have an incentive to stimulate access traffic and what steps should be taken if they do have such incentives. The Commission invites comment on a variety of means of ensuring that access charges of competitive LECs remain just and reasonable if access stimulation occurs. These include establishing growth triggers that would require a competitive LEC to refile a tariff, and redefining the benchmark rate that competitive LECs can target.

*Legal Basis*

30. The legal basis for any action that may be taken pursuant to the Notice is contained in sections 1, 4(i), 4(j), and 201–205 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j), 201–205.

*Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply*

31. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

32. *Small Businesses*. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.

33. *Small Organizations*. Nationwide, there are approximately 1.6 million small organizations.

34. *Small Governmental Jurisdictions*. The term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. The Commission estimates that, of this total, 84,377 entities were ''small governmental jurisdictions.'' Thus, the Commission estimates that most governmental jurisdictions are small.

35. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission has therefore included small incumbent local exchange carriers in this RFA analysis, although the Commission emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

36. *Incumbent Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,307 carriers, an estimated 1,019 have 1,500 or fewer employees and 288 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the Commission's action.

37. *Competitive Local Exchange Carriers, Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 859 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees and 118 have more than 1,500 employees. In addition, 16 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are ''Other Local Service Providers.'' Of the 44, an estimated 43 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities that may be affected by the Commission's action.

*Description of Projected Reporting, Recordkeeping and Other Compliance Requirements*

38. Should the Commission decide to adopt any regulations to address access stimulation by LECs, the associated rules potentially could modify the reporting and recordkeeping requirements of LECs. The Commission could, for instance, require LECs to make additional reports on switched access traffic demand, or provide

additional supporting materials with their tariff filings. These proposals may impose additional reporting or recordkeeping requirements on entities. The Commission seeks comment on the possible burden these requirements would place on small entities. Also, the Commission seeks comment on whether a special approach toward any possible compliance burdens on small entities might be appropriate. Entities, especially small businesses, are encouraged to quantify the costs and benefits of any reporting requirement that may be established in this proceeding.

*Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

39. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

40. The Commission's primary objective is to develop a framework for ensuring that rates remain just and reasonable, as required by section 201(b). The Commission seeks comment here on the effect the various proposals described in the Notice will have on small entities, and on what effect alternative rules would have on those entities. The Commission invites comment on ways in which the Commission can achieve its goal of protecting consumers while at the same time imposing minimal burdens on small entities.

*Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

41. None.

*Ordering Clauses*

42. Accordingly, *It is ordered*, pursuant to Sections 4(i), 160, 201–204, and 254(g) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 160, 201–204, and 254(g), that this Notice of Proposed Rulemaking is adopted.

43. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

44. *It is further ordered* that pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on this Notice of Proposed Rulemaking on or before December 17, 2007 and reply comments on or before December 31, 2007.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E7–22342 Filed 11–14–07; 8:45 am]

BILLING CODE 6712–01–P

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Part 31

**[FAR Case 2006–021; Docket 2007–0001; Sequence 10]**

**RIN: 9000–AK84**

## Federal Acquisition Regulation; FAR Case 2006–021, Post Retirement Benefits (PRB), FAS 106

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to permit the contractor to measure accrued PRB costs using either the criteria in Internal Revenue Code (IRC) 419 or the criteria in Financial Accounting Standard (FAS) 106.

**DATES:** Interested parties should submit written comments to the FAR Secretariat on or before January 14, 2008 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAR case number 2006–021 by any of the following methods:

Federal eRulemaking Portal: *http://www.regulations.gov*.

• To search for any document, first select under ''Step 1,'' ''Documents with an Open Comment Period'' and select under ''Optional Step 2,'' ''Federal Acquisition Regulation'' as the agency of choice. Under ''Optional Step 3,'' select ''Proposed Rules''. Under ''Optional Step 4,'' from the drop down list, select ''Document Title'' and type the FAR Case number ''2006–021''. Click the ''Submit'' button. Please include your name and company name (if any) inside the document. You may also search for any document by clicking on the ''Search for Documents'' tab at the top of the screen. Select from the agency field ''Federal Acquisition Regulation'', and type ''2006–021'' in the ''Document Title'' field. Select the ''Submit'' button.

• Fax: 202–501–4067.

• Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

*Instructions:* Please submit comments only and cite FAR case 2006–021 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Edward Chambers, Procurement Analyst, at (202) 501–3221, for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAR case 2006–021.

**SUPPLEMENTARY INFORMATION:**

### A. Background

FAR 31.205–6(o) allows contractors to choose among three different accounting methods for PRB costs: cash basis, terminal funding, and accrual basis.

When the accrual basis is used, the FAR currently requires that costs must be measured based on the requirements of FAS 106.

However, the tax-deductible amount that is contributed to the retiree benefit trust is determined using IRC 419, which has different measurement criteria than FAS 106. As a result, the FAS 106 amount can often exceed the IRC 419 measured costs, and contractors that choose to accrue PRB costs for Government reimbursement face a dilemma: whether to fund the entire FAS 106 amount to obtain Government reimbursement of the costs, regardless of tax implications, or fund only the tax deductible amount and not be reimbursed for the entire FAS 106 amount under their Government contracts.

The Councils are proposing to amend FAR 31.205–6(o) to alleviate this dilemma. This amendment would provide the contractor an option of measuring accrued PRB costs using criteria based on IRC 419 rather than FAS 106, thereby permitting the contractor to fund the entire tax deductible amount without having a portion disallowed because it did not meet the FAR's current measurement criteria. The Councils note that this amendment will not change the total measured PRB costs, *i.e.*, the total measured PRB costs over the life of the PRB plan would be the same whether the contractor chose to apply the criteria in FAS 106 or IRC 419.

The Councils note that the proposed rule may result in the Government paying higher PRB costs, since under the current rule some contractors may have chosen to fund the IRC amount rather than the full FAS amount in current and future accounting periods. Absent this proposed revision, the resulting difference will be an unallowable cost. However, the Councils are unable to estimate the specific cost impact because the number of contractors who may choose to use the proposed IRC 419 measurement option is unknown. Moreover, the Councils further note that there may be a cost impact if the rule remains unchanged. For example, in lieu of funding the lower IRC amount, contractors could decide to fund the full FAS amount (and forego the tax benefit), change from accrual to pay-as-you go accounting, or terminate their PRB plans rather than fund amounts that are not tax deductible.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**B. Regulatory Flexibility Act**

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most small entities do not accrue PRB costs for Government contract costing purposes.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000–0013.

**List of Subjects in 48 CFR Part 31**

Government procurement.

Dated: October 24, 2007

**Al Matera,**

*Director, Office of Acquisition Policy.*

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 31 as set forth below:

1. The authority citation for 48 CFR part 31 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Amend section 31.205–6 by revising paragraphs (o)(2)(iii)(A) and (B) to read as follows:

**31.205–6 Compensation for personal services.**

* * * * *

(o) * * *

(2) * * *

(iii) * * *

(A) Measured and assigned in accordance with—

(1) Generally accepted accounting principles. However, the portion of PRB costs attributable to the transition obligation assigned to the current year that is in excess of the amount assignable under the delayed recognition methodology described in paragraphs 112 and 113 of Financial Accounting Standards Board Statement 106 is unallowable. The transition obligation is defined in Statement 106, paragraph 110; or

(2) The costs shall—

(i) Be measured using reasonable actuarial assumptions, which may include a healthcare inflation assumption;

(ii) Be assigned to accounting periods on the basis of the average future working lives of active employees covered by the PRB plan or a 15 year period, whichever period is longer; and

(iii) Exclude Federal income taxes, whether incurred by the fund or the contractor (including those taxes associated with any increase in PRB costs), unless the fund holding the plan assets is tax-exempt under the provisions of 26 U.S.C. 501(c);

(B) Paid to an insurer or trustee to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees. The assets shall be segregated in the trust, or otherwise effectively restricted, so that they cannot be used by the employer for other purposes; and

* * * * *

[FR Doc. 07–5669 Filed 11–14–07; 8:45 am]

BILLING CODE 6820–EP–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Parts 600 and 635

**RIN 0648–AU89**

### Atlantic Highly Migratory Species; Atlantic Shark Management Measures; Amendment 2 to the Consolidated Highly Migratory Species Fishery Management Plan

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; reopening comment period.

**SUMMARY:** NMFS is reopening the comment period to provide additional opportunity for public comment on the draft Amendment 2 to the Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) and its July 27, 2007, proposed rule. More specifically, NMFS is interested in receiving comments on a modification to shark dealer weigh-out slips that would facilitate compliance with measures proposed in the draft Amendment 2 to the HMS FMP, which would require fishermen to land sharks with all fins naturally attached. Additionally, over the course of the comment period, NMFS has received suggestions on ways to modify the proposed measures to minimize impacts to fishermen. NMFS is interested in receiving additional comments regarding those suggestions. Furthermore, as is required under the current regulations and was proposed to be maintained in the July 27, 2007, proposed rule, any overharvests that occur in the 2007 or 2008 commercial shark fishery will be accounted for with the implementation of final Amendment 2 to the Consolidated HMS FMP. Thus, NMFS is reopening the comment period for 30 days to gather further public comment on these issues. The draft Amendment 2 to the Consolidated HMS FMP and its proposed rule also describe a range of other management measures that could impact fishermen and dealers for HMS fisheries.

**DATES:** The public comment period for receiving written comments on the July 27, 2007 (72 FR 41392), proposed rule

and the draft Amendment 2 to the Consolidated HMS FMP is reopened. Comments must be received by 5 p.m. on December 17, 2007.

**ADDRESSES:** You may submit comments, identified by 0648–AU89, by any one of the following methods:

• Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*

• Email to *ShkA2@noaa.gov*.

• Fax: 301–713–1917, Attn: Michael Clark

• Mail: Attn: Michael Clark, HMS Management Division (SF1), 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope ''Comment on Amendment 2.''

Instructions: All comments received are part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, PowerPoint, or Adobe PDF file formats only.

Copies of the draft Amendment 2 to the Consolidated HMS FMP and other relevant documents are available on the HMS Management Division's website at *www.nmfs.noaa.gov/sfa/hms* or by contacting the HMS Management Division at 301–713–2347.

**FOR FURTHER INFORMATION CONTACT:** For more information concerning the draft Amendment 2 to the Consolidated HMS FMP and its proposed rule, contact: Michael Clark at 301–713–2347 or fax 301–713–1917; or Jackie Wilson at 240–338–3936 or fax 404–806–9188.

**SUPPLEMENTARY INFORMATION:** The Atlantic HMS fisheries are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). The Consolidated HMS FMP, finalized in 2006, and amendments to that FMP are implemented by regulations at 50 CFR part 635.

On July 27, 2007 (72 FR 41392), NMFS published a proposed rule that requested comments on the draft Amendment 2 to the Consolidated HMS FMP, and scheduled 10 public hearings throughout August and September 2007 to receive comments from fishery participants and other members of the public regarding the proposed rule and draft Amendment 2 to the Consolidated HMS FMP. On October 3, 2007 (72 FR 56330), the comment period was extended from October 15, 2007, to November 2, 2007.

At the October 2007 HMS Advisory Panel (AP) meeting, AP members asked a number of questions regarding the proposed measures that would require fishermen to land sharks with all fins naturally attached. Specifically, AP members asked how this requirement would relate to the Shark Finning Prohibition Act and its implementing regulations. In order to provide evidence that sharks were actually landed with their fins attached, NMFS is considering modifying shark dealer weigh-out slips so that dealers can document when they receive sharks landed with fins naturally attached. NMFS recently released a document that discusses this issue entitled ''Clarification of the Proposed Rule Regarding Landing Sharks with the Fins Attached and the Shark Finning Prohibition Act,'' which is available on the HMS website (see **ADDRESSES**) and was distributed to the HMS listserve.

Throughout the comment period, NMFS has received thousands of comments on the full range of analyzed alternatives, including the status of the stocks, proposed quotas, proposed shark landing requirements, and the proposed list of allowable shark species for recreational anglers. NMFS has also received suggestions on modifying the proposed measures to minimize impacts on fishermen. Specifically, one group of commenters, including the Gulf of Mexico Fishery Management Council and the Atlantic States Marine Fisheries Commission, suggest implementing two regions (i.e., a Gulf of Mexico region and an Atlantic region). In general, these comments were made in light of the blacktip shark status in the Gulf of Mexico and the large overharvests in the Gulf of Mexico during 2007. NMFS has not fully analyzed the implications of the two regions versus the proposed one region or the status quo alternative of three regions. Nonetheless, NMFS welcomes additional comments on this suggestion.

Finally, NMFS is clarifying that any overharvests in 2007 or 2008 would be accounted for in final measures implementing Amendment 2 to the Consolidated HMS FMP, consistent with both the current and proposed regulations. NMFS continues to accept comments on any of the proposed measures and on those measures that comments were specifically requested, including the proposed list of species that recreational anglers would be allowed to land, the amount of time proposed to provide notice of closures, and the 80 percent trigger for closing commercial shark fisheries.

In order to provide additional opportunities for public comment, NMFS is reopening the public comment period on the proposed rule and draft Amendment 2 to the Consolidated HMS FMP until 5 p.m., December 17, 2007.

**Authority:** 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

Dated: November 9, 2007.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

[FR Doc. E7–22377 Filed 11–14–07; 8:45 am]

BILLING CODE 3510–22–S

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No.070717342–7504–01]**

**RIN 0648–AV42**

## Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fishery; Proposed 2008–2010 Fishing Quotas for Atlantic Surfclams and Ocean Quahogs

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes quotas for the Atlantic surfclam and ocean quahog fisheries for 2008, 2009, and 2010. Regulations governing these fisheries require NMFS to publish the proposed quota specifications for the 2008–2010 fishing years and seek public comment on such proposed measures. The intent of this action is to propose allowable harvest levels of Atlantic surfclams and ocean quahogs from the Exclusive Economic Zone.

**DATES:** Comments must be received no later than 5 p.m., eastern standard time, on December 17, 2007.

**ADDRESSES:** Copies of supporting documents, including the Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis (IRFA) are available from Daniel Furlong, Executive Director, Mid-Atlantic

Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. A copy of the RIR/IRFA is accessible via the Internet at *http://www.nero.noaa.gov/nero/regs/com.html*.

You may submit comments, identified by RIN 0648–AV42, by any one of the following methods:

- Mail: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. Mark on the outside of the envelope, ''Comments on SC/OQ Proposed Specifications.''
- Fax: (978) 281–9135.
- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*.

Instructions: All comments received are a part of the public record and will generally be posted to http://www.regulations.gov without change. All Personal Identifying Information (forexample, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Brian R. Hooker, Fishery Policy Analyst, 978–281–9220.

**SUPPLEMENTARY INFORMATION:** The Fishery Management Plan for the Atlantic Surfclam and Ocean Quahog Fisheries (FMP) requires that NMFS, in consultation with the Mid-Atlantic Fishery Management Council (Council), specify quotas for surfclams and ocean quahogs for a 3-year period, with an annual review, from a range that represents the optimum yield (OY) for each fishery. It is the policy of the Council that the levels selected allow sustainable fishing to continue at that level for at least 10 years for surfclams and 30 years for ocean quahogs. In addition to this constraint, the Council policy also considers the economic impacts of the quotas. Regulations implementing Amendment 10 to the FMP (63 FR 27481, May 19, 1998) added Maine ocean quahogs (locally known as mahogany quahogs) to the management unit, and provided for a small artisanal fishery for ocean quahogs in the waters north of 43 50' N. lat. with an annual quota within a range of 17,000 to 100,000 Maine bu (5,991 to 35,240 hL). As specified in Amendment 10, the Maine mahogany ocean quahog quota is allocated separately from the quota specified for the ocean quahog fishery. Regulations implementing Amendment 13 to the FMP (68 FR 69970, December 16, 2003) established the ability to set multi-year quotas. An evaluation, in the form of an annual quota recommendation, is conducted by the Council every year to determine if the multi-year quota specifications remains appropriate. The fishing quotas must be in compliance with overfishing definitions for each species. In proposing these quotas, the Council considered the available stock assessments, data reported by harvesters and processors, and other relevant information concerning exploitable biomass and spawning biomass, fishing mortality rates, stock recruitment, projected fishing effort and catches, and areas closed to fishing.

In June 2007, the Council voted to recommend maintaining the 2007 quota levels of 5.333 million bu (284 million L) for the ocean quahog fishery, 3.400 million bu (181 million L) for the Atlantic surfclam fishery, and 100,000 Maine bu (35,240 hL) for the Maine ocean quahog fishery for 2008–2010. The proposed quotas for the 2008–2010 Atlantic surfclam and ocean quahog fishery are shown in the table below. The Atlantic surfclam and ocean quahog quotas are specified in standard bu of 53.24 L per bu, while the Maine ocean quahog quota is specified in ''Maine'' bu of 35.24 L per bu. Because Maine ocean quahogs are the same species as ocean quahogs, both fisheries are assessed under the same ocean quahog overfishing definition. When the two quota amounts (ocean quahog and Maine ocean quahog) are added, the total allowable harvest is still lower than the level that would result in overfishing for the entire stock.

PROPOSED 2008–2010 ATLANTIC SURFCLAM AND OCEAN QUAHOG[1] QUOTAS

| | 2008 | | 2009 | | 2010 | |
|---|---|---|---|---|---|---|
| | bu | hL | bu | hL | bu | hL |
| Surfclams [2] | 3.400 | 1.810 | 3.400 | 1.810 | 3.400 | 1.810 |
| Ocean Quahogs [2] | 5.333 | 2.840 | 5.333 | 2.840 | 5.333 | 2.840 |
| Maine Ocean Quahogs[3] | 100,000 | 35,240 | 100,000 | 35,240 | 100,000 | 35,240 |

[1] Numerical values are in millions except for Maine ocean quahogs
[2] 1 bu = 1.88 cubic ft. = 53.24 liters
[3] 1 bu = 1.2445 cubic ft. = 35.24 liters

## Surfclams

In 1999, the Council expressed its intention to increase the surfclam quota to OY over a period of 5 years (OY = 3.4 million bu (181 million L)). The proposed 2008–2010 status quo surfclam quota was developed after reviewing the results of the 44th Northeast Regional Stock Assessment Workshop (SAW 44) for surfclams, issued in January 2007. The surfclam quota recommendation is consistent with the SAW 44 finding that the Atlantic surfclam stock is not overfished, nor is overfishing occurring. Estimated fishable stock biomass in 2005 was above the management target, and fishing mortality was below the management threshold. Even though the total stock biomass is expected to gradually decline over the next 3 years due to poor recruitment, the total proposed quota of 3.4 million bu (181 million L), if fully harvested, would not exceed the fishing mortality threshold. Based on this information the Council is recommending, and NMFS is proposing, to maintain the status quo surfclam quota of 3.4 million bu (181 million L) for 2008–2010. This quota represents the maximum allowable quota under the FMP.

## Ocean Quahogs

The proposed 2008–2010 quota for ocean quahogs also reflects the status quo quota of 5.333 million bu (284 million L) in 2007. SAW 44 found that the ocean quahog stock is not overfished, nor is overfishing occurring. Estimated fishable biomass in 2005 was above the management target, and estimated fishing mortality was well below the target level. Fishing mortality is not expected to reach the target threshold if the proposed quota is

harvested each of the 3 years. Similar to surfclams, the ocean quahog biomass is expected to decline over the next 3 years. There is some evidence of recruitment, and small ocean quahogs found in most regions; however, growth is so slow that initial recruitment of year classes to the fishery is delayed for about 20 years. Based on this information the Council is recommending, and NMFS is proposing, to maintain the status quo quota of 5.333 million bu (284 million L) for 2008–2010. This quota level is above current market demand, but allows for growth of the market if conditions change.

The proposed 2008–2010 quota for Maine ocean quahogs is the status quo level of 100,000 Maine bu (35,240 hL). In 2006, the State of Maine completed a stock assessment of the resource within the Maine Mahogany Quahog Zone. This assessment was peer-reviewed as part of SAW 44. Although landings per unit of effort have declined since 2002, they remain relatively high overall. The findings of the Maine quahog survey did not change the status of the entire ocean quahog resource. The proposed quota represents the maximum allowable quota under the FMP.

**Classification**

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment. This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to 5 U.S.C. 603, an initial regulatory flexibility analysis (IRFA) has been prepared, which describes the economic impacts that this proposed rule, if adopted, would have on small entities. A summary of the IRFA is included in this section. The complete IRFA and regulatory impact review is available from the Council (see **ADDRESSES**). A description of the reasons why this action is being considered, as well as the objectives of and legal basis for this proposed rule is found in the preamble of this proposed rule. There are no Federal rules that duplicate, overlap, or conflict with this proposed rule.

This action proposes fishing quotas for Atlantic surfclams and ocean quahogs for 2008–2010. The Council analyzed four quota alternatives for the Atlantic surfclam fishery, five alternatives for the ocean quahog fishery, and four alternatives for the Maine ocean quahog fishery. Each of the alternative sets included the proposed alternative and a ''no action'' alternative. The three proposed quotas for 2008–2010 are 5.333 million bu (284 million L) for the ocean quahog fishery, 3.400 million bu (181 million L) for the Atlantic surfclam fishery, and 100,000 Maine bu (35,240 hL) for the Maine ocean quahog fishery.

*Description and Estimate of the Number of Small Entities to Which this Proposed Rule Would Apply*

The Small Business Administration (SBA) defines a small commercial fishing entity as a firm with gross annual receipts not exceeding $4 million. In 2006, a total of 38 vessels reported harvesting surfclams and/or ocean quahogs from Federal waters under an Individual Transferable Quota (ITQ) system. In addition, 25 vessels participated in the limited access Maine ocean quahog fishery, for a total of 63 participants in the 2006 fisheries. Average 2006 gross income from surfclam ITQ trips was $1,182,713 per vessel, and from ocean quahog ITQ trips was $1,020,409 per vessel. The Maine ocean quahog fishery reported an average value of $160,698 per boat. Each vessel in this analysis is treated as a single entity for purposes of size determination and impact assessment. All 63 commercial fishing entities fall under the SBA size standard for small commercial fishing entities.

In addition to the actual vessels that participate in the fishery there are 55 ocean quahog quota allocation owners, 67 surfclam allocation owners, and 51 Federal limited access Maine mahogany quahog permit holders. An allocation owner may choose to fish or lease his or her quota allocation.

*Economic Impacts of this Proposed Action*

The proposed quotas for 2008–2010 reflect the same quota level set for 2005–2007. Therefore, it is not expected that there will be any different economic impacts beyond status quo resulting from the proposed quota level. Leaving the ocean quahog quota at the harvest level of 5.333 million bu (284 million L) is not expected to constrain the fishery. In fact, actual ocean quahog landings for 2005 and 2006 did not exceed 60 percent of the available quota. The total 2007 harvest is expected to be similar to recent years (as of September 15, 2007, only 45.4 percent of the quota had been harvested). In comparison, 41 percent of the quota had been harvested as of September 15, 2006.

The surfclam quota is proposed to be set to the maximum allowed under the FMP. In contrast to the ocean quahog harvest, the surfclam fishery has harvested over 80 percent of the available quota each year since 2005. The Maine ocean quahog quota is proposed to be also set at the maximum allowed under the FMP. The Maine ocean quahog quota is often fully harvested on an annual basis. It is anticipated that by maintaining the status quo quota level for the next 3 years the fishing industry will benefit from the stability of product demand from the seafood processors and being able to predict future fishery performance based on past performance from the last 3 years.

*Economic Impacts of Alternatives to the Proposed Action*

The Council analyzed four alternatives for the Atlantic surfclam fishery, five alternatives for the ocean quahog fishery, and four alternatives for the Maine ocean quahog fishery. Each of the alternative sets included the proposed alternative and a ''no action'' alternative. The selection of ''no action'' alternative would result in no quotas being established, a closure of the fishery, and is contrary to the FMP. Based on 2006 ex-vessel prices, the result of no Federal surfclam or ocean quahog harvests in 2008 would be a loss of $34.3 million to the Federal surfclam fishery, $18.4 million to the ocean quahog fishery, and $4 million to the Maine ocean quahog fishery, for a total loss of $56.7 million. The viable alternatives to the proposed quotas for ocean quahog include a 20–percent decrease from the status quo, a 6.2–percent decrease form the status quo, and a 20–percent increase from the status quo. The ocean quahog quota alternatives that were chosen for analysis represent options within the 4 - 6 million bu (213 - 319.4 million L) range that is specified in the FMP. Since the alternative quota levels would not likely constrain the harvest level, the primary economic impact would come from the change in the lease and sale value of surplus quota shares. It is estimated that the status quo lease price per bushel of ocean quahogs is $0.53. A 20–percent decrease in quota would likely increase the lease value to $1.00 per bu. In 2006 there were over 748,000 cage tags traded (each cage tag equals 32 bu or 1,704 liters). Most tags are traded more than one time. Since NMFS does not keep records on the transaction costs, the actual value of these transactions can not be accurately

determined. However, it is clear that allocation owners who depend primarily on the lease market would benefit from a decrease in quota at the expense of harvesters. The other two alternatives each would increase the quota above status quo. Thus, each would likely have the effect of devaluing the lease price of a quota share, perhaps encouraging some allocation owners to sell their quota shares. These sales could cause further consolidation of quota shares in the ocean quahog fishery.

The alternatives to the proposed surfclam quotas include a 45.6–percent decrease from the status quo and a 4.4–percent decrease from the status quo. The Atlantic surfclam quota alternatives that were chosen for analysis represent options within the 1.85 - 3.4 million bu (98.5 - 181 million L) range that is specified in the FMP. A 45.6–percent decrease in the Federal surfclam quota would subtract 23,147 bu (1.2 million L) from the current average allocation. At an average ex-vessel value of $11.22 per bu, the gross value of the quota decrease would equal $259,715 per allocation. For those entities that are simply renting their allocation, it is assumed that the current rental value for a bu of surfclams is $4.00. The foregone value of 23,147 bu (1.2 million L) would equate to $92,590. A 4.4–percent decrease in the Federal surfclam quota would subtract 2,234 bu (118,930 L) from the current average allocation. At an average ex-vessel value of $11.22 per bu, the gross value of the quota decrease would equal $25,060 per allocation. For those allocation owners renting their allocation, 2,334 bu (118,930 L) at $4.00 per bushel would equate to a loss of $8,934.

The alternatives to the proposed Maine ocean quahog quota include a 50–percent decrease from the status quo and a 10–percent decrease from the status quo. Since 100,000 Maine bu (35,240 hL) is the maximum quota currently allowed for the Maine ocean quahog fishery under the FMP, only quota alternatives equal to, and less than that amount were analyzed. In 2006, a total of 25 vessels participated in the Maine ocean quahog fishery. If the Maine quota were reduced by 50 percent to 50,000 Maine bu (1.8 million L), 90 percent of the reduction would likely be replaced by renting ocean quahog allocation from the ITQ fishery. This would equal a total of 45,000 bu (1.6 million L) rented, at an estimated $1.00 per bushel. Divided among the 25 vessels in the fleet, the average cost per vessel would be $1,800. A 10–percent decrease in the Maine ocean quahog quota would likely result in 10,000 bu (352,400 L) being leased from the ocean quahog ITQ fishery, resulting in a lease cost of $400 per vessel. Under both alternatives, those unable to lease quota shares would just lose the amount they would have harvested under the 100,000–bu (35,240,000–L) quota.

## Reporting and Recordkeeping Requirements

This proposed rule would not impose any new reporting, recordkeeping, or other compliance requirements. Therefore, the costs of compliance would remain unchanged.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: November 9, 2007.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. E7–22381 Filed 11–14–07; 8:45 am]

BILLING CODE 3510–22–S

# Notices

Federal Register

Vol. 72, No. 220

Thursday, November 15, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Information Collection; Equal Opportunity Compliance Review Record

**AGENCY:** Forest Service, USDA.

**ACTION:** Request for Comment; Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the new information collection, Equal Opportunity Compliance Review Record.

**DATES:** Comments must be received in writing on or before January 14, 2008 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

**ADDRESSES:** Comments concerning this notice should be addressed to Civil Rights, Mail Stop 1142, Forest Service, USDA, 1400 Independence Ave., SW., Washington, DC 20250–1142.

Comments also may be submitted via facsimile to (202) 205–5054 or by e-mail to: *pjackman@fs.fed.us*.

The public may inspect comments received at USDA Forest Service, Civil Rights, 201 14th St., SW., Room 4SW, Washington, DC 20024 during normal business hours. Visitors are encouraged to call ahead to 202–205–8534 to facilitate entry to the building.

**FOR FURTHER INFORMATION CONTACT:** Pat Jackman, Civil Rights, (202) 205–0989. Individuals who use TDD may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

**SUPPLEMENTARY INFORMATION:**

*Title:* Equal Opportunity Compliance Review Record.

*OMB Number:* 0596–New.

*Type of Request:* New.

*Abstract:*

All Federal agencies must comply with equal opportunity laws:

- Title VI of the Civil Rights Act of 1964, as amended.
- Title IX of the Education Amendments Act of 1972.
- The Age Discrimination Act of 1975, as amended.
- Section 504 of the Rehabilitation Act of 1973, as amended.
- Executive orders prohibiting discrimination in the delivery of all programs and services to the public.

Federal agencies and the entities receiving Federal financial assistance for the delivery of agency programs are prohibited from discriminating. Federal financial assistance is defined as, ''Federal monies given through grants, cooperative agreements, commercial special use permits, training presented by the agency, loan/temporary assignment of Federal personnel, or loan/use of Federal property at or below market value.''

The equal opportunity laws require agencies to conduct periodic program compliance reviews of recipients of Federal Financial Assistance to ensure they are adhering to the nondiscrimination statutes. The statutes require that prior to awarding support or issuing permits, the Federal government shall conduct pre-award reviews to ensure that potential recipients understand their responsibilities to provide services equitable pursuant to the law. Thereafter, during the partnership with the agency, ongoing monitoring and subsequent periodic program compliance reviews will take place to ensure that program beneficiaries are served without any barriers to information, activities, program/facility access or discrimination and that recipient(s)'s employees understand their customer service role.

Forest Service employees will use form FS–1700–6, Equal Opportunity Compliance Review Record, to collect information and document assisted program compliance reviews. Collection will occur during face-to-face meetings or telephone interviews conducted by Forest Service employees integral to the pre-award and post award process. The pre-award civil rights review will take place prior to the award of a grant, signing of a cooperative agreement, letting of commercial special use permit, or similar activity. The post award interview may take place once every five years, or upon report/discovery of discrimination.

The information collected is for internal use only and is utilized to establish civil rights compliance, identify opportunities for training or technical assistance, and actions toward compliance. Information is only shared with the recipient and other Federal agencies who share in the financial assistance activities with the same recipient(s). Monitoring reviews are required and have been a responsibility of the Federal government since 1964. Without the ability to monitor assisted program recipients, the Forest Service would not be able to administer compliance and improve customer service.

*Estimate of Annual Burden:* 1 hour.

*Type of Respondents:* Recipients of Federal financial assistance.

*Estimated Annual Number of Respondents:* 3,400.

*Estimated Annual Number of Responses per Respondent:* One.

*Estimated Total Annual Burden on Respondents:* 3,400 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: November 2, 2007.

**Hank Kashdan,**

*Deputy Chief, Business Operations.*

[FR Doc. E7–22316 Filed 11–14–07; 8:45 am]

BILLING CODE 3410–11–P

## CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

### Senior Executive Service Performance Review Board

**AGENCY:** Chemical Safety and Hazard Investigation Board.

**ACTION:** Notice.

**SUMMARY:** This notice announces changes in the membership of the Senior Executive Service Performance Review Board for the Chemical Safety and Hazard Investigation Board (CSB).

**DATES:** Effective November 15, 2007.

**FOR FURTHER INFORMATION CONTACT:** Christopher Kirkpatrick, Office of General Counsel, (202) 261–7600.

**SUPPLEMENTARY INFORMATION:** 5 U.S.C. 4314(c)(1) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, a performance review board (PRB). The PRB reviews initial performance ratings of members of the Senior Executive Service (SES) and makes recommendations on performance ratings and awards for senior executives. Because the CSB is a small independent Federal agency, the SES members of the CSB's PRB are being drawn from other Federal agencies.

The CSB Board Member Delegated Interim Executive and Administrative Authority has appointed the following individuals to the CSB Senior Executive Service Performance Review Board:

*PRB Chair*—William B. Wark, Board Member, Chemical Safety and Hazard Investigation Board.

*PRB Member*—Curtis Bowling, Director of Environmental Readiness and Safety, Office of the Secretary of Defense/Chairman, Department of Defense Explosives Safety Board.

Mr. Wark replaces John S. Bresland (formerly Board Member, Chemical Safety and Hazard Investigation Board) as Chair of the PRB. Mr. Bowling replaces Leon A. Wilson, Jr. (formerly Executive Director, Committee for Purchase From People Who Are Blind or Severely Disabled). The service of Mr. Bresland and Mr. Wilson on the PRB has ended. Their appointments were originally announced in the **Federal Register** of October 8, 2003 (68 FR 58063) (Bresland) and January 11, 2007 (72 FR 1317) (Wilson).

Lawrence W. Roffee (Executive Director, United States Access Board) continues to serve as a Member of the PRB, as announced in the **Federal Register** of January 11, 2007 (72 FR 1317).

This notice is published in the **Federal Register** pursuant to the requirement of 5 U.S.C. 4314(c)(4).

Dated: November 8, 2007.

**Raymond C. Porfiri,**

*Deputy General Counsel.*

[FR Doc. E7–22332 Filed 11–14–07; 8:45 am]

BILLING CODE 6350–01–P

## DEPARTMENT OF COMMERCE

### U.S. Census Bureau

### Proposed Information Collection; Comment Request; Monthly Retail Trade Survey

**AGENCY:** U.S. Census Bureau, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** To ensure consideration, written comments must be submitted on or before January 14, 2008.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Scott Scheleur, U.S. Census Bureau, Room 8K181, 4600 Silver Hill Road, Washington, DC 20233–6500, (301) 763–2713.

**SUPPLEMENTARY INFORMATION**

#### I. Abstract

The Monthly Retail Trade Survey provides estimates of monthly retail sales, end-of-month merchandise inventories, and quarterly e-commerce sales of retailers in the United States by selected kinds of business. Also, it provides monthly sales of food service establishments. The Bureau of Economic Analysis (BEA) uses this information to prepare the National Income and Products Accounts and to benchmark the annual input-output tables. Statistics provided from the Monthly Retail Trade Survey are used to calculate the gross domestic product (GDP).

Estimates produced from the Monthly Retail Trade Survey are based on a probability sample. The sample design consists of one fixed panel where all cases are requested to report sales and/or inventories each month.

Listed below are the series of retail form numbers and a description of each form:

| Series | Description |
|---|---|
| SM–44(06)S | Non Department Store/Sales Only/WO E-Commerce. |
| SM–44(06)SE | Non Department Store/Sales Only W E-Commerce. |
| SM–44(06)SS | Non Department Store/Sales Only/Screener. |
| SM–44(06)B | Non Department Store/Sales and Inventory/WO E-Commerce. |
| SM–44(06)BE | Non Department Store/Sales and Inventory/W E-Commerce. |
| SM–44(06)BS | Non Department Store/Sales and Inventory/Screener. |
| SM–45(06)S | Department Store/Sales Only/WO E-Commerce. |
| SM–45(06)SE | Department Store/Sales Only/W E-Commerce. |
| SM–45(06)SS | Department Store/Sales Only/Screener. |
| SM–45(06)B | Department Store/Sales and Inventory/WO E-Commerce. |
| SM–45(06)BE | Department Store/Sales and Inventory/W E-Commerce. |
| SM–45(06)BS | Department Store/Sales and Inventory/Screener. |
| SM–72(06)S | Food Services/Sales Only/WO E-Commerce. |
| SM–20(06)I | Non Department and Department Store/Inventory Only. |

## II. Method of Collection

This information will be collected by mail, fax, and telephone follow-up.

## III. Data

*OMB Control Number:* 0607–0717.

*Form Number:* SM–44(06)S, SM–44(06)SE, SM–44(06)SS, SM–44(06)B, SM–44(06)BE, SM–44(06)BS, SM–45(06)S, SM–45(06)SE, SM–45(06)SS, SM–45(06)B, SM–45(06)BE, SM–45(06)BS, SM–72(06)S, and SM–20(06)I.

*Type of Review:* Regular submission.

*Affected Public:* Retail and Food Services firms in the United States.

*Estimated Number of Respondents:* 10,000.

*Estimated Time Per Response:* 7 minutes.

*Estimated Total Annual Burden Hours:* 14,000.

*Estimated Total Annual Cost:* $367,640.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13 U.S.C. Section 182.

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 7, 2007.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E7–22234 Filed 11–14–07; 8:45 am]

BILLING CODE 3510–07–P

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

[Docket No. 071107679–7690–01]

## Impact of Implementation of the Chemical Weapons Convention on Commercial Activities Involving ''Schedule 1'' Chemicals During Calendar Year 2007

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Notice of inquiry.

**SUMMARY:** The Bureau of Industry and Security (BIS) is seeking public comments on the impact that implementation of the Chemical Weapons Convention, through the Chemical Weapons Convention Implementation Act and the Chemical Weapons Convention Regulations, has had on commercial activities involving ''Schedule 1'' chemicals during calendar year 2007. The purpose of this notice of inquiry is to collect information to assist BIS in its preparation of the annual certification to the Congress, which is required under Condition 9 of Senate Resolution 75, April 24, 1997, in which the Senate gave its advice and consent to the ratification of the Chemical Weapons Convention.

**DATES:** Comments must be received by December 17, 2007.

**ADDRESSES:** You may submit comments by any of the following methods:

*E-mail: wfisher@bis.doc.gov.* Include the phrase ''Schedule 1 Notice of Inquiry'' in the subject line;

*Fax:* (202) 482–3355 (Attn: Willard Fisher);

*Mail or Hand Delivery/Courier:* Willard Fisher, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** For questions on the Chemical Weapons Convention requirements for ''Schedule 1'' chemicals, contact Timir Misra, Treaty Compliance Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, U.S. Department of Commerce, *Phone:* (703) 605–4400. For questions on the submission of comments, contact Willard Fisher, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce, *Phone:* (202) 482–2440.

**SUPPLEMENTARY INFORMATION:**

### Background

In providing its advice and consent to the ratification of the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and Their Destruction, commonly called the Chemical Weapons Convention (CWC) (the Convention), the Senate included, in Senate Resolution 75 (S. Res. 75, April 24, 1997), several conditions to its ratification. Condition 9, titled ''Protection of Advanced Biotechnology,'' calls for the President to certify to Congress on an annual basis that ''the legitimate commercial activities and interests of chemical, biotechnology, and pharmaceutical firms in the United States are not being significantly harmed by the limitations of the Convention on access to, and production of, those chemicals and toxins listed in Schedule 1.'' On July 8, 2004, President Bush, by Executive Order 13346, delegated his authority to make the annual certification to the Secretary of Commerce.

The CWC is an international arms control treaty that contains certain verification provisions. In order to implement these verification provisions, the CWC established the Organization for the Prohibition of Chemical Weapons (OPCW). The CWC imposes certain obligations on countries that have ratified the Convention (i.e., States Parties), among which are the enactment of legislation to prohibit the production, storage, and use of chemical weapons, and the establishment of a National Authority to serve as the national focal point for effective liaison with the OPCW and other States Parties for the purpose of achieving the object and purpose of the Convention and the implementation of its provisions. The CWC also requires each State Party to implement a comprehensive data declaration and inspection regime to provide transparency and to verify that both the public and private sectors of the State Party are not engaged in activities prohibited under the CWC.

''Schedule 1'' chemicals consist of those toxic chemicals and precursors set forth in the CWC ''Annex on Chemicals'' and in Supplement No. 1 to part 712 of the Chemical Weapons Convention Regulations (CWCR) (15 CFR parts 710–722). The CWC identified these toxic chemicals and precursors as posing a high risk to the object and purpose of the Convention.

The CWC restricts the production of ''Schedule 1'' chemicals for protective purposes to two facilities per State Party. The CWC Article-by-Article Analysis submitted to the Senate in

Treaty Doc. 103–21 defined the term ''protective purposes'' to mean ''used for determining the adequacy of defense equipment and measures.'' Consistent with this definition, U.S. implementation, as authorized via Presidential Decision Directive (PDD) 70, December 17, 1999, assigned the responsibility to operate these two facilities to the Department of Defense (DOD), thereby precluding commercial production of Schedule 1 chemicals for protective purposes in the United States. This action did not establish any limitations on ''Schedule 1'' chemical activities that are not prohibited by the CWC. However, the Department of Defense maintains strict controls on ''Schedule 1'' chemicals produced at its facilities in order to ensure the accountability and proper use of such chemicals, consistent with the object and purpose of the Convention.

The provisions of the CWC that affect commercial activities involving ''Schedule 1'' chemicals are implemented in the CWCR (see 15 CFR part 712) and in the Export Administration Regulations (EAR) (see 15 CFR 742.18 and 15 CFR part 745), both of which are administered by the Bureau of Industry and Security (BIS). Pursuant to CWC requirements, the CWCR restrict commercial production of Schedule 1 chemicals to research, medical, or pharmaceutical purposes. The CWCR also contain other requirements and prohibitions that apply to ''Schedule 1'' chemicals and/or ''Schedule 1'' facilities. Specifically, the CWCR:

(1) Prohibit the import of ''Schedule 1'' chemicals from States not Party to the Convention (15 CFR 712.2(b));

(2) Require annual declarations by certain facilities engaged in the production of ''Schedule 1'' chemicals in excess of 100 grams aggregate per calendar year (i.e., declared ''Schedule 1'' facilities) for purposes not prohibited by the Convention (15 CFR 712.5(a)(1) and (a)(2));

(3) Require government approval of ''declared Schedule 1'' facilities (15 CFR 712.5(f));

(4) Provide that ''declared Schedule 1'' facilities are subject to initial and routine inspection by the Organization for the Prohibition of Chemical Weapons (15 CFR 712.5(e) and 716.1(b)(1));

(5) Require 200 days advance notification of establishment of new ''Schedule 1'' production facilities producing greater than 100 grams aggregate of ''Schedule 1'' chemicals per calendar year (15 CFR 712.4);

(6) Require advance notification and annual reporting of all imports and exports of ''Schedule 1'' chemicals to, or from, other States Parties to the Convention (15 CFR 712.6, 742.18(a)(1) and 745.1); and

(7) Prohibit the export of ''Schedule 1'' chemicals to States not Party to the Convention (15 CFR 742.18(a)(1) and (b)(1)(ii)).

**Request for Comments**

In order to assist in determining whether the legitimate commercial activities and interests of chemical, biotechnology, and pharmaceutical firms in the United States are significantly harmed by the limitations of the Convention on access to, and production of, ''Schedule 1'' chemicals as described in this notice, BIS is seeking public comments on any effects that implementation of the Chemical Weapons Convention, through the Chemical Weapons Convention Implementation Act and the Chemical Weapons Convention Regulations, has had on commercial activities involving ''Schedule 1'' chemicals during calendar year 2007. In response to last year's notice of inquiry, BIS received comments from two companies. To allow BIS to properly evaluate the significance of any harm to commercial activities involving ''Schedule 1'' chemicals, public comments submitted in response to this notice of inquiry should include both a quantitative and qualitative assessment of the impact of the CWC on such activities.

**Submission of Comments**

All comments must be submitted to the address indicated in this notice. The Department requires that all comments be submitted in written form.

The Department encourages interested persons who wish to comment to do so at the earliest possible time. The period for submission of comments will close on December 17, 2007. The Department will consider all comments received before the close of the comment period. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them. All comments submitted in response to this notice will be a matter of public record and will be available for public inspection and copying.

The Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays public comments on the BIS Freedom of Information Act (FOIA) Web site at *http://www.bis.doc.gov/foia.* This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this Web site, please call BIS's Office of Administration, at (202) 482–1093, for assistance.

Dated: November 8, 2007.

**Matthew S. Borman,**

*Deputy Assistant Secretary for Export Administration.*

[FR Doc. E7–22386 Filed 11–14–07; 8:45 am]

BILLING CODE 3510–33–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–469–814]**

### Chlorinated Isocyanurates From Spain: Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (''Department'' published its preliminary results of the administrative review of the antidumping duty order on chlorinated isocyanurates (''chlorinated isos'') from Spain on July 9, 2007. *See Chlorinated Isocyanurates from Spain: Preliminary Results of Antidumping Duty Administrative Review,* 72 FR 37189 (July 9, 2007) (''*Preliminary Results*''). The period of review (''POR'') is December 20, 2004, through May 31, 2006. We invited interested parties to comment on our *Preliminary Results.* Based on our analysis of the comments received, we have made changes to our calculations. The final dumping margins from this review are listed in the ''Final Results of Review'' section below.

**EFFECTIVE DATE:** November 15, 2007.

**FOR FURTHER INFORMATION CONTACT:** Thomas Martin, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3936.

**SUPPLEMENTARY INFORMATION:** On June 24, 2005, the Department published in the **Federal Register** an antidumping duty order on chlorinated isos from Spain. *See Chlorinated Isocyanurates from Spain: Notice of Antidumping Duty Order,* 70 FR 36502 (June 24, 2005) (''*Chlorinated Isos Order*''). On July 27, 2006, the Department published in the

**Federal Register** a notice of the initiation of the antidumping duty administration review of chlorinated isos from Spain for the period December 20, 2004, through May 31, 2006. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 71 FR 42626 (July 27, 2006).

The Department published the preliminary results of these reviews on July 9, 2007. *See Preliminary Results.* We invited parties to comment on our preliminary results of review. *See Preliminary Results,* 72 FR at 37194. The respondent Aragonesas Industrias y Energía S.A. (''Aragonesas'') and the petitioners, Biolab, Inc., Clearon Corporation and Occidental Chemical Corporation (collectively, ''the petitioners''), submitted case briefs on August 8, 2007. Aragonesas and the petitioners submitted rebuttal briefs on August 22, 2007. On September 25, 2007, the Department held both a public session and a closed session hearing concerning these issues raised by the parties in their briefs.

**Scope of Antidumping Duty Order**

The products covered by this order are chlorinated isos. Chlorinated isos are derivatives of cyanuric acid, described as chlorinated s-triazine triones. There are three primary chemical compositions of chlorinated isos: (1) trichloroisocyanuric acid (C13(NCO)3); (2) sodium dichloroisocyanurate (dihydrate) (NaC12(NCO)3 2H20); and (3) sodium dichloroisocyanurate (anhydrous) (NaC12(NCO)3). Chlorinated isos are available in powder, granular, and tableted forms. This order covers all chlorinated isos.

Chlorinated isos are currently classifiable under subheadings 2933.69.6015, 2933.69.6021, and 2933.69.6050 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The tariff classification 2933.69.6015 covers sodium dichloroisocyanurates (anhydrous and dihydrate forms) and trichloroisocyanuric acid. The tariff classifications 2933.69.6021 and 2933.69.6050 represent basket categories that include chlorinated isos and other compounds including an infused triazine ring. Although the HTSUS subheadings are provided for convenience and customers purposes, and written description of the scope of this order is dispositive.

**Analysis of Comments Received**

All issues raised in the briefs and rebuttal briefs submitted by the parties in these reviews are addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice. A list of the issues which parties raised and to which we responded in the Issues and Decision Memorandum is attached to this notice as an appendix. The Issues and Decision Memorandum is a public document which is on file in the Central Records Unit in room B–099 in the main Department building, and is accessible on the Web at *http://www.ia.ita.doc.gov/frn*. The paper copy and electronic version of the memorandum are identical in content.

**Changes Since the Preliminary Results**

Based on our analysis of comments received, we have made changes in the margin calculation for Aragonesas. For a list of these changes, *see* Issues and Decision Memorandum, at the section titled ''Changes in the Margin Calculation Since the Preliminary Results.''

**Final Results of Review**

We determine that the following percentage margin exists for the period December 20, 2004, through May 31, 2006:

| Manufacturer/exporter | Weighted-average margin (percentage) |
|---|---|
| Aragonesas Industrias y Energía S.A ..... | 2.35 |

**Assessment**

The Department shall determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212(b). In accordance with 19 CFR 351.212(b)(1), we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to each importer, to the total entered value of the examined sales for that importer. Where the importer-specific assessment rate is above *de minimis* (*i.e.*, 0.50 percent or greater), we will instruct CBP to assess the importer-specific rate uniformly, as appropriate, on all entries of subject merchandise during the POR that were entered by the importer. The Department will issue instructions to CBP 15 days after the date of publication of these final results of review directing CBP to assess the final assessment rates (if above *de minimis*) uniformly on all entries of subject merchandise made by the relevant importer during the POR. Pursuant to 19 CFR 351.106(c)(2), the Department will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent).

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (''*Assessment Policy Notice*''). This clarification will apply to entries of subject merchandise during the POR produced by the company included in these final results of review for which the reviewed company did not know that the merchandise it sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the ''All Others'' rate if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

**Cash Deposit Requirements**

The following deposit requirements will be effective for all shipments of chlorinated isos from Spain entered, or withdrawn from warehouse, for consumption, effective on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company, Aragonesas, will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 24.83 percent, the ''All Others'' rate made effective by the original investigation. *See Chlorinated Isos Order*. These deposit requirements shall remain in effect until further notice.

**Notification to Importers**

This notice serves as a final reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent

assessment of double antidumping duties.

**Notification to Interested Parties**

This notice serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these final results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 6, 2007.

**Stephen J. Claeys,**

*Acting Assistant Secretary for Import Administration.*

## Appendix

Comment 1: Whether the Department Should Grant a Level of Trade Adjustment.

A. Whether Certain Sales to Industrial Customers Should Be Reclassified as Sales in the Retail Channel of Distribution Due to Product Characteristics.

B. Whether Evidence on the Record Supports Aragonesas' Reported Selling Activity Intensity.

Comment 2: Whether the Department Should Exclude Sales for Which Aragonesas Reported No Freight Expenses in Calculating the Average Rate by Which Aragonesas Over-reported Home Market Inland Freight.

Comment 3: Whether the Department Should Apply the Major Input Rule for Valuing Caustic Soda and Chlorine Inputs.

Comment 4: Whether the Tableting and Packaging Services Supplier Is Affiliated With Aragonesas.

Comment 5: Whether the Department Should Adjust Aragonesas' G&A Expenses.

Comment 6: Whether the Department Should Adjust Aragonesas' Cost of Production To Account for Costs That Were Unreconciled After Verification.

Comment 7: Whether the Department Should Deduct Unsubstantiated Interest Income From Aragonesas' Financial Expense Ratio Calculation.

Comment 8: Whether the Department Should Adjust the Reported Costs for CONNUM 1111.

Comment 9: Whether the Department Should Refrain From Zeroing Negative Margins.

[FR Doc. 07–5700 Filed 11–14–07; 8:45 am]

BILLING CODE 3510–DS–M

## DEPARTMENT OF COMMERCE

### Minority Business Development Agency

**[Docket No.: 071107681–7682–01]**

### Extension of the Award Period for Certain Native American Business Enterprise Centers

**AGENCY:** Minority Business Development Agency, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Minority Business Development Agency (MBDA) is publishing this notice to allow for up to a 180-day funded extension, on a non-competitive basis, of the award periods for those Native American Business Enterprise Centers (NABECs) identified in this notice whose current award period is scheduled to end on December 31, 2007. MBDA is taking this action to allow for continued program delivery by the identified NABEC operators while MBDA completes the competitive solicitation and award processes for the next three (3) year NABEC award period.

**DATES:** The award period and related funding, if approved by the Department of Commerce Grants Officer, will commence January 1, 2008 and will continue for a period not to exceed 180 days.

**FOR FURTHER INFORMATION CONTACT:** Mr. Efrain Gonzalez, Chief, Office of Business Development, Minority Business Development Agency, 1401 Constitution Avenue, NW., Room 5075, Washington, DC 20230. Mr. Gonzalez may be reached by telephone at (202) 482–1940 and by e-mail at *egonzalez@mbda.gov*.

**SUPPLEMENTARY INFORMATION:** Pursuant to Executive Order 11625, the NABEC Program provides standardized business assistance and development services directly to Native American- and other eligible minority-owned businesses. The NABEC Program is a key component of MBDA's overall business development assistance program and promotes the growth and competitiveness of eligible businesses and further incorporates an entrepreneurial approach to the delivery of client services. This entrepreneurial strategy expands the reach and service delivery of the NABEC Program by requiring project operators to develop and to build upon strategic alliances with public and private sector partners as a means of serving eligible businesses within each NABEC's applicable geographical service area. MBDA currently funds a network of eight (8) NABEC projects located throughout the United States.

This notice amends MBDA's prior **Federal Register** notice dated August 29, 2003 (68 FR 51981), as amended on September 30, 2003 (68 FR 56267), February 11, 2004 (69 FR 6644), February 19, 2004 (69 FR 7726) and October 25, 2006 (71 FR 62420) to allow for up to a 180-day funded extension, on a non-competitive basis, of the award period for the following five (5) NABECs whose award period is scheduled to end on December 31, 2007: Minnesota/Iowa Statewide NABEC (Minnesota Chippewa Tribe); North Dakota/South Dakota Statewide NABEC (United Tribes Technical College); Arizona Statewide NABEC (The National Center for American Indian Enterprise Development); California Statewide NABEC (The National Center for American Indian Enterprise Development); and the Northwest NABEC (The National Center for American Indian Enterprise Development). MBDA is taking this action to allow for continued program delivery by the five identified NABEC operators while MBDA completes the competitive solicitation and award processes for the next three (3) year NABEC award period. The remaining three (3) NABEC projects: North Carolina Statewide NABEC (The National Center for American Indian Enterprise Development); New Mexico Statewide NABEC (American Indian Chamber of Commerce of New Mexico); and the Oklahoma Statewide NABEC (Rural Enterprises of Oklahoma, Inc.) are not affected by this notice as their respective awards period do not expire until the end of July or August 2008 (as the case may be).

The allowable award extensions and additional funding set forth herein will be made at the sole discretion of MBDA and the Department of Commerce using the evaluation criteria and process used to determine the continuation of funding during the original award period (Program Years 1–4). In making such determinations, the following factors will be considered: (1) The NABEC's program performance rating during the prior program period; (2) the availability of appropriated funds; and (3) MBDA and Department of Commerce priorities. MBDA will review the project's performance rating as evaluated through the standardized performance reports and assessments required under the NABEC Program. Projects receiving below a ''Satisfactory'' performance rating in the prior program period will be eligible for an award extension under this notice.

Funding for the allowable award extensions listed in this notice is contingent upon the availability of Fiscal Year 2008 appropriations, which have not yet been appropriated for the NABEC program. MBDA therefore issues this notice subject to the appropriations made available under the current continuing resolution, H.J. Res. 52, ''Making continuing appropriations for the fiscal year 2008, and for other purposes,'' Public Law 110–92. In no event will MBDA or the Department of Commerce be responsible to cover any costs incurred outside of the current award period by the incumbent operators of the five (5) NABEC projects affected by this notice if the NABEC Program fails to receive funding or is cancelled because of other MBDA or Department priorities. Publication of this announcement does not oblige MBDA or the Department to award any extensions or to obligate any available funds for such purpose.

**Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements**

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the December 30, 2004 **Federal Register** notice (69 FR 78389) are applicable to this notice.

**Executive Order 12866**

This notice has been determined to be not significant for purposes of E.O. 12866.

**Executive Order 13132 (Federalism)**

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

**Administrative Procedure Act/ Regulatory Flexibility Act**

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

**Authority:** 15 U.S.C. 1512 and Executive Order 11625.

Dated: November 9, 2007.

**Ronald N. Langston,**

*National Director, Minority Business Development Agency.*

[FR Doc. E7–22387 Filed 11–14–07; 8:45 am]

BILLING CODE 3510–21–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN: 0648–XD89**

### Gulf of Mexico Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of a public meeting.

**SUMMARY:** The Gulf of Mexico Fishery Management Council (Council) will convene its Socioeconomic Panel (SEP).

**DATES:** The meeting will be convene at 8:30 a.m. on Thursday, December 6, 2007 and conclude no later than 1 p.m. on Friday, December 7, 2007.

**ADDRESSES:** The meeting will be held at the Quorum Hotel Tampa Westshore, 700 N. Westshore Blvd., Tampa, FL 33609; telephone: (813) 289–8200.

*Council address*: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

**FOR FURTHER INFORMATION CONTACT:** Dr. Assane Diagne, Economist, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

**SUPPLEMENTARY INFORMATION:** The Council will convene its SEP to discuss allocation issues and the role of the SEP in the Southeast Data Assessment and Review (SEDAR) and Council processes.

A copy of the agenda and related materials can be obtained by calling the Council office at (813) 348–1630.

Although other non-emergency issues not on the agendas may come before the SEP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions of the SEP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina Trezza at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: November 8, 2007.

**Tracey L. Thompson,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E7–22215 Filed 11–14–07; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN: 0648–XD88**

### Pacific Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Pacific Fishery Management Council's (Council) Salmon Technical Team Klamath Subcommittee (STTKS) will hold a meeting with members of the Yurok and Hoopa Tribes and additional agency personnel from the National Marine Fisheries Service, United States Fish and Wildlife Service, and the California Department of Fish and Game to continue planning and assignments for developing an overfishing assessment for Klamath River fall Chinook (KRFC). This meeting of the STTKS is open to the public.

**DATES:** The meeting will be in session from 9 a.m. to 5 p.m. Thursday, December 6, and 8 a.m. to 3 p.m. Friday, December 7, 2007.

**ADDRESSES:** The meeting will be held at the California Department of Fish and Game office, located at 474 Aviation Blvd., Suite 130, Santa Rosa, CA 95403.

**FOR FURTHER INFORMATION CONTACT:** Mr. Chuck Tracy, Salmon Management Staff Officer, Pacific Fishery Management Council; telephone: (503) 820–2280.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to further develop a report to assess the cause of KRFC failing to meet the 35,000 adult spawner conservation objective, and the implication to the long-term productivity of the stock of not meeting that objective, for three consecutive years.

When a salmon stock managed by the Council fails to meet its conservation objective for three consecutive years, an overfishing concern is triggered according to the terms of the Pacific Coast Salmon Plan (Salmon Plan). The Salmon Plan requires the Council to direct its Salmon Technical Team to work with relevant agency and tribal personnel to undertake a review of the status of the stock in question and determine if excessive harvest was responsible for the shortfall, if other factors were involved, and the significance of the stock depression with regard to achieving maximum sustainable yield.

Although non-emergency issues not contained in the meeting agenda may come before the STTKS for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: November 8, 2007.

**Tracey L. Thompson,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E7–22214 Filed 11–14–07; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XD84**

### Notice of Solicitation of Public Comment on the Development of Alternative Aquaculture Feeds

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of solicitation of public comment on alternative aquaculture feeds.

**SUMMARY:** The National Marine Fisheries Service is soliciting public comment for ideas and recommendations on alternative dietary ingredients (feedstuffs) for aquaculture. This information is being gathered as part of the NOAA–U.S. Department of Agriculture alternative feeds initiative to help guide future research and development. Public comment is being collected in advance of a 2008 workshop on alternative feeds. Information submitted in response to this notice will be shared with workshop attendees.

**DATES:** Comments should be submitted by February 29, 2008, to ensure consideration. Comments submitted after that date will be considered to the extent possible.

**ADDRESSES:** Information about the NOAA Aquaculture Program and the NOAA–USDA Alternative Feeds Initiative is available on the NOAA Aquaculture Program website: *http://aquaculture.noaa.gov*.

Electronic comments should be submitted to *NOAA.Aquaculture@noaa.gov*. Written comments should be faxed to the NOAA Aquaculture Program clearly marked ''Attn: Alternative Feeds Initiative'' at (301) 713–9108; or mailed to the NOAA Aquaculture Program, Attn: Alternative Feeds Initiative, 1315 East-West Highway, Rm. 13117, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Kate Naughten, NOAA Aquaculture Program, 1315 East-West Highway, SSMC #3 Mail Code F/AQ, Room 13117, Silver Spring, MD 20910, (301) 713–9079; or e-mail at: *kate.naughten@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

### Background

The issue of feed ingredients is among the top challenges facing the global aquaculture industry. The protein-rich feed pellets used in aquaculture are made in part from small, bony fish species including herring, menhaden, anchovy, and sardines. These species, harvested worldwide for use in fish meal and fish oil, are under increasing commercial fishing pressure.

Fish meal and fish oil are principal feeds ingredients for cultured fish species including carp, shrimp, salmon, tilapia, trout, and catfish, as well as poultry and pigs. In 2002, 81 percent of the fish oil and 46 percent of the fish meal produced worldwide was used for aquaculture.

As ingredients in aquaculture feedstuffs, fish meal and fish oil supply the essential amino acids and fatty acids required for normal growth. In the U.S. and elsewhere, studies are underway to better understand the nutritional requirements of fish and shrimp and to evaluate the use of alternative dietary ingredients in aquaculture feed, including soybeans, barley, rice, peas, and other crops along with canola, lupine, wheat gluten, corn gluten, various plant proteins, algae, and seafood processing by-products.

Specifically, NMFS is seeking responses in following areas: (1) Groundbreaking research on alternative dietary ingredients (feedstuffs) for aquaculture, including plant based proteins, is expanding the United States and worldwide. Where should the federal government focus its research efforts in the area of alternative feeds for aquaculture? Are there specific areas that the federal government should not address? (2) What are potential alternative sources of protein and oil for aquaculture feeds? For example, are there specific opportunities for greater use of seafood processing waste and other agricultural by-products in aquaculture feeds? Are there specific obstacles to using these alternatives as alternative dietary ingredients in aquaculture feed? (3) What type of treatments or processes show promise for improvement of existing aquaculture feedstuffs and for developing new feedstuffs? How soon could these technologies be commercialized? (4) Fish meal and fish oil contribute important human nutritional components to aquaculture feeds such as omega 3 fatty acids. As the aquaculture feeds industry seeks to replace fish meal and fish oil with alternatives, how can the nutritional benefits of farmed seafood be maintained or enhanced? For example, what technologies exist for producing omega 3 fatty acids?

Dated: November 9, 2007.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

[FR Doc. E7–22358 Filed 11–14–07; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Establishment of Federal Advisory Committee

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Notice.

**SUMMARY:** Under the provisions of section 744 of Public Law 109–364 (the John Warner National Defense Authorization Act for Fiscal Year 2007), the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of

1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.65, the Department of Defense gives notice that it intends to establish the Traumatic Brain Injury Family Caregiver Panel, as a subcommittee of the Defense Health Board.

Pursuant to section 744(b)(5) and (c) of Public Law 109–364, the Traumatic Brain Injury Family Caregiver Panel shall develop the required curricula, and the Secretary of Defense shall disseminate the curricula to:

(a) To health care professionals who or otherwise work with members and former members of the Armed Forces with traumatic brain injury;

(b) To family members affected by the traumatic brain injury of such members and former members; and

(c) To other care or support personnel who may provide service to members or former members affected by traumatic brain injury.

No later than one year after the development of the curricula required by section 744(b) of Public Law 109–364, the Secretary of Defense and the Secretary of Veterans Affairs shall submit to the Committees on Armed Services and Veterans Affairs of the Senate and the House of Representatives a report on the following: (a) The actions undertaken under section 744(b) of Public Law 109–364; and (b) recommendations for the improvement or updating of training curriculum developed and provided under section 744 of Public Law 109–364.

This non-discretionary advisory committee, which will operate as a subcommittee of the Defense Health Board, shall provide the Department of Defense and the Department of Veterans Affairs independent advice and recommendations on the development of training curricula to be used by family members of members and former members of the Armed Forces on techniques, strategies, and skills for care and assistance for such members and former members with traumatic brain injury.

Even though the Traumatic Brain Injury Family Caregiver Panel shall operate as a subcommittee of the Defense Health Board and not as a chartered federal advisory committee, the Panel shall comply with: (a) The full provisions of section 744 of Public Law 109–364; and (b) the spirit and intent of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976, and 41 CFR 102–3.5 through 102–3.185.

Whenever the Traumatic Brain Injury Family Caregiver Panel meets for the purpose of deliberating on the substantive matters upon which it is providing advice or recommendations, it must meet under the open-meeting rules of the Federal Advisory Committee Act and the Government in the Sunshine Acts. In addition, the Traumatic Brain Injury Family Caregiver Panel's recommendations, prior to being submitted to the government's decision maker, shall be deliberated under the same open-meeting rules by the Defense Health Board.

The Traumatic Brain Injury Family Caregiver Panel, as a subcommittee of the Defense Health Board, shall be authorized to establish subcommittees, as necessary and consistent with its mission, and these subcommittees or working groups shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976, and other appropriate Federal regulations.

Such subcommittees or workgroups shall not work independently of the Traumatic Brain Injury Family Caregiver Panel, and shall report all their recommendations and advice Traumatic Brain Injury Family Caregiver Panel for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the Traumatic Brain Injury Family Caregiver Panel nor can they report directly to the Department of Defense or any Federal officers or employees who are not members of the Defense Health Board.

Pursuant to section 744(a)(2) of Public Law 109–364, the Traumatic Brain Injury Family Caregiver Panel shall consist of 15 members appointed by the Secretary of Defense in consultation with the Secretary of Veterans Affairs. The Secretary of Defense in appointing members for the Traumatic Brain Injury Family Caregiver Panel shall consider members from among the following:

(a) Physicians, nurses, rehabilitation therapists, and other individuals with traumatic brain injury, including persons who specialize in caring for and assisting individuals with traumatic brain injury incurred in combat;

(b) Representatives of family caregivers or family caregiver associations;

(c) Health and medical personnel of the Department of Defense and the Department of Veterans Affairs with expertise in traumatic brain injury and personnel and readiness representatives of the Department of Defense with expertise in traumatic brain injury;

(d) Psychologists or other individuals with expertise in the mental health treatment and care of individuals with traumatic brain injury;

(e) Experts in the development of training curricula;

(f) Family members of members of the Armed Forces with traumatic brain injury; and

(g) Such other individuals the Secretary of Defense considers appropriate.

Panel and subcommittee members appointed by the Secretary of Defense, who are not full-time Federal officers or employees, shall serve as Special Government Employees under the authority of 5 U.S.C. 3109. Panel and subcommittee members shall be appointed on an annual basis by the Secretary of Defense, and with the exception of travel and per diem for official travel, they shall serve without compensation. The Assistant Secretary of Defense for Health Affairs shall select the Panel's chairperson from the total Panel membership.

In accordance with DoD policy and procedures, the Assistant Secretary of Defense for Health Affairs is authorized to act upon the advice emanating from the Traumatic Brain Injury Family Caregiver Panel.

**SUPPLEMENTARY INFORMATION:** The Traumatic Brain Injury Family Caregiver Panel shall meet at the call of the Defense Health Board's Designated Federal Officer, in consultation with the chairperson of the Traumatic Brain Injury Family Caregiver Panel. The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. The Designated Federal Officer or duly appointed Alternate Designated Federal Officer shall attend all Traumatic Brain Injury Family Caregiver Panel meetings and meetings of any subcommittees for the Traumatic Brain Injury Family Caregiver Panel.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Traumatic Brain Injury Family Caregiver Panel membership about the Panel's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Traumatic Brain Injury Family Caregiver Panel.

All written statements shall be submitted to the Designated Federal Officer for the Defense Health Board, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Defense Health Board's Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Traumatic Brain Injury Family Caregiver Panel. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

**FOR FURTHER INFORMATION CONTACT:** Jim Freeman, DoD Committee Management Office, 703–601–2554, extension 128.

Dated: November 8, 2007.

**L. M. Bynum,**

*Alternate OSD Federal Register, Liaison Officer, Department of Defense.*

[FR Doc. E7–22324 Filed 11–14–07; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Board of Visitors, United States Military Academy (USMA)

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of open meeting; postponed.

**SUMMARY:** The meeting originally scheduled for Friday, November 16, 2007, that was published in the **Federal Register** on October 25, 2007 (72 FR 60662) has been postponed. The meeting has tentatively been rescheduled for Friday, December 7, 2007 at West Point, NY.

**FOR FURTHER INFORMATION CONTACT:** Ms. Cynthia Kramer, United States Military Academy, West Point, NY 10996–5000, (845) 938–5078 or via e-mail: *Cynthia.kramer@usma.edu.*

**SUPPLEMENTARY INFORMATION:** None.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. E7–22328 Filed 11–14–07; 8:45 am]

**BILLING CODE 3710–08–P**

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before December 17, 2007.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 9, 2007.

**Angela C. Arrington,**

*IC Clearance Official, Regulatory Information Management Services, Office of Management.*

### Federal Student Aid

*Type of Review:* Extension.

*Title:* Student Assistance General Provisions—Subpart E (Verification of Student Aid Application Information).

*Frequency:* Annually.

*Affected Public:* Individuals or household; businesses or other for-profit; not-for-profit institutions; Federal Government; State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 3,036,371.

*Burden Hours:* 1,022,384.

*Abstract:* Verification of Application Information for Title IV Student Financial Assistance Programs. Applicant's and, in some cases, the applicant's parent(s) or spouse must provide documentation to support data listed on the application for assistance (Free Application for Federal Student Aid—FAFSA).

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3453. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–22335 Filed 11–14–07; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. IC08–550–000, FERC–550]**

### Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

November 6, 2007.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of Proposed Information Collection and Request for Comments.

**SUMMARY:** In compliance with the requirements of Section3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

**DATES:** Comments on the collection of information are due by January 11, 2008.

**ADDRESSES:** Copies of sample filings of the proposed information collection can be obtained from the Commission's Web site (*http://www.ferc.gov/docs-filings/elibrary.asp*) or from the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, ED–34, 888 First Street, NE., Washington, DC 20426. Comments may be filed electronically or in paper format. Those parties filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comment should be submitted to the Secretary of the Commission, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and refer to Docket No. IC08–550–000.

Documents filed electronically via the Internet must be prepared in, MS Word, Portable Document Format, Word Perfect or ASCII format. To file the document, access the Commission's Web site at *www.ferc.gov* and click on ''Make an E-filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the eLibrary link. For user assistance, contact *FERConlinesupport@ferc.gov* or toll free at (866) 208–3676 or for TTY, contact (202) 502–8659.

**FOR FURTHER INFORMATION CONTACT:** Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov*.

**SUPPLEMENTARY INFORMATION:** The information collected under the requirements of FERC–550 ''Oil Pipeline Rates: Tariff Filings'' (OMB No. 1902–0089) is used by the Commission to implement the statutory provisions of Part 1, 6 and 15 of the Interstate Commerce Act (ICA) (Pub. L. 337, 34 Stat. 584). Jurisdiction over oil pipelines as it relates to the establishment of valuations for pipelines was transferred from the Interstate Commerce Commission (ICC) to FERC, pursuant to sections 306 and 402 of the Department of Energy Organization Act (DOE Act), 42 U.S.C. 7155 and 7172 and Executive Order No. 12009, 42 FR 46267 (September 17, 1977).

The filing requirements for proposed oil pipeline rates are specified in 18 CFR 341–348. The data that oil pipelines file is the basis for Commission analyses of the amounts they plan to charge to transport crude oil and petroleum products. The Commission uses its analyses to (1) determine if the proposed charges result in just and reasonable rates for the oil pipeline's transportation services and (2) help the Commission decide whether it should suspend, accept or reject the proposed rates.

*Action:* The Commission is now requesting a three-year extension of the current expiration date, with no changes to the existing collection. The information filed with the Commission is mandatory.

*Burden Statement:* Public Reporting Burden for this information collection is estimated as:

| Number of respondents annually (1) | Number of responses per respondent (2) | Average burden hours per response (3) | Total annual burden hours (4) |
|---|---|---|---|
| 200 | 3 | 11 | 6,600 |

6,600 hours/2080 hours[1] × $124,384[2] equals $401,026. The cost of filing FERC–550 per respondent is $2005.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose or provide the information including:

(1) Reviewing instructions; (2) developing, acquiring, installing, and using technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting existing ways to comply with an previously applicable filing instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) competing and reviewing the collection of information; and (7) transmitting or otherwise disclosing the information.

The cost estimate for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) The accuracy of the Commission's burden estimate of the proposed information collection, including the validity of the methodology and assumptions used to calculate the reporting burden; (2) ways to enhance the quality, utility and clarity of the information to be collected.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–22284 Filed 11–14–07; 8:45 am]

BILLING CODE 6717–01–P

[1] Number of hours an employee works in a year.

[2] Average annual salary per employee.

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP05–383–001]**

### Algonquin Gas Transmission, LLC; Notice of Compliance Filing

November 6, 2007.

Take notice that on November 1, 2007, Algonquin Gas Transmission, LLC (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, to be effective on the later of December 1, 2007 or the date on which the facilities are completed and place into service.

Algonquin states that copies of the filing are being served to all affected customers and interested state commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicate below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Protest Date:* 5 p.m. Eastern Time November 13, 2007.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–22290 Filed 11–14–07; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. CP08–19–000; CP07–367–001]**

### Columbia Gas Transmission Corporation; Notice of Application

November 6, 2007.

Take notice that on November 5, 2007, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed an application in Docket No. CP08–19–000, under section 7 of the Natural Gas Act, for a certificate of public convenience and necessity authorizing it to restate the certificated volume of base gas stored in its Coco A storage field to a level below the volume currently certificated by the Commission. Concurrently, Columbia filed an amendment to its application in Docket No. CP07–367–000, the Eastern Market Expansion (EME) Project, to reflect the change in base gas. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket numbers excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding this Application should be directed to Fredric K. George, Lead Counsel, Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, West Virginia 25325–1273 at (304) 357–2359 or by fax at (304) 357–3206.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

*Comment Date:* November 16, 2007.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–22283 Filed 11–14–07; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP06–26–001]**

### Dominion Cove Point LNG, LP; Notice of Compliance Filing

November 5, 2007.

Take notice that on October 26, 2007, Dominion Cove Point LNG, LP (Cove

Point) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Ninth Revised Sheet No. 8, with an effective date of December 1, 2007.

Cove Point states that the filing is being made in compliance with the Commission's Order issued on June 16, 2006, in the above referenced proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time November 13, 2007.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–22282 Filed 11–14–07; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2009–105]**

### Virginia Electric and Power Co.; Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

November 6, 2007.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 2009–105.

c. *Date Filed:* October 23, 2007.

d. *Applicant:* Virginia Electric and Power Co. (dba Dominion North Carolina Power).

e. *Name of Project:* Roanoke Rapids and Gaston Project.

f. *Location:* The project is located on the Roanoke River, in Brunswick and Mecklenburg Counties, Virginia and Halifax, Warren, and Northampton Counties, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Jim Thornton, Dominion Generation, Innsbrook Technical Center, 1 NE 5000 Dominion Boulevard, Geln Allen, VA 23060, (804) 273–3257.

i. *FERC Contact:* Hillary Berlin at 202–502–8915, or e-mail *Hillary.Berlin@FERC.gov*.

j. *Deadline for filing comments and or motions:* December 7, 2007.

All documents (original and eight copies) should be filed with: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2009–105) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Application:* Virginia Electric and Power Co. requests permission to allow Redtail-Gaston, LLC to construct a new 120-slip boat facility on a portion of shoreline along Lake Gaston. This boat facility will accommodate a planned residential community (Eaton's Crossing) to be constructed on an adjacent 78.9-acre privately-owned parcel in Littleton, Warren County, North Carolina. Redtail-Gaston, LLC proposes the following activities along approximately 6,500 linear feet of the Lake's shoreline: (1) Resurface and repair an existing boat ramp, (2) construct a finger pier alongside the boat ramp, (3) construct two, 10-slip dock structures, (4) construct five, 20-slip covered boathouses, and (5) remove trash and debris from four existing beaches. Redtail-Gaston, LLC also proposes various measures for protection and enhancement of environmental resources, including erosion and sediment control measures and a forested riparian buffer along the shoreline. No dredging activities are proposed.

l. *Location of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, State, and local agencies are invited to file

comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–22288 Filed 11–14–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP08–29–000]**

### Rockies Express Shippers, Complainant v. Northern Natural Gas Company, Respondent; Notice of Amended Complaint

November 6, 2007.

Take notice that on October 30, 2007, pursuant to Rules 214 and 215 of the Rules of Practice and Procedure, 18 CFR 385.214 and 385.215, Rockies Express Shippers, (Complainant) filed an amendment to its formal complaint filed on October 24, 2007 against Northern Natural Gas Company (Respondent). This Amendment adds an additional basis for rejection of the Respondents backhaul charge which was addressed in issue No. 4 of the October 24, 2007 Complaint.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on November 19, 2007.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–22281 Filed 11–14–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

November 6, 2007.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

*Docket Numbers:* RP96–200–182.

*Applicants:* CenterPoint Energy Gas Transmission Co.

Description: CenterPoint Energy Gas Transmission Co submits a document which assigns an existing negotiated rate agreement with Steelscape, Inc to Ternium USA, Inc under RP96–200.

*Filed Date:* 11/02/2007.

*Accession Number:* 20071105–0203.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 14, 2007.

*Docket Numbers:* RP96–272–070.

*Applicants:* Northern Natural Gas Company.

*Description:* Northern Natural Gas Company submits 46 Revised Sheet 66A et al. to FERC Gas Tariff, Fifth Revised Volume 1, effective 11/1/07.

*Filed Date:* 11/01/2007.

*Accession Number:* 20071102–0161.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, November 13, 2007.

*Docket Numbers:* RP08–38–000.

*Applicants:* Columbia Gas Transmission Corporation.

*Description:* Columbia Gas Transmission Corp submits Original Sheet 500C to FERC Gas Tariff, Second Revised Volume 1, to be effective 11/1/07.

*Filed Date:* 10/30/2007.

*Accession Number:* 20071031–0077.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, November 13, 2007.

*Docket Numbers:* RP08–57–000.

*Applicants:* Caledonia Energy Partners, L.L.C.

*Description:* Caledonia Energy Partners, LLC submits First Revised Sheet 1 et al. to FERC Gas Tariff, Original Volume 1, effective 12/5/07.

*Filed Date:* 11/05/2007.

*Accession Number:* 20071106–0039.

*Comment Date:* 5 p.m. Eastern Time on Monday, November 19, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that

enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Nathaniel J. Davis, Sr.,**

*Acting Deputy Secretary.*

[FR Doc. E7–22272 Filed 11–14–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #2

November 5, 2007.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER08–110–000.
*Applicants:* Starwood Power-Midway, LLC.
*Description:* Starwood Power-Midway, LLC submits its application for an Order accepting FERC Electric Tariff, Original Volume 1 authorizing wholesale sales of electric energy and related services at market-based rates.
*Filed Date:* 10/29/2007.
*Accession Number:* 20071101–0098.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 19, 2007.

*Docket Numbers:* ER08–111–000.
*Applicants:* ISO New England Inc.
*Description:* ISO New England, Inc and New England Power Pool Participants Committee submits 3rd Revised Sheet 7191 *et al.* reflecting proposed revisions to Market Rule 1 & Appendix F to reflect the addition of the North East Reliability Interconnection etc.
*Filed Date:* 10/29/2007.
*Accession Number:* 20071101–0096.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 19, 2007.

*Docket Numbers:* ER08–112–000.
*Applicants:* Idaho Power Company.
*Description:* Idaho Power Company submits its Annual Informational Filing showing the formula rate and formula rate revenue requirements in effect under Schedules 7, 8, and 9 of the OATT for the period 10/1/07—9/30/08.
*Filed Date:* 10/29/2007.
*Accession Number:* 20071101–0095.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 19, 2007.

*Docket Numbers:* ER08–114–000.
*Applicants:* Oncor Electric Delivery Company LLC.
*Description:* Oncor Electric Delivery Co, LLC submits a Notice of Succession.
*Filed Date:* 10/31/2007.
*Accession Number:* 20071101–0161.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 21, 2007.

*Docket Numbers:* ER08–116–000.
*Applicants:* Avista Corporation.
*Description:* Avista Corporation submits unsigned pro forma Long-Term firm Point-to-Point Transmission Service Agreements with the City of Seattle, WA *et al.*
*Filed Date:* 10/31/2007.
*Accession Number:* 20071101–0100.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 21, 2007.

*Docket Numbers:* ER08–117–000.
*Applicants:* Florida Power & Light Company.
*Description:* Florida Power & Light Co submits a revised Network Integration Transmission Service Agreement with Seminole Electric Coop, Inc.
*Filed Date:* 10/31/2007.
*Accession Number:* 20071101–0101.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 21, 2007.

*Docket Numbers:* ER08–119–000.
*Applicants:* Florida Power & Light Company.
*Description:* Florida Power & Light Co submits a new Rate Schedule 308, Agreement for Specified Services with Oleander Power Project, LP.
*Filed Date:* 10/31/2007.
*Accession Number:* 20071101–0103.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 21, 2007.

*Docket Numbers:* ER08–120–000.
*Applicants:* Florida Power & Light Company.
*Description:* Florida Power & Light Co submits a new Rate Schedule 309 Parllel Operation Agreement with Seminole Energy LLC.
*Filed Date:* 10/31/2007.
*Accession Number:* 20071101–0104.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 21, 2007.

*Docket Numbers:* ER08–121–000.
*Applicants:* Florida Power & Light Company.
*Description:* Florida Power and Light Co submits a new Rate Schedule 310, Agreement for Specified Services with Seminole Energy LLC.
*Filed Date:* 10/31/2007.
*Accession Number:* 20071101–0105.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 21, 2007.

*Docket Numbers:* ER08–122–000.
*Applicants:* American Electric Power Service Corp.
*Description:* AEP Texas North Co submits an amendment to the interconnection agreement with Airtricity Wild Horse Wind Farm, LLC.
*Filed Date:* 10/31/2007.
*Accession Number:* 20071101–0106.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 21, 2007.

*Docket Numbers:* ER08–123–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* Commonwealth Edison Company submits a notice of cancellation of its Large Generator Interconnection Agreement designated as Original Service Agreement C1036 *et al.*
*Filed Date:* 10/31/2007.
*Accession Number:* 20071101–0107.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 21, 2007.

*Docket Numbers:* ER08–124–000.
*Applicants:* Dynegy Oakland, LLC.
*Description:* Dynegy Oakland, LLC submits revisions to its Reliability Must-Run Rate Schedules of its Reliability Agreement with the California Independent System Operator Corp.
*Filed Date:* 10/31/2007.
*Accession Number:* 20071101–0108.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 21, 2007.

*Docket Numbers:* ER08–125–000.
*Applicants:* Luminant Energy Company LLC.
*Description:* Luminate Energy Co, LLC submits a notice of succession that reflects a name change from TXU Portfolio Management Co, LP to Luminate Energy Co, LLC effective 10/1/07.
*Filed Date:* 10/31/2007.
*Accession Number:* 20071102–0085.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 21, 2007.

*Docket Numbers:* ER08–126–000.
*Applicants:* Dynegy South Bay, LLC.
*Description:* Dynegy South Bay, LLC submits revisions to certain Reliability Must-Run Rate Schedules of its Reliability Must Run Agreement with California Independent System Operator Corp.
*Filed Date:* 10/31/2007.
*Accession Number:* 20071102–0086.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 21, 2007.

*Docket Numbers:* ER08–127–000.
*Applicants:* Avista Corporation.
*Description:* Avista Corporation submits unsigned pro forma Long-Term Firm Point-to-Point Transmission Service Agreements with the City of Seattle, WA.
*Filed Date:* 10/31/2007.
*Accession Number:* 20071102–0087.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 21, 2007.

*Docket Numbers:* ER08–128–000.
*Applicants:* Mirant Delta, LLC.
*Description:* Mirant Delta, LLC submits notice of cancellation of its Rate

Schedule FERC 4 and request for authorization of payment under Section 7.5 of Rate Schedule 4.

*Filed Date:* 10/31/2007.

*Accession Number:* 20071102–0088.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 21, 2007.

*Docket Numbers:* ER08–129–000.

*Applicants:* Southern Operating Companies.

*Description:* Southern Companies' proposed adjustment to their Open Access Transmission Tariff Formula Rate to implement the Commission's 3/29/07 Pension Accounting Directive issued in AI07–1.

*Filed Date:* 10/31/2007.

*Accession Number:* 20071102–0089.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 21, 2007.

*Docket Numbers:* ER08–130–000.

*Applicants:* Mirant Potrero, LLC.

*Description:* Mirant Potrero, LLC submits revisions to its Must-Run Service Agreement with the California Independent System Operator Corporation.

*Filed Date:* 10/31/2007.

*Accession Number:* 20071102–0090.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 21, 2007.

*Docket Numbers:* ER08–131–000.

*Applicants:* Geysers Power Company, LLC.

*Description:* Geysers Power Company, LLC submits revisions to certain Rate Schedules of its Reliability Must-Run Agreement with California Independent System Operator Corporation.

*Filed Date:* 10/31/2007.

*Accession Number:* 20071102–0091.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 21, 2007.

*Docket Numbers:* ER08–132–000.

*Applicants:* Gilroy Energy Center, LLC.

*Description:* Gilroy Energy Center, LLC submits annual revisions to certain Rate Schedules of its Reliability Must-Run Agreement with California Independent System Operator Corporation, effective as of 1/1/08.

*Filed Date:* 10/31/2007.

*Accession Number:* 20071102–0092.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 21, 2007.

*Docket Numbers:* ER08–133–000.

*Applicants:* Los Medanos Energy Center, LLC.

*Description:* Los Medanos Energy Center, LLC submits annual revisions to certain Rate Schedules of its Must-Run Service Agreement with California Independent System Operator Corp, to become effective 1/1/08 and 11/01/07 submit a corrected Substitute First Revised Sheet 144 to FERC Electric Rate Schedule 2.

*Filed Date:* 10/31/2007; 11/01/2007.

*Accession Number:* 20071102–0093; 20071102–0067.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 21, 2007.

*Docket Numbers:* ER08–134–000.

*Applicants:* ISO New England Inc.

*Description:* ISO New England Inc submits the 2008 Capital Budget and Capital Budget Quarterly filing for third quarter of 2007 under ER08–134.

*Filed Date:* 10/31/2007.

*Accession Number:* 20071102–0120.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 21, 2007.

*Docket Numbers:* ER08–138–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* PJM Interconnection, LLC submits service agreements with AMERESCO Deleware Energy, LLC *et al.*

*Filed Date:* 10/31/2007.

*Accession Number:* 20071102–0118.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 21, 2007.

*Docket Numbers:* ER08–140–000.

*Applicants:* California Independent System Operator Corporation.

*Description:* California Independent System Operator Corp submits an amendment to its tariff implementing the CAISO's Location Constrained Resource Interconnection policy.

*Filed Date:* 10/31/2007.

*Accession Number:* 20071102–0119.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 21, 2007.

*Docket Numbers:* ER08–166–000; ER08–167–000; ER08–168–000.

*Applicants:* CalPeak Power-El Cajon LLC; California Independent System Operator Corporation.

*Description:* CalPeak LLC, on behalf of CalPeak Power-El Cajon *et al.*, submits modifications to certain schedules contained in the Reliability Must Run Service Agreement with Calilfornia Independent System Operator Corp.

*Filed Date:* 10/31/2007.

*Accession Number:* 20071105–0097.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 21, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Nathaniel J. Davis, Sr.,**

*Acting Deputy Secretary.*

[FR Doc. E7–22275 Filed 11–14–07; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

November 5, 2007.

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC08–9–000.

*Applicants:* Warren Power, LLC.

*Description:* Application of Warren Power, LLC for authorization of disposition of jurisdictional assets.

*Filed Date:* 10/31/2007.

*Accession Number:* 20071102–0083.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 21, 2007.

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG08–10–000.
*Applicants:* Wheatfield Wind Power Project, LLC.
*Description:* Wheatfield Wind Power Project LLC submits a Notice of Self-Certification of EWG.
*Filed Date:* 11/01/2007.
*Accession Number:* 20071101–5147.
*Comment Date:* 5 p.m. Eastern Time on Friday, November 23, 2007.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER97–420–016.
*Applicants:* ProLiance Energy, LLC.
*Description:* ProLiance Energy, LLC submits a change in status notification.
*Filed Date:* 10/31/2007.
*Accession Number:* 20071102–0074.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 21, 2007.

*Docket Numbers:* ER96–1551–019; ER01–615–015; ER07–965–001.
*Applicants:* Public Service Company of New Mexico.
*Description:* Public Service Company of New Mexico and EnergyCo Marketing and Trading, LLC provides notification of changes in status, *et al.*
*Filed Date:* 10/26/2007.
*Accession Number:* 20071102–0112.
*Comment Date:* 5 p.m. Eastern Time on Friday, November 16, 2007.

*Docket Numbers:* ER98–855–009.
*Applicants:* Wisconsin Electric Power Company.
*Description:* Wisconsin Electric Power Company submits its Notice of Change in Status of FERC Electric Market Rate Tariff and on 10/29/07 submit clean and relined version with proper page numbering of its Tariff.
*Filed Date:* 10/26/2007; 10/29/2007.
*Accession Number:* 20071101–0062; 20071101–0063.
*Comment Date:* 5 p.m. Eastern Time on Friday, November 16, 2007.

*Docket Numbers:* ER98–1643–011.
*Applicants:* Portland General Electric Company.
*Description:* Portland General Electric Company submits its Notice of Change in Status re the construction of Biglow Canyon Wind Farm.
*Filed Date:* 10/31/2007.
*Accession Number:* 20071101–0075.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 21, 2007.

*Docket Numbers:* ER03–428–006.
*Applicants:* ConocoPhillips Company.
*Description:* ConocoPhillips Co. notifies FERC of a non-material change in status in accordance with reporting requirements adopted in Order 652, etc.
*Filed Date:* 10/30/2007.
*Accession Number:* 20071102–0073.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, November 20, 2007.

*Docket Numbers:* ER03–534–004.
*Applicants:* Ingenco Wholesale Power, LLC.
*Description:* Ingenco Wholesale Power, LLC submits a compliance filing of revisions to the proposed market-base rate tariff in accordance with Order 697.
*Filed Date:* 10/30/2007.
*Accession Number:* 20071102–0072.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, November 20, 2007.

*Docket Numbers:* ER07–965–001.
*Applicants:* EnergyCo. Marketing and Trading, LLC; Public Service Company of New Mexico.
*Description:* Public Service Company of New Mexico and EnergyCo. Marketing and Trading, LLC provides notification of changes in status.
*Filed Date:* 10/26/2007.
*Accession Number:* 20071102–0112.
*Comment Date:* 5 p.m. Eastern Time on Friday, November 16, 2007.

*Docket Numbers:* ER07–1156–002.
*Applicants:* PacifiCorp.
*Description:* PacifiCorp. submits a refund report in accordance with Commission's 8/28/07 Letter Order.
*Filed Date:* 10/30/2007.
*Accession Number:* 20071101–0077.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, November 20, 2007.

*Docket Numbers:* ER07–1215–002.
*Applicants:* The Royal Bank of Scottland plc.
*Description:* The Royal Bank of Scotland plc submits its market-based rate tariff in accordance with FERC's directions.
*Filed Date:* 10/22/2007.
*Accession Number:* 20071101–0079.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, November 13, 2007.

*Docket Numbers:* ER07–1219–001.
*Applicants:* Southern Company Services, Inc.
*Description:* Southern Company Services Inc, acting agent for Alabama Power Company et al. submits its compliance filing to FERC's Order issued on 9/27/07.
*Filed Date:* 10/29/2007.
*Accession Number:* 20071101–0076.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 19, 2007.

*Docket Numbers:* ER07–1226–001.
*Applicants:* Southwest Power Pool, Inc.
*Description:* Southwest Power Pool, Inc. submits a compliance filing providing for revisions to Attachments H and T of its Open Access Transmission Tariff.
*Filed Date:* 10/29/2007.
*Accession Number:* 20071101–0078.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 19, 2007.

*Docket Numbers:* ER07–1263–003.
*Applicants:* High Sierra Power Marketing, LLC.
*Description:* High Sierra Power Marketing, LLC submits Substitute Original Sheet 1, *et al.* to FERC Electric Tariff, Original Volume 1, effective 9/19/07.
*Filed Date:* 10/31/2007.
*Accession Number:* 20071102–0076.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 21, 2007.

*Docket Numbers:* ER07–1264–003.
*Applicants:* Sierra Power Asset Marketing, LLC.
*Description:* Sierra Power Asset Marketing submits Substitute Original Sheet 1 et al. to FERC Electric Tariff, Original Volume 1, effective 9/19/07.
*Filed Date:* 10/31/2007.
*Accession Number:* 20071102–0075.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 21, 2007.

*Docket Numbers:* ER07–1389–001.
*Applicants:* Pypha Energy, LLC.
*Description:* Pypha Energy, LLC submits their market based rate authority and Substitute Original Sheet 1, 2, and 3 to FERC Electric Tariff, Original Volume 1.
*Filed Date:* 10/29/2007.
*Accession Number:* 20071101–0080.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 19, 2007.

*Docket Numbers:* ER08–77–001.
*Applicants:* Golden Spread Electric Cooperative, Inc.
*Description:* Golden Spread Electric Cooperative Inc submits amendments to its First Revised Rate Schedule 23–33.
*Filed Date:* 10/26/2007.
*Accession Number:* 20071101–0081.
*Comment Date:* 5 p.m. Eastern Time on Friday, November 16, 2007.

*Docket Numbers:* ER08–95–000.
*Applicants:* PJM Interconnection, LLC.
*Description:* PJM Interconnection, LLC submits an executed interconnection service agreement and an executed construction service agreement with Rutgers University et al.
*Filed Date:* 10/29/2007.
*Accession Number:* 20071101–0109.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 19, 2007.

*Docket Numbers:* ER08–98–000.
*Applicants:* The Connecticut Light and Power Company.
*Description:* Northeast Utilities Service Co., on behalf of the Connecticut Light & Power Co., submits a revised Interconnection & Operation Agreement with Milford Power

Company, LLC designated as First Revised Agreement 101.

*Filed Date:* 10/30/2007.

*Accession Number:* 20071101–0084.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, November 20, 2007.

*Docket Numbers:* ER08–99–000.

*Applicants:* MidAmerican Energy Company.

*Description:* MidAmerican Energy Company submits an Engineering and Procurement Agreement with Generation Supply Function of MidAmerican (Interconnection Customer) and the Transmission Function of MidAmerican.

*Filed Date:* 10/30/2007.

*Accession Number:* 20071101–0083.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, November 20, 2007.

*Docket Numbers:* ER08–100–000.

*Applicants:* Sempra Energy Trading, LLC.

*Description:* Sempra Energy Trading, LLC submits a notice of succession that reflects the name change that became effective 9/30/07 and Fourth Revised Rate Schedule 1, *et al.*

*Filed Date:* 10/30/2007.

*Accession Number:* 20071101–0082.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, November 20, 2007.

*Docket Numbers:* ER08–108–000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Southwest Power Pool, Inc. submits revisions to its Open Access Transmission Tariff to reflect updated of annual values used in calculation of offer caps for all pivotal resources.

*Filed Date:* 10/29/2007.

*Accession Number:* 20071101–0099.

*Comment Date:* 5 p.m. Eastern Time on Monday, November 19, 2007.

*Docket Numbers:* ER08–109–000.

*Applicants:* Midwest Independent Transmission System Operator, Inc.

*Description:* Midwest Independent Transmission System Operator, Inc. submits proposed revisions to its Open Access Transmission and Energy Markets Tariff on Transition to Auction Revenue Rights, etc.

*Filed Date:* 10/30/2007.

*Accession Number:* 20071101–0097.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, November 20, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Nathaniel J. Davis, Sr.,**

*Acting Deputy Secretary.*

[FR Doc. E7–22276 Filed 11–14–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP07–447–000]**

### Northern Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Ogden Compressor Replacement Project and Request for Comments on Environmental Issues

November 7, 2007.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Ogden Compressor Replacement Project involving the abandonment of two compressor units by Northern Natural Gas Company (Northern) from an existing compressor station in Boone County, Iowa, and installation of a compressor unit at an existing compressor station within a gas storage field in Dallas County, Iowa.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice that Northern provided to landowners with a residence within ½-mile of the proposed facilities. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

**Summary of the Proposed Project**

Northern is proposing to optimize its ability to transport gas to and from the Redfield Gas Storage Field in Dallas County, Iowa by decreasing the amount of horsepower (hp) at the Ogden Compressor Station (Ogden) in Boone County, Iowa, and increasing the amount of hp at the Redfield Compressor Station (Redfield) in Dallas County, Iowa. Northern is proposing to abandon-in-place two 1,600-hp horizontal reciprocating compressor units at Ogden and install one 1,400-hp vertical reciprocating compressor unit at Redfield. The location of the project facilities is shown in Appendix 1.[2]

[1] Northern's application was filed with the Commission under section 7 of the Natural Gas Act.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (maps), are available on the Commission's Web site at the

**Land Requirements for Construction**

Construction of the proposed facilities would require about 2.1 acres of land within the existing compressor station yards.

**The EA Process**

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we [3] will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Land use.
- Water resources, fisheries, and wetlands.
- Cultural resources.
- Vegetation and wildlife.
- Air quality and noise.
- Endangered and threatened species.
- Hazardous waste.
- Public safety.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

**Public Participation**

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 3.
- Reference Docket No. CP07–447–000.
- Mail your comments so that they will be received in Washington, DC on or before December 12, 2007.

The Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line.

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (Appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

**Becoming an Intervenor**

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding, or ''intervenor''. To become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). Intervenors have the right to seek rehearing of the Commission's decision. Motions to Intervene should be electronically submitted using the Commission's eFiling system at *http://www.ferc.gov*. Persons without Internet access should send an original and 14 copies of their motion to the Secretary of the Commission at the address indicated previously. Persons filing Motions to Intervene on or before the comment deadline indicated above must send a copy of the motion to the Applicant. All filings, including late interventions, submitted after the comment deadline must be served on the Applicant and all other intervenors identified on the Commission's service list for this proceeding. Persons on the service list with e-mail addresses may be served electronically; others must be served a hard copy of the filing.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

**Environmental Mailing List**

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who own homes within distances defined in the Commission's regulations of certain aboveground facilities. By this notice we are also asking governmental agencies, especially those in Appendix 2, to express their interest in becoming cooperating agencies for the preparation of the EA.

**Additional Information**

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all

''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–22291 Filed 11–14–07; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 12934–000; FFP Project 48, LLC]**

### Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

November 6, 2007.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–12934–000.

c. *Date Filed:* August 6, 2007.

d. *Applicant:* FFP Project 48, LLC.

e. *Name of the Project:* New Madrid Bend Project.

f. *Location:* The project would be located on the Mississippi River in New Madrid County, Missouri and Fulton County, Kentucky. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicants Contact:* Mr. Dan Irvin, FFP Project 48, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232–3536.

i. *FERC Contact:* Patricia W. Gillis, (202) 502–8735.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and. the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12934–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) 5350 proposed 20-kilowatt Free Flow generating units having a total installed capacity of 107-megawatts, (2) a proposed transmission line, and (3) appurtenant facilities. The project would have an average annual generation of 468.66-gigawatt-hours and be sold to a local utility.

l. *Location of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform to 18 CFR 4.30 and 4.36.

o. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform to 18 CFR 4.30 and 4.36.

p. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

s. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title

''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', and ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–22285 Filed 11–14–07; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 12935–000; FFP Project 56, LLC]**

### Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

November 6, 2007.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–12935–000.

c. *Date Filed:* August 6, 2007.

d. *Applicant:* FFP Project 56, LLC.

e. *Name of the Project:* Arsenault Island Project.

f. *Location:* The project would be located on the Mississippi River in St. Louis County, Missouri and St. Claire County, Illinois. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a—825r.

h. *Applicants Contact:* Mr. Dan Irvin, FFP Project 56, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232–3536.

i. *FERC Contact:* Patricia W. Gillis, (202) 502–8735.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12935–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) 1950 proposed 20-kilowatt Free Flow generating units having a total installed capacity of 39-megawatts, (2) a proposed transmission line, and (3) appurtenant facilities. The project would have an average annual generation of 170.82-gigawatt-hours and be sold to a local utility.

l. *Location of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform to 18 CFR 4.30 and 4.36.

o. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform to 18 CFR 4.30 and 4.36.

p. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214.

In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

s. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', and ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–22286 Filed 11–14–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 1494–325]**

### Grand River Dam Authority; Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

November 6, 2007.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 1494–325.

c. *Date Filed:* October 18, 2007.

d. *Applicant:* Grand River Dam Authority.

e. *Name of Project:* Pensacola Project.

f. *Location:* The project is located on Elk River in Delaware County, Oklahoma. The project does not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r) and 799 and 801.

h. *Applicant Contact:* Ms. Tamara Jahnke, Grand River Dam Authority, P.O. Box 409, Vinita, OK 74301, (918) 256–5545.

i. *FERC Contact:* Rebecca Martin at 202–502–6012, or e-mail *Rebecca.martin@ferc.gov.*

j. *Deadline for filing comments and or motions:* December 7, 2007.

All documents (original and eight copies) should be filed with: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–1494–325) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Application:* The licensee requests Commission approval to grant an after-the-fact permit to Grand View Village for four existing docks with a total of 30 slips on Elk River. The first dock is 72 feet by 26.5 feet with a store on it. A second dock that is 24 feet by 24 feet dock is attached to the first dock. The third dock has 12 slips and is 30 feet by 159 feet. The fourth dock has 18 slips and is 150 feet by 70 feet.

l. *Location of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an

agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–22287 Filed 11–14–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No: 2277–007]**

### Union Electric Company; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

November 6, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of license to delete certain non-jurisdictional transmission facilities from license.

b. *Project No.:* 2277–007.

c. *Date Filed:* October 12, 2007.

d. *Applicant:* Union Electric Company (doing business as AmerenUE).

e. *Name of Project:* Tom Sauk Pumped-Storage Project.

f. *Location:* The project is located on the East Fork of the Black River in Reynolds County, Missouri.

g. *Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Thomas L. Hollenkamp, Manager Dam Safety & Hydro Engineering, AmerenUE, One Ameren Plaza, 1901 Chouteau Avenue, St. Louis, MO 63166–6149.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Vedula Sarma at (202) 502–6190, or e-mail address: *vedula.sarma@ferc.gov*.

j. *Deadline for filing comments and or motions:* December 7, 2007.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* Union Electric Company dba AmerenUE proposes to delete from license a 30-mile-long 138-kV transmission line extending from the switchyard at the Tom Sauk Pumped-Storage Project to the Rivermines Substation. According to AmerenUE the line is no longer a primary line for the project but functions as part of an integrated transmission system under the control of Midwest Independent System Operator and is used to transmit power from both project and non-project sources.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–22289 Filed 11–14–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Sunshine Act Meeting Notice

November 8, 2007.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

**AGENCY HOLDING MEETING:** Federal Energy Regulatory Commission.

**DATE AND TIME:** November 15, 2007, 10 a.m.

**PLACE:** Room 2C, 888 First Street, NE., Washington, DC 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

***Note** Items listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at *http://www.ferc.gov* using

the eLibrary link, or may be examined in the Commission's Public Reference Room.

## 926TH—MEETING; REGULAR MEETING

[November 15, 2007, 10 a.m.]

| Item No. | Docket No. | Company |
|---|---|---|
| | **Administrative** | |
| A–1 | AD02–1–000 | Agency Administrative Matters. |
| A–2 | AD02–7–000 | Customer Matters, Reliability, Security and Market Operations. |
| A–3 | AD06–3–000 | Energy Market Update. |
| | **Electric** | |
| E–1 | ER07–532–000 | Midwest Independent Transmission System Operator, Inc. |
| E–2 | ER07–576–000 | Baltimore Gas and Electric Company. |
| | ER07–576–001 | |
| E–3 | EL07–62–000 | Southern California Edison Company. |
| E–4 | RC07–3–000 | Lee County, Florida. |
| | RC07–5–000 | Solid Waste Authority of Palm Beach County, Florida. |
| E–5 | ER07–1383–000 | Duke Energy Shared Services, Inc. |
| | ER07–1384–000 | |
| E–6 | ER08–10–000 | Pepco Holdings, Inc. |
| E–7 | EL04–99–001 | Mississippi Delta Energy Agency and Clarksdale Public Utilities Commission v. Entergy Services, Inc. and Entergy Operating Companies. |
| E–8 | RR07–9–003 | North American Electric Reliability Corporation. |
| | RR07–10–003 | |
| E–9 | OMITTED. | |
| E–10 | EL07–91–000 | Pacific Gas and Electric Company. |
| E–11 | OMITTED. | |
| E–12 | ER07–547–002 | ISO New England Inc. |
| E–13 | ER05–1410–005 | PJM Interconnection, L.L.C. |
| | EL05–148–005 | |
| E–14 | ER04–835–006 | California Independent System Operator Corporation. |
| | EL04–103–001 | Pacific Gas and Electric Company v. California Independent System Operator Corporation. |
| E–15 | EL05–19–002 | Golden Spread Electric Cooperative, Inc., Lyntegar Electric Cooperative, Inc., Farmers' Electric Cooperative, Inc., Lea County Electric Cooperative, Inc., Central Valley Electric Cooperative, Inc. and Roosevelt County Electric Cooperative, Inc. v. Southwestern Public Service Company. |
| | ER05–168–001 | Southwestern Public Service Company. |
| E–16 | ER06–629–000 | California Independent System Operator Corporation. |
| | ER06–629–001 | |
| | ER06–630–000 | California Independent System Operator Corporation, Pacific Gas and Electric Company, San Diego Gas and Electric Company and Southern California Edison Company. |
| E–17 | EL00–95–136 | San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator and the California Power Exchange Corporation. |
| | EL00–98–123 | Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange. |
| E–18 | EC07–70–000 | Entergy Gulf States, Inc. and Calcasieu Power, LLC. |
| E–19 | OMITTED. | |
| | **Miscellaneous** | |
| M–1 | RM07–16–000 | Filing Via the Internet. |
| | **Gas** | |
| G–1 | RM08–1–000 | Promotion of a More Efficient Capacity Release Market. |
| G–2 | RP07–508–000 | Columbia Gulf Transmission Company. |
| | RP07–508–001 | |
| | RP07–508–002 | |
| G–3 | RP07–507–000 | Columbia Gas Transmission Corporation. |
| | RP07–507–001 | |
| | RP07–507–002 | |
| G–4 | RP07–478–000 | Columbia Gulf Transmission Company. |
| | RP07–478–001 | |
| | RP07–478–002 | |
| G–5 | RP07–479–000 | Columbia Gas Transmission Corporation. |
| | RP07–479–001 | |
| | RP07–479–002 | |

926TH—MEETING; REGULAR MEETING—Continued

[November 15, 2007, 10 a.m.]

| Item No. | Docket No. | Company |
|---|---|---|
| G–6 | RP07–396–001 | Tennessee Gas Pipeline Company. |
| | RP07–396–002 | |
| G–7 | RP07–443–000 | Iroquois Gas Transmission System, L.P. |
| | RP07–443–001 | |
| G–8 | RP04–99–003 | Indicated Shippers v. Tennessee Gas Pipeline Company. |
| G–9 | RP07–504–000 | Algonquin Gas Transmission, LLC. |
| **Hydro** | | |
| H–1 | P–7115–038 | Homestead Energy Resources, LLC. |
| H–2 | P–1390–005 | Southern California Edison Company. |
| | P–1390–007 | |
| | P–1390–040 | |
| H–3 | P–11841–004 | Ketchikan Public Utilities. |
| H–4 | P–12734–003 | Midwest Hydraulics, Inc. |
| H–5 | P–2219–024 | Garkane Energy Cooperative, Inc. |
| **Certificates** | | |
| C–1 | CP01–368–006 | Transcontinental Gas Pipe Line Corporation. |
| | CP01–369–004 | Williams Gas Processing—Gulf Coast Company, L.P. |
| | CP03–11–006 | Jupiter Energy Corporation. |
| C–2 | CP06–45–005 | Northwest Pipeline Corporation. |
| C–3 | CP07–411–000 | Texas Eastern Transmission, LP. |
| C–4 | CP06–459–000 | Transwestern Pipeline Company, LLC. |
| | CP07–9–000 | El Paso Natural Gas Company. |
| C–5 | OMITTED. | |

**Kimberly D. Bose,**

*Secretary.*

A free webcast of this event is available through *http://www.ferc.gov*. Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its Web cast. The Capitol Connection provides technical support for the free Web casts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. E7–22292 Filed 11–14–07; 8:45 am]

BILLING CODE 6717–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8495–2]**

## Request for Nomination to the Farm, Ranch, and Rural Communities Advisory Committee

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Request for Nominations.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) invites nominations for membership on the Farm, Ranch and Rural Communities Advisory Committee.

The membership of this committee will include a balanced representation of interested persons with relevant experience to contribute to the functions of the committee and will be drawn from farm groups, conservation and environmental groups, agricultural processors and retailers, academia, citizen's groups and tribal governments.

*Background:* In order to help EPA build a more positive and proactive relationship with the agricultural industry to protect human health and the environment, the EPA is forming a Farm, Ranch and Rural Communities Federal Advisory Committee. This Committee will provide advice and recommendations to the Administrator on environmental issues and programs that impact, or are of concern to, farms, ranches and rural communities.

The Committee expects to meet approximately two (2) times a year, or as needed and approved by the Designated Federal Officer DFO). Meetings will be held in Washington DC and the EPA regions. Members serve on the Committee in a voluntary capacity. However, EPA may provide reimbursement for travel expenses associated with official government business. Because of the nature of the issues to be discussed, it is the intent of the Agency for the Committee to have a majority of members who are actively engaged in farming or ranching.

Members may represent farmers, ranchers, and rural communities—large and small, crop and livestock, commodity and specialty, regionally balanced—and the rural suppliers, marketers, and processors that serve farmers, ranchers and rural communities; as well as the academic/research community who do research on environmental issues impacting agriculture, tribal agriculture groups, state and local government representatives, and environmental/conservation groups. USDA and other Federal agencies, as appropriate, will be invited to nominate members to serve as regular government employees.

In selecting committee members, EPA will consider each candidate's

qualifications including, but not limited to, whether the candidate is:

- Actively engaged in farming.
- Occupies a senior position within their organization.
- Holds leadership positions in ag-related organizations, businesses and/or workgroups.
- Has broad experience outside of their current position.
- Has experience working on issues where building consensus is necessary.
- Has membership in professional societies, broad-based networks or the equivalent.
- Has extensive experience in the environmental field dealing with agricultural issues.
- Provides services to producers.
- Is involved in processing, retailing, manufacturing and distribution of agricultural products.

**DATES:** Establishment of this Committee will take place by the Fall of 2007. Any interested person or organization may submit the names of qualified persons, including themselves. Suggestions for the list of candidates should be identified by name, occupation, qualifications, organization, position, address, and telephone number. Submissions should include a resume or curriculum vita detailing the nominee's background, experience and qualifications and other relevant information, and a short biography should be included as well. Letters of support and recommendation will be accepted but are not mandatory.

**ADDRESSES:** Submit suggestions for candidates to: Marrietta Haggins, Staff Assistant, U.S. EPA (MC 1601M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, *haggins.marrietta@epa.gov*, 202–564–3692.

**FOR FURTHER INFORMATION CONTACT:** Jon Scholl, Counselor to the Administrator for Agricultural Policy, U.S. EPA (MC 1101A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, *scholl.jon@epa.gov*, 202–564–7719. The Agency will not formally acknowledge or respond to nominations.

**SUPPLEMENTARY INFORMATION:** The purpose of the proposed Committee is to provide advice to the Administrator of the Environmental Protection Agency (EPA) on environmental issues and programs that impact, or are of concern to, farms, ranches and rural communities. The Committee is a part of EPA's efforts to expand cooperative working relationships with the agriculture industry and to achieve greater progress in environmental protection. Topics covered may include issues relating to water, air and radiation, solid waste and emergency response, pesticides and toxics, enforcement and compliance assistance, and research and development. In addition, tools and approaches that are cross media in nature and would help agricultural producers improve their environmental performance, and barriers to greater environmental protection and means to improve working relationships between the Agency and agricultural producers, may also be examined. The Committee may be asked to: prepare papers, reports, letters, memos or other forms of correspondence to convey their advice and recommendations on implementing the FTTA, Executive Order 12591, and other related or associated authorities; review periodic EPA reports describing the Agency's progress in implementing statutes, executive orders and regulations on issues potentially impacting the agricultural industry; and, assess alternative approaches for measuring the environmental benefits of these activities.

Dated: October 31, 2007.

**Jon Scholl,**

*Counselor to the Administrator for Agricultural Policy.*

[FR Doc. E7–22380 Filed 11–14–07; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8495–3]**

## Science Advisory Board Staff Office, Clean Air Scientific Advisory Committee (CASAC); Notification of a Public Advisory Committee Meeting of the CASAC Sulfur Oxides (SOx) Primary NAAQS Review Panel

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public meeting of the Clean Air Scientific Advisory Committee's (CASAC) Sulfur Oxides (SOx) Primary NAAQS Review Panel (Panel) to conduct a peer review of EPA's *Integrated Science Assessment for Sulfur Oxides—Health Criteria (First External Review Draft)* (EPA/600/R–07/108, September 2007) and to conduct a consultation on the EPA's *Sulfur Oxides Health Assessment Plan: Scope and Methods for Exposure and Risk Assessment.*

**DATES:** The meeting will be held from 8:30 a.m. to 5 p.m. (Eastern Time) on Wednesday, December 5, 2007, and 8:30 a.m. to 2 p.m. on Thursday, December 6, 2007.

*Location:* The meeting will take place at the Marriott at Research Triangle Park, 4700 Guardian Drive, Durham, NC, 27703, *telephone:* (919) 941–6200.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public who wishes to submit a written or brief oral statement (five minutes or less) or wants further information concerning this meeting must contact Dr. Holly Stallworth, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *via telephone/voice mail:* (202) 343–9867; *fax:* (202) 233–0643; or *e-mail* at: *stallworth.holly@epa.gov.* General information concerning the CASAC or the EPA Science Advisory Board can be found on the EPA Web site at: *http://www.epa.gov/sab.*

**SUPPLEMENTARY INFORMATION:** *Background:* EPA is in the process of reviewing the primary National Ambient Air Quality Standards (NAAQS) for sulfur oxides. Under the Clean Air Act, EPA is required to carry out a periodic review and revision, as appropriate, of the air quality criteria and the NAAQS for six criteria air pollutants, which include sulfur oxides. Primary standards set limits to protect public health, including the health of ''sensitive'' populations such as asthmatics, children, and the elderly.

As part of that process, EPA's Office of Research and Development (ORD) has completed a draft document, *Integrated Science Assessment for Sulfur Oxides—Health Criteria (First External Review Draft)* (EPA/600/R–07/108, September 2007) and has requested that CASAC peer review the document. EPA's Office of Air and Radiation (OAR) will also release a document entitled *Sulfur Oxides Health Assessment Plan: Scope and Methods for Exposure and Risk Assessment* and has requested that the CASAC provide consultative advice to assist the Agency in developing human exposure and health risk assessments for sulfur oxides. EPA has released an integrated plan for all aspects of this review of the primary $SO_2$ standard, *Integrated Plan for Review of the Primary National Ambient Air Quality Standards for Sulfur Oxides* (October 2007), which reflects advice provided by the CASAC panel through a consultation on a draft of that document, *Draft Integrated Plan for Review of the Primary National Ambient Air Quality Standards for Sulfur Dioxides* (April 2007). Background information about the CASAC SOx

review activities and about formation of the CASAC Panel was published in the **Federal Register** on August 7, 2006 (71 FR 44695–44696).

*Technical Contact:* Any questions concerning EPA's *Integrated Science Assessment for Sulfur Oxides—Health Criteria (First External Review Draft)* should be directed to Dr. Jee Young Kim in EPA's Office of Research and Development at (919) 541–4157 or *kim.jee-young@epa.gov.* Any questions concerning EPA's *Sulfur Oxides Health Assessment Plan: Scope and Methods for Exposure and Risk Assessment* should be directed to Dr. Stephen Graham in EPA's Office of Air and Radiation at (919) 541–4344 or *graham.stephen@epa.gov.*

*Availability of Meeting Materials:* EPA–ORD's *Integrated Science Assessment for Sulfur Oxides—Health Criteria (First External Review Draft)* can be accessed at: *http://www.epa.gov/ttn/naaqs/standards/so2/s_so2_cr_isa.html.* EPA–OAR's *Sulfur Oxides Health Assessment Plan: Scope and Methods for Exposure and Risk Assessment* will be accessible at: *http://www.epa.gov/ttn/naaqs/standards/so2/s_so2_index.html.* Agendas and materials in support of meeting will be placed on the SAB Web site at: *http://www.epa.gov/sab* in advance of the meeting.

*Procedures for Providing Public Input:* Interested members of the public may submit relevant written or oral information for the CASAC Panel to consider during the advisory process. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public meeting will be limited to five minutes per speaker, with no more than a total of one hour for all speakers. Interested parties should contact Dr. Stallworth, DFO, in writing (preferably via e-mail) by November 30, 2007 at the contact information noted above, to be placed on the public speaker list for this meeting. *Written Statements:* Written statements should be received in the SAB Staff Office by November 30, 2007, so that the information may be made available to the Panel for their consideration prior to this meeting. Written statements should be supplied to the DFO in the following formats: one hard copy with original signature (optional), and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format).

*Accessibility:* For information on access or services for individuals with disabilities, please contact Dr. Stallworth at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: November 8, 2007.

**Anthony F. Maciorowski,**

*Deputy Director, EPA Science Advisory Board Staff Office.*

[FR Doc. E7–22372 Filed 11–14–07; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8494–9]**

## Science Advisory Board Staff Office; Notification of a Meeting of the Science Advisory Board

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The EPA Science Advisory Board (SAB) Staff Office announces a public face-to-face meeting of the chartered SAB to: continue its discussions of the strategic research directions for the U.S. Environmental Protection Agency; complete its discussions of science use in disaster response programs; complete its quality review of the draft SAB report *Advisory on Hypoxia in the Gulf of Mexico*; and to continue its planning activities for future SAB meetings.

**DATES:** The meeting dates are Thursday, December 6, 2007, from 8:30 a.m. to 5 p.m. through Friday, December 7, 2007, from 8:30 a.m., no later than 12 p.m. (Eastern Time).

**ADDRESSES:** The meeting will be held in the SAB Conference Center, located at 1025 F Street, NW., Room 3705, Washington, DC 20004.

**FOR FURTHER INFORMATION CONTACT:** Members of the public who wish to obtain additional information about this meeting may contact Mr. Thomas O. Miller, Designated Federal Officer (DFO), by mail at the address given below; by telephone at (202) 343–9982; by fax at (202) 233–0643; or by e-mail at: *miller.tom@epa.gov*. The SAB mailing address is: U.S. EPA, Science Advisory Board (1400F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The messenger address is: U.S. EPA, Science Advisory Board (1400F), Room 3600, 1025 F Street, NW., Washington, DC 20004, Phone (202) 343–9999. General information about the SAB, as well as any updates concerning the meeting announced in this notice, may be found on the SAB Web site at: *http://www.epa.gov/sab*.

**SUPPLEMENTARY INFORMATION:** The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

*Background:* (a) SAB Quality Review of the Draft SAB Report Advisory on Hypoxia in the Gulf of Mexico. The Chartered Science Advisory Board will conduct a second quality review of the draft report of its Hypoxia Advisory Panel (HAP) which was begun at the SAB meeting on October 3, 2007 (see 72 FR 50105–50107; August 30, 2007). The draft report will be placed on the SAB Web site prior to the meeting. Specific times for this activity will be provided in the meeting agenda that will be placed on the SAB Web site prior to the meeting (see *http://www.epa.gov/sab/*). Background on the Panel and this review is available on the SAB Web site at: *http://www.epa.gov/sab/panels/hypoxia_adv_panel.htm*.

(b) *EPA Strategic Research Directions:* The Agency asked the Science Advisory Board for advice on the strategic directions for its research program for the next five to fifteen years. This activity complements the annual SAB review of EPA's research budget, and permits a more critical evaluation of research programs than is possible during the research budget review. The SAB will continue to discuss EPA's research program directions which were initiated at its October 3–5, 2007 meeting (see 72 FR 50105–50107; August 30, 2007). Specific information time for this discussion will be provided in the meeting agenda that will be available on the SAB Web site prior to the meeting (see *http://www.epa.gov/sab/*).

(c) *Science in Emergency Response:* The SAB is exploring the use of science in preparing for and responding to environmental disasters. The SAB previously discussed this topic at its meetings on December 12–14, 2006 (see 71 FR 67566), June 19–20, 2007 (see 72 FR 27308) and October 3–5, 2007 (see 72 FR 50105–50107; August 30, 2007). The SAB is currently drafting advisory comments to the Administrator as a result of these discussions. Final discussions of those comments will be held during the SAB meeting on December 6–7, 2007. Specific times will be provided in the meeting agenda that

will be placed on the SAB Web site prior to the meeting (see *http://www.epa.gov/sab/*). Additional information is available on the SAB Web site for the December 2007 meeting at: *http://www.epa.gov/sab/agendas.htm*.

(d) SAB meeting at: *http://www.epa.gov/sab/07agendas/sab_06_19–20_07_agenda.pdf*, and for the October 3–5, 2007 meeting at: *http://www.epa.gov/sab/mtgcal.htm*

*Availability of Meeting Materials:* Materials in support of this meeting will be placed on the SAB Web site at *http://www.epa.gov/sab* in advance of this meeting.

*Procedures for Providing Public Input:* Interested members of the public may submit relevant written or oral information for the SAB to consider during the advisory process.

*Oral Statements:* In general, individuals or groups requesting an oral presentation at a public meeting will be limited to five minutes per speaker, with no more than one hour for all speakers. Interested parties should contact Mr. Thomas Miller, DFO, at the contact information provided above, by December 3, 2007, to be placed on the public speaker list for the December 6–7, 2007 meeting. A telephone conference line will be available for those portions of the meeting during which the SAB is conducting quality reviews of draft committee reports. Information on the call in procedures and numbers can be obtained by calling the EPA SAB Staff Office ad (202) 343–9999. *Written Statements:* Written statements should be received in the SAB Staff Office by December 3, 2007, so that the information may be made available to the SAB for their consideration prior to this meeting. Written statements should be supplied, at the contact information specified above, in the following formats: one hard copy with original signature, and one electronic copy via e-mail to: *miller.tom@epa.gov* (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format).

*Meeting Accommodations:* For information on access or services for individuals with disabilities, please contact Mr. Thomas Miller at (202) 343–9982, or via e-mail at *miller.tom@epa.gov.* To request accommodation of a disability, please contact Mr. Miller, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: November 7, 2007.

**Vanessa T. Vu,**

*Director, EPA Science Advisory Board Staff Office.*

[FR Doc. E7–22371 Filed 11–14–07; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2004–0109; FRL–8156–9]**

## Draft List of Initial Pesticide Active Ingredients and Pesticide Inerts to be Considered for Screening under the Federal Food, Drug, and Cosmetic Act; Extension of Comment Period

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; second extension of comment period.

**SUMMARY:** EPA issued a notice in the **Federal Register** of June 18, 2007, concerning the draft list of the first group of chemicals that will be screened in the Agency's Endocrine Disruptor Screening Program (EDSP). The draft list was produced using the approach described in the September 2005 notice, and includes chemicals that the Agency, in its discretion, has decided should be tested first, based upon exposure potential.The June 18, 2007 **Federal Register** notice provided for a 90–day public comment period. EPA extended the comment period an additional 60 days in the **Federal Register** of September 12, 2007. This document is extending the comment period for a second time for 45 days. The new comment period extends to December 31, 2007.

**DATES:** Comments, identified by docket identification (ID) number EPA–HQ–OPPT–2004–0109 must be received on or before December 31, 2007.

**ADDRESSES:** Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of June 18, 2007.

**FOR FURTHER INFORMATION CONTACT:** Linda Phillips, Office of Science Coordination and Policy (7203M), Office of Prevention, Pesticides, and Toxic Substances, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–1264; e-mail address: *phillips.linda@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

The Agency included in the June 18, 2007 notice a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. What Should I Consider as I Prepare My Comments for EPA?*

When preparing comments follow the procedures and suggestions given in Unit I.B. of the **SUPPLEMENTARY INFORMATION** of the June 18, 2007**Federal Register** notice.

*C. How and to Whom Do I Submit Comments?*

To submit comments, or access the public docket, please follow the detailed instructions as provided in Unit I.B.3. of the **SUPPLEMENTARY INFORMATION** of the June 18, 2007 **Federal Register** notice. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### II. What Action is EPA Taking?

This document extends the public comment period that was originally established in the**Federal Register** of June 18, 2007 (72 FR 33486) (FRL–8129–3) and was extended in the **Federal Register** of September 12, 2007 (72 FR 52108) (FRL–8146–3). In the **Federal Register** notice of June 18, 2007, EPA announced the draft list of the first group of chemicals that will be screened in the Agency's EDSP. The draft list was developed using the approach described in the**Federal Register** notice of September 27, 2005 (70 FR 56449) (FRL–7716–9). As required by the Federal Food, Drug, and Cosmetic Act (FFDCA), all pesticides must eventually be screened under the EDSP, and this first group is simply a starting point. Because EPA developed this draft list of chemicals based upon exposure potential, it should not be construed as a list of known or likely endocrine disruptors, and it would be inappropriate to do so. Following consideration of comments on this draft list of chemicals, EPA will issue a **Federal Register** notice containing the final list of chemicals. EPA is hereby extending the comment period, which was set to end on November 16, 2007, to December 31, 2007.

### III. What is the Agency's Authority for Taking this Action?

Section 408(p) of FFDCA requires EPA to ''develop a screening program, using appropriate validated test systems and other scientifically relevant information, to determine whether certain substances may have an effect in humans that is similar to an effect produced by a naturally occurring

estrogen, or such other endocrine effect as [EPA] may designate.'' (21 U.S.C. 346a(p)). The statute generally requires EPA to ''provide for the testing of all pesticide chemicals.'' (21 U.S.C. 346a(p)(3)). However, EPA is authorized to exempt a chemical, by order upon a determination that ''the substance is anticipated not to produce any effect in humans similar to an effect produced by a naturally occurring estrogen.'' (21 U.S.C. 346a(p)(4)). ''Pesticide chemical'' is defined as ''any substance that is a pesticide within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act, including all active and inert ingredients of such pesticide.'' (21 U.S.C. 321(q)(1)).

**List of Subjects**

Environmental protection, Chemicals, Endocrine Disruptors, Pesticides.

Dated: November 8, 2007.

**James Jones,**

*Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.*

[FR Doc. E7–22379 Filed 11–14–07; 8:45 am]

**BILLING CODE 6560–50–S**

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Notice of information collection—new: Demographic Information on Applicants for Federal Employment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35), the Equal Employment Opportunity Commission (Commission or EEOC) announces that it intends to submit to the Office of Management and Budget (OMB) a request to approve a new information collection as described below.

**DATES:** Written comments on this notice must be submitted on or before January 14, 2008.

**ADDRESSES:** Written comments should be submitted to Stephen Llewellyn, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, NW., Washington, DC 20507. As a convenience to commentators, the Executive Secretariat will accept comments transmitted by facsimile (''FAX'') machine. The telephone number of the FAX receiver is (202) 663–4114. (This is not a toll-free number.) Only comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TTD). (These are not toll-free telephone numbers.) You may also submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments. Copies of comments submitted by the public will be available to review at the Commission's library, Room 6502, 1801 L Street, NW., Washington, DC 20507 between the hours of 9:30 a.m. and 5 p.m. or can be reviewed at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Heidi Schandler, Affirmative Employment Division, Federal Sector Programs, Office of Federal Operations, 1801 L Street, NW., Washington, DC 20507, (202) 663–4416 (voice); (202) 663–7208 (TTD). This notice is available in the following formats: Braille, audio tape, and electronic file on computer disk. Requests for this notice in an alternative format should be made to the Publications Center at 1–800–699–3362.

**SUPPLEMENTARY INFORMATION:** EEOC enforces Title VII of the Civil Rights Act, the Equal Pay Act, the Age Discrimination in Employment Act, the Rehabilitation Act and Title I of the Americans with Disabilities Act. Pursuant to its authority under those statutes, EEOC issued Equal Employment Opportunity Management Directive 715 (MD–715) to provide policy guidance and standards for establishing and maintaining effective affirmative programs of equal employment opportunity under Section 717 of Title VII and effective affirmative action programs under Section 501 of the Rehabilitation Act. MD–715 applies to all executive agencies and military departments (except uniformed members) as defined in Sections 102 and 105 of Title 5 U.S.C. (including those with employees and applicants for employment who are paid from nonappropriated funds), the United States Postal Service, the Postal Rate Commission, the Tennessee Valley Authority, the Smithsonian Institution, and those units of the judicial branch of the federal government having positions in the competitive service.

The overriding objective of MD–715 is to ensure that all employees and applicants for employment enjoy equality of opportunity in the federal workplace regardless of race, color, sex, age, national origin, religion or disability. In order to ensure that agencies proactively prevent potential discrimination before it occurs and establish systems to monitor compliance with Title VII and the Rehabilitation Act, MD–715 requires agencies to evaluate their employment practices by collecting and analyzing data on the race, national origin, sex and disability status of applicants for both permanent and temporary employment. See also 29 CFR Part 1607 (Uniform Guidelines on Employee Selection Procedures). This notice concerns an optional form for the use of federal agencies in gathering data on the race, national origin, sex and disability status of applicants, which constitutes a collection of information under the Paperwork Reduction Act.

Pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and OMB regulation 5 CFR 1320.8(d)(1), the Commission solicits public comment on its proposed optional form for use by federal agencies in gathering demographic information on applicants for federal employment. Comments are particularly invited on whether this collection of information will enable the Commission and federal agencies to:

- Evaluate whether the proposed data collection tool will have practical utility by enabling a federal agency to determine whether recruitment activities are effectively reaching all segments of the relevant labor pool in compliance with the laws enforced by the Commission and whether the agency's selection procedures allow all applicants to compete on a level playing field regardless of race, national origin, sex or disability status;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on applicants for federal employment who choose to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The remainder of this **SUPPLEMENTARY INFORMATION** section provides the public with information it will need to comment on the EEOC proposal. It contains an overview of the information collection and the proposed form that

agencies can use to collect the demographic information on persons who apply for federal employment.

The Demographic Information on Applicants form is designed to enable federal agencies to evaluate their employment practices by collecting and analyzing data on the race, national origin, sex and disability status of applicants for both permanent and temporary employment. Use of the form is not required. Federal agencies may or may not elect to use the form. Applicants for federal employment may or may not elect to complete the form.

*Background:* Under the provisions of Title VII and the Rehabilitation Act, the Commission is charged with ensuring that federal agencies proactively prevent potential discrimination before it occurs. Pursuant to such oversight responsibilities, the Commission has established systems to monitor compliance with Title VII and the Rehabilitation Act by requiring federal agencies to evaluate their employment practices through the collection and analysis of data on the race, national origin, sex and disability status of applicants for both permanent and temporary employment.

While several federal agencies (or components of such agencies) have obtained OMB approval for the use of forms collecting data on the race, national origin, sex and disability status of applicants, it is not an efficient use of government resources for each federal agency to separately seek OMB approval. Accordingly, in order to avoid unnecessary duplication of effort and a proliferation of forms, the EEOC seeks approval of a form which can be used by any agency which so desires. Use of the proposed form is optional; an agency is free to develop and seek OMB approval of an agency-specific form should the agency so desire.

Response by applicants is optional. The information obtained will be used by federal agencies only for evaluating whether an agency's recruitment activities are effectively reaching all segments of the relevant labor pool and whether the agency's selection procedures allow all applicants to compete on a level playing field regardless of race, national origin, sex or disability status. The voluntary responses are treated in a highly confidential manner and play no part in the selection of who is hired. The information is not provided to any panel rating the applications, to selecting officials, to anyone who can affect the application or to the public. Rather, the information is used in summary form to determine trends over many selections within a given occupational or organization area. No information from the form is entered into an official personnel file.

*Burden Statement:* In August 2005, the Office of Personnel Management (OPM) announced that it had submitted a revised ''Optional Application for Federal Employment OF 612'' to OMB to collect applicant qualifications information associated with vacancy announcements for federal positions and the specifications of the improved resume builder in the USAJOBS Web site. See 70 FR 44699 (August 3, 2005). Noting the ''dramatic upsurge in responses * * * in the Federal application process and the advancement of technology to provide for online application, [and the] increased interest by job seekers in Federal employment,'' OPM estimated the number of respondents for the OF 612 at 245,000 and estimated the number of respondents for the resume builder at 3,510,600.

According to the OPM, in Fiscal Year (FY) 2006, Government-wide, there was a total of 237,525 new hires by federal agencies (excluding agencies not included in the Central Personnel Data File (CPDF), such as the United States Postal Service and the Tennessee Valley Authority) and a total of 12,013 employees who transferred to other federal agencies. See OPM's FedScope tool for Human Resources Data at: *http://www.fedscope.opm.gov/accessions.asp.*

Because no federal agency is required to use this form and because responses by applicants are optional, it is not possible to accurately forecast the number of responses and the public reporting burden for the collection of the data. For purposes of this submission, the EEOC has chosen to calculate its initial estimate of the burden hours based upon the highest feasible number based upon OPM's estimated number of respondents utilizing the USAJOBS Federal employment information system.

Because of the increasing use of online application systems, which require only pointing and clicking on the selected responses, and because the form requests only six questions regarding basic information, the EEOC estimates that an applicant can complete the form in approximately 3 minutes.

**Overview of This Information Collection**

*Collection Title:* Demographic Information on Applicants.

*OMB Control No.:* None.

*Description of Affected Public:* Individuals submitting applications for federal employment.

*Number of Responses:* 3,510,600.

*Estimated Time per Respondent:* 3 minutes.

*Total Burden Hours:* 175,530 [(3,510,600 × 3)/60].

*Federal Cost:* None.

Form—DEMOGRAPHIC INFORMATION ON APPLICANTS

Vacancy Announcement No.:

_____

Position Title and Grade:

_____

Name (Last, First, Middle Initial):

_____

Your Privacy Is Protected

This information is used to determine if our recruitment efforts are reaching all segments of the population, consistent with Federal equal employment opportunity laws. Your voluntary responses are treated in a highly confidential manner. Your responses are not released to the panel rating the applications, to the selecting official, to anyone else who can affect your application, or to the public. No information taken from this form is ever placed in your Personnel file. This is vital information not available from any other source. We can only get it directly from you. Thank you for helping us to provide better service.

1. How did you learn about this position? (Check One):
   1. Agency Internet Site recruitment.
   2. Private Employment Web Site.
   3. Other Internet Site.
   4. Poster.
   5. Newspaper.
   6. Magazine.
   7. TV/Radio.
   8. Student association.
   9. Private Employment Office.
   10. State Employment Office.
   11. Federal, state, or local Job Information Center.
   12. Agency Human Resources Department (bulletin board or other announcement).
   13. Agency or other Federal government on campus.
   14. Religious organization.
   15. School or college counselor or other official.
   16. Job Fair (give location: ____).
   17. Friend or relative working for this agency.
   18. State Vocational Rehabilitation Agency.
   19. Professional organization or publication.
   20. Other.
2. Sex (Check One):

1. Male
2. Female

3. Ethnicity (Check One):
   1. Hispanic or Latino—a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.
   2. Not Hispanic or Latino

4. Race (Check all that apply):
   1. American Indian or Alaskan Native—a person having origins in any of the original peoples of North or South America (including Central America), and who maintains tribal affiliation or community attachment.
   2. Asian—a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, or Vietnam.
   3. Black or African American—a person having origins in any of the black racial groups of Africa.
   4. Native Hawaiian or Other Pacific Islander—a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific islands.
   5. White—a person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

Under the Rehabilitation Act (Act), information on your disability status is used solely in connection with affirmative action obligations or efforts. Self-identification of your disability status is voluntary. The information will be kept confidential in accordance with the Act provisions and the information will be used only in accordance with the Act. A refusal to provide the information will not subject you to any adverse treatment.

5. Do you have any physical or mental disabilities?
   1. Yes.
   2. No.
   3. Do not wish to respond.

If yes, do you have a targeted disability? Check all that apply:*
   1. Deaf (Total deafness in both ears, with or without understandable speech).
   2. Blind (Inability to read ordinary size print, not correctable by glasses or no useable vision beyond light perception).
   3. Missing extremities (Missing one arm or leg or missing two or more hands, arms, feet, or legs).
   4. Partial paralysis (Loss of ability to move or use a part of the body, including hands, arms, legs, and/or trunk).
   5. Complete paralysis.
   6. Seizure/convulsive disorder (e.g., epilepsy).
   7. Intellectual Disorder/Mental retardation (A chronic and lifetime condition certifiable under Schedule A).
   8. Psychiatric Disorder or a history of treatment for mental or emotional illness.
   9. Severe distortion of limbs and/or spine (e.g., dwarfism; kyphosis, etc.).

*Descriptions based on Standard Form 256.

**Privacy Act and Paperwork Reduction Act Statement**

*Privacy Act Information:* This information is provided pursuant to Public Law 93–579 (''Privacy Act of 1974''), for individuals completing Federal records and forms that solicit personal information. The authority is Title 5 of the U.S. Code, sections 1302, 3301, 3304, and 7201. *Purpose and Routine Uses:* No individual data is ever provided to selecting officials. This form will only be seen by HR Personnel and Equal Employment Opportunity officials. Data summarizing all applicants for a position will be used to determine if we are effectively recruiting from all segments of the population, in conformance with the requirements of Federal equal employment opportunity laws. Only summary data is reported, and only in a format which can not be broken out by individual applicants. *Effects of Nondisclosure:* Providing this information is voluntary. No individual personnel selections are made based on this information.

*Paperwork Reduction Act Statement:* The Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*,) requires us to inform you that this information is being collected for planning and assessing affirmative employment program initiatives. Response to this request is voluntary. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The estimated burden of completing this form is three (3) minutes, including the time for reviewing instructions. Direct comments regarding the burden estimate or any other aspect of this form to the Equal Employment Opportunity Commission, Affirmative Employment Division, Federal Sector Programs, 1801 L St., NW., Washington, DC 20507 and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

Dated: November 5, 2007.

For the Commission.

**Naomi C. Earp,**

*Chair.*

[FR Doc. E7–22242 Filed 11–14–07; 8:45 am]

BILLING CODE 6570–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

November 8, 2007.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 14, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

**ADDRESSES:** You may submit all PRA comments by e-mail or U.S. mail. To submit your comments by e-mail, send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, send them to Jerry Cowden, Federal Communications Commission, Room 1-B135, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection(s) contact Jerry Cowden via e-mail at *PRA@fcc.gov* or at 202–418–0447.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* None.

*Title:* Information Collection regarding Emergency Backup Power for Communications Assets as set forth in the Commission's rules (47 CFR 12.2).

*Form No.:* Not applicable.

*Type of Review:* New collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 73 respondents; 93 responses.

*Estimated Time per Response:* 70.32 hours (average).

*Frequency of Response:* One-time reporting.

*Obligation to Respond:* Mandatory.

*Total Annual Burden:* 6,540 hours.

*Total Annual Cost:* None.

*Privacy Act Impact Assessment:* This information collection does not affect individuals or households, and therefore a privacy impact assessment is not required.

*Nature and Extent of Confidentiality:* All reports and plans required by Section 12.2 of the Commission's rules will be automatically afforded confidentiality because the information in these reports and plans is sensitive for both national security and/or commercial reasons.

*Needs and Uses:* The Commission, in order to help fulfill its statutory obligation to make wire and radio communications services available to all people in the United States for the purpose of the national defense and promoting safety of life and property, adopted an Order (FCC 07–107) that includes an emergency backup power rule (section 12.2). This rule, as modified in an Order on Reconsideration (FCC 07–177) obligates certain specified local exchange carriers (LECs) and commercial mobile radio service (CMRS) providers to file a report that enumerates whether the carriers meet the emergency backup power requirement for certain assets specified by the rule.

Specifically, Section 12.2(c) requires LECs and CMRS providers to file reports with the Commission that identify the following information: (1) Each asset that was designed to comply with the applicable backup power requirement; (2) each asset where compliance is precluded due to risk to safety or life or health; (3) each asset where compliance is precluded by private legal obligation or agreement; (4) each asset where compliance is precluded by Federal, state, tribal or local law; and (5) each asset that was designed with less than the required emergency backup power capacity and that is not precluded from compliance by risk to safety of life or health, private legal obligation or agreement, or Federal, state, tribal or local law. LECs and CMRS providers must file these reports within six months of the effective date of this requirement, which is the date of **Federal Register** notice announcing OMB approval of the information collection contained in section 12.2 of the Commission's rules. LECs and CMRS providers must include a description of facts supporting the basis of the LECs or CMRS provider's claim of preclusion from compliance based on risk to safety of life or health, private legal obligation or agreement, or Federal, state, tribal or local law.

Additionally, LECs and CMRS providers identifying assets designed with less than the emergency backup power capacity required in section 12.2(a) and not otherwise precluded from compliance for one of the three reasons identified in section 12.2(b) must comply with the backup power requirement or file, within 12 months from the effective date of section 12.2, a certified emergency backup power compliance plan that is subject to Commission review. The emergency backup power compliance plan must certify and describe how, in the event of a commercial power failure, the LEC or CMRS provider will provide emergency backup power to 100 percent of the area covered by any non-compliant asset, relying on on-site and/or portable backup power sources or other sources as appropriate. This emergency backup power must be sufficient for service coverage as follows: A minimum of 24 hours for assets inside central offices and eight hours for other assets such as cell sites, remote switches, and digital loop carrier system remote terminals.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 07–5697 Filed 11–14–07; 8:45 am]

**BILLING CODE 6712–01–P**

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## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Review by the Federal Communications Commission, Comments Requested

November 8, 2007.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall ahve practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before January 14, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** You may submit all PRA comments by e-mail or U.S. mail. To submit your comments by e-mail, send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, send them to Leslie F. Smith, Federal Communications Commission, Room 1–C216, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** For Additional information about the information collection(s), contact Leslie F. Smith via e-mail at *PRA@fcc.gov* or call (202) 418–0217.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0774.

*Title:* Universal Service Reporting, Disclosure, and Record Retention Requirements (47 CFR parts 36 and 54).

*Form Number:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities, not-for-profit institutions, and state, local, or tribal government.

*Number of Respondents:* 7,061,552 respondents; 7,621,931 responses.

*Estimated Time Per Response:* 0.084–1500 hours

*Frequency of Response:* On occasion, quarterly, annual, and five-year

reporting requirements; recordkeeping requirement; and third party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits.

*Total Annual Burden:* 1,502,333 hours

*Total Annual Cost:* $0.00

*Privacy Act Impact Assessment:* No impacts.

*Nature of Extent of Confidentiality:* This collection does not address information of a confidential nature.

*Needs and Uses:* The Telecommunication Act of 1996 (1996 Act) directed the Commission to initiate a rulemaking to reform the system of universal service so that universal service is preserved and advanced as markets move toward competition. To fulfill that mandate, on March 8, 1996, the Commission adopted a *Notice of proposed Rulemaking (NPRM)* in CC Docket No. 96–45 to implement the congressional directives set out in section 254 of the Communications Act of 1934, as amended by the 1996 Act. Pursuant to section 254(a)(1), the *NPRM* also referred numerous issues related to universal service to a Federal-State Joint Board for recommended decision. On November 8, 1996, the Joint Board released a Recommended Decision in which it made recommendations to assist and counsel the Commission in the creation of an effective universal service support mechanism that would ensure that the goals of affordable, quality service and access to advanced services are met by means that enhance competition. On November 18, 1996, the Commission's Common Carrier Bureau released a *Public Notice* (DA 96–1891) seeking public comment on the issues addressed and recommendations made by the Joint Board in the Recommended Decision. In a *Report and Order* issued in CC Docket No. 96–45, released on May 8, 1997, and other proceedings, the Commission adopted rules that were designed to implement the universal service provisions of section 254. On August 29, 2007, the Commission released the *Report and Order,* 2007 Comprehensive Review of the Universal Service Fund Management, Administration and Oversight, WC Docket Nos. 05–195, 02–60, 03–109 and CC Docket Nos. 96–45, 02–6, 97–21, FCC 07–150. In this order, the Commission took several further steps to safeguard the Universal Service Fund from waste, fraud, and abuse, including imposing document retention rules on all universal service programs and program contributors.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 07–5699 Filed 11–14–07; 8:45 am]

**BILLING CODE 6712–01–M**

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## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

November 7, 2007.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before January 14, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** You may submit all PRA comments by e-mail or U.S. mail. To submit your comments by e-mail, send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, send them to Leslie F. Smith, Federal Communications Commission, Room 1–C216, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection(s), contact Leslie F. Smith via e-mail at *PRA@fcc.gov* or call (202) 418–0217.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0384.

*Title:* Sections 64.904 and 64.905, Auditor's Attestation and Certification.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents:* 13 respondents.

*Estimated Time per Response:* 35–250 hours.

*Obligation to Respond:* Required to obtain or retain benefits.

*Frequency of Response:* On-occasion, biennial, and annual reporting requirements.

*Total Annual Burden:* 1,535 hours.

*Total Annual Cost:* $1,200,000.

*Privacy Act Impact Assessment:* No impacts.

*Nature of Extent of Confidentiality:* This collection does not address information of a confidential nature.

*Needs and Uses:* 47 CFR 64.904(a) requires each incumbent LEC required to file a cost allocation manual is required to either have an attest engagement or have a financial audit performed by an independent auditor biennially. Mid-sized carriers are required to file a certification with the Commission stating that they are in compliance with 47 CFR 64.905. The requirements are imposed to ensure that the carriers are properly complying with Commission rules. They serve as an important aid in the Commission's monitoring program.

*OMB Control Number:* 3060–0470.

*Title:* Sections 64.901–64.903, Allocation of Cost, Cost Allocation Manual, and RAO Letters 19 and 26.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents:* 6 respondents.

*Estimated Time per Response:* 400 hours (avg.).

*Frequency of Response:* On-occasion and annual reporting requirements.

*Obligation to Respond:* Required to obtain or retain benefits.

*Total Annual Burden:* 2,400 hours.

*Total Annual Cost:* $0.00.

*Privacy Act Impact Assessment:* No impacts.

*Nature and Extent of Confidentiality:* This collection does not address information of a confidential nature.

*Needs and Uses:* 47 CFR 64.901 requires carriers to separate their

regulated costs from nonregulated costs using the attributable cost method of cost allocation. Carriers must follow the principles described in § 64.901. Carriers subject to Section 64.901 are also subject to the provisions of 47 CFR 32.23 and 32.27. 47 CFR 64.903(a) requires LECs with annual operating revenues equal to or above the indexed revenue threshold as defined in 47 CFR 32.9000 to file a cost allocation manual containing the information specified in § 64.903(a)(1)–(6). Section 64.903(b) requires that carriers update their cost allocation manuals at least annually, except changes to the cost apportionment table and the description of time reporting procedures must be filed at time of implementation. The FCC uses the manual to ensure that all costs are properly classified.

*OMB Control Number:* 3060–0814.

*Title:* Section 54.301, Local Switching Support and Local Switching Support Data Collection Form and Instructions.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents:* 152 respondents.

*Estimated Time per Response:* 0.5–24 hours.

*Frequency of Response:* Annual and on occasion reporting requirements; third party disclosure.

*Obligation to Respond:* Required to obtain or retain benefits.

*Total Annual Burden:* 2,967 hours.

*Total Annual Cost:* $0.00.

*Privacy Act Impact Assessment:* No impacts.

*Nature of Extent of Confidentiality:* This collection does not address information of a confidential nature.

*Needs and Uses:* Pursuant to 47 CFR 54.301, each incumbent local exchange carrier that is not a member of the NECA common line tariff, that has been designated an eligible telecommunications carrier, and that services a study area with 50,000 or fewer access lines shall, for each study area, provide the Administrator with the projected total un-separated dollar amount assigned to each account in § 54.301(b). Average schedule companies are required to file information pursuant to § 54.301(f). Both respondents must provide true-up data. The data are necessary to calculate certain revenue requirements.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E7–22339 Filed 11–14–07; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collections Approved by Office of Management and Budget

November 6, 2007.

**SUMMARY:** The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

**FOR FURTHER INFORMATION CONTACT:** Dana Wilson, Federal Communications Commission, 445 12th Street, SW., Washington DC, 20554, (202) 418–2247 or via the Internet at *Dana.Wilson@fcc.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–0439.

*OMB Approval Date:* 10/10/2007.

*Expiration Date:* 10/31/2010.

*Title:* Section 64.201, Regulations Concerning Indecent Communications by Telephone.

*Form No.:* N/A.

*Estimated Annual Burden:* 1,632 hours.

*Needs and Uses:* Under Section 223 of the Communications Act of 1932, as amended, telephone companies are required, to the extent technically feasible, to prohibit access to indecent communications from the telephone of a subscriber who has not previously requested access. 47 CFR 64.201 of the Commission's rules implements Section 223 of the Communications Act and contains several information collection requirements: (1) A requirement that certain common carriers block access to indecent messages unless the subscriber seeks access from the common carrier (telephone company) in writing; (2) A requirement that adult message service providers notify their carriers of the nature of their programming; and (3) A requirement that a provider of adult message services request that their carrier identify it as such in bills to its subscribers. The information requirements are imposed on carriers, adult message service providers, and those who solicit their services to ensure that minors are denied access to material deemed indecent.

*OMB Control No.:* 3060–0665.

*OMB Approval Date:* 10/10/2007.

*Expiration Date:* 10/31/2010.

*Title:* Section 64.707, Public Dissemination of Information by Providers of Operator Services.

*Form No.:* N/A.

*Estimated Annual Burden:* 1,744 hours.

*Needs and Uses:* As required by 47 U.S.C. 226(d)(4)(b) of the Communication's Act, 47 CFR 64.707 of the Commission's rules, provides that operator service providers must regularly publish and make available upon request from consumers written materials that describe any changes in operator services and choices available to consumers. Consumers use the information to increase their knowledge of the choices available to them in the operator services marketplace.

*OMB Control No.:* 3060–0787.

*OMB Approval Date:* 11/5/2007.

*Expiration Date:* 11/30/2010.

*Title:* Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94–129, FCC 03–42.

*Form No.:* N/A.

*Estimated Annual Burden:* 105,901 hours.

*Needs and Uses:* Section 258 of the Telecommunications Act of 1996 directed the Commission to prescribe rules to prevent the unauthorized change by telecommunications carriers of consumers' selections of telecommunications service providers (slamming). On March 17, 2003, the FCC released the *Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking,* CC Docket No. 94–129, FCC 03–42 (*Third Order on Reconsideration*), in which the Commission revised and clarified certain rules to implement section 258 of the 1996 Act. On May 23, 2003, the Commission also released an *Order* (CC Docket No. 94–129, FCC 03–116) clarifying certain aspects of the *Third Order on Reconsideration.* The rules and requirements implementing section 258 can be found primarily at 47 CFR part 64. These rules will continue to enable the Commission to deter slamming, while protecting consumers from carriers that take advantage of consumer confusion over different types of telecommunications services.

*OMB Control No.:* 3060–0973.

*OMB Approval Date:* 10/10/2007.

*Expiration Date:* 10/31/2010.

*Title:* Section 64.1120(e), Sale or Transfer of Subscriber Base to Another Carrier (CC Dockets 00–257 and 94–129).

*Form No.:* N/A.

*Estimated Annual Burden:* 525 hours.

*Needs and Uses:* Pursuant to 47 CFR 64.1120(e) of the Commission's rules, an

acquiring carrier will self-certify to the Commission, in advance of the transfer, that the carrier will comply with the required procedures, including giving advance notice to the affected subscribers in a manner that ensures the protection of their interests. By streamlining the carrier change rules, the Commission will continue to protect consumers' interests and, at the same time, will ensure that its rules do not inadvertently inhibit routine business transactions. On July 16, 2004, the Commission released a *First Order on Reconsideration and Fourth Order on Reconsideration* which made a minor modification to 47 CFR 64.1120(e)(iii) of the Commission's rules.

The modification in the rule did not impose any new or modified information collection requirements nor did it affect the existing annual hourly and cost changes.

*OMB Control No.:* 3060–1089.

*OMB Approval Date:* 10/22/2007.

*Expiration Date:* 10/31/2007.

*Title:* Emergency Access Notice of Proposed Rulemaking (NPRM) and Internet-Protocol (IP) Relay/ Video Relay Service (VRS) Fraud Further Notice of Proposed Rulemaking (FNPRM); VRS Interoperability FNPRM, CG Docket No. 03–123.

*Form No.:* N/A.

*Estimated Annual Burden:* 34,016 hours.

*Needs and Uses:* The Commission has revised collection 3060–1089 to consolidate/merge the information collection requirements of 3060–1091 into this collection. The Commission concluded that these two proposed information collections are similar because these collections involve the same respondents and contain similar data of identifiable information in order: (1) To facilitate 911 emergency calls; (2) to improve interoperability for VRS and IP Relay services; and (3) to curtail misuse of VRS and IP Relay services. The Commission does not collect this information. The Commission requires respondents to collect this information. On October 22, 2007, the Commission received OMB's approval to consolidate/merged the information collection requirements contained in 3060–1091 into information collection requirements of 3060–1089. Therefore, OMB Control No. 3060–1091 is discontinued and will be eliminated. On November 30 2005, the Commission released a Notice of Proposed Rulemaking (*NPRM*), CG Docket No. 03–123, which addressed the issue of access to emergency services for Internet-based forms of Telecommunications Relay Services (*TRS*), namely VRS and IP Relay Service. The Commission sought to adopt means to ensure that such calls promptly reach the appropriate emergency service provider. By doing so, the *NPRM* sought comment on the following issues:

(1) Whether the Commission VRS and IP Relay service providers to establish a registration process in which VRS and IP Relay service users provide, in advance, the primary location from which they will be making VRS or IP Relay service calls (the Registered Location), so that a communications assistant (CA) can identify the appropriate Public Safety Answering Point (PSAP) to contact; (2) whether VRS and IP Relay providers should be required to register their customers and obtain a Registered Location from their customers so that they will be able to make the outbound call to the appropriate PSAP; (3) whether there are other means by which VRS and IP Relay service providers may obtain Registered Location information, for example, by linking the serial number of the customer's VRS or IP Relay service terminal or equipment to their registered location; (4) whether any privacy considerations might be raised by requiring VRS and IP Relay service users to provide location information as a prerequisite to using these services; (5) whether, assuming some type of location registration requirement is adopted, the Commission should require specific information or limit the scope of information that providers should be able to obtain; (6) whether the Commission should require VRS and IP Relay providers to provide appropriate warning labels for installation on customer premises equipment (CPE) used in connection with VRS and IP Relay services; (7) whether the Commission should require VRS and IP Relay providers to obtain and keep a record of affirmative acknowledgement by every subscriber of having received and understood the advisory that E911 service may not be available through VRS and IP Relay or may be in some way limited by comparison to traditional E911 service; and (8) how the Commission may ensure that providers have updated location information, and the respective obligations of the providers and the consumers in this regard. On May 8, 2006, the Commission released the *Misuse of IP Relay Service and VRS Further Notice of Proposed Rulemaking*, (IP Relay Fraud FNPRM), CG Docket No. 03–123, FCC 06–58 which contained the following information collection requirements involving user registration, *e.g.*, callers register to use VRS and IP Relay and provide their requisite information as necessary: The *IP Relay Fraud FNPRM* sought comment on: (1) Whether IP Relay and VRS providers should be required to implement user registration systems in which users provide certain information to their providers, in advance, as a means of curbing illegitimate IP Relay and VRS calls; (2) what information should users be required to provide; (3) whether there are steps that could be taken, or technology implemented, to prevent the wrongful use of registration information; and (4) whether the Commission should require VRS and IP Relay providers to maintain records of apparently illegitimate calls that were terminated by the providers.

**Note:** The Commission merged the *IP Relay Fraud FNPRM* collection with the *Emergency Access NPRM* collection to avoid duplication.

On May 9, 2006, the Commission released the *VRS Interoperability Notice of Proposed Rulemaking (Interoperability FNPRM)*, In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for individuals with Hearing and Speech Disabilities, CG Docket No. 03–123, FCC 06–57. In the *Interoperability FNPRM*, the Commission sought comment on the feasibility of establishing a single, open, and global database of proxy numbers for VRS users that would be available to all service providers, so that a hearing person can call a VRS user through any VRS provider, and without having first to ascertain the VRS user's current IP address. The Commission also sought comment on nature of the proxy numbers that might be used and how they might be administered. The Commission sought comment on the role of the Commission in creating and maintaining the database. In the *Interoperability FNPRM*, the Commission recognized: (a) That when a hearing person contact a VRS user by calling a VRS provider, the calling party has to know in advance the IP address of the VRS user so that the calling party can give that address to the VRS CA (b) that because most consumers' IP addresses are dynamic, the VRS consumer may not know the IP address of his or her VRS equipment at a particular time; (c) that some VRS providers have created their own database of ''proxy'' or ''alias'' numbers that associate with the IP address of their customers, even if a particular person's IP address is dynamic and changes; (d) that databases are maintained by the service provider and, generally, are not shared with other service providers; and (e) that a person desiring to call a VRS consumer via the

consumer's proxy number can only use the services of the VRS provider that generates the number.

The *Interoperability FNPRM* proposed the following information collection requirements involving an open, global database of VRS proxy numbers. The Interoperability FNPRM sought comment on: (1) Whether VRS providers should be required to provide information to populate an open, global database of VRS proxy numbers and to keep the information current; (2) whether the Interstate TRS Fund administrator, a separate entity, or a consortium of service providers should be responsible for the maintenance and operation of an open, global database of VRS proxy numbers; (3) whether Deaf and hard of hearing individuals using video broadband communication need uniform and static end-point numbers should be linked to the North American Numbering Plan (NANP) that would remain consistent across all VRS providers so that they can contact one another and be contacted to the same extent that Public Switched Telephone Network (PSTN) and VoIP users are able to identify and call one another; (4) whether participation by service providers should be mandatory so that all VRS users can receive incoming calls.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E7–22340 Filed 11–14–07; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL MARITIME COMMISSION

### Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

*Agreement No.:* 011679–009.

*Title:* ASF/SERC Agreement.

*Parties:* American President Lines, Ltd./APL Co. Pte Ltd.; ANL Singapore Pte Ltd.; China Shipping (Group) Company/China Shipping Container Lines, Co. Ltd.; COSCO Container Lines Company, Ltd.; Evergreen Line Joint Service; Hanjin Shipping Co., Ltd.; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line Ltd.; Sinotrans Container Lines Co., Ltd.; Wan Hai Lines Ltd.; and Yang Ming Marine Transport Corp.

*Filing Party:* Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

*Synopsis:* The amendment adds a new Article 5.3 authorizing the establishment of permanent Secretariat and revises Article 6.1 to define the role of Secretariat.

By Order of the Federal Maritime Commission.

Dated: November 9, 2007.

**Karen V. Gregory,**

*Assistant Secretary.*

[FR Doc. E7–22384 Filed 11–14–07; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

**Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants**

Columbia River Logistics Services dba, Columbia River Logistics Services (COLO), 30900 Launch Land, Umatilla, OR 97882. *Officers:* Jeff Vandel, Vice President, (Qualifying Individual), Steve Miller, President.

Unicarga Int'l Freight Systems, Inc., 7901 NW 68th Street, Miami, FL 33166. *Officers:* Jorge M. Palacios, Secretary, (Qualifying Individual), Marcos A. Hernandez, President.

**Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants**

Mados Systems Inc. dba Mados Shippers Consultants, 6886 S Yosemite Street, Centennial, CO 80112, *Officers:* Maxwell Nwokeukwu, Vice President, (Qualifying Individual), Akudo L. Nwokeukwu, President.

Dockside Management, Inc. dba Dockside International Forwarders, 8405 NW., 53rd Street, Miami, FL 33166. *Officers:* Gonzalo Torres, Jr., President, (Qualifying Individual), Clara M. Faya.

Grandiosa Enterprises, Inc., 58 Pyles Lane, Suite #300, New Castle, DE 19720, *Officer:* Daniel S. Cabellos, President, (Qualifying Individual).

Delphi Logistics, Corp. dba Delphi Logistics, 2023 N.W. 84th Ave., Suite 205, Miami, FL 33122. *Officers:*

Piedad D. Castrillon, Vice President, (Qualifying Individual), Alonso Silva, President.

Cargo Marine, 1810 Milby Street, Houston, TX 77003, Ziad H. Hajahmed, Sole Proprietor.

Dated: November 9, 2007.

**Karen V. Gregory,**

*Assistant Secretary.*

[FR Doc. E7–22356 Filed 11–14–07; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary Licenses; Correction

In the OTI Applicant Notice published in the **Federal Register** on October 17, 2007 (72 FR 58850) reference to the name of the Manns Freight Systems, Inc. dba Guardian Global Transport is corrected to read: ''Manna Freight Systems, Inc. dba Guardian Global Transport''

Dated: November 9, 2007.

**Karen V. Gregory,**

*Assistant Secretary.*

[FR Doc. E7–22383 Filed 11–14–07; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Rescission of Order of Revocation

Notice is hereby given that the Order revoking the following license is being rescinded by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515.

*License Number:* 006313N.

*Name:* Puerto Rico Freight Systems, Inc.

*Address:* Edificio 11, Central Mercantil Zona Libre, Guanaybno, PR 00965.

*Order Published:* FR: 10/31/07 (Volume 72, No. 210 Pg. 61645).

**Sandra L. Kusumoto,**

*Director, Bureau of Certification and Licensing.*

[FR Doc. E7–22347 Filed 11–14–07; 8:45 am]

**BILLING CODE 6730–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Announcement of the Second Meeting of the Physical Activity Guidelines Advisory Committee

**AGENCY:** Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science.

**ACTION:** Notice.

**Authority:** 42 U.S.C. 217a, section 222 of the Public Health Service Act, as amended. The Committee is governed by the provision of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

**SUMMARY:** The U.S. Department of Health and Human Services (HHS) announces the second in a series of three federal advisory committee meetings on the Physical Activity Guidelines for Americans, to be held in Washington, DC. This meeting will be open to the public. The Physical Activity Guidelines Advisory Committee has been charged with reviewing existing scientific literature to identify where there is sufficient evidence to develop a comprehensive set of specific physical activity recommendations. The Committee will prepare a report to the Secretary of HHS that documents the scientific background and rationale for the issuance of Physical Activity Guidelines for Americans. The report will also identify areas where further scientific research is needed. The Committee's recommendations will be utilized by the Department to prepare the final Physical Activity Guidelines. The intent is to issue physical activity recommendations for all Americans that will be tailored as necessary for specific subgroups of the population.

**DATES:** The Committee will meet December 6–7, 2007 for a day and a half meeting. The December 6 session will be from 8:30 a.m. to 5 p.m. The December 7 session will be from 8:30 a.m. to 1:15 p.m.

**ADDRESSES:** The meeting will be held in the Cohen Auditorium at the Wilbur J. Cohen Building, located at 330 Independence Avenue, SW., Washington, DC 20201.

**FOR FURTHER INFORMATION CONTACT:** CAPT Richard Troiano, PhD., Executive Secretary, Physical Activity Guidelines Advisory Committee, Department of Health and Human Services, Office of Public Health and Science, Office of Disease Prevention and Health Promotion, Room LL–100, 1101 Wootton Parkway, Rockville, MD 20852, 240/453–8280 (telephone), 240/453–8281 (fax). Additional information is available on the Internet at *http://www.health.gov/PAguidelines.*

**SUPPLEMENTARY INFORMATION:** The Physical Activity Guidelines Advisory Committee: The thirteen-member Committee is chaired by William Haskell, PhD., Professor of Medicine, Stanford University School of Medicine. The Vice-Chair is Miriam Nelson, PhD., Director, John Hancock Center for Physical Activity and Nutrition, Friedman School of Nutrition Science and Policy, Tufts University. Other members of the Committee include Rod K. Dishman, PhD., Professor of Exercise Science and Director, Exercise Psychology Laboratory, Department of Kinesiology, University of Georgia; Edward Howley, PhD., Professor Emeritus, Department of Exercise, Sport, and Leisure Studies, University of Tennessee; Wendy Kohrt, PhD., Professor of Medicine, Division of Geriatric Medicine, University of Colorado at Denver and Health Sciences Center; William Kraus, M.D., Professor, Division of Cardiovascular Medicine, Duke University School of Medicine; I-Min Lee, M.D., Sc.D., Associate Professor of Medicine, Harvard Medical School and Associate Professor of Epidemiology, Harvard School of Public Health; Anne McTiernan, M.D., PhD., Director, Prevention Center, Fred Hutchinson Cancer Research Center; Russell Pate, PhD., Associate Vice President for Health Sciences, Office of Research and Health Sciences and Professor, Department of Exercise Science, University of South Carolina; Kenneth Powell, M.D., M.P.H., Public Health and Epidemiologic Consultant; Judith Regensteiner, PhD., Professor Department of Medicine and Director, Center for Women's Health Research, University of Colorado at Denver and Health Sciences Center: James Rimmer, PhD., Professor and Director, National Center on Physical Activity and Disability, Department of Disability and Human Development, University of Illinois at Chicago; and Antronette Yancey, M.D., M.P.H., Professor, Department of Health Services, University of California at Los Angeles School of Public Health.

*Purpose of the Meeting:* The Advisory Committee will present current work performed since the initial meeting of the Committee in June and deliberate on next steps. The Committee will also hear oral comments from the public to help inform them as they prepare their report to the Secretary. The report to the Secretary will outline the scientific background and rationale for the issuance of Physical Activity Guidelines for Americans. The report will also identify areas where further scientific research is needed. The Committee's recommendations will be utilized by the Department to prepare the final Physical Activity Guidelines. The intent is to develop physical activity recommendations for all Americans that will be tailored as necessary for specific subgroups of the population.

*Public Participation at Meeting:* Members of the public are invited to observe the Advisory Committee meeting. On December 7, a portion of the meeting agenda will be allocated for committee members to hear public comments. All individuals wishing to observe and/or make comments at the meeting must indicate their intention to do so by pre-registering at *http://www.health.gov/PAguidelines.* Due to time constraints, a limited number of scheduled time slots for public comments will be made available on a first-come-first-served basis through pre-registration. Comments will also be limited to 1–2 minutes per individual. Attendees that do not pre-register to make comments cannot be guaranteed an opportunity to have his or her comments heard during the meeting. Individuals are encouraged to submit their comments in writing in advance of the meeting through the pre-registration process. Additionally, individuals wishing to only submit written comments may also do so through pre-registration or by e-mail to *PA.Guidelines@hhs.gov.* Please note there will be no public comment session during the Advisory Committee meeting on December 6. Registrations must be completed by November 30, 2007. Space for the meeting is limited and registrations will be accepted until maximum room capacity is reached. A waiting list will be maintained should registrations exceed room capacity. Individuals on the waiting list will be contacted as additional space for the meeting becomes available.

Registrants for the Physical Activity Advisory Guidelines Committee meeting must present valid government-issued photo identification (i.e., driver's license) and should arrive 45 minutes prior to the start of the meeting to clear through security. Security will provide

registered attendees badges that must be worn at all times and returned to security prior to exiting the Cohen Building.

Registration questions may be directed to Experient at *PAguidelines@experient-inc.com* (e-mail), (703) 525–8333 x3346 (phone) or (703) 525–8557 (fax).

Dated: November 8, 2007.

**Penelope Slade Royall,**

*RADM, USPHS, Deputy Assistant Secretary for Health, Office of Disease Prevention and Health Promotion.*

[FR Doc. E7–22333 Filed 11–14–07; 8:45 am]

**BILLING CODE 4150–32–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day–08–05AJ]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

**Proposed Project**

National Surveillance for Severe Adverse Events Associated with Treatment of Latent Tuberculosis Infection—New, Division of Tuberculosis Elimination (DTBE), National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

Between October 2000 and October 2007, 79 patients receiving treatment for Latent TB Infection (LTBI) were reported to the Division of Tuberculosis Elimination (DTBE), Centers for Disease Control and Prevention (CDC) with severe adverse events to their medications(s). A severe adverse event is defined as a drug-related reaction resulting in hospitalization or death of a person receiving treatment for LTBI. Deaths reported among persons with LTBI included, 2 of 50 persons who were on the recommended two-month regimen of rifampin and pyrazinamide (RZ); 9 of 22 treated with isoniazid alone, and 2 of 3 patients on other regimens (e.g., pyrazinamide and ethambutol). Severe adverse events such as hospitalizations, liver transplants, and death related to treatment of LTBI continue to be reported to DTBE.

The purpose of this information collection request is to determine the annual number and trends of severe adverse events associated with treatment of LTBI and identify common characteristics of patients with severe adverse events during treatment of LTBI. Potential correspondents are any of the 60 reporting areas for the national TB surveillance system (the 50 states, the District of Columbia, New York City, Puerto Rico, and 8 jurisdictions in the Pacific and Caribbean). Data will be collected using the data collection form for adverse event associated with LTBI treatment (AELT). The AELT form is completed for each reported hospitalization or death related to treatment of LTBI and contains demographic, clinical, and laboratory information. CDC will analyze and periodically publish reports summarizing national LTBI treatment adverse events statistics and also will conduct special analyses for publication in peer-reviewed scientific journals to further describe and interpret these data.

The Food and Drug Administration (FDA) collects data on adverse events related to drugs through the FDA MedWatch Program but it does not include the disease context and risk factors that are essential for revising treatment options for LTBI. Reporting will be conducted through telephone, e-mail, or during CDC site visits. There is no cost to respondents other than their time to gather medical records to complete the form. The total estimated annualized burden hours are 32.

ESTIMATED ANNUALIZED BURDEN

| Type of respondent | Form name | Number of respondents | Number reponses per respondent | Average burden per response (in hours) |
|---|---|---|---|---|
| Physician | AELT | 4 | 1 | 3 |
| Nurses | AELT | 4 | 1 | 4 |
| Medical Clerk | AELT | 4 | 1 | 1 |

Dated: November 6, 2007.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E7–22308 Filed 11–14–07; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day–08–07AU]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

**Proposed Project**

Methicillin-Resistant *Staphylococcus aureus* (MRSA) Infection Control Practices Survey—New—National Center for Preparedness, Detection, and Control of Infectious Diseases (NCPDCID), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

In October, 2006, CDC recommended specific strategies to reduce transmission of multi-drug resistant organisms, including MRSA, in U.S. hospitals. Currently detailed data on ongoing MRSA prevention efforts at hospitals reporting to CDC surveillance systems is unknown. CDC has developed a survey to assess MRSA prevention programs in place at health care facilities reporting MRSA infection data to CDC through established surveillance systems. In this project, infection control practitioners in all hospitals that participate in the MRSA portion of the Active Bacterial Core Surveillance System will be surveyed electronically three times. There will be an initial baseline survey and then two follow-up surveys, each a year apart. The surveys will determine if changes in infection control practice correlate with changes in rates of MRSA infections. The proposed survey will provide data that can be used to assess progress toward achieving CDC's Health Protection Goals. The survey will also provide data on facility-based MRSA prevention policies and procedures that may affect MRSA infection rates. These results will inform CDC in the prevention and control of MRSA.

This proposed project supports CDC's Goal of ''Healthy People in Healthy Places'' and its Strategic Goal to ''Increase the number of health care institutions that comply with evidence based guidelines for infection control.''

There is no cost to respondents other than their time to complete the survey. The total estimated annualized burden hours are 105 hours.

| Respondents | Number of respondents | Number of responses per respondent | Average burden per response (in hours) |
|---|---|---|---|
| Infection Control Practitioners | 210 | 1 | 30/60 |

Dated: November 8, 2007.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E7–22314 Filed 11–14–07; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

**[30Day–08–0728]**

## Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

### Proposed Project

The National Electronic Disease Surveillance System (NEDSS)—Extension—National Center for Public Health Informatics (NCPHI), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

CDC is responsible for the dissemination of nationally notifiable diseases information and for monitoring and reporting the impact of epidemic influenza on mortality, Public Health Services Act (42 U.S.C. 241). Since April 1984, CDC Epidemiology Program Office (EPO) has been working with the Council of State and Territorial Epidemiologists (CSTE) to demonstrate the efficiency and effectiveness of computer transmission of surveillance data between CDC and the state health departments.

By 1989, all 50 states were using this computerized disease surveillance system, which was then renamed the National Electronic Telecommunications System for Surveillance (NETSS) to reflect its national scope (OMB numbers 0920–0447 and 0920–0007).

Beginning in 1999, CDC, Epidemiology Program Office (EPO) worked with CSTE, state and local public health system staff, and other CDC disease prevention and control program staff to identify information categories and information technology standards to support integrated disease surveillance. That effort is now focused on development and completion of the National Electronic Disease Surveillance System (NEDSS), coordinated by CDC's National Center for Public Health Informatics, Division of Integrated Surveillance Systems and Services (DISSS).

States will continue to use portions of NETSS to transmit data to CDC. One of the reasons for providing NETSS to NEDSS data mapping is to identify what data elements in NETSS correspond to data elements in NEDSS. Those elements mapped from NETSS to NEDSS were collected in OMB number 0920–0007.

NEDSS will electronically integrate and link together a wide variety of surveillance activities and will facilitate more accurate and timely reporting of disease information to CDC and state and local health departments. Consistent with recommendations supported by our state and local surveillance partners and described in the 1995 report, *Integrating Public Health Information and Surveillance Systems,* NEDSS includes data standards, an internet based communications infrastructure built on industry standards, and policy-level agreements on data access, sharing, burden reduction, and protection of confidentiality.

To support NEDSS, CDC has developed an information system, the NEDSS Base System (NBS), which uses NEDSS technical and information standards. The NBS is currently deployed to 16 states, including AL, AR, ID, MD, ME, MT, NE, NM, NV, RI, SC, TN, TX, VA, VT, and WY.

CDC is requesting a three-year OMB clearance extension of collecting the NEDSS data. There are no costs to respondents other than their time. The average total annualized burden for the Weekly Morbidity Reports and the Annual Summary Report is 9,384 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

| Respondents | Number of respondents | Number of responses per respondent | Average burden per response (in hours) |
|---|---|---|---|
| Weekly Reporting | | | |
| States | 50 | 52 | 3 |
| Territories | 5 | 52 | 1.5 |
| Cities | 2 | 52 | 3 |
| Annual Reporting | | | |
| States | 50 | 1 | 16 |
| Territories | 5 | 1 | 10 |
| Cities | 2 | 1 | 16 |

Dated: November 8, 2007.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E7–22315 Filed 11–14–07; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

**Human T-box Transcription Factor Brachyury as a Target for Cancer Immunotherapy: Identification of Epitopes of Human Brachyury as Targets for T-cell Mediated Lysis of Tumors**

*Description of Technology:* Identification of tumor antigens is essential in advancing immune-based therapeutic interventions in cancer. Transcription factors that control mesoderm have been implicated in tumor cell invasion and metastasis. Brachyury, a member of the T-box transcription factor family, is a highly conserved protein and a fundamental player in mesoderm (epithelial-to-mesenchymal transition, i.e. EMT) specification in multicellular organisms.

This invention describes the identification of the human transcription factor Brachyury as a novel target for cancer immunotherapy for the treatment of several tumors such as tumors of lung, intestine, stomach, kidney, bladder, uterus, ovary, and testis, and chronic lymphocytic leukemia. This is the first demonstration that (a) a T-box transcription factor and (b) a molecule implicated in mesodermal development (EMT) can be a potential target for human T-cell mediated cancer immunotherapy.

*Applications:*

1. Brachyury can be targeted for cancer immunotherapy.
2. Epitopes of the Brachyury protein that could be used to expand human T-lymphocytes for T-cell mediated lysis of tumors.
3. The technology can be developed as a cancer vaccine.

*Advantages:*

1. This technology can be delivered with the U.S. government owned fowl pox vector.
2. *In vitro* proof of concept data are available.

*Benefits:* This is the first demonstration that (a) a T-box transcription factor and (b) a molecule implicated in mesodermal development (EMT) can be a potential target for human T-cell mediated cancer immunotherapy. This technology has the potential of becoming a successful therapy for metastatic cancers.

*Inventors:* Jeffrey Schlom, *et al.* (NCI, CCR, LTIB)

*Development Status: In vivo* studies are ongoing.

*Relevant Publication:* C Palena, DE Polev, KY Tsang, RI Fernando, M Litzinger, LL Krukovskaya, AV Baranova, AP Kozlov, J Schlom. The human T-box mesodermal transcription factor Brachyury is a candidate target for T-cell-mediated cancer immunotherapy. Clin Cancer Res. 2007 Apr 15;13(8):2471–2478.

*Patent Status:* U.S. Provisional Application filed 28 Feb 2007 (HHS Reference No. E–074–2007/0–US–01).

*Licensing Status:* This technology is available for licensing under an exclusive or non-exclusive patent license.

*Licensing Contact:* Michelle Booden, PhD.; 301/451–7337; *boodenm@mail.nih.gov.*

*Collaborative Research Opportunity:* The National Cancer Institute, Center for Cancer Research, Laboratory of Tumor Immunology and Biology is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize cancer vaccines aimed at targeting Brachyury. Please contact John D. Hewes, PhD. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

**Diagnostic Ovarian Cancer Biomarkers**

*Description of Technology:* Ovarian cancer is one of the most common malignancies. Warning symptoms generally do not occur until the tumor has already spread beyond the ovary. As a result, patients are diagnosed with advanced stages of ovarian cancer and their prognosis is poor. Five year

survival rate for these patients is only fifteen percent and despite a clinical response of eighty percent to surgery and chemotherapy, most patients experience tumor recurrence within two years of treatment. The overwhelming majority of patients will eventually develop chemoresistance and lose their batter against cancer.

The inventors have discovered unique proangiogenic biomarkers isolated from ovarian endothelial cells. By targeting tumor angiogenesis by inhibiting endothelial cells that support tumor growth, this technology provides methods to diagnose ovarian cancer in its early stages.

Available for licensing is a gene profile that is indicative of patient survival. Unlike other biomarkers that are determined from discrete patient groups at either end of the survival spectrum, this profile is based upon expressed genes in late stage, high-grade papillary serous ovarian tumors. This predictive patient survival profile is based upon the theory that gene expression for advanced late stage ovarian cancer is more likely to develop aggressive, recurrent disease.

Also available for licensing is a gene signature that can predict whether a patient will respond positively to chemotherapy, show an initial response but will relapse within six months of completing chemotherapy, or not respond to chemotherapy. This methodology may enable clinicians to identify patients who need alternative chemotherapy regiment and to recommend cancer treatment appropriately.

*Applications:*

Method to prognose ovarian cancer and likelihood of aggressive, recurrent ovarian cancer;

Method to predict patient survival with advanced stage ovarian cancer;

Method to predict ovarian patient sensitivity to chemotherapeutic agents;

Methods to identify treatment options to enhance patient's response to chemotherapeutic agents;

Methods to treat ovarian cancer patients with inhibitory proangiogenic agents;

Ovarian cancer therapeutics.

*Advantages:*

Rapid, easy to use diagnostics;

Tool to choose appropriate cancer treatments which may avoid patient exposure to negative side effects of chemotherapy.

*Market:*

Ovarian cancer is the fifth most common form of cancer in women in the U.S.;

Ovarian cancer is three times more lethal than breast cancer;

15,310 deaths in the U.S. in 2006.

*Development Status:* The technology is currently in the pre-clinical stage of development.

*Inventors:* Michael J. Birrer, *et al.* (NCI).

*Publication:* C Lu, *et al.* Gene alterations identified by expression profiling in tumor-associated endothelial cells from invasive ovarian carcinoma. Cancer Res. 2007 Feb 15;67(4):1757–1768.

*Patent Status:*

U.S. Provisional Application No. 60/951,073 filed 20 Jul 2007 (HHS Reference No. E–061–2007/0–US–01);

U.S. Provisional Application No. 60/899,942 filed 06 Feb 2007 (HHS Reference No. E–060–2007/0–US–01);

U.S. Provisional Application No. 60/901,455 filed 14 Feb 2007 (HHS Reference No. E–095–2007/0–US–01).

*Licensing Status:* Available for exclusive or non-exclusive licensing.

*Licensing Contact:* Jennifer Wong; 301/435–4633; *wongje@mail.nih.gov.*

*Collaborative Research Opportunity:* The Cell and Cancer Biology Branch of the National Cancer Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize a gene expression profile that predicts ovarian cancer patient response to chemotherapy. Please contact John D. Hewes, Ph.D., NCI Technology Transfer Center, Tel. 301–435–3121 or E-mail: *hewesj@mail.nih.gov* for more information.

**A Novel, Inhibitory Platelet Surface Protein (TREM Like Transcript, TLT–1): New Target for the Treatment of Cancer, Infectious Diseases, Cardiac Diseases, and Platelet-Associated Disorders**

*Description of Technology:* Triggering Receptors in Myeloid Cells (TREM) recently were discovered to modulate innate and adaptive immunity. Specifically, TREM1 amplifies the response to sepsis in innate immunity by activating neutrophils and other leukocytes; and TREM2 potentiates dendritic cell maturation in adaptive immunity.

This invention describes a novel, inhibitory platelet surface protein known as TREM like Transcript (TLT–1). TLT–1 is the first inhibitory receptor discovered to reside within the TREM gene locus. Structurally, TLT–1 also possesses inhibitory domains that indicate this regulatory function. TLT–1 is highly expressed in peripheral blood platelets and may modulate many other types of myeloid cells. Additionally, the invention describes specific, human, single chain antibodies (scFvs) that recognize TLT–1.

*Applications:*

1. This discovery implies the receptor has an important regulatory role in both innate and adaptive immunity.

2. TLT–1 is a potential therapeutic target for thrombosis and other platelet-associated disorders, as well as immune disorders, cancer, septic shock, infectious disease, stroke, heart disease, myocardial infarction, vascular disorders.

3. Detection of soluble TLT–1 in patient plasma suggests the protein is a marker of ongoing coagulopathies.

4. Defective platelet aggregation in TLT–1 null mice confirms a role for the protein in regulation of thrombosis associated with inflammation.

*Advantages:*

1. *In vitro* proof of concept data available—Three of the anti-TLT–1 scFvs inhibit thrombin-induced aggregation of human platelets in a dose-dependent manner.

2. Complete human origin of these antibodies suggests negligible immunogenicity and minimizes the problem of adverse immune responses in human therapy.

3. Target validation is complete. TLT–1 null mice demonstrate defects in platelet aggregation with no gross bleeding defect.

*Development Status: In vitro* experiments completed. Target validation with null mice completed. In vivo animal studies with scFv are currently ongoing.

*Inventors:* Drs. Toshiyuki Mori, *et al.* (NCI)

*Patent Status:* U.S. Patent Application No. 11/634,331 filed 04 Dec 2006 (HHS Reference No. E–177–2006/0–US–01).

*Licensing Contact:* Mojdeh Bahar; 301/435–2950; *baharm@mail.nih.gov.*

*Collaborative Research Opportunity:* The National Cancer Institute's Molecular Targets Development Program is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize antibodies that react specifically with TLT–1. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Dated: November 5, 2007.

**Steven M. Ferguson,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. E7–22302 Filed 11–14–07; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Prospective Grant of Exclusive License: Use of Licensed Patent Rights for Development of Therapies for Prostatic Diseases

**AGENCY:** National Institutes of Health, Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied the following patents or patent applications U.S. Patent No. 6,946,133 issued September 20, 2005 and U.S. Patent Application No. 11/606,929 filed December 1, 2006, as well as all continuations, divisionals, and issued and pending foreign counterparts [HHS Ref. No E–062–1996/0]; U.S. Patent Application Nos. 60/334,669 and 10/497,003 filed November 30, 2001 and August 24, 2004 respectively, as well as all continuations, divisionals, and issued and pending foreign counterparts [HHS Ref. No. E–124–2001/0, 1]; and U.S. Patent No. 6,165,460 issued December 26, 2000 and U.S. Patent Application No. 09/693,121 filed October 20, 2000; as well as all continuations, divisionals, and issued and pending foreign counterparts [HHS Ref. No E–200–1990/4] to BN ImmunoTherapeutics, which is located in Mountain View, CA. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory may be worldwide and the field of use may be limited to the use of Licensed Patent Rights for development of therapies for prostatic diseases. For the avoidance of doubt, said delivery formulation specifically excludes canary poxvirus vectors, NYVAC, eukaryotic expression vectors, aqueous-based delivery formulations, and recombinant yeast.

**DATES:** Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before January 14, 2008 will be considered.

**ADDRESSES:** Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: Michelle A. Booden, PhD., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 451–7337; Facsimile: (301) 402–0220; E-mail: *boodenm@mail.nih.gov.*

**SUPPLEMENTARY INFORMATION:** The present invention relates to isolated peptides comprising immunogenic peptides derived from PSA. These immunogenic peptides are considered agonist epitopes of the wild-type PSA–3 cytotoxic T lymphocyte (CTL) epitope, which is an agonist epitope modified from the wild type epitope and shows greater immune stimulating characteristics. This invention claims the physical composition and use of the PSA–3 agonist epitopes, including peptide, nucleic acid, pharmaceutical composition, and method of treatment. The PSA–3 agonist epitopes would have application in a number of traditional and non-traditional vaccine delivery systems for the treatment of cancer. The invention also describes the use of at least one target antigen or immunological epitope as an immunogen or vaccine in conjunction with various costimulatory molecules.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: November 7, 2007.

**Steven M. Ferguson,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. E7–22303 Filed 11–14–07; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

**Proposed Project: Evaluating Cultural Competence in Behavioral Healthcare Education and Training—NEW**

SAMHSA's Center for Mental Health Services (CMHS) is soliciting comments concerning its request for approval of a new information collection from graduates of behavioral healthcare education and training programs. The Evaluating Cultural Competence in Behavioral Healthcare Education and Training Interview Guide for Faculty and Administrators (the Faculty/Administrator Interview Guide) and the Evaluating Cultural Competence in Behavioral Healthcare Education and Training Interview Guide for Graduates (the Graduate Interview Guide) will be used by CMHS to investigate faculty's, administrators', and graduates' perceptions of effectiveness of program curricula to prepare them to function as culturally competent behavioral healthcare providers. In achieving these results, this project will aid CMHS's effort to further the development of a more culturally competent workforce; thereby enhancing progress toward

understanding and eliminating disparities in mental health services, which will ultimately help to transform the mental health system.

The Interview Guides will be administered via telephone with faculty, administrators, and recent graduates of behavioral healthcare education and training programs. The Interview Guides will be used to describe how and to what degree the curricula taught in behavioral healthcare education and training programs advances cultural competence effectively in the respective disciplines. The Interview Guides will address the following:

a. Respondent's gender, age, ethnicity, primary language, additional languages spoken, current status (faculty member, provider, researcher, government healthcare worker) and whether she/he is working in the field of training;

b. How cultural competence is defined and conceived;

c. How cultural competence training is implemented and provided to students in behavioral healthcare programs;

d. The program's approach to cultural competence and what effect the approach should have on a student's professional development;

e. Specific elements of programs that foster greater cultural awareness and sensitivity among students;

f. Methods of cultural competence training and their importance;

g. Training policies and guidelines related to cultural competence;

h. How cultural competence training is assessed and how the results of assessments are incorporated back into the program;

i. What methods are used to evaluate program success in terms of students' cultural competence training and how success is measured;

j. Indicators used in measuring students' satisfaction with cultural competence training;

k. Respondent's perceptions about effectiveness of instruction or material during graduate training, and what could have made the instruction more effective; and

l. How graduate training prepares students for professional practice.

The Interview Guides will each include approximately 20–24 questions and are expected to take about one hour to administer. The burden for conducting the interview is as follows:

| Interview guide | Number of respondents | Responses per respondent | Burden per response (hrs.) | Total burden (hrs.) |
|---|---|---|---|---|
| Evaluating Cultural Competence in Behavioral Healthcare Education and Training Interview Guide for Faculty and Administrators | 15 | 1 | 1 | 15 |
| Evaluating Cultural Competence in Behavioral Healthcare Education and Training Interview Guide for Graduates | 60 | 1 | 1 | 60 |
| Total | 75 | | | 75 |

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857 *AND* e-mail her a copy at *summer.king@samhsa.hhs.gov*. Written comments should be received within 60 days of this notice.

Dated: November 7, 2007.

**Elaine Parry,**

*Acting Director, Office of Program Services.*

[FR Doc. E7–22306 Filed 11–14–07; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[USCG–2007–0045]**

### Collection of Information Under Review by Office of Management and Budget: OMB Control Numbers: 1625–0005, 1625–0020, 1625–0029, 1625–0031, and 1625–0085

**AGENCY:** Coast Guard, DHS.

**ACTION:** Sixty-Day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit Information Collection Requests (ICRs) to the Office of Management and Budget (OMB) requesting an extension of their approval for the following collections of information: (1) 1625–0005, Application and Permit to Handle Hazardous Materials; (2) 1625–0020, Security Zones, Regulated Navigation Areas, and Safety Zones; (3) 1625–0029, Self-propelled Liquefied Gas Vessels; (4) 1625–0031, Plan Approval and Records for Electrical Engineering Regulations—Title 46 CFR Subchapter J; and (5) 1625–0085, Streamlined Inspection Program. Before submitting these ICRs to OMB, the Coast Guard is inviting comments as described below.

**DATES:** Comments must reach the Coast Guard on or before January 14, 2008.

**ADDRESSES:** To make sure your comments and related material do not enter the docket [USCG–2007–0045] more than once, please submit them by only one of the following means:

(1) Online: *http://www.regulations.gov.*

(2) Mail or Hand deliver to: Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Hand deliver between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) Fax to: Docket Management Facility, 202–493–2251. The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://www.regulations.gov.*

Copies of complete ICRs are available through this docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from Commandant (CG–611), U.S. Coast Guard Headquarters, (*Attn:* Mr. Arthur Requina), 2100 2nd Street, SW., Washington, DC 20593–0001. The telephone number is 202–475–3523.

**FOR FURTHER INFORMATION CONTACT:** Mr. Arthur Requina, Office of Information Management, telephone 202–475–3523, or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket

Operations, 202–493–0402, for questions on the docket.

**SUPPLEMENTARY INFORMATION:**

*Public participation and request for comments:* We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

*Submitting comments:* If you submit a comment, please include the docket number for this request [USCG–2007–0045], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, and an e-mail address or other contact information in the body of your document to ensure that you can be identified as the submitter. This also allows us to contact you in the event further information is needed or if there are questions. For example, if we cannot read your submission due to technical difficulties and you cannot be contacted, your submission may not be considered. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

*Viewing comments and documents:* Go to *http://www.regulations.gov* to view documents mentioned in this notice as being available in the docket. Click on ''Search for Dockets,'' and enter the docket number [USCG–2007–0045] in the Docket ID box, and click enter. You may also visit the Docket Management Facility in room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy Act:* Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://DocketsInfo.dot.gov*.

**Information Collection Request**

1. *Title:* Application and Permit to Handle Hazardous Materials.

*OMB Control Number:* 1625–0005.

*Summary:* The information sought by this collection, which includes form CG–4260, ensures the safe handling of explosives and other hazardous materials around ports and aboard vessels.

*Need:* Sections 1225 and 1231 of 33 U.S.C. authorize the Coast Guard to establish standards for the handling, storage, and movement of hazardous materials on a vessel and waterfront facility. Regulations in 33 CFR 126.17, 49 CFR 176.100, and 176.415 prescribe the rules for facilities and vessels.

*Respondents:* Shipping agents and terminal operators that handle hazardous materials.

*Frequency:* On occasion.

*Burden Estimate:* The estimated burden has increased from 145 hours to 185 hours a year.

2. *Title:* Security Zones, Regulated Navigation Areas, and Safety Zones.

*OMB Control Number:* 1625–0020.

*Summary:* The Coast Guard collects this information only when someone seeks a security zone, a regulated navigation area, or safety zone. It uses the information to assess the need to establish one of these areas.

*Need:* Sections 1226 and 1231 of 33 U.S.C.; 50 U.S.C. 191 and 195; and parts 6 and 165 of 33 CFR give the Coast Guard Captain of the Port (COTP) the authority to designate security zones in the United States for as long as deemed necessary to prevent damage or injury. Section 1223 of 33 U.S.C. authorizes the Coast Guard to prescribe rules to control vessel traffic in areas he or she deems hazardous because of reduced visibility, adverse weather, or vessel congestion. Section 1225 of 33 U.S.C. authorizes the Coast Guard to establish rules to allow the designation of safety zones where access is limited to authorized persons, vehicles, or vessels to protect the public from hazardous situations.

*Respondents:* Federal, State, and local government agencies, vessels and facilities.

*Frequency:* On occasion.

*Burden Estimate:* The estimated burden has increased from 194 hours to 295 hours a year.

3. *Title:* Self-propelled Liquefied Gas Vessels.

*OMB Control Number:* 1625–0029.

*Summary:* To ensure compliance with our rules for the design and operation of liquefied gas carriers, the Coast Guard needs the information sought in this collection utilizing agency form numbers CG–4355 and CG–5148.

*Need:* Sections 3703 and 9101 of 46 U.S.C. authorize the Coast Guard to establish regulations to protect life, property, and the environment from the hazards associated with the carriage of dangerous liquid cargo in bulk. Part 154 of 46 CFR prescribes these rules for the carriage of liquefied gases in bulk on self-propelled vessels by governing the design, construction, equipment, and operation of these vessels and the safety of personnel aboard them.

*Respondents:* Owners and operators of self-propelled vessels carrying liquefied gas.

*Frequency:* On occasion.

*Burden Estimate:* The estimated burden has increased from 5,416 hours to 6,566 hours a year.

4. *Title:* Plan Approval and Records for Electrical Engineering Regulations—Title 46 CFR Subchapter J.

*OMB Control Number:* 1625–0031.

*Summary:* The information sought is required to ensure compliance with our rules on electrical engineering for the design and construction of U.S. flag commercial vessels.

*Need:* Sections 3306 and 3703 of 46 U.S.C. authorize the Coast Guard to establish rules to promote the safety of life and property in commercial vessels. The electrical engineering rules appear at 46 CFR chapter I, subchapter J (parts 110 through 113).

*Respondents:* Owners, operators, and builders of vessels.

*Frequency:* On occasion.

*Burden Estimate:* The estimated burden has increased from 1,151 hours to 3,529 hours a year.

5. *Title:* Streamlined Inspection Program.

*OMB Control Number:* 1625–0085.

*Summary:* The Coast Guard established an optional Streamlined Inspection Program (SIP) to provide owners and operators of U.S. vessels an alternative method of complying with inspection requirements of the Coast Guard.

*Need:* Section 3306 of 46 U.S.C. authorizes the Coast Guard to prescribe regulations necessary to carry out inspections of vessels required under 46 U.S.C. 3301. Within the same subtitle, 46 U.S.C. 3103 allows the Coast Guard to rely on reports, documents, and records of other persons/methods determined to be reliable, to ensure

compliance with vessels and seamen requirements. The SIP regulations under 46 CFR part 8, subpart E, offer owners and operators of inspected vessels an alternative to traditional Coast Guard inspection procedures. Owners and operators of vessels opting to participate in the program will maintain them in compliance with a Company Action Plan (CAP) and Vessel Action Plan (VAP). They will have their own personnel periodically perform many of the tests/examinations conducted by marine inspectors of the Coast Guard, who expect participating vessels will continuously meet a higher level of safety/readiness throughout the inspection cycle.

*Respondents:* Owners and operators of vessels.

*Frequency:* On occasion. Application and plan development occur only once, at time of enrollment. Updates and revisions are required to be made every two years by the applicant. The Officer in Charge, Marine Inspection (OCMI) and the company SIP agent will review the plans every five years.

*Burden Estimate:* The estimated burden has increased from 2,138 hours to 2,496 hours a year.

Dated: November 8, 2007.

**D.T. Glenn,**

*Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.*

[FR Doc. E7–22367 Filed 11–14–07; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket No. CGD08–07–042]**

### Notice of Public Hearing on Bellaire Bridge Across the Ohio River, Mile 94.3 at Bellaire, OH

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of public hearing.

**SUMMARY:** The Commander, Eighth Coast Guard District will hold a public hearing to receive comments concerning the status of the Bellaire Bridge at Bellaire, Ohio. The hearing will allow interested persons to present comments and information about the bridge not being used for transportation purposes and being an obstruction to navigation.

**DATES:** The hearing will be held on December 19, 2007, from 3 p.m. to 6 p.m. If you would like to submit written material and requests to make an oral presentation at the hearing, please notify the Bridge Administrator no later than December 12, 2007.

**ADDRESSES:** The hearing will be held at the Bellaire Library, 330 32nd Street, Bellaire, Ohio 43906. Send written material and requests to make oral comments to Commander (dwb), Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, Room 2.107F, Saint Louis, Missouri 63103.

Commander (dwb) maintains the public docket for this notice and hearing minutes, comments and material received from the public will become part of Docket CGD 08–07–042. Written comments will be accepted and should reach the Bridge Administrator by close of business on December 12, 2007. All information pertaining to this Docket CGD 08–07–042 will be available for inspection or copying at the above address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions regarding this notice call Mr. Roger K. Wiebusch, Bridge Administrator, telephone (314) 269–2378.

**SUPPLEMENTARY INFORMATION:**

#### Background

Complaints have been received alleging that the bridge is not used for transportation and is unreasonably obstructive to navigation. Information available to the Coast Guard reflects concern about the lack of use of the bridge and its structural condition. The bridge was built in 1924 by the Interstate Bridge Company and used for land transportation until 1990.

#### Procedural

The hearing is open to the public. Attendees at the hearing, who wish to present testimony and have not previously made a request to do so, will follow those having submitted a request, as time permits. If a large number of persons wish to speak, the presiding officer may limit the time allotted to each speaker. Conversely, the public hearing may end early if all present wishing to speak have done so.

#### Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the hearing, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

Dated: November 6, 2007.

**Roger K. Wiebusch,**

*Bridge Administrator.*

[FR Doc. E7–22351 Filed 11–14–07; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket No. USCG–2007–0063]**

### National Maritime Security Advisory Committee Meeting

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of meeting.

**SUMMARY:** The National Maritime Security Advisory Committee (NMSAC), will meet in San Ramon, California to discuss various issues relating to national maritime security. This meeting will be open to the public.

**DATES:** The Committee will meet on Thursday, December 6, 2007, from 9:30 a.m. to 4 p.m. This meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before November 23, 2007. Requests to have a copy of your material distributed to each member of the committee or subcommittee should reach the Coast Guard on or before November 23, 2007.

**ADDRESSES:** The Committee will meet in Salon D at the Marriott San Ramon Hotel, 2600 Bishop Drive, San Ramon, California 94583. Send written material and requests to make oral presentations to Captain Mark O'Malley, Commandant (CG–544), Executive Director of NMSAC, U.S. Coast Guard Headquarters, Room 5302, 2100 2ND Street SW., Washington, DC 20593–0001. This notice is available in our online docket, USCG–2007–0063, at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Ryan Owens, Assistant to Executive Director of NMSAC; at (202) 372–1108.

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463).

#### Agenda of Meeting

The tentative agenda for the December 6, 2007 Committee meeting is as follows:

(1) Welcome and opening remarks; introduction of new Executive Assistant.

(2) Old Committee Action Items.

(3) Update from the Transportation Workers Identification Card (TWIC) Workgroup.

(4) Miscellaneous Updates on: the Maritime Sector Coordinating Council; USCG/CBP Joint Recovery Protocols for the Resumption of Trade; USCG NVIC 9–02 Ch 3,revisisions to Area Maritime Security Committee guidance and planning requirements per the SAFE Port Act; USCG's Container Inspection program and Status of the TWIC program.

(5) Public Comments.

(6) New Committee Action Items.

(7) Closing Remarks.

**Procedural**

This meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at a meeting, please notify the Executive Director no later than November 23, 2007. Written material for distribution at a meeting should reach the Coast Guard no later than November 23, 2007. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of a meeting, please submit 25 copies to the Executive Director no later than November 23, 2007.

**Information on Services for Individuals With Disabilities**

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Executive Director as soon as possible.

Dated: November 5, 2007.

**M. P. O'Malley,**

*Captain, U.S. Coast Guard, Chief, Office of Port and Facility Activities, Designated Federal Official, NMSAC.*

[FR Doc. E7–22355 Filed 11–14–07; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Big Branch Marsh National Wildlife Refuge

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability of the Final Comprehensive Conservation Plan and Finding of No Significant Impact.

**SUMMARY:** The Fish and Wildlife Service announces that a Final Comprehensive Conservation Plan (CCP) and Finding of No Significant Impact (FONSI) for Big Branch Marsh National Wildlife Refuge in St. Tammany Parish, Louisiana, is available for distribution. The CCP was prepared pursuant to the National Wildlife Refuge System Improvement Act of 1997, and in accordance with the National Environmental Policy Act of 1969, and describes how the refuge will be managed for the next 15 years. The compatibility determinations for hunting, fishing, wildlife observation and photography, environmental education and interpretation, bicycling, trapping of selected furbearers, forest management, and mosquito management are also available within the CCP.

**ADDRESSES:** A copy of the CCP/FONSI may be obtained by writing to the Big Branch Marsh National Wildlife Refuge, 61389 Highway 434, Lacombe, Louisiana 70445. The plan may also be accessed and downloaded from the Service's Web site address: *http://southeast.fws.gov/planning/.*

**FOR FURTHER INFORMATION CONTACT:** Charlotte Parker, Natural Resource Planner, Southeast Louisiana Refuge Complex, Telephone: 985/882–2029; Fax: 985/882–9133; Electronic mail: *charlotte_parker@fws.gov*; or by writing to the Natural Resource Planner at the address in the **ADDRESSES** section.

**SUPPLEMENTARY INFORMATION:** With this notice, we finalize the CCP process for Big Branch Marsh National Wildlife Refuge begun as announced in the **Federal Register** on January 12, 2004 (69 FR 1756). We released the Draft CCP/EA to the public, announcing and requesting comments for 30 days in a notice of availability in the **Federal Register** on April 30, 2007 (72 FR 21284).

The Draft CCP/EA identified and evaluated three alternatives for managing the refuge over the next 15 years. Alternative A, the ''no action'' alternative, would have continued current management of the refuge. Alternative B, the ''proposed'' alternative, would emphasize maintaining and improving wetland habitats, monitoring targeted flora and fauna representative of the Pontchartrain Basin, and providing quality public use programs and wildlife-dependent recreational activities. The refuge headquarters would not only house administrative offices, but would offer interpretation of refuge wildlife and habitats, demonstrate habitat improvements for individual landowners, and be developed as an urban public use area with trails and visitor and community outreach. Management decisions and actions would support wildlife species and habitat occurring on the refuge based on well-planned strategies and sound professional judgment. Alternative C would have focused refuge management on expanding public use activities to the fullest extent possible, while conducting only mandated resource protection.

Based on the environmental assessment and the comments received, the Service adopted Alternative B as its ''preferred'' alternative. This alternative was considered to be the most effective for meeting the purposes of the refuge by: (1) Assessing which species should be targeted for monitoring; (2) conserving and restoring wetlands; (3) determining best management practices for forestry and fire management programs; and (4) monitoring management actions for effectiveness. Public use programs will be updated to support and teach reasons behind refuge management actions, and to provide quality experiences to refuge visitors. The refuge headquarters will be developed to provide more visitor services. Alternative B best achieves national, ecosystem, and refuge-specific goals and objectives and positively addresses significant issues and concerns expressed by the public.

Big Branch Marsh National Wildlife Refuge is in St. Tammany Parish, Louisiana, between the towns of Mandeville and Slidell. The refuge covers a total of 17,366 acres within the 24,000-acre acquisition boundary. The refuge is located within the Pontchartrain Basin and consists of diverse habitat types, such as open waters of Lake Pontchartrain, marshes, ponds, bayous, submerged aquatic vegetation beds, prairie terrace, forested wetlands, and pine ridges within a relatively small area. Annually, more than 49,000 visitors participate in refuge activities.

**Authority:** This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: July 20, 2007.

**Cynthia K. Dohner,**

*Acting Regional Director.*

[FR Doc. E7–22311 Filed 11–14–07; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WO–250–1220–PM–24 1A]**

### 60-Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

**AGENCY:** Department of the Interior, Bureau of Land Management.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Record Keeping Requirements, the Department of the Interior (DOI), Bureau of Land Management (BLM) invites public comments on the proposed collection of information (1004–XXXX).

**DATES:** Public comments will be accepted on or before January 14, 2008.

**ADDRESSES:** *Send Comments to:* You may send comments to Jennifer Hoger Russell, Park Studies Unit, College of Natural Resources, University of Idaho, P.O. Box 44139, Moscow, ID 83844–1139; Phone: (208) 885–4806; Fax (208) 885–4261, e-mail: *jhoger@uidaho.edu.* Also, you may send comments to Alexandra Ritchie, BLM Bureau Information Collection Clearance Officer, 1620 L Street, NW., Room 401, Washington, DC 20036 or by e-mail at *Alexandra_Ritchie@blm.gov.* All responses to this notice will be summarized and included in the request for the Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

*To Request a Draft of Proposed Collection of Information Contact:* Jennifer Hoger Russell, Park Studies Unit, College of Natural Resources, University of Idaho, P.O. Box 44139, Moscow, ID 83844–1139; Phone: (208) 885–4806; Fax (208) 885–4261, e-mail: *jhoger@uidaho.edu.*

**FOR FURTHER INFORMATION CONTACT:** Victoria ''Vicki'' Josupait, Bureau of Land Management National Operations Center, DFC, Building 50, P.O. Box 25047, OC–531, Denver, CO 80225; or via phone 303–236–6313; or via e-mail: *Victoria_Josupait@blm.gov.* You are entitled to a copy of the entire information collection request package free of charge.

**SUPPLEMENTARY INFORMATION:**

*Title:* Bureau of Land Management Visitor Satisfaction Survey.

*Bureau Form Number:* None.

*OMB Number:* 1004–XXXX.

*Expiration Date:* To be requested.

*Type of Request:* New collection.

*Description of Need:* The Government Performance and Results Act (GPRA) of 1993 (Pub.L. No. 103–62) sets out to ''improve Federal program effectiveness and public accountability by promoting a new focus on results, service quality, and customer satisfaction'' (Section 2. b. 3). In order to fulfill this responsibility, DOI's bureaus and offices must collect data from their respective user groups to (1) better understand the needs and desires of the public and (2) respond to those needs and desires accordingly.

The GPRA is supported by Executive Order (E.O.) 12862 (September 11, 1993) aimed at ''ensuring the Federal Government provides the highest quality service possible to the American people.'' The E.O. discusses surveys as a means for determining the kinds and qualities of service desired by the Federal Government's customers and for determining satisfaction levels for existing service. Voluntary customer surveys provide valuable information regarding customer satisfaction with BLM's services, recreation experience, and value for fee paid, as well as reporting on annual performance goals.

The GPRA requires that the BLM develop goals to improve program effectiveness and public accountability, and to measure performance related to these goals. The BLM Visitor Satisfaction Survey (Survey) measures performance toward those goals through a short visitor survey. The project is an element of the BLM Strategic Plan.

The Survey is funded by the BLM through an assistance agreement with the Park Studies Unit at the University of Idaho. The BLM had used a longer version of the survey to conduct visitor surveys at approximately 22 BLM recreation sites annually since 1999, with the exception of 2002 (OMB No. 1040–0001, exp. 01/31/05). In 2005, the BLM received clearance for the Survey (OMB No. 1040–0001, exp. 1/31/08). This is a request that will replace the previously-approved information collection under which we have been operating for several years, with the addition of two questions to address new performance measures, and with a new clearance number.

The purpose of the Survey is to measure visitors' opinions and satisfaction regarding facilities, fees, services, interpretation and education, and recreational opportunities at each site and Bureau-wide. This effort is required by GPRA and other DOI strategic planning efforts. Data from the proposed survey is needed to assess performance regarding BLM GPRA goals 3.1.01, 3.1.11, 3.1.15, and 3.1.16. The relevant BLM GPRA goals state:

Goal 3.1.01: *Percent of visitors satisfied with the quality of their recreation experience. (Target 96%).*

Goal 3.1.11: *Satisfaction with the quality of interpretation and environmental education products in Special Recreation Management Areas as measured by a general public survey. (Target 91%).**

Goal 3.1.15: *Percent of visitors satisfied with services provided by commercial recreational operations. (Target—Establish Baseline).**

Goal 3.1.16: *Percent of customers satisfied with the value for fee paid. (Target 90%).*

**New measures for the FY08 survey.*

Each of these goals directly supports the DOI Strategic Plan Mission Goal to ''Improve recreation opportunities for America'', and End Outcome Goal 1 to ''Improve the Quality and Diversity of Recreation Experiences and Visitor Enjoyment on DOI lands'', as identified in the DOI GPRA Strategic Plan 2007–2012. BLM performance on all goals measured in this study will contribute to DOI Department-wide performance reports. Results of the Survey will also be used by local BLM managers to improve visitor services and to allocate limited resources.

Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Record Keeping Requirements, the BLM invites comments on the need for gathering the information in the proposed survey (OMB No. 1004–XXXX). Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology.

*Automated data collection:* This information will be collected via in-person intercept surveys. No automated data collection will take place.

*Description of respondents:* Visitors to approximately 22 BLM recreation sites.

*Estimated average number of respondents:* 3,500 respondents (1,050 non-respondents and 2,450 respondents).

*Estimated average number of responses:* 3,500 respondents (1,050 non-responses and 2,450 responses).

*Estimated average burden hours per response:* 1 minute for non-respondents and 8 minutes for respondents.

*Frequency of response:* 1 time per respondent.

*Estimated annual reporting burden:* 482.5 hours.

Dated: November 8, 2007.

**Alexandra Ritchie,**

*Information Collection Clearance Officer, Bureau of Land Management.*

[FR Doc. E7–22238 Filed 11–14–07; 8:45 am]

BILLING CODE 4310–84–P

## DEPARTMENT OF THE INTERIOR

**[Docket No. MMS–2007–OMM–0063]**

### Minerals Management Service

### MMS Information Collection Activity: 1010–0151 (30 CFR 250, Subpart B) Plans and Information, Extension of a Collection; Comment Request

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of extension of an information collection (1010–0151).

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR 250, Subpart B, Plans and Information.

**DATE:** Submit written comments by January 14, 2008.

**ADDRESSES:** You may submit comments by any either of the following methods listed below.

- *Electronically:* go to *http://www.regulations.gov*, select ''Minerals Management Service'' from the agency drop-down menu, then click ''submit.'' In the Docket ID column, select MMS–2007–OMM–0063 to submit public comments and to view supporting and related materials available. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link. All comments submitted will be published and posted to the docket after the closing period.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Cheryl Blundon; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ''Information Collection 1010–0151'' in your comments.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Blundon, Regulations and Standards Branch at (703) 787–1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulations and the forms that require the subject collection of information.

**SUPPLEMENTARY INFORMATION:**

*Title:* 30 CFR Part 250, Subpart B, Plans and Information.

*Form(s):* MMS–137, MMS–138, MMS–139, MMS–141, and MMS–142.

*OMB Control Number:* 1010–0151.

*Abstract:* The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.*, 31 U.S.C. 9701), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition. Sections 11 and 25 of the amended OCS Lands Act require the holders of OCS oil and gas or sulphur leases to submit exploration plans (EPs) or development and production plans (DPPs) to the Secretary for approval prior to commencing these activities. As a Federal agency, we have a continuing affirmative duty to comply with the Endangered Species Act (ESA). This includes a substantive duty to carry out any agency action in a manner that is not likely to jeopardize protected species as well as a procedural duty to consult with the Fish and Wildlife Service (FWS) and National Oceanic and Atmospheric Administration Fisheries (NOAA Fisheries) before engaging in a discretionary action that may affect a protected species.

To provide supplementary guidance and procedures, MMS issues Notices to Lessees and Operators (NTLs) on a regional or national basis. Regulation 30 CFR 250.103 allows MMS to issue NTLs to clarify, supplement, or provide more detail about certain requirements.

Regulations at 30 CFR part 250 Subpart B, implement these statutory requirements. The MMS engineers, geologists, geophysicists, environmental scientists, and other Federal agencies analyze and evaluate the information and data collected under subpart B to ensure that planned operations are safe; will not adversely affect the marine, coastal, or human environment; and will conserve the resources of the OCS. We use the information to: (a) Report annually to NOAA Fisheries the effectiveness of mitigation, any adverse effects of the proposed action, and any incidental take, in accordance with 50 CFR 402.14(i)(3), and (b) allow the Regional Supervisor to make an informed decision on whether to approve the proposed exploration or development and production plans as submitted, or whether modifications are necessary without the analysis and evaluation of the required information. The affected States also review the information collected for consistency with approved Coastal Zone Management (CZM) plans.

Specifically, MMS uses the information to evaluate, analyze, determine, or ensure that:

- Ancillary activities comply with appropriate laws or regulations and are conducted safely, protect the environment, and do not interfere or conflict with the other uses of the OCS (i.e., military use, subsistence activity).
- Points of contact and responsible parties are designated for proposed activities.
- Surveying, monitoring, or other activities do not interfere or conflict with preexisting and other uses of the area.
- Plans or actions meet or implement lease stipulation requirements.
- Proposed exploration, drilling, production, and pipeline activities are conducted in a safe and acceptable manner for the location and water depth proposed and conserve reservoir energy to allow enhanced recovery operations in later stages of lease development.
- Unnecessary or incompatible facilities are not installed on the OCS.
- Shallow drilling hazards (such as shallow gas accumulations or mudslide areas) are avoided.
- Areas are properly classified for $H_2S$, and appropriate procedures are in place.
- Appropriate oil spill planning measures and procedures are implemented.
- Expected meteorological conditions at the activity site are accommodated.
- Environmentally sensitive areas are identified, and the direct and cumulative effects of the activities are minimized.
- Offshore and onshore air quality is not significantly affected by the proposed activities.
- Waste disposal methods and pollution mitigation techniques are appropriate for local conditions.
- State CZM requirements have been met.
- Archaeological or cultural resources are identified and protected from unreasonable disturbances.
- Socioeconomic effects of the proposed project on the local community and associated services have been determined.
- Support infrastructures and associated traffic are adequately covered in plans.

The following forms used in the Gulf of Mexico Region (GOMR) are also submitted to MMS. The OMB approved these forms as part of the information collection for the current subpart B regulations.

• Form MMS–137 (Plan Information Form) is submitted to summarize plan information.

• Forms MMS–138 (GOM Air Emission Calculations for Exploration Plans) and MMS–139 (GOM Air Emission Calculations for Development Operations Coordination Documents (DOCDs)) are submitted to standardize the way potential air emissions are estimated and approved as part of the OCS plan.

• MMS–141 (ROV Survey Report) is submitted to report the observations and information recorded from 2 sets of ROV monitoring surveys to identify high-density biological communities that may occur on the seafloor in deep water.

• MMS–142 (Environmental Impact Analysis Worksheet) is a fill in the blank form that is submitted to identify the environmental impact-producing factors (IPFs) for the listed environmental resources.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR 250.197, ''Data and information to be made available to the public or for limited inspection.'' No items of a sensitive nature are collected. Responses are mandatory.

*Frequency:* On occasion.

*Estimated Number and Description of Respondents:* Approximately 130 Federal OCS oil and gas lessees and operators.

*Estimated Reporting and Recordkeeping ''Hour'' Burden:* The currently approved annual reporting burden for this collection is 321,817 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

| Citation 30 CFR 250 subpart B and NTLs | Reporting & recordkeeping requirement | Hour burden |
|---|---|---|
| | | Non-hour cost burden |
| 200 thru 206 | General requirements for plans and information | Burden with specific requirements below. |
| 208 | Notify MMS and other users of the OCS before conducting ancillary activities | 10 |
| 210(a) | Submit report summarizing & analyzing data/information obtained or derived from ancillary activities. | 1 |
| 210(b) | Retain ancillary activities data/information | 2 |
| 211 thru 228 | Submit EP and accompanying information (including forms MMS–137, MMS 138, MMS–142 used in GOMR) and provide notifications. | 640 $3,250 ea EP surface location* |
| 211 thru 228; 241 thru 262; NTLs. | Submit to MMS observer training requirement materials and information | 1/2 hour. |
| | Training certification and recordkeeping | 1/2 hour. |
| | If used, submit to MMS information on any passive acoustic monitoring system prior to placing it in service. | 1 hour. |
| | Submit to MMS marine mammal observation report(s). (This includes observer duty and training and are the occasional activities done in-house and not subcontracted out.) | 345 hours**. |
| | Observer training | $37.50 per hour. |
| | Observation Report/Form | $52 per hour. |
| | Observation Duty | $52 per hour. |
| 211 thru 228: 241 thru 262; NTLs. | Submit injured/dead protected species report | 1/2 hour. |
| 211 thru 228; 241 thru 262; NTLs. | Submit request for training video | 1/2 hour. |
| | Submit annual report to MMS on training process and certification | 1/2 hour. |
| | Training recordkeeping | 1/2 hour. |
| | Post placards on vessels and structures. (Exempt from information collection burden because MMS is providing exact language for the trash and debris warning, similar to the ''Surgeon General's Warning'' exemption.). | 0 |
| 231(b); 232(d); 234; 235(a); 281(d)(3); 283; 284; 285; 209. | Submit amended, modified, revised, or supplemental EP, or resubmit disapproved EP | 120 |
| 235(b); 272(b); 281(d)(3)(ii). | Appeal State's objection | Burden exempt as defined in 5 CFR 1320.4(a)(2), (c). |
| 241 thru 262; 209 | Submit DPP or DOCD and accompanying information (including forms MMS–137, MMS 139, MMS–NEW used in GOMR) and provide notifications. | 690 $3,750 ea DPP/DOCD well*. |
| 266(b); 267(d); 272(a); 273, 283; 284; 285; 209. | Submit amended, modified, revised, or supplemental DPP or DOCD, or resubmit disapproved DPP or DOCD. | GOM–95 POCS–600. |
| 269(b) | Submit information on preliminary plans for leases or units in vicinity of proposed development and production activities. | 2 |
| 281(a) | Submit various applications. Burdens included under appropriate subpart or form (1010–0050; 1010–0059; 1010–0141; 1010–0149). | 0 |
| 282 | Retain monitoring data/information. | 2 |
| | Submit monitoring plans | 1 |
| 282(b) | Submit monitoring reports and data (including form MMS–141 used in GOMR) | 2 |
| 287 thru 295 | Submit DWOP | 750 $3,150 ea DWOP. |
| 296 thru 298 | Submit CID | 443 $24,200 ea CID |
| 200 thru 299 | General departure and alternative compliance requests not specifically covered elsewhere in subpart B regulations. | 2 |

*You may have multiple locations and/or wells for each EP, EPP, or DOCD.

** Hours are based on 14 days of observing, attending a training session, and writing report(s).

*Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden:* We have identified seven non-hour costs associated with this information collection. Four of these non-hour cost burdens are cost recovery fees. They consist of fees being submitted with EP's, DPP's or DOCD's, DWOP's, and CID's. There are also three non-hour cost burdens that are associated with the Protected Species Observer Program. The costs associated with this program are due to activities that are, for the most part, subcontracted to other service companies with expertise in these areas. To allow for the potential in-house reporting by lessees/operators, we have retained a minimal hour burden in the table.

We estimate that the annual non-hour cost burden is $8,906,784. We have not identified any other ''non-hour cost'' burdens associated with this collection of information.

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

*Comments:* Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *''. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the ''non-hour cost'' burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

*Public Comment Procedures:* Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*MMS Information Collection Clearance Officer:* Arlene Bajusz (202) 208–7744.

Dated: October 15, 2007.

**E.P. Danenberger,**

*Chief, Office of Offshore Regulatory Programs.*

[FR Doc. E7–22300 Filed 11–14–07; 8:45 am]

BILLING CODE 4310–MR–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Committee for the Preservation of the White House; Notice of Public Meeting

**AGENCY:** National Park Service, Department of the Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Committee for the Preservation of the White House will be held at the White House at 2 p.m. on Wednesday, December 5, 2007.

**DATES:** December 5, 2007.

**FOR FURTHER INFORMATION CONTACT:** Executive Secretary, Committee for the Preservation of the White House, 1100 Ohio Drive, SW., Washington, DC 20242. (202) 619–6344.

**SUPPLEMENTARY INFORMATION:** It is expected that the meeting agenda will include policies, goals, and long range plans. The meeting will be open, but subject to appointment and security clearance requirements. Clearance information, which includes full name, date of birth and Social Security number, must be received by November 28, 2007. Due to the present mail delays being experienced, clearance information should be faxed to (202) 619–6353 in order to assure receipt by deadline. Inquiries may be made by calling the Committee for the Preservation of the White House between 9 a.m. and 4 p.m. weekdays at (202) 619–6344. Written comments may be sent to the Executive Secretary, Committee for the Preservation of the White House, 1100 Ohio Drive, SW., Washington, DC 20242.

Dated: November 5, 2007.

**Ann Bowman Smith,**

*Executive Secretary, Committee for the Preservation of the White House.*

[FR Doc. E7–22307 Filed 11–14–07; 8:45 am]

BILLING CODE 4312–JK–P

## INTERNATIONAL TRADE COMMISSION

**[Inv. No. 337–TA–617]**

### In the Matter of Certain Digital Televisions and Certain Products Containing Same and Methods of Using Same; Notice of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Institution of investigation pursuant to 19 U.S.C. 1337.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 15, 2007, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Funai Electric Co., Ltd. of Japan and Funai Corporation, Inc. of Rutherford, New Jersey. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain digital televisions and certain products containing same and methods of using same by reason of infringement of certain claims of U.S. Patent Nos. 6,115,074 and 5,329,369. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. The complainants request that the Commission institute an investigation and, after the investigation, issue a

permanent exclusion order and a permanent cease and desist order.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**FOR FURTHER INFORMATION CONTACT:** David O. Lloyd, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2576.

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2006).

*Scope of Investigation:* Having considered the complaint, the U.S. International Trade Commission, on November 8, 2007, *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain digital televisions and certain products containing same and methods of using same by reason of infringement of one or more of claims 1, 4, 5, 8, 9, and 23 of U.S. Patent No. 6,115,074 and claims 1–3, 5, 7, 10–13, 15, and 19–29 of U.S. Patent No. 5,329,369, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Funai Electric Co., Ltd., 7–1, 7-Chome, Nakagaito, Daito City, Osaka, 574–0013, Japan.

Funai Corporation, Inc., 201 Route 17, North, Suite 903, Rutherford, New Jersey 07070.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Vizio, Inc., 39 Tesla, Irvine, California 92618.

AmTran Technology Co., Ltd., 17F, 268, Lien Cheng Rd., Chungho City, Taipei Hsien, Taiwan 23553.

Polaroid Corporation, 1265 Main Street, Building W3, Waltham, Massachusetts 02451.

Petters Group Worldwide, LLC, 4400 Baker Road, Minnetonka, Minnesota 55343.

Syntax-Brillian Corporation, 1600 North Desert Drive, Tempe, Arizona 85281.

Taiwan Kolin Co., Ltd., 10F, #86 Section 1 Chung-King South Road, Taipei City, Taiwan 10048.

Proview International Holdings, Ltd., Unit 901, Paul Y Centre, No. 51 Hung To Road, Kun Tong, Hong Kong.

Proview Technology (Shenzhen) Co., Ltd., North Block 21, 23#, Shataukok Free Trade Zone, Shen Zhen, China.

Proview Technology, Ltd., 7373 Hunt Avenue, Garden Grove, California 92841.

TPV Technology, Ltd., Room 2108, 21/F, Harcourt House, 39 Gloucester Road, Wanchai, Hong Kong.

TPV International (USA), Inc., 3737 Executive Center Drive, Suite 261, Austin, Texas.

Top Victory Electronics (Taiwan) Co., Ltd., 10/F, #230, Liancheng Road, Zhonghe City, Taipei Hsien, Taiwan 23552.

Envision Peripherals, Inc., 47490 Seabridge Drive, Fremont, California 94538.

International Reliance Corp., 550 Cliffside Drive, San Dimas, California 91773.

(c) The Commission investigative attorney, party to this investigation, is David O. Lloyd, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Carl C. Charneski is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of a permanent exclusion order or cease and desist order or both directed against a respondent.

Issued: November 8, 2007.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E7–22207 Filed 11–14–07; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–453 and 731–TA–1136–1137 (Preliminary)]**

## Sodium Nitrite From China and Germany

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of countervailing duty and antidumping duty investigations and scheduling of preliminary phase investigations.

**SUMMARY:** The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase countervailing duty investigation No. 701–TA–453 (Preliminary) and antidumping duty investigation Nos. 731–TA–1136–1137 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China and Germany of sodium nitrite, provided for in subheading 2834.10.1000 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of China

and that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to sections 702(c)(1)(B) or 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) or 1673a(c)(1)(B)), the Commission must reach preliminary determinations in countervailing duty and antidumping duty investigations in 45 days, or in this case by December 24, 2007. The Commission's views are due at the Department of Commerce within five business days thereafter, or by January 2, 2008.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

**EFFECTIVE DATE:** November 8, 2007.

**FOR FURTHER INFORMATION CONTACT:** Dana Lofgren (202–205–3185 or *dana.lofgren@usitc.gov* ), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

**SUPPLEMENTARY INFORMATION:**

*Background*. These investigations are being instituted in response to a petition filed on November 8, 2007, by General Chemical Co. Inc. (Parsippany, NJ).

*Participation in the investigations and public service list*. Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission countervailing duty and antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list*. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Conference*. The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on November 27, 2007, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Dana Lofgren (202–205–3185 or *dana.lofgren@usitc.gov*) not later than November 21, 2007, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

*Written submissions*. As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before November 30, 2007, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: November 8, 2007.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E7–22296 Filed 11–14–07; 8:45 am]

**BILLING CODE 7020–02–P**

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## INTERNATIONAL TRADE COMMISSION

**[USITC SE–07–025]**

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** November 20, 2007 at 11 a.m.

**PLACE:** Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED**

1. Agenda for future meetings: None.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–444–446 and 731–TA–1107–1109 (Final) (Coated Free Sheet Paper from China, Indonesia, and Korea)—briefing and vote. (The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before December 6, 2007.)
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: November 8, 2007.

By order of the Commission.

**William R. Bishop,**

*Hearings and Meetings Coordinator.*

[FR Doc. E7–22269 Filed 11–14–07; 8:45 am]

**BILLING CODE 7020–02–P**

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## DEPARTMENT OF JUSTICE

### Foreign Claims Settlement Commission

**[F.C.S.C. Meeting Notice No. 7–07]**

### Notice of Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations

(45 CFR part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of Commission business and other matters specified, as follows:

*Date and Time:* Thursday, November 29, 2007, at 1 p.m.

*Subject Matter:* Issuance of Amended Proposed Decisions and Amended Final Decisions in claims against Albania.

*Status:* Open.

All meetings are held at the Foreign claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616–6988.

**Mauricio J. Tamargo,**

*Chairman.*

[FR Doc. 07–5718 Filed 11–13–07; 3:30 pm]

BILLING CODE 4410–01–P

## DEPARTMENT OF JUSTICE

### Coordinating Council on Juvenile Justice and Delinquency Prevention

**[OJP (OJJDP) Docket No. 1474]**

### Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

**AGENCY:** Coordinating Council on Juvenile Justice and Delinquency Prevention.

**ACTION:** Notice of meeting.

**SUMMARY:** The Coordinating Council on Juvenile Justice and Delinquency Prevention (Council) is announcing its December 7, 2007 meeting.

**DATES:** Friday, December 7, 2007, 9 a.m. to 11 a.m.

**ADDRESSES:** The meeting will take place at the U.S. Department of Justice (DOJ), Office of Justice Programs (OJP), 810 7th Street, NW., 3rd floor, Washington, DC 20531.

**FOR FURTHER INFORMATION CONTACT:** Robin Delany-Shabazz, Designated Federal Official, by telephone at 202–307–9963 [**Note:** This is not a toll-free telephone number], or by e-mail at *Robin.Delany-Shabazz@usdoj.gov*.

**SUPPLEMENTARY INFORMATION:** The Coordinating Council on Juvenile Justice and Delinquency Prevention, established pursuant to Section 3(2)A of the Federal Advisory Committee Act (5 U.S.C. App. 2) will meet to carry out its advisory functions under Section 206 of the Juvenile Justice and Delinquency Prevention Act of 2002, 42 U.S.C. 5601, *et seq.* Documents such as meeting announcements, agendas, minutes, and interim and final reports will be available on the Council's Web page at *http://www.JuvenileCouncil.gov*. (You may also verify the status of the meeting at that web address.)

Although designated agency representatives may attend, the Council membership is composed of the Attorney General (Chair), the Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Education, the Secretary of Housing and Urban Development, the Administrator of the Office of Juvenile Justice and Delinquency Prevention (Vice Chair), the Director of the Office of National Drug Control Policy, the Chief Executive Officer of the Corporation for National and Community Service, and the Assistant Secretary of Homeland Security for U.S. Immigration and Customs Enforcement. Up to nine additional members are appointed by the Speaker of the House of Representatives, the Senate Majority Leader, and the President of the United States.

#### Meeting Agenda

The agenda for this meeting will include: (a) Briefing on federal efforts to address disproportionality in the juvenile justice and child welfare systems; (b) an update on federal coordination in the Gulf Coast region and on other Council Partnership Projects; and (c) applicable legislative and program updates; announcements and other business. The meeting is open to the public.

#### Registration

For security purposes, members of the public who wish to attend the meeting must pre-register online at *http://www.juvenilecouncil.gov/meetings.html*. Should problems arise with web registration, call Daryel Dunston at 240–221–4343 or send a request to register for the December 7, 2007 Council meeting to Mr. Dunston. Include name, title, organization or other affiliation, full address and phone, fax and e-mail information and send to his attention either by fax at: 301–945–4295 or by e-mail to *ddunston@edjassociates.com*. Register no later than Friday, November 30, 2007. [**Note:** These are not toll-free telephone numbers.] Additional identification documents may be required. Space is limited.

**Note:** Photo identification will be required for admission to the meeting.

#### Written Comments

Interested parties may submit written comments by Friday, November 30, 2007, to Robin Delany-Shabazz, Designated Federal Official for the Coordinating Council on Juvenile Justice and Delinquency Prevention, at *Robin.Delany-Shabazz@usdoj.gov*. The Coordinating Council on Juvenile Justice and Delinquency Prevention expects that the public statements presented will not repeat previously submitted statements. Written questions and comments from the public may be invited at this meeting.

Dated: November 8, 2007.

**Michele DeKonty,**

*Chief of Staff.*

[FR Doc. E7–22301 Filed 11–14–07; 8:45 am]

BILLING CODE 4410–18–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–62,331; TA–W–62,331A]**

### Ansonia Copper and Brass, Inc., Ansonia, CT; and Ansonia Copper & Brass, Inc., Waterbury, CT; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 19, 2007 in response to a petition filed by a company official on behalf of workers of Ansonia Copper & Brass, Inc., Ansonia, Connecticut (TA–W–62,331) and Ansonia Copper & Brass, Inc., Waterbury, Connecticut (TA–W–62,331A).

The subject firm workers are under existing certifications (TA–W–58,222 and TA–W–58,222A) that expire on December 7, 2007.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated. Further investigation in this case would serve no purpose.

Signed at Washington, DC, this 6th day of November, 2007.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E7–22323 Filed 11–14–07; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–62,248]**

### ArvinMeritor, Gabriel Ride Control Division, Including On-Site Leased Workers of Pinnacle Staffing, Chickasha, OK; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on October 11, 2007, applicable to workers of ArvinMeritor, Gabriel Ride Control Division, Chickasha, Oklahoma. The notice was published in the **Federal Register** on October 26, 2007 (72 FR 60910).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of chrome rods.

New information shows that leased workers of Pinnacle Staffing were employed on-site at the Chickasha, Oklahoma location of ArvinMeritor, Gabriel Ride Control Division. The Department has determined that these leased workers were engaged in on-site activities related to the production of chrome goods at ArvinMeritor, Gabriel Ride Control Division, Chickasha, Oklahoma.

Based on these findings, the Department is amending this certification to include leased workers of Pinnacle Staffing working on-site at the Chickasha, Oklahoma location of the subject firm.

The intent of the Department's certification is to include all workers employed at ArvinMeritor, Gabriel Ride Control Division, Chickasha, Oklahoma who were adversely-impacted by a shift in production of chrome rods to Mexico.

The amended notice applicable to TA–W–62,248 is hereby issued as follows:

All workers of ArvinMeritor, Gabriel Ride Control Division, including on-site leased workers of Pinnacle Staffing, Chickasha, Oklahoma, who became totally or partially separated from employment on or after October 3, 2006, through October 11, 2009, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 7th day of November 2007.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E7–22322 Filed 11–14–07; 8:45 am]

BILLING CODE 4510–FN–P

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## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–62,176]**

### First American Title Insurance Company: Eagle Production Center; Flint, MI; Notice of Negative Determination Regarding Application for Reconsideration

By application dated October 16, 2007, a worker requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of First American Title Insurance Company, Eagle Production Center, Flint, Michigan (subject firm) to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA). The negative determination was issued on October 9, 2007, and the Department's Notice of negative determination was published in the **Federal Register** on October 26, 2007 (72 FR 60910).

The worker-filed TAA/ATAA petition was denied because the subject firm does not produce an article within the meaning of Section 222(a)(2) of the Act. Workers at the subject firm are engaged in title insurance operations which entail the examining of chain of title for residential and commercial properties, writing title commitments and policies, interacting with customers and providing customer service, and abstracting.

Pursuant to 29 CFR 90.18(c), administrative reconsideration may be granted if:

(1) It appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) It appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) In the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The request for reconsideration alleges that the subject workers produce an ''end product.'' These products include search packages (abstracts of land title and copies of documents identifying a chain of title and encumbrances to the property); property reports (copies of documents covering the customers' interests such as easements and mortgages); title commitments (a document that indicates a commitment to issue title insurance and provides a complete history of the property); and title policies (a compilation of documents that is delivered to and paid for by the customer). The request for reconsideration also states that the ''assemblage and distribution of the product(s)'' is being shifted to India and the Philippines.

It is the Department's policy that the subject firm must produce an article domestically. The Department's policy is supported by current regulation. 29 CFR 90.11(c)(7) requires that the petition include a ''description of the articles produced by the workers' firm or appropriate subdivision, the production or sales of which are adversely affected by increased imports, and a description of the imported articles concerned. If available, the petition should also include information concerning the method of manufacture, end uses, and wholesale or retail value of the domestic articles produced and the United States tariff provision under which the imported articles are classified.''

In order to determine whether the subject firm is a manufacturing firm, the Department consulted the North American Industry Classification System (NAICS) Web site. The NAICS identifies the primary activity of the company, which is useful in understanding what a firm does for its customers, which, in turn, aids in determining whether a firm produces an article or provides services for its customers. According to the NAICS, the subject firm is a ''Direct Title Insurance Carrier.'' This industry includes ''establishments primarily engaged in initially underwriting * * * insurance policies to protect the owners of real estate or real estate creditors against loss sustained by reason of any title defect to real property.''

After careful review of the request for reconsideration and previously-submitted information, the Department determines that the subject firm is a service firm and not a manufacturing firm. As a corollary, the Department determines that there was no shift of production abroad.

While the Department has discretion to issue regulations and guidance on the operation of the TAA program, the Department cannot expand the program

to include workers that Congress did not intend to cover, such as service workers. In 2002, while amending the Trade Act, the Senate explained the purpose and history of TAA:

> Since it began, TAA for workers has covered mostly manufacturing workers, with a substantial portion of program participants being steel and automobile workers in the mid- to late-1970s to early 1980s, and light industry and apparel workers in the mid- to late-1990s. In fiscal years 1995 through 1999, the estimated number of workers covered by certifications under the two TAA for workers programs averaged 167,000 annually, reaching a high of about 228,000 in 1999, despite a falling overall unemployment rate. During the same period, approximately 784 firms were certified under the TAA for firms program. Participating firms represent a broad array of *industries producing manufactured products*, including auto parts, agricultural equipment, electronics, jewelry, circuit boards, and textiles, as well as some producers of agricultural and forestry products.

S. Rep. 107–134, S. Rep. No. 134, 107th Cong., 2nd Sess. 2002, 2002 WL 221903 (February 4, 2002) (emphasis added). Clearly, the language suggests that the focus of TAA is the manufacture of marketable goods.

Congress has recognized the difference between manufacturers and service firms and that an amendment to the Trade Act is needed to cover workers in service firms. It has recently rejected at least two attempts to amend the Trade Act to expand TAA coverage to service firms. It did not pass the ''Trade Adjustment Assistance Equity for Service Workers Act of 2005'' or the ''Fair Wage, Competition, and Investment Act of 2005.'' Most recently, Senator Baucus introduced the ''Trade and Globalization Adjustment Assistance Act of 2007'' which provides for an expansion of coverage to workers in a ''service sector firm'' when there are increased imports of services like or directly competitive with articles produced or services provided in the United States, or a shift in provision of like or directly competitive articles or services to a foreign country, and Congressman Rangel introduced a similar bill in the House of Representatives that was discussed in late October 2007.

Until Congress amends the Trade Act to cover service workers, the worker group seeking TAA certification (or on whose behalf certification is being sought) must work for a firm or appropriate subdivision that produces an article and there must be a relationship between the workers' work and the article produced by the workers' firm or appropriate subdivision that produces an article domestically.

After careful review of the request for reconsideration and previously submitted materials, the Department determines that there is no new information that supports a finding that Section 222(a)(2) of the Trade Act of 1974 was satisfied and that there was no mistake or misinterpretation of the facts or the law.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 6th day of November 2007.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E7–22321 Filed 11–14–07; 8:45 am]

BILLING CODE 4510–FN–P

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## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of *October 29 through November 2, 2007.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

**Affirmative Determinations for Worker Adjustment Assistance**

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

*None.*

The following certifications have been issued. The requirements of section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

*TA–W–62,251; Precept Medical Products, Inc., Childersburg, AL: October 3, 2006.*

*TA–W–62,291; Compumedics USA Ltd, El Paso, TX: October 10, 2006.*

The following certifications have been issued. The requirements of section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

*None.*

The following certifications have been issued. The requirements of section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

*None.*

**Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance**

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of section 222(a)(2)(A) (increased imports) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

*TA–W–62,128; Weiman/Preview, A Division of Interlude Furniture LLC, Christiansburg, VA: September 5, 2006.*

*TA–W–62,191; Kurdziel Iron of Rothbury, Inc., On-Site Leased Workers of Employment Giant Formerly Know as Select Employment, Rothbury, MI: September 20, 2006.*

*TA–W–62,238; Cramco, Inc., On-Site Leased Workers from Express Personnel Services, Philadelphia, PA: September 28, 2006.*

*TA–W–62,241; Blyth Homescents International, A Subsidiary of Blyth, Inc./Elkin Mfg. Distribution, Leased Workers of Mega For, Elkin, NC: September 24, 2006.*

*TA–W–62,304; EBI, dba Biomet Trauma Spine Bracing etc., Biomet Bracing Division, Marlow, OK: October 12, 2006.*

*TA–W–62,335; Krizman International, Inc., Mishawaka, IN: October 18, 2006.*

*TA–W–62,305; Kimball Electronics Hibbing, A Subsidiary of Kimball Electronics Mfg., Hibbing, MN: October 15, 2006.*

*TA–W–62,313; Stanley Furniture Company, Inc., Martinsville Division, Martinsville, VA: October 15, 2006.*

*TA–W–62,313A; Stanley Furniture Company, Inc., Stanleytown Division, Stanleytown, VA: October 15, 2006.*

*TA–W–62,050; GAF Materials Corporation, Erie, PA: August 27, 2009.*

*TA–W–62,091; Plastech Engineering Products, Inc., Core Engineering Department, Auburn Hills, MI: August 28, 2006.*

*TA–W–62,233; Burke Hosiery Mills, Inc., Hickory, NC: September 27, 2006.*

*TA–W–62,221; T.P. Corporation, Duryea, PA: November 10, 2007.*

*TA–W–62,239; Menzies Southern Hosiery Mills, Also known as Southern Hosiery Mills, Inc., Hickory, NC: October 2, 2006.*

*TA–W–62,270; San Francisco City Lights, Inc., San Francisco, CA: October 5, 2006.*

The following certifications have been issued. The requirements of section 222(a)(2)(B) (shift in production) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

*TA–W–61,870; Goodrich Corporation, Landing Gears Division, Cleveland, OH: July 23, 2006.*

*TA–W–62,120; Nifco America Corp., On-Site Lease Workers from Dawson and I–Force, Canal Winchester, OH: September 6, 2006.*

*TA–W–62,156; Hypercom Corporation, Headquarters Division, Phoenix, AZ: September 14, 2006.*

*TA–W–62,226; ConAgra Foods, Edina, MN: September 28, 2006.*

*TA–W–62,314; Motorola Inc., On-Site Leased Workers of Manpower, Schaumburg, IL: December 10, 2007.*

*TA–W–62,354; GDX North America, Inc., GDX Automotive, Wabash, Indiana Division, Wabash, IN: October 22, 2006.*

*TA–W–62,212; Eastman Kodak Company, WW Thermal Media Flow Division, On-Site Leased Workers From Datrose, Adecco, Rochester, NY: September 18, 2006.*

*TA–W–62,294; Allstar Pro LLC, Division of Linear LLC, On-Site Leased Workers From Bernard, Downingtown, PA: October 10, 2006.*

*TA–W–62,332; H.L. Operating Corporation, d/b/a Hartmann, Inc., Workers Wages are Under Hartmann, On-Site Leased Workers From Chase Staffing, Lebanon, TN: October 19, 2006.*

*TA–W–62,344; Black and Decker Industrial Products Group, A Subsidiary of Black and Decker Inc., Router Bits Division, Jackson, TN: October 22, 2006.*

*TA–W–62,348; Madison Industries, Inc., Sumter, SC: October 16, 2006.*

The following certifications have been issued. The requirements of section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

*TA–W–62,318; R.L. Stowe Mills, Inc., Stowe Spinning Division, Belmont, NC: October 16, 2006.*

The following certifications have been issued. The requirements of section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

*None.*

**Negative Determinations for Alternative Trade Adjustment Assistance**

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of section 246 has not been met. The firm does not have a significant number of workers 50 years of age or older.

*TA–W–62,251; Precept Medical Products, Inc., Childersburg, AL.*

*TA–W–62,291; Compumedics USA Ltd, El Paso, TX.*

The Department has determined that criterion (2) of section 246 has not been met. Workers at the firm possess skills that are easily transferable.

*None.*

The Department has determined that criterion (3) of section 246 has not been met. Competition conditions within the workers' industry are not adverse.

*None.*

**Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance**

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

*TA–W–62,243; Electric Mobility Corporation, Sewell, NJ.*

*TA–W–62,374; VF Jeanswear Limited Partnership, Service Support Center, Greensboro, NC.*

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

*None.*

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

*TA–W–61,854; General Automatic Machine Products Co., North Adams, MI.*

*TA–W–61,889; Flint Group, Sheetfed Division, Holland, MI.*

*TA–W–61,917; Millennium Specialty Chemicals, Inc., Baltimore, MD.*

*TA–W–62,093; Riverside Uniform Rentals, Inc., A Division of Riverside Mfg. Company, Prichard, WV.*

*TA–W–62,184; Mark Eyelet, Inc., On-Site Leased Workers of Jaci Carrol Staffing, Watertown, CT.*

*TA–W–62,184A; Ozzi II, Inc. (dba OC Eyelet), On-Site Leased Workers of Jaci Carrol Staffing, Watertown, CT.*

*TA–W–62,213; J.P. Price Lumber Company, Monticello, AR.*

*TA–W–61,922; Urban Industries, Inc., Bulk Bag Division, Galion, OH.*

*TA–W–62,220; Agrium U.S. Inc., Kenai Nitrogen Operation, Kenai, AK.*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA–W–62,315; Idaho Lottery Commission, Boise, ID.*

*TA–W–62,363; Tweel Home Furnishings, Rock Hill, SC.*

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

*None.*

I hereby certify that the aforementioned determinations were issued during the period of *October 29 through November 2, 2007.* Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: November 8, 2007.

**Ralph DiBattista,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. E7–22319 Filed 11–14–07; 8:45 am]

BILLING CODE 4510–FN–P

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## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–60,055; TA–W–60,055A]**

### Swift Textiles, d/b/a/ Swift Galey, Midland, GA, Including an Employee of Swift Textiles, d/b/a/ Swift Galley, Midland, GA Located in Garland, TX; Amended Notice of Revised Determination on Reconsideration

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Notice of Revised Determination on Reconsideration on December 6, 2006, applicable to workers of Swift Textiles, d/b/a/ Swift Galey, Midland, Georgia. The notice was published in the **Federal Register** on December 12, 2006 (71 FR 74562–74563).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that a worker separation has occurred involving an employee of the Midland, Georgia facility of Swift Textiles, d/b/a/ Swift Galey located in Garland, Texas. Mr. Gamalief Lotez provided sales support services for the production of denim fabric that is produced at the Midland, Georgia location of the subject firm.

Based on these findings, the Department is amending this certification to include an employee of the Midland, Georgia facility of Swift Textiles, d/b/a/ Swift Galey, located in Garland, Texas.

The intent of the Department's revised determination is to include all workers of Swift Textiles, d/b/a/ Swift Galey, Midland, Georgia who were adversely affected as secondary workers.

The amended notice applicable to TA–W–60,055 is hereby issued as follows:

All workers of Swift Textile, d/b/a/ Swift Galey, Midland, Georgia (TA–W–60,055), including an employee in support of Swift Textile, d/b/a/ Swift Galey, Midland, Georgia located in Garland, Texas (TA–W–60,055A), who became totally or partially separated from employment on or after September 11, 2005, through December 6, 2008, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 7th day of November 2007.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E7–22320 Filed 11–14–07; 8:45 am]

BILLING CODE 4510–FN–P

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## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total

or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 26, 2007.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 26, 2007.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 6th day of November 2007.

**Ralph DiBattista,**

*Director, Division of Trade Adjustment Assistance.*

APPENDIX

[TAA petitions instituted between 10/29/07 and 11/2/07]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 62369 | TEVA (State) | Miami, FL | 10/29/07 | 10/25/07 |
| 62370 | Tietex International (Comp) | Spartanburg, SC | 10/29/07 | 10/29/07 |
| 62371 | Leach and Garner Company (State) | North Attleboro, MA | 10/29/07 | 10/25/07 |
| 62372 | Tree Island Fastener (Comp) | Ferndale, WA | 10/29/07 | 10/22/07 |
| 62373 | Mahle (Comp) | Holland, MI | 10/29/07 | 10/24/07 |
| 62374 | VF Jeanswear Limited Partnership (Comp) | Greensboro, NC | 10/29/07 | 10/26/07 |
| 62375 | International Legwear Group (Comp) | Athens, TN | 10/29/07 | 10/26/07 |
| 62376 | Georgia-Pacific (Wkrs) | Los Angeles, CA | 10/29/07 | 10/26/07 |
| 62377 | First Choice Distribution (Comp) | Des Moines, IA | 10/29/07 | 10/26/07 |
| 62378 | Concentra Health Solutions (Comp) | Charlotte, NC | 10/29/07 | 10/22/07 |
| 62379 | Federal Mogul Ignition Company (Comp) | Burlington, IA | 10/30/07 | 10/15/07 |
| 62380 | Weyerhaeuser Aberdeen Log Sorting Yard (Comp) | Aberdeen, WA | 10/30/07 | 10/22/07 |
| 62381 | 3M Eau Claire (Comp) | Eau Claire, WI | 10/30/07 | 10/30/07 |
| 62382 | Milsco Manufacturing Company (Comp) | Milwaukee, WI | 10/30/07 | 10/25/07 |
| 62383 | Japser C. Fashion, Inc. (Wkrs) | New York, NY | 10/30/07 | 10/15/07 |
| 62384 | Energy Conversion Systems (Comp) | Dunn, NC | 10/30/07 | 10/29/07 |
| 62385 | Windstream Communications (Wkrs) | Lincoln, NE | 10/30/07 | 10/29/07 |
| 62386 | USR Optonix, Inc. (Comp) | Washington, NJ | 10/30/07 | 10/29/07 |
| 62387 | SAF Holland (Wkrs) | Warrenton, MO | 10/30/07 | 10/22/07 |
| 62388 | Dresser Rand Company (IUE) | Painted Post, NY | 10/30/07 | 10/23/07 |
| 62389 | Peer Foods Group, Inc. (Wkrs) | Chicago, IL | 10/30/07 | 10/15/07 |
| 62390 | Techline USA (Union) | Waunakee, WI | 10/31/07 | 10/29/07 |
| 62391 | MultiLayer Coating Technologies, LLC (Wkrs) | New Bedford, MA | 10/31/07 | 10/29/07 |
| 62392 | GE Zenith Controls (Comp) | Bonham, TX | 10/31/07 | 10/30/07 |
| 62393 | American Axle and Manufacturing, Inc. (Comp) | Buffalo, NY | 10/31/07 | 10/18/07 |
| 62394 | TI Automotive Systems (State) | Warren, MI | 11/01/07 | 10/30/07 |
| 62395 | MegTec Systems (Union) | Depere, WI | 11/01/07 | 10/31/07 |
| 62396 | Atrum-Brighton (Magna International) (UAW) | Brighton, MI | 11/01/07 | 10/30/07 |
| 62397 | Clariant Corporation (Comp) | Charlotte, NC | 11/02/07 | 11/01/07 |
| 62398 | Federal-Mogul (Comp) | Michigan City, IN | 11/02/07 | 11/01/07 |
| 62399 | Wausau Paper (Comp) | Groveton, NH | 11/02/07 | 10/31/07 |
| 62400 | Janesville Acoustic (UAW) | Grand Rapids, MN | 11/02/07 | 11/01/07 |
| 62401 | Victor Forstmann, Inc. (Comp) | East Dublin, GA | 11/02/07 | 10/31/07 |
| 62402 | Alma Products (Wkrs) | Alma, MI | 11/02/07 | 10/25/07 |
| 62403 | Quality Industrial Services (Wkrs) | Madisonville, KY | 11/02/07 | 10/26/07 |
| 62404 | Motor Wheel Commercial Vehicle Systems (Wkrs) | Berea, KY | 11/02/07 | 10/28/07 |

[FR Doc. E7–22318 Filed 11–14–07; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Request for Certification of Compliance—Rural Industrialization Loan and Grant Program

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** The Employment and Training Administration is issuing this notice to announce the receipt of a ''Certification of Non-Relocation and Market and Capacity Information Report'' (Form 4279–2) for the following:

*Applicant/Location:* Prima Bella Produce, Inc/Brawley, California.

*Principal Product/Purpose:* The loan, guarantee, or grant application is to make tenant improvements to an existing facility and to purchase new and used packing line equipment. The NAICS industry code for this enterprise is: 115114 Postharvest Crop Activities (except Cotton Ginning).

**DATES:** All interested parties may submit comments in writing no later than November 29, 2007. Copies of adverse comments received will be forwarded to the applicant noted above.

**ADDRESSES:** Address all comments concerning this notice to Anthony D. Dais, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210; or e-mail *Dais.Anthony@dol.gov*; or transmit via

fax 202–693–3015 (this is not a toll-free number).

**FOR FURTHER INFORMATION CONTACT:** Anthony D. Dais, at telephone number (202) 693–2784 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** Section 188 of the Consolidated Farm and Rural Development Act of 1972, as established under 29 CFR part 75, authorizes the United States Department of Agriculture to make or guarantee loans or grants to finance industrial and business activities in rural areas. The Secretary of Labor must review the application for financial assistance for the purpose of certifying to the Secretary of Agriculture that the assistance is not calculated, or likely, to result in: (a) A transfer of any employment or business activity from one area to another by the loan applicant's business operation; or, (b) An increase in the production of goods, materials, services, or facilities in an area where there is not sufficient demand to employ the efficient capacity of existing competitive enterprises unless the financial assistance will not have an adverse impact on existing competitive enterprises in the area. The Employment and Training Administration within the Department of Labor is responsible for the review and certification process. Comments should address the two bases for certification and, if possible, provide data to assist in the analysis of these issues.

Signed at Washington, DC November 8, 2007.

**Gay M. Gilbert,**

*Administrator, Office of Workforce Investment, Employment and Training Administration.*

[FR Doc. E7–22325 Filed 11–14–07; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2007–0011]**

### Federal Advisory Council on Occupational Safety and Health (FACOSH)

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Appointment of new members.

**SUMMARY:** On September 28, 2007, the Secretary of Labor appointed six new members to the Federal Advisory Council on Occupational Safety and Health (FACOSH).

**FOR FURTHER INFORMATION CONTACT:** Ms. Diane Brayden, Director, OSHA, Office of Federal Agency Programs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room 3622, Washington, DC 20210; telephone (202) 693–2122; fax (202) 693–1685; e-mail *ofap@dol.gov.*

**SUPPLEMENTARY INFORMATION:** FACOSH is authorized to advise the Secretary of Labor on all matters relating to the occupational safety and health of Federal employees (Occupational Safety and Health Act of 1970 (29 U.S.C. 668), 5 U.S.C. 7902, Executive Order 13446). This includes providing advice on how to reduce and keep to a minimum the number of injuries and illnesses in the Federal workforce and how to encourage the establishment and maintenance of effective occupational safety and health programs in each Federal department and agency.

FACOSH consists of 16 members, divided equally between representatives of Federal agencies and labor organizations representing Federal employees. FACOSH members serve three-year terms.

*FACOSH Member Appointments:* OSHA published a request for FACOSH nominations in the **Federal Register** (72 FR 7467–7468 (3/2/2007)), and received nominations for seventeen individuals. On September 28, 2007, the Secretary of Labor appointed the following five individuals to serve three-year terms ending in June 2010:

- Mr. Ralph E. Dudley, Tennessee Valley Authority,
- Ms. Kathleen J.H. Wheeler, U.S. Department of the Interior,
- Ms. Colleen M. Kelley, National Treasury Employees Union,
- Mr. William D. ''Chico'' McGill, International Brotherhood of Electrical Workers, and
- Mr. Chester G. Wheeler, Jr., Seafarers International Union.

In addition, the Secretary of Labor appointed Mr. Paul Hutter, U.S. Department of Veterans Affairs, to fill the remainder of a term that expires in June 2009.

*Authority and Signature:* Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by section 19 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 668), 5 U.S.C. 7902, section 1(c) of Executive Order 13446, the Federal Advisory Committee Act (5 U.S.C. App. 2), and Secretary of Labor's Order No. 5–2007 (72 FR 31160).

Signed at Washington, DC, this 9th day of November, 2007.

**Edwin G. Foulke, Jr.,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. E7–22310 Filed 11–14–07; 8:45 am]

**BILLING CODE 4510–26–P**

## NUCLEAR REGULATORY COMMISSION

### Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** U.S. Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of the OMB review of information collection and solicitation of public comment.

**SUMMARY:** The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* New collection.

2. *The title of the information collection:* NRC Survey of Public Response to Emergencies.

3. *The form number if applicable:* N/A.

4. *How often the collection is required:* This is a one-time collection.

5. *Who will be required or asked to report:* Members of the public that reside within the 10-mile Emergency Planning Zones (EPZs) of nuclear power plants.

6. *An estimate of the number of annual responses:* 920 (each respondent will answer one survey).

7. *The estimated number of annual respondents:* This is a one-time collection of 800 completed surveys.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 210 hours ((800 completed surveys × .25 hours per response = 200 hours) + (120 uncompleted surveys × .083 hours per response = 10 hours)).

9. *An indication of whether Section 3507(d), Public Law 104–13 applies:* N/A.

10. *Abstract:* As part of the NRC's effort to review and improve emergency response program areas, the NRC intends to conduct a telephone survey

to assess public reaction to existing protective action strategies, new protective action strategies, and the effectiveness in which these strategies are conveyed to the public. The survey will produce statistical descriptions of likely public reaction to and acceptance of various protective action strategies. The targets for the telephone survey are randomly selected members of the public that reside within the 10-mile EPZs around nuclear power plants. This is a nationwide survey of the public residing within EPZs. The response to the surveys will be used by the NRC in the development of enhancements to its guidance for nuclear power plant protective action recommendations and the means by which this information is disseminated. The survey will also improve the understanding of other areas related to protective action implementation, such as the extent of shadow evacuations and the expected usage of congregate care facilities.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by December 17, 2007. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Nathan J. Frey, Office of Information and Regulatory Affairs (3150–XXXX), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Nathan J. Frey@omb.eop.gov* or submitted by telephone at (202) 395–7345.

The NRC Clearance Officer is Margaret A. Janney, 301–415–7245.

Dated at Rockville, Maryland, this 8th day of November, 2007.

For the Nuclear Regulatory Commission.

**Margaret A. Janney,**

*NRC Clearance Officer, Office of Information Services.*

[FR Doc. E7–22334 Filed 11–14–07; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 150–00043 General License Pursuant to 10 CFR 150.20 EA–06–259; EA–07–230]**

## In the Matter of Universal Testing, LLC, Clearfield, UT; Confirmatory Order (Effective Immediately)

Universal Testing, LLC (Universal Testing) is the holder of a general license pursuant to 10 CFR 150.20 issued by the Nuclear Regulatory Commission (NRC or Commission). This general license was granted to Universal Testing at various times during calendar years 2005, 2006, and 2007.

### II

An NRC inspection was conducted at your Clearfield, Utah, facility on April 4, 2006. Following that inspection, an investigation was initiated on May 8, 2006, by the NRC Office of Investigations (OI) in order to determine whether a radiographer employed by Universal Testing willfully violated NRC regulations.

Based on the results of the NRC inspection and OI investigation, the NRC determined that a violation of NRC requirements occurred. The violation involved a failure to secure an industrial radiography exposure device containing licensed material as required by 10 CFR 20.1801 and 10 CFR 20.1802. The NRC also determined that the violation resulted from willful actions on the part of the radiographer involved.

### III

In a letter dated February 23, 2007, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty—$6,500 for the violation. In the February 23, 2007, letter, the NRC offered Universal Testing the opportunity to request Alternative Dispute Resolution (ADR) with the NRC in an attempt to resolve issues associated with these violations. In response to the February 23, 2007, letter, Universal Testing requested ADR to resolve the matter with the NRC. ADR is a process in which a neutral mediator, with no decision-making authority, assists the NRC and Universal Testing to resolve any differences regarding the matter.

An ADR session was conducted between Universal Testing and the NRC in Arlington, Texas, on July 25, 2007. During that ADR session, an Agreement in Principle was reached. The elements of the agreement consisted of the following:

1. Universal Testing will add one additional qualified person to conduct additional field audits of its radiographers. Universal Testing will conduct at least one unannounced field audit in NRC jurisdiction on each job where that job lasts more than 3 consecutive weeks.

2. For a period of 1-year from the date of this Confirmatory Order, Universal Testing will notify the NRC the same day that it accepts any contract to perform a job in NRC jurisdiction.

3. Within 30 days from the date of this Confirmatory Order, Universal Testing will develop and implement a disciplinary program with a graded approach for infractions. This disciplinary program will consider minor infractions up to willful failures to follow the rules. The disciplinary program will emphasize individual responsibility for radiation safety and radioactive material security, and will encourage reporting safety and security concerns. The disciplinary program will include a requirement that at least one individual who is in possession of a radiography camera be capable of responding to a security alarm.

4. Universal Testing will develop, maintain, and implement a procedure for employees who are in possession of licensed material and who are away from the office, to notify company owners or managers of their location every evening. The intent of the notification is for the company to actively maintain knowledge of where licensed material is located every evening. Universal Testing will develop this procedure within 60 days of the date of this order. This procedure will include a requirement for reporting of safety and security concerns. The procedure will also include actions the company will take to find licensed material when it has not arrived at its expected location.

5. Within 1-year from the date of this Confirmatory Order, Universal Testing will discuss with the Non-Destructive Testing Manager's Association (NDTMA) the possibility of an industry-based program to share information about radiography employees. The concept would be for this industry-based program to assist radiography companies to determine the trustworthiness and reliability of individuals applying for employment.

6. Not later than 1-year from the date of this Confirmatory Order, Universal Testing will discuss with NDTMA the possibility of submitting an article or making a presentation to the membership. The article or presentation will address the conditions of this Confirmatory Order and the value it adds to overall safe and effective operations. Alternatively, Universal

Testing will propose to make a presentation to the local Salt Lake City Chapter of the ASNT on the same subject. Not later than 11 months from the date of this Confirmatory Order, a draft of the proposed article or presentation will be provided to the NRC Region IV office (in advance of the submittal) for review, comment, and concurrence.

7. Universal Testing has expressed its intent to continue seeking radiography business in NRC's jurisdiction.

8. If Universal Testing applies for an NRC license, Universal Testing will request that the conditions of this Confirmatory Order be incorporated into its license.

9. The above provisions would not apply to any existing NRC licensee that may purchase Universal Testing, LLC. Universal Testing will promptly notify NRC Region IV if any existing NRC licensee agrees to purchase Universal Testing.

10. In recognition of the extensive corrective actions, the NRC agrees to reduce the civil penalty originally proposed to $500.

Some of the above conditions are clarified as indicated below. On October 29, 2007, Universal Testing consented to issuing this Order with the commitments, as described in Section IV below. Universal Testing further agreed that this Order is to be affective upon issuance and that it has waived its right to a hearing.

Accordingly, pursuant to Sections 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, the Commission's regulations in 10 CFR 2.202, 2.205, 10 CFR parts 20, 34, 150, and in part 71 that references 49 CFR 177, *it is hereby ordered, effective immediately, that:*

1. Within 30 days from the date of this Confirmatory Order, Universal Testing, LLC must pay the reduced civil penalty of $500 in accordance with NUREG/BR–0254 and submit to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, a statement indicating when and by what method payment was made.

2. Universal Testing will add one additional qualified person to conduct additional field audits of its radiographers. Universal Testing will conduct at least one unannounced field audit in NRC jurisdiction on each job where that job lasts more than 3 consecutive weeks.

3. For a period of one year from the date of this Confirmatory Order, Universal Testing will notify the NRC the same day that it accepts any contract to perform a job in NRC jurisdiction.

4. Within 60 days of the date of this Order, Universal Testing will develop, maintain, and implement a procedure that contains the following requirements.

(A) On occasions in which individuals are traveling away from the office, at least one individual who is in possession of a radiography camera shall be capable of responding to a security alarm 24 hours a day.

(B) Employees who are traveling away from the office shall contact company managers every evening and provide company managers with the physical location of the employee and the radiography camera in order for the company to actively maintain knowledge of where licensed material is located.

(C) The procedure will specify the actions company managers will take to locate licensed material when it has not arrived at its expected location and/or when an individual fails to make the required evening contact.

(D) The procedure will require employees to report safety and security concerns.

5. Within 30 days from the date of this Confirmatory Order, Universal Testing will develop, maintain, and implement a disciplinary program with a graded approach for infractions. This disciplinary program will consider minor infractions up to willful failures to follow the rules. The disciplinary program will emphasize individual responsibility for radiation safety and radioactive material security, and will encourage reporting safety and security concerns. The disciplinary program will consider the company's disciplinary actions for situations discussed in Item 4 above.

6. Within 1-year from the date of this Confirmatory Order, Universal Testing will discuss with the Non-Destructive Testing Manager's Association (NDTMA) the possibility of an industry-based program to share information about radiography employees. The concept would be for this industry-based program to assist radiography companies to determine the trustworthiness and reliability of individuals applying for employment.

7. Not later than 1-year from the date of this Confirmatory Order, Universal Testing will discuss with NDTMA the possibility of submitting an article or making a presentation to the membership. The article or presentation will address the conditions of this Confirmatory Order and the value it adds to overall safe and effective operations. Alternatively, Universal Testing will propose to make a presentation to the local Salt Lake City Chapter of the American Society of Non-destructive Testing (ASNT) on the same subject. Not later than 11 months from the date of this Confirmatory Order, a draft of the proposed article or presentation will be provided to the NRC Region IV office (in advance of the submittal) for review, comment, and concurrence.

8. If Universal Testing applies for an NRC license, Universal Testing will request that the conditions of this Confirmatory Order be incorporated into its license.

9. The above provisions do not apply to any existing NRC licensee that may purchase Universal Testing, LLC. Universal Testing will promptly notify NRC Region IV if any existing NRC licensee agrees to purchase Universal Testing.

The Regional Administrator, NRC Region IV, may relax or rescind, in writing, any of the above conditions upon a showing by Universal Testing, LLC of good cause.

Any person adversely affected by this Confirmatory Order, other than Universal Testing, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to Universal Testing, LLC, 393 South Main, Clearfield, Utah 84015. Because of the possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is

adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309 (d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 6th day of November, 2007.

For the Nuclear Regulatory Commission.

**Leonard D. Wert,**

*Acting Regional Administrator.*

[FR Doc. E7–22389 Filed 11–14–07; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 72–26]**

## Notice of Issuance of Addendum to the Supplement to the Environmental Assessment for the Diablo Canyon Independent Spent Fuel Storage Installation

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of Issuance.

**SUMMARY:** Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) is issuing an Addendum to the supplement to the Environmental Assessment (EA) for the Diablo Canyon Independent Spent Fuel Storage Installation (ISFSI). NRC issued the EA and initial Finding of No Significant Impact (FONSI) for this action on October 24, 2003, and subsequently issued a license for the Diablo Canyon ISFSI to the Pacific Gas and Electric Company (PG&E), on March 22, 2004. The license authorizes PG&E to receive, possess, store, and transfer spent nuclear fuel and associated radioactive materials resulting from the operation of the Diablo Canyon Power Plant in an ISFSI at the site for a term of 20 years. On August 30, 2007, NRC issued a supplement to the EA and final FONSI, in response to the June 2, 2006, decision by the United States Court of Appeals for the Ninth Circuit, *San Luis Obispo Mothers for Peace* v. *NRC*, 449 F.3d 1016 (9th Cir. 2006). The supplement to the EA addressed the environmental impacts from potential terrorist acts against the Diablo Canyon ISFSI. The Addendum lists six documents to be added to the list of references provided in the supplement to the EA.

**FOR FURTHER INFORMATION CONTACT:** James R. Hall, Senior Project Manager, Licensing Branch, Division of Spent Fuel Storage and Transportation, Mail Stop EBB–3D–02M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. *Telephone:* (301) 492–3319; *e-mail: jrh@nrc.gov.*

**SUPPLEMENTARY INFORMATION:** On December 21, 2001, PG&E submitted an application to NRC, requesting a site-specific license to build and operate an ISFSI, to be located on the site of the Diablo Canyon Power Plant, in San Luis Obispo County, California. The NRC staff issued an EA and FONSI for this action on October 24, 2003, in accordance with the National Environmental Policy Act, and in conformance with the applicable requirements of 10 CFR part 51.

On March 22, 2004, the NRC staff issued Materials License No. SNM–2511 to PG&E, pursuant to 10 CFR part 72, authorizing PG&E to receive, possess, store, and transfer spent nuclear fuel and associated radioactive materials resulting from the operation of the Diablo Canyon Power Plant in an ISFSI at the site for a term of 20 years. Subsequently, the San Luis Obispo Mothers for Peace and other parties filed suit in the United States Court of Appeals for the Ninth Circuit, asking that NRC be required to consider terrorist acts in its environmental review associated with this licensing action. In its decision of June 2, 2006, *San Luis Obispo Mothers for Peace* v. *NRC*, 449 F.3d 1016 (9th Cir. 2006), the Ninth Circuit held that NRC could not categorically refuse to consider the consequences of a terrorist attack under NEPA and remanded the case to NRC.

In response to the Ninth Circuit decision, the Commission directed the NRC staff to prepare a revised EA, addressing the likelihood of a terrorist attack at the Diablo Canyon ISFSI site and the potential consequences of such an attack. On May 29, 2007, the NRC staff issued a preliminary supplement to the EA and draft FONSI to address the environmental impacts from potential terrorist acts against the Diablo Canyon ISFSI. On August 30, 2007, NRC issued the final supplement to the EA and final FONSI for this action. NRC summarized the comments received and responded to those comments in the final supplement to the EA, which also included a list of 14 references. Subsequent to the issuance of the final supplement, the staff determined that certain other documents concerning NRC's generic security assessments should also be included in the list of references. These 6 documents are listed in the Addendum.

Documents related to this action, including the May 29, 2007, preliminary supplement to the EA and draft FONSI; the August 30, 2007, EA supplement and final FONSI; the October 24, 2003, EA; and the Diablo Canyon ISFSI license and supporting documentation, are available electronically, at NRC's Electronic Reading Room, at: *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession number for the final EA supplement and final FONSI is ML072400511, and the accession number for the Addendum is ML073040434. For the preliminary supplement to the EA and draft FONSI, the accession number is ML071280256. The ADAMS accession number for the October 24, 2003, EA is ML032970337; and for the ISFSI license and related documents, the accession number is ML040780107. If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact NRC's Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

These documents may also be viewed electronically on the public computers located at NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents, for a fee.

Dated at Rockville, Maryland, this 7th day of November, 2007.

For the Nuclear Regulatory Commission.

**Robert A. Nelson,**

*Chief, Licensing Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. E7–22349 Filed 11–14–07; 8:45 am]

**BILLING CODE 7590–01–P**

## PENSION BENEFIT GUARANTY CORPORATION

### Required Interest Rate Assumption for Determining Variable-Rate Premium for Single-Employer Plans; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of interest rates and assumptions.

**SUMMARY:** This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site (*http://www.pbgc.gov*).

**DATES:** The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in November 2007. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in December 2007.

**FOR FURTHER INFORMATION CONTACT:** Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

**SUPPLEMENTARY INFORMATION:**

#### Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the ''required interest rate'') in determining a single-employer plan's variable-rate premium. Pursuant to the Pension Protection Act of 2006, for premium payment years beginning in 2006 or 2007, the required interest rate is the ''applicable percentage'' of the annual rate of interest determined by the Secretary of the Treasury on amounts invested conservatively in long-term investment grade corporate bonds for the month preceding the beginning of the plan year for which premiums are being paid (the ''premium payment year'').

On February 2, 2007 (at 72 FR 4955), the Internal Revenue Service (IRS) published final regulations containing updated mortality tables for determining current liability under section 412(l)(7) of the Code and section 302(d)(7) of ERISA for plan years beginning on or after January 1, 2007. As a result, in accordance with section 4006(a)(3)(E)(iii)(II) of ERISA, the ''applicable percentage'' to be used in determining the required interest rate for plan years beginning in 2007 is 100 percent.

The required interest rate to be used in determining variable-rate premiums for premium payment years beginning in November 2007 is 6.14 percent (*i.e.*, 100 percent of the 6.14 percent composite corporate bond rate for October 2007 as determined by the Treasury).

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between December 2006 and November 2007.

| For premium payment years beginning in: | The required interest rate is: |
|---|---|
| December 2006 | 4.90 |
| January 2007 | 5.75 |
| February 2007 | 5.89 |
| March 2007 | 5.85 |
| April 2007 | 5.84 |
| May 2007 | 5.98 |
| June 2007 | 6.01 |
| July 2007 | 6.32 |
| August 2007 | 6.33 |
| September 2007 | 6.33 |
| October 2007 | 6.23 |
| November 2007 | 6.14 |

#### Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in December 2007 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 8th day of November 2007.

**Vincent K. Snowbarger,**

*Deputy Director, Pension Benefit Guaranty Corporation.*

[FR Doc. E7–22327 Filed 11–14–07; 8:45 am]

BILLING CODE 7709–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC–28045; 812–12984]**

### BTOP50 Managed Futures Fund and Asset Alliance Advisors, Inc.; Notice of Application

November 8, 2007.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 18(c) and 18(i) of the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit certain registered closed-end management investment companies to issue multiple classes of shares.

**APPLICANTS:** BTOP50 Managed Futures Fund (''Trust'') and Asset Alliance Advisors, Inc. (''Advisor'').

**FILING DATES:** The application was filed on June 9, 2003 and amended on December 9, 2003 and November 6, 2007.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will

be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 3, 2007, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, 800 Third Avenue, New York, NY 10022.

**FOR FURTHER INFORMATION CONTACT:** Julia Kim Gilmer, Branch Chief, or Nadya B. Roytblat, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Desk, 100 F Street, NE., Washington, DC 20549–0102 (tel. 202–551–5850).

## Applicants' Representations

1. The Trust is a closed-end management investment company registered under the Act and organized as a Delaware statutory trust. After the completion of its initial offering, the Trust expects to continuously offer its shares to the public pursuant to rule 415 under the Securities Act of 1933 at net asset value plus any applicable sales charge. The Advisor is registered as an investment adviser under the Investment Advisers Act of 1940 and serves as investment adviser to the Trust. Applicants request that the requested relief also extend to any other registered closed-end management investment companies that continuously offer their shares that now or in the future are advised by the Advisor, or any entity controlling, controlled by or under common control with the Adviser (such investment companies, together with the Trust, the ''Funds'').[1]

2. The shares of the Trust will not be listed on any national stock exchange and the Trust will not arrange for the quotation of its shares on any over-the-counter market. The Trust does not expect that any secondary market will develop for its shares. The Trust intends to make monthly repurchase offers for up to 15% of its outstanding shares at net asset value, up to a maximum of 25% in any three consecutive months, pursuant to rule 13e–4 of the Securities Exchange Act of 1934.

3. The Funds seek the flexibility to be structured as multiple class funds.The Trust intends to initially offer a single class of shares (''Class A Shares'') without a service fee or an early withdrawal charge (''EWC''). If the requested relief is granted, the Trust may also offer Class B, C, D and E shares with an annual service fee of 2%, 1.5%, 1% and .5% of net asset value, respectively. Class B, C, D and E shares also will be subject to an EWC of 2%, 1.5%. 1% and .5% of the purchase price, which will decline over approximately a 12-month period. The Funds will not waive, schedule a variation in or eliminate any EWCs established for a particular class of shares. The Funds may in the future offer additional classes of shares and/or another sales charge structure.

4. Applicants represent that any asset-based service and distribution fees will comply with the provisions of rule 2830(d) of the Conduct Rules of the National Association of Securities Dealers, Inc. (''NASD''). Applicants also represent that each Fund will disclose in its prospectus, the fees, expenses and other characteristics of each class of shares offered for sale by the prospectus as is required for open-end multiple class funds under Form N–1A. As is required for open-end funds, each Fund will disclose its expenses in shareholder reports, and disclose any arrangements that result in breakpoints in or elimination of sales loads in its prospectus.[2] Each Fund and principal underwriter of Fund shares will also comply with any requirements that may be adopted by the Commission regarding disclosure at the point of sale and in transaction confirmations about the costs and conflicts of interest arising out of the distribution of open-end investment company shares, and regarding prospectus disclosure of sales loads and revenue sharing arrangements as if those requirements applied to the Fund and the principal underwriter of the Fund's shares.[3]

5. The Trust will allocate all expenses incurred by it among the various classes of shares based on the net assets of the Trust attributable to each class, except that the net asset value and expenses of each class will reflect the expenses associated with the service and/or distribution plan of the class and any other incremental expenses of that class. Expenses of the Trust allocated to a particular class of shares will be borne on a pro rata basis by each outstanding share of that class. Applicants state that each Fund will comply with the provisions of rule 18f–3 under the Act as if that rule applied to the Funds. The Funds will not offer exchange privileges.

## Applicants' Legal Analysis

1. Section 18(c) of the Act provides, in relevant part, that a closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Applicants state that the creation of multiple classes of shares of the Funds may be prohibited by section 18(c).

2. Section 18(i) of the Act provides that each share of stock issued by a registered management investment company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that permitting multiple classes of shares of the Funds may violate section 18(i) of the Act because each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

3. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision of the Act, or from any rule under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c)

[1] Any Fund relying on this relief in the future will comply with the terms and conditions of the application. The Trust is the only investment company that currently intends to rely on the requested order.

[2] *See* Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies, Investment Company Act Release No. 26372 (Feb. 27, 2004) (adopting release) (requiring open-end investment companies to disclose fund expenses in shareholder reports); and Disclosure of Breakpoint Discounts by Mutual Funds, Investment Company Act Release No. 26464 (June 7, 2004) (adopting release) (requiring open-end investment companies to provide prospectus disclosure of certain sales load information).

[3] Confirmation Requirements and Point of Sale Disclosure Requirements for Transactions in Certain Mutual Funds and Other Securities, and Other Confirmation Requirement Amendments, and Amendments to the Registration Form for Mutual Funds, Investment Company Act Release Nos. 26341 (Jan. 29, 2004) (proposing release) and 26778 (Feb. 28, 2005) (re-opening the comment period for the proposed rules and requesting additional comments).

from sections 18(c) and 18(i) to permit the Funds to issue multiple classes of shares.

4. Applicants submit that the proposed allocation of expenses and voting rights among multiple classes is equitable and will not discriminate against any group of shareholders. Applicants submit that the proposed arrangements would permit a Fund to facilitate the distribution of its shares and provide investors with a broader choice of shareholder services. Applicants assert that the proposed closed-end investment company multiple class structure does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f–3 under the Act. Applicants state that each Fund will comply with the provisions of rule 18f–3 as if it were an open-end investment company.

5. Applicants also state that because the Funds, like open-end investment companies, will continuously offer their shares and offer investors a variety of distribution channels and service fees, they will comply with rule 12b–1 and 6c–10 under the Act as if those rules applied to the Funds.

## Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Each Fund relying on the order will comply with the provisions of rules 6c–10, 12b–1 and 18f–3 under the Act, as amended from time to time, as if those rules applied to closed-end management investment companies, and will comply with NASD Conduct Rule 2830(d), as amended from time to time, as if that rule applied to all closed-end management investment companies.

For the Commission, by the Division of Investment Management, under delegated authority.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–22204 Filed 11–14–07; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 28046; 813–350]**

## Tower 21st Century Fund LLC, et al.; Notice of Application

November 8, 2007.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the ''Act'') exempting applicants from all provisions of the Act, except section 9 and sections 36 through 53, and the rules and regulations under the Act. With respect to sections 17 and 30 of the Act, and the rules and regulations thereunder, and rule 38a–1 under the Act, the exemption is limited as set forth in the application.

**SUMMARY OF APPLICATION:** Applicants request an order to exempt certain investment vehicles formed for the benefit of partners and key eligible current and former employees of Sonnenschein Nath & Rosenthal LLP (''Sonnenschein'' or the ''Firm'') and certain of its affiliates from certain provisions of the Act. Each such entity will be an ''employees'' securities company'' within the meaning of section 2(a)(13) of the Act.

**APPLICANTS:** Tower 21st Century Fund LLC (the ''Investment Fund'') and Sonnenschein.

**FILING DATES:** The application was filed on July 2, 2002, and amended on December 30, 2003, July 7, 2004, March 12, 2007 and November 7, 2007.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 3, 2007, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303. Applicants, c/o Paul J. Miller, Esq., Sonnenschein Nath & Rosenthal LLP, 7800 Sears Tower, Chicago, Illinois 60611.

**FOR FURTHER INFORMATION CONTACT:** Jaea F. Hahn, Senior Counsel, at (202) 551–6870, or Nadya B. Roytblat, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street, NE., Washington, DC 20549–0102 (tel. 202–551–5850).

## Applicants' Representations

1. Sonnenschein is a law firm organized as a Delaware limited liability partnership. The Firm and its ''affiliates,'' as defined in rule 12b–2 under the Securities Act of 1934 (the ''Exchange Act''), are referred to collectively as the ''Sonnenschein Group'' and individually as a ''Sonnenschein Entity.''

2. The Investment Fund is a Delaware limited liability company. The applicants may in the future offer additional pooled investment vehicles identical in all material respects (other than form of organization, investment objective and strategy) to the Investment Fund (each, an ''Additional Fund'') (together, the Investment Fund and the Additional Fund are referred to as the ''Funds''). The applicants anticipate that each Additional Fund will also be structured as a limited liability company, although an Additional Fund could be structured, either domestically or, or for tax purposes, offshore, as a general partnership, limited partnership, corporation or other business organization formed as an ''employees' securities company'' within the meaning of section 2(a)(13) of the Act. Each Fund will operate as a non-diversified, closed-end management investment company. The Funds will be established to enable the Partners (as defined below) and certain employees of the Sonnenschein Group to participate in certain investment opportunities that come to the attention of the Sonnenschein Group. Participation as investors in the Funds will allow the Eligible Investors (as defined below) to diversify their investments and to have the opportunity to participate in investments that might not otherwise be available to them or that might be beyond their individual means.

3. The Funds will each be managed by an investment committee (''Investment Committee''), each member of which shall be a Partner of the Firm. The Firm will initially appoint the members (each, a ''Manager'' of the Fund) of each Investment Committee and vacancies thereafter will be filled by vote of the remaining Managers. The Managers or any person involved in the operation of the Funds will register as an investment adviser if required under the Investment Advisers Act of 1940, or the rules under that Act.

4. Interests in the Funds (''Interests'') will be offered without registration in reliance on section 4(2) of the Securities Act of 1933 (the ''Securities Act'') or

Regulation D under the Securities Act, or any successor rule. Interests will be offered solely to Sonnenschein Entities or persons (each an ''Eligible Investor'') who, at the time of the offer, are either ''Eligible Employees'' or ''Qualified Investment Vehicles''. ''Eligible Employees'' are (a) equity, non-equity, special and retired partners and any other category of partners of the Firm (''Partners''), (b) current and former lawyers who are of counsel to the Firm, and (c) certain current and former key employees of the Firm involved in the Firm's non-legal business activities including its administrative, finance and accounting, and marketing activities, who in each case meet the standards of an ''accredited investor'' set forth in rule 501(a)(5) or rule 501(a)(6) of Regulation D under the Securities Act.[1] A ''Qualified Investment Vehicle'' is a trust or other entity the sole beneficiaries of which are an Eligible Employee, or one or more of his or her ''Immediate Family Members'' (parent, spouse, child, brother or sister, spouse of child and any step or adoptive relationship) or as to which the Eligible Employee is settlor or the principal decision maker and the primary beneficiaries of which are one or more of his or her Immediate Family Members, which trust or other entity meets the standards of an ''accredited investor'' set forth in rule 501(a) of Regulation D under the Securities Act.[2] Prior to offering Interests to an individual, the Investment Committee must reasonably believe that the individual is a sophisticated investor capable of understanding and evaluating the risks of participating in the Fund without the benefit of regulatory safeguards. Each investor in a Fund shall be a ''Member'' of such Fund.

5. Each Eligible Investor will receive a copy of the Fund's organizational documents and the Application prior to his or her investment in such Fund. Each Fund will send its Members annual reports as soon as practicable after the end of each fiscal year. The annual report of a Fund will not contain financial statements of the Fund, since these would not provide useful information to Members because each Member will generally have differing interest in the Fund's various investments made since he or she became a Member, and will not have an economic interest in the holdings of the Fund on a consolidated basis. In addition, as soon as practicable after the end of each fiscal year, the Funds will send a report to each Member setting forth such tax information as shall be necessary for the preparation by the Member of his or her federal and state tax returns.

6. A Member will be permitted to transfer his or her Interests only to a Qualified Investment Vehicle or to an Eligible Employee as permitted by the Investment Committee in its sole discretion, or on death, by will, trust or otherwise in accordance with the laws of descent and distribution, or to another Member.[3] Capital contributions made to a Fund by its Members will be placed in a liquid capital account (''LCA'') to the credit of the contributor, pending the purchase price for an investment. Interests in the LCA may be repurchased upon request by Members, in whole or in part, by notice to the Investment Committee. Interests in separate accounts for investments may be repurchased only with the agreement of the Investment Committee. No fee of any kind will be charged in connection with the sale of Interests.

7. A Member will not be permitted to participate in any investment made by the Fund after that Member enters any of the following categories: (a) A Member who has notified the Investment Committee before the effective date of the Investment Committee's investment decision to make an investment, which notice, except in the absolute discretion of the Investment Committee, is irrevocable for one year, that that Member will not participate in future investments; (b) a Member who ceases to be an Eligible Investor when the Investment Committee determines to make an investment; (c) a Member who the Investment Committee determines is no longer able to bear the economic risk of further investment; (d) a Member whose aliquot share would be below a required minimum; (e) a Member whose continued membership would have adverse tax consequences to the Fund; or (f) a Member whose continued investment would violate applicable law or regulation.

8. Each Fund will bear its own expenses. The Firm may be reimbursed by a Fund for reasonable services and necessary out-of-pocket costs directly associated with the organization and operation of the Funds, including administrative and overhead expenses. There will be no allocation of any of the Firm's operating expenses to a Fund. No management fee or other compensation will be paid by the Fund or its Members to the Investment Committee or the Managers for their services in such capacity.

9. The Funds may borrow from Sonnenschein Group, a Partner, or a bank or other financial institution, provided that a Fund will not borrow from any person if the borrowing would cause any person not named in section 2(a)(13) of the Act to own outstanding securities of the Fund (other than short-term paper). Any borrowings by a Fund will be non-recourse to Members. If a Sonnenschein Entity or a Partner makes a loan to the Funds, the interest rate on the loan will be no less favorable to the Funds than the rate that could be obtained on an arm's length basis.

10. A Fund will not acquire any security issued by a registered investment company if immediately after the acquisition the Fund would own more than 3% of the outstanding voting stock of the registered investment company.

**Applicants' Legal Analysis**

1. Section 6(b) of the Act provides, in part, that the Commission will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the Commission will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' securities company as any investment company all of whose securities (other than short-term paper) are beneficially owned (a) by current or former employees, or persons on retainer, of one or more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers together with any of the persons in (a) or (b).

[1] Any such former Partners, of counsel or employees will maintain a sufficiently close nexus with the Firm so as to preserve the community of interest between the Eligible Employee and the Firm.

[2] The inclusion of entities controlled by an Eligible Employee in the definition of Eligible Investor is intended to enable Eligible Employees and their Immediate Family Members to make investments in the Funds through private investment vehicles for the purpose of personal and family investment and estate planning objectives. Eligible Employees will exercise investment discretion and control over these investment vehicles, thereby creating a close nexus between the Firm and these investment vehicles.

[3] No person may become a transferee or substitute Member unless that person is a member of one of the classes listed in section 2(a)(13) of the Act, except that a legal representative or executor may hold an interest in a Fund in order to settle the estate of a decedent or bankrupt for similar purposes.

2. Section 7 of the Act generally prohibits investment companies that are not registered under section 8 of the Act from selling or redeeming their securities. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the Commission, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicants request an order under sections 6(b) and 6(e) of the Act exempting the Funds from all provisions of the Act, except section 9 and sections 36 through 53, and the rules and regulations under the Act. With respect to sections 17 and 30 of the Act, and the rules and regulations thereunder, and rule 38a–1 under the Act, the exemption is limited as set forth in the application.

3. Section 17(a) generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicants request an exemption from section 17(a) to permit a Fund to: (a) Purchase, from the Firm or any affiliated person thereof, securities or interests in properties previously acquired for the account of the Firm or any affiliated person thereof; (b) sell, to the Firm or any affiliated person thereof, securities or interests in properties previously acquired by the Funds; (c) invest in companies, partnerships or other investment vehicles offered, sponsored or managed by the Firm or any affiliated person thereof; (d) to invest in securities of issuers for which the Firm or any affiliated person thereof have performed services and from which they may have received fees; (e) purchase interests in any company or other investment vehicle (i) in which the Firm owns 5% or more of the voting securities, or (ii) that otherwise is an affiliated person of the Fund (or an affiliated person of such a person) or an affiliated person of the Firm; and (f) to participate as a selling securityholder in a public offering in which the Firm or any affiliated person thereof acts as or represents as counsel a member of the selling group or the issuer or underwriter.

4. Applicants state that an exemption from section 17(a) is consistent with the protection of investors and the purposes of the Act. Applicants state that the Members will be informed by the offering materials for a Fund of the possible extent of the Fund's dealings with the Firm or any affiliated person thereof. Applicants also state that, as financially sophisticated professionals, Eligible Investors will be able to evaluate the attendant risks. Applicants assert that the community of interest among the Members and the Firm will provide the best protection against any risk of abuse.

5. Section 17(d) of the Act and rule 17d-1 under the Act prohibit any affiliated person or principal underwriter of a registered investment company, or any affiliated person of an affiliated person or principal underwriter, acting as principal, from participating in any joint arrangement with the company unless authorized by the Commission. Applicants request relief to permit affiliated persons of each Fund, or affiliated persons of any of these persons, to participate in any joint arrangement in which the Fund is a participant. Joint transactions in which a Fund may participate could include the following: (a) An investment by one or more Funds in a security in which the Firm or its affiliated person (including Partners of the Firm), or another Fund, is a participant, or with respect to which the Firm or an affiliated person is entitled to receive fees (including, but not limited to, legal fees, consulting fees, or other economic benefits or interests); (b) an investment by one or more Funds in an investment vehicle sponsored, offered or managed by the Firm; and (c) an investment by one or more Funds in a security in which an affiliate is or may become a participant.

6. Applicants state that compliance with section 17(d) would cause the Funds to forego investment opportunities simply because a Member, the Firm or other affiliates of the Fund also had made or contemplated making a similar investment. In addition, because investment opportunities of the types considered by the Funds often require that each participant make available funds in an amount that may be substantially greater than that available to the investor alone, there may be certain attractive opportunities of which a Fund may be unable to take advantage except as a co-participant with other persons, including affiliates. Applicants note that, in light of the Firm's purpose of establishing the Funds so as to reward Eligible Investors and to attract highly qualified personnel to the Firm, the possibility is minimal that an affiliated party investor will enter into a transaction with a Fund with the intent of disadvantaging the Fund. Finally, applicants contend that the possibility that a Fund may be disadvantaged by the participation of an affiliate in a transaction will be minimized by compliance with the lockstep procedures described in condition 4 below. Applicants assert that the flexibility to structure co-investments and joint investments will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent.

7. Section 17(f) of the Act designates the entities that may act as investment company custodians, and rule 17f–2 allows an investment company to act as self-custodian, subject to certain requirements. Applicants request an exemption from section 17(f) and rule 17f–2 to permit the following exceptions from the requirements of rule 17f–2: (a) A Fund's investments may be kept in the locked files of the Firm or of a Partner; (b) for purposes of paragraph (d) of the rule, (i) Partners and employees of the Firm will be deemed employees of the Funds, (ii) each Manager of a Fund will be deemed to be an officer of such Fund; and (iii) the Investment Committee of a Fund will be deemed to be the board of directors of the Fund; and (c) in place of the verification procedures under paragraph (f) of the rule, verification will be effected quarterly by two employees of the Firm. Applicants assert that the securities held by the Funds are most suitably kept in the Firm's files, where they can be referred to as necessary.

8. Section 17(g) and rule 17g–1 generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requires that a majority of directors who are not interested persons (''disinterested directors'') take certain actions and give certain approvals relating to fidelity bonding. Paragraph (g) of rule 17g–1 sets forth certain materials relating to the fidelity bond that must be filed with the Commission and certain notices relating to the fidelity bond that must be given to each member of the investment company's board of directors. Paragraph (h) of rule 17g–1 provides that an investment company must designate one of its officers to make the filings and give the notices required by paragraph (g). Paragraph (j) of rule 17g–1 exempts a joint insured bond provided and maintained by an investment company and one or more other parties from section 17(d) of the Act and the rules thereunder. Rule 17g–1(j)(3) requires that the board of directors of an investment company satisfy the fund governance standards defined in rule 0–1(a)(7).

9. Applicants request an exemption from section 17(g) and rule 17g–1 to the extent necessary to permit each Fund to comply with rule 17g–1 without the

necessity of having a majority of the disinterested directors take such action and make such approvals as are set forth in the rule. Specifically, each Fund will comply by having the Investment Committee take such actions and make such approvals as are set forth in rule 17g–1. Applicants state that, because the Managers will be interested persons of the Fund, a Fund could not comply with rule 17g–1 without the requested relief. Applicants also request an exemption from the requirements of rule 17g–1(g) and (h) relating to the filing of copies of fidelity bonds and related information with the Commission and the provision of notices to the board of directors and from the requirements of rule 17g–1(j)(3). Applicants believe the filing requirements are burdensome and unnecessary as applied to the Funds. The Investment Committee will maintain the materials otherwise required to be filed with the Commission by rule 17g–1(g) and agree that all such material will be subject to examination by the Commission and its staff. The Investment Committee will designate a person to maintain the records otherwise required to be filed with the Commission under paragraph (g) of the rule. Applicants also state that the notices otherwise required to be given to the board of directors would be unnecessary as the Funds will not have boards of directors. The Funds will comply with all other requirements of rule 17g–1.

10. Section 17(j) and paragraph (b) of rule 17j–1 make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j–1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicants request an exemption from the requirements of rule 17j–1, except for the anti-fraud provisions of paragraph (b), because they are unnecessarily burdensome as applied to the Funds.

11. Applicants request an exemption from the requirements in sections 30(a), 30(b) and 30(e), and the rules under those sections, that registered investment companies prepare and file with the Commission and mail to their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the Commission for periodic reports have little relevance to the Funds and would entail administrative and legal costs that outweigh any benefit to the Members. Applicants request exemptive relief to the extent necessary to permit each Fund to report annually to its Members. Applicants also request an exemption from section 30(h) to the extent necessary to exempt the Managers of each Fund and any other persons who may be deemed members of an advisory board of a Fund from filing Forms 3, 4 and 5 under section 16 of the Exchange Act with respect to their ownership of Interests in the Fund. Applicants assert that, because there will be no trading market and the transfers of Interests will be severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

12. Rule 38a–1 requires investment companies to adopt, implement and periodically review written policies and procedures reasonably designed to prevent violation of the federal securities laws and to appoint a chief compliance officer. The Funds will comply with rule 38a–1(a), (c) and (d), except that (a) since the Funds do not have boards of directors, the Investment Committee will fulfill the responsibilities assigned to a Fund's board of directors under the rule, and (b) since the Managers are not disinterested persons of the Funds, approval by a majority of the disinterested board members required by rule 38a–1 will not be obtained.

**Applicants' Conditions**

The applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each proposed transaction to which a Fund is a party otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 (each, a ''Section 17 Transaction'') will be effected only if the Investment Committee determines that: (a) The terms of the Section 17 Transaction, including the consideration to be paid or received, are fair and reasonable to the Members of the participating Fund and do not involve overreaching of the Fund or its Members on the part of any person concerned; and (b) the Section 17 Transaction is consistent with the interests of the Members of the participating Fund, the Fund's organizational documents and the Fund's reports to its Members.

In addition, the Investment Committee will record and preserve a description of such Section 17 Transactions, its findings, the information or materials upon which its findings are based and the basis therefor. All such records will be maintained for the life of a Fund and at least six years thereafter, and will be subject to examination by the Commission and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

2. If purchases or sales are made by a Fund from or to an entity affiliated with the Fund by reason of a Partner or employee of the Sonnenschein Group (a) serving as an officer, director, general partner or investment adviser of the entity, or (b) having a 5% or more investment in the entity, such individual will not participate in the Fund's determination of whether or not to effect the purchase or sale.

3. The Investment Committee will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Funds, or any affiliated person of such a person, promoter, or principal underwriter.

4. The Investment Committee will not acquire for a Fund any investment in which a Co-Investor, as defined below, has acquired or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Fund and the Co-Investor are participants, unless any such Co-Investor, prior to disposing all or part of its investment, (a) gives the Investment Committee sufficient, but not less than one day's, notice of its intent to dispose of its investment, and (b) refrains from disposing of its investment unless the participating Fund holding such investment has the opportunity to dispose of its investment prior to or concurrently with, on the same terms as, and on a *pro rata* basis with the Co-Investor. The term ''Co-Investor'' with respect to any Fund means any person who is (a) an ''affiliated person'' (as defined in section 2(a)(3) of the Act) of the Fund; (b) the Sonnenschein Group; (c) a Partner, lawyer, or employee of the Sonnenschein Group; (d) an investment vehicle offered, sponsored, or managed by the Firm or an affiliated person of the Firm; or (e) an entity in which a Sonnenschein Entity acts as a general partner or has a similar capacity to control the sale or other disposition of the entity's securities.

The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) To its direct or indirect wholly-owned subsidiary, to any

company (a ''parent'') of which the Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its parent; (b) to Immediate Family Members of the Co-Investor or a trust established for any such Immediate Family Member; (c) when the investment is comprised of securities that are listed on a national securities exchange registered under section 6 of the Exchange Act; or (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 thereunder.

5. The Investment Committee of each Fund will send to each Member who had an interest in that Fund at any time during the fiscal year then ended, Fund financial statements. Such financial statements may be unaudited. At the end of each fiscal year, the Investment Committee will make a valuation or have a valuation made of all of the assets of the Fund, as of such fiscal year end in a manner consistent with the customary practice with respect to the valuation of assets of the kind held by the Fund. In addition, as soon as practicable after the end of each fiscal year of each Fund, the Managers of the Fund shall send a report to each person who was a Fund Investor at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Fund Investor of his or her federal and state income tax returns and a report of the investment activities of such Fund during such year.

6. Each Fund and its Investment Committee will maintain and preserve, for the life of that Fund and at least six years thereafter, such accounts, books and other documents as constitute the record forming the basis for the financial statements and annual reports of such Fund to be provided to its Members, and agree that all such records will be subject to examination by the Commission and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–22297 Filed 11–14–07; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–56766; File No. SR–Amex–2007–114]**

## Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Collection of the Activity Assessment Fee

November 7, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 26, 2007, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Amex. Amex filed the proposal pursuant to Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) [4] thereunder, as establishing or changing a due, fee, or other charge applicable to a member, which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 393 and the Amex Fee Schedule to revise the procedures by which the Exchange collects fees from its members and member organizations to offset its fee obligations under Section 31 of the Act.[5] The text of the proposed rule change is available on the Amex's Web site at *http://www.amex.com*, Amex's principal office, and the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Background

Effective August 6, 2004, the Commission established new procedures that govern the calculation, payment, and collection of fees and assessments on securities transactions owed by each national securities exchange and association.[6] Pursuant to the new procedures, each exchange and association must provide data on its securities transactions to the Commission using Form R31. Generally, only data obtained from a registered clearing agency may be submitted to the Commission for this purpose.[7] The Commission in turn, calculates the amount of fees and assessments based on the aggregate dollar volume of these transactions and the fee rate in effect at that time and bills the exchange or association that amount twice annually.

Historically, the Exchange has funded the payment of these fees by requiring members pursuant to Rule 393 to: (i) Report on a monthly basis the aggregate volume of equity sales, aggregate sales price of those equity sales, and the amount of the fee owed; and (ii) submit along with the monthly report a check in the amount of the fee owed. The funds collected by the Exchange pursuant to Rule 393 for all equity securities are then remitted to the Commission in accordance with Rule 31. In addition, the Exchange uses the OCC to collect the funds to offset the payment of Section 31 fees owed based on the sales of options and sales of securities resulting from the exercise of physical delivery options. OCC collects fees directly from Exchange members through their clearing firms and remits the amount collected to the Commission on behalf of Amex.

Proposal

The Exchange now proposes to amend Rule 393 and the Amex Fee Schedule to revise the current procedures used to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] 15 U.S.C. 78ee.

[6] *See* Securities Exchange Act Release No. 49928 (June 28, 2004), 69 FR 1060 (July 7, 2004).

[7] In connection with these new procedures the Commission concluded that the data collected by a registered clearing agency is the most reliable and auditable source for covered sales information. The National Securities Clearing Corporation (''NSCC'') is the primary source of data for equity transactions and the Options Clearing Corporation (''OCC'') is the primary source of data for option transactions.

collect funds from its members to offset its obligations under Section 31 of the Act. On December 1, 2007, the Exchange will end the current ''self-reporting'' procedures using the Rule 393 Form for most transactions and will begin directly billing all members' and member organizations' designated clearing firms for the amount owed by the member to the Exchange. The fee will be identified as the Activity Assessment Fee and will be assessed monthly for all covered securities transactions (other than options transactions or sales of securities resulting from options exercises) whose settlement dates fall within the applicable computational period (which is generally a month). If the Section 31 fee rate changes in the middle of a computational period (*i.e.*, in the middle of a month), the computational period may be broken up to facilitate the appropriate application of the old and new fee rates. The Activity Assessment Fee will be calculated based on securities transaction data reported by the NSCC (which is the same data used by the Exchange to prepare Form R31 to report its obligations under Section 31 to the Commission). Included in the Activity Assessment Fee will be covered sales resulting from orders entered on Amex but executed on another exchange through its private linkage.

The Exchange will, however, continue to require firms participating in its After-Hours Trading program to continue self-reporting, on the Rule 393 Form, the aggregate volume and sales price of Aggregate Price-Coupled orders. The execution of covered sales resulting from Aggregate Price-Coupled orders will not be included in the Exchange's calculation of the monthly Activity Assessment Fee.[8]

It is the Exchange's initial intention to collect or receive from the membership the Activity Assessment Fee in an amount that, as accurately as possible equals the Exchange's Section 31 obligation (for equities transactions). The Exchange, however, has incurred, and continues to incur, the costs of developing systems necessary for compliance with the Commission's Section 31 procedures and for calculating and billing the Activity Assessment Fee. Therefore, the Exchange might in the future determine to bill the membership some form of assessment to offset these or other Section 31 costs. The proposed amendment to Rule 393 will also provide that, to the extent the Exchange may collect more from members under Rule 393 than is due from the Exchange to the Commission pursuant to Section 31 of the Act, for example due to rounding differences, the excess monies collected may be used by the Exchange to fund its regulatory expenses.

In addition, as discussed above, the OCC will continue to collect and remit to the Commission on Amex's behalf, the funds to offset the payment of Section 31 fees owed based on the sales of options and sales of securities resulting from the exercise of physical delivery options. Therefore, sales of options and exercises will not be included in the monthly Activity Assessment Fee.

2. Statutory Basis

The proposed rule change is consistent with the objectives of Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(4),[10] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Specifically, the Exchange is proposing to assess a monthly Activity Assessment Fee to its members to fund its obligation pursuant to Section 31 of the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing proposed rule change has become effective upon filing with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act[11] and Rule 19b–4(f)(2)[12] thereunder, because it establishes or changes a due, fee, or other charge applicable only to a member.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SRA–Amex–2007–114 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2007–114. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You

[8] Firms participating in Amex's After-Hours Trading program will continue to submit, with their filings of the Rule 393 Form, payment of the Activity Assessment Fee for their self-reported Aggregate Price-Coupled orders. Telephone conversation between Claire McGrath, Senior Vice President and General Counsel, Amex and David Michehl, Special Counsel, Division of Market Regulation, Commission on November 7, 2007.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2007–114 and should be submitted on or before December 6, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–22203 Filed 11–14–07; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–56772; File No. SR–CBOE–2007–126]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Increase the Class Quoting Limit in Fourteen Option Classes

November 8, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 1, 2007, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Exchange has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Section 19(b)(3)(A)(i) of the Act,[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Exchange filed Amendment No. 1 to the proposed rule change on November 7, 2007. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to increase the class quoting limit in fourteen option classes. The text of the proposed rule change is available on CBOE's Web site (*http://www.cboe.com*), at the CBOE's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

CBOE Rule 8.3A, Maximum Number of Market Participants Quoting Electronically per Product, establishes class quoting limits (''CQLs'') for each class traded on the Hybrid Trading System.[5] A CQL is the maximum number of quoters that may quote electronically in a given product and the current levels are established from 25–40, depending on the trading activity of the particular product.

Rule 8.3A, Interpretation .01(c) provides a procedure by which the President of the Exchange may increase the CQL for a particular product. In this regard, the President of the Exchange may increase the CQL in exceptional circumstances, which are defined in the rule as ''substantial trading volume, whether actual or expected.''[6] The effect of an increase in the CQL is procompetitive in that it increases the number of market participants that may quote electronically in a product. The purpose of this filing is to increase the CQL in the following option classes as described below:

| Option class | Current CQL | New QL |
|---|---|---|
| Goldman Sachs Group Inc (GS) | 45 | 60 |
| Bear Stearns Companies (BSC) | 35 | 50 |
| Crocs Inc. (CROX) | 35 | 50 |
| Petro Bras Sa Petrobas A (PBR) | 30 | 50 |
| First Solar, Inc. (FSLR) | 30 | 50 |
| Focus Media Holding Ltd. (FMCN) | 30 | 50 |
| China Mobile Limited (CHL) | 25 | 50 |
| Dryships Inc. (DRYS) | 25 | 50 |
| Petrochina Co Ltd ADS (PTR) | 25 | 50 |
| JA Solar Holdings Co. (JASO) | 25 | 50 |
| Trina Solar Ltd. (TSL) | 25 | 50 |
| LDK Solar Co. Ltd (LDK) | 25 | 50 |
| China Digital TV Holding Co., Ltd. (STV) | 25 | 50 |
| China Sunergy Co., Ltd. (CSUN) | 25 | 50 |

The trading volume in these option classes recently has increased substantially. Increasing the CQL in these classes will enable the Exchange to enhance the liquidity offered, thereby offering deeper and more liquid markets. The Exchange represents that it has the systems capacity to support this increase in the CQLs.

2. Statutory Basis

Accordingly, CBOE believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] *See* Rule 8.3A.01.

[6] ''Any actions taken by the President of the Exchange pursuant to this paragraph will be submitted to the SEC in a rule filing pursuant to Section 19(b)(3)(A) of the Exchange Act.'' Rule 8.3A.01(c).

securities exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither received nor solicited written comments on the proposal.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing proposed rule change will take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)(i) of the Act[9] and Rule 19b–4(f)(1) thereunder,[10] because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2007–126 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2007–126. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2007–126 and should be submitted on or before December 6, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–22337 Filed 11–14–07; 8:45 am]

**BILLING CODE 8011–01–P**

[7] 15 U.S.C. 78(f)(b).

[8] 15 U.S.C. 78(f)(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(i).

[10] 17 CFR 240.19b–4(f)(1).

[11] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–56771; File No. SR–CHX–2005–34]**

## Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Regarding Cancellation of the Stock Leg of a Stock-Option Order and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 Thereto

November 8, 2007.

**I. Introduction**

On November 14, 2005, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to permit the cancellation of the stock leg of a stock-option order[3] if market conditions in a non-Exchange market prevent the options leg of the order from being executed at the agreed upon price. On July 11, 2006, the Exchange submitted Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on July 27, 2006.[4] The Commission received no comments regarding the proposal. The Exchange filed Amendment No. 2 to the proposed rule change on October 22, 2007, and withdrew Amendment No. 2 on November 5, 2007. On November 5, 2007, CHX filed Amendment No. 3 to the proposal.[5] This order approves the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A ''stock-option order'' would be defined as an order to buy or sell a stated number of units of an underlying or a related security coupled with either (i) the purchase or sale of option contract(s) on the opposite side of the market representing either the same number of units of the underlying or related security or the number of units of the underlying security necessary to create a delta-neutral or delta-hedged position or (ii) the purchase or sale of an equal number of put and call option contracts, each having the same exercise price, expiration date and each representing the same number of units of stock as, and on the opposite side of the market from, the underlying or related security portion of the order. *See* CHX's proposed Interpretation and Policy .01(b) to Rule 9 under Article 20.

[4] *See* Securities Exchange Act Release No. 54185 (July 20, 2006), 71 FR 42693 (''Notice'').

[5] In Amendment No. 3, CHX made revisions to the proposed rule text and purpose section of the proposal to conform the proposal with changes to the Exchange's trading model that were approved by the Commission after publication of the Notice. *See* Securities Exchange Act Release No. 54550 (September 29, 2006), 71 FR 59563 (October 10, 2006). In addition, in Amendment No. 3 CHX added a representation to the proposal that would require

proposed rule change, as amended. In addition, the Commission is publishing notice to solicit comment on, and is simultaneously approving on an accelerated basis, Amendment No. 3 to the proposed rule change.

## II. Description of Proposal

The Exchange proposes to amend Exchange Rule 9 under Article 20 to add new Interpretation and Policy .01, to permit the cancellation of the stock leg of a stock-option order if market conditions in a non-Exchange market prevent the options leg of the order from being executed at the agreed-upon price.[6] The market conditions that would be sufficient to justify cancellation of the stock leg of a stock-option order include a sudden change in the price of the options involved in the transaction prior to execution of the trade or a trading halt or systems failure that precludes immediate execution of the options leg at the agreed upon price. The Exchange's proposed rule also would require CHX floor participants that handle stock-option orders that are cancelled in accordance with the proposed rule to maintain records ''sufficient to establish that market conditions in a non-Exchange market prevented the execution of the option leg(s).'' [7]

In Amendment No. 3 to the proposed rule change, the Exchange amended the proposed Interpretation and Policy .01 to state that it would not become operative until a special trade indicator to identify stock transactions that are part of stock-option orders is implemented. The purpose of this trade indicator would be to provide notice to market participants that these stock trades could be cancelled. This trade indicator must be used on such transactions reported through the Consolidated Tape Association Plan and the Nasdaq/UTP Plan.

## III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[9] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Commission notes that the Exchange's proposed Interpretation and Policy .01 to Exchange Rule 9 under Article 20 is substantially similar to current Rule 6.48(b) of the Chicago Board Options Exchange, Incorporated, which permits cancellation of the options leg of a stock-option order under the same circumstances described in the Exchange's proposed rule. Accordingly, the Commission finds that it is reasonable for the Exchange to provide CHX floor participants with the ability to cancel the stock leg of a stock-option order in certain limited circumstances when market conditions prevent the completion of the options leg of the order.

The Commission also finds good cause for approving Amendment No. 3 to the proposed rule change prior to 30 days after the date of publication of notice of filing thereof in the **Federal Register**. This amendment will ensure that, before the proposed rule change becomes operative, an indicator is developed that will make transparent the potential cancellation of stock-option orders. Accordingly, the Commission finds good cause for approving Amendment No. 3 to the proposed rule change on an accelerated basis.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3 to the proposed rule change, including whether Amendment No. 3 to the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–CHX–2005–34 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CHX–2005–34. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2005–34 and should be submitted on or before December 6, 2007.

## V. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–CHX–2005–34), as amended, is approved, and that Amendment No. 3 to the proposed rule change (SR–CHX–2005–34) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

**Florence E. Harmon,**

*Deputy Secretary.*

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**BILLING CODE 8011–01–P**

CHX to establish a special trade indicator for stock-option orders prior to the proposal becoming operative.

[6] CHX represented that the stock leg of a stock-option order always would be presented to the CHX with an identified buyer and seller who have agreed to the terms of the trade, and that both the buyer and seller would be aware of the possibility that the stock leg of a stock-option order may be cancelled on the CHX if the corresponding options leg is not executed because of market conditions. *See* Notice, *supra* note 5.

[7] *See* CHX's proposed Interpretation and Policy .01(c) to Exchange Rule 9 under Article 20.

[8] In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–56773; File No. SR–ISE–2007–104]**

## Self-Regulatory Organizations; International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

November 8, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 1, 2007, the International Securities Exchange, LLC (''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees to remove the surcharge fee for transactions in options on 10 Premium Products.[3] The text of the proposed rule change is available on the ISE's Web site (*http://www.ise.com*), at the principal office of the ISE, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange is proposing to amend its Schedule of Fees to remove the surcharge fee previously adopted for transactions in options on the iShares S&P 100 Index Fund (''OEF''),[4] the Financial Select Sector SPDR Fund (''XLF''), the Technology Select Sector SPDR Fund (''XLK''), the Utilities Select Sector SPDR Fund (''XLU''),[5] the Materials Select Sector SPDR Fund (''XLB''), the Industrial Select Sector SPDR Fund (''XLI''), the Health Care Select Sector SPDR Fund (''XLV''), the Consumer Discretionary Select Sector SPDR Fund (''XLY''),[6] the Energy Select Sector SPDR Fund (''XLE''), and the Consumer Staples Select Sector SPDR Fund (''XLP'').[7] The Exchange is proposing to remove the surcharge fee for these products from its Schedule of Fees because it no longer pays a license fee to Standard and Poor's, Inc. in connection with transactions in options on OEF, XLF, XLK, XLU, XLB, XLI, XLV, XLY, XLE and XLP. Accordingly, there is no longer a need for this surcharge fee. The Exchange will, however, continue to charge an execution fee and a comparison fee for transactions in options on OEF, XLF, XLK, XLU, XLB, XLI, XLV, XLY, XLE and XLP.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4) of the Act[8] that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3) of the Act[9] and Rule 19b–4(f)(2)[10] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*); or
- Send an E-mail to *rule-comments@sec.gov.* Please include File No. SR–ISE–2007–104 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2007–104. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Premium Products is defined in the Schedule of Fees as the products enumerated therein.

[4] *See* Securities Exchange Act Release No. 46189 (July 11, 2002), 67 FR 47587 (July 19, 2002).

[5] *See* Securities Exchange Act Release No. 47243 (January 24, 2003), 68 FR 5066 (January 31, 2003).

[6] *See* Securities Exchange Act Release No. 47536 (March 19, 2003), 68 FR 14727 (March 26, 2003).

[7] *See* Securities Exchange Act Release No. 47564 (March 24, 2003), 68 FR 15256 (March 28, 2003).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 19b–4(f)(2).

Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2007–104 and should be submitted on or before December 6, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–56767; File No. SR–NYSEArca–2007–87]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of a Proposed Rule Change, and Amendments No. 1 and No. 2 Thereto, To Amend Listing Fees for Structured Products

November 7, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 16, 2007, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On October 30, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. On November 7, 2007, the Exchange filed Amendment No. 2 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly-owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities''), proposes to amend its Schedule of Fees and Charges (''Fee Schedule'') to revise the listing fees applicable to structured products listed on NYSE Arca, LLC (''NYSE Arca Marketplace''), the equities facility of NYSE Arca Equities. The proposed revisions would apply retroactively as of October 3, 2007. The text of the proposed rule change is available at the Commission's Public Reference Room, at the Exchange, and at *http://www.nyse.com.*

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

a. Listing Fee Schedule

NYSE Arca has determined to revise the listing fees specifically applicable to Structured Products[3] in order to harmonize its fees with the New York Stock Exchange LLC's fees. The proposed revisions would apply as of October 3, 2007.

NYSE Arca currently assesses a one-time Listing Fee of $20,000 for each Structured Product that is listed pursuant to an initial public offering (''IPO'') or an initial listing. Each time the issuer lists additional shares for the same Structured Product pursuant to a subsequent IPO, the issuer is charged a $1,000 fee. If an issuer lists a Structured Product that is already listed on another Marketplace or quoted on an inter-dealer Quotation System, the issuer is subject to a $5,000 fee per such product. In addition, if an issuer lists additional Structured Products that were already listed on another marketplace or quoted on an inter-dealer quotation system, the issuer is subject to the following fees:

| Number of structured products | Fee per product |
|---|---|
| 2–10 | $1,000 |
| 11–100 | 500 |
| 100+ | 100 |

The revised fee schedule would clarify the types of products defined as ''Structured Products'' and replace the current fee schedule with a fee schedule based on the total of shares outstanding. The revised fee schedule provides a fee cap of $45,000 per issue. The new fee schedule is as follows:

| Shares outstanding | Fee |
|---|---|
| Up to 1 million | $5,000 |
| 1+ to 2 million | 10,000 |
| 2+ to 3 million | 15,000 |
| 3+ to 4 million | 20,000 |
| 4+ to 5 million | 25,000 |
| 5+ to 6 million | 30,000 |
| 6+ to 7 million | 30,000 |
| 7+ to 8 million | 30,000 |
| 8+ to 9 million | 30,000 |
| 9+ to 10 million | 32,500 |
| 10+ to 15 million | 37,500 |
| in excess of 15 million | 45,000 |

As set forth in the revised fee schedule for Structured Products, the fees will apply each time an issuer lists a Structured Product as well as subsequent listings of additional shares of the same Structured Product. The Exchange will treat each series of a Structured Product as a separate issue.

b. Annual Fee Schedule

NYSE Arca currently assesses Annual Fees based on the total number of Structured Products per issuer. The Annual Fee for one Structured Product listed is $5,000. For each additional Structured Product listed by the same issuer the following fees apply:

| Number of structured products | Fee per product |
|---|---|
| 2 through 10 | $1,000 |
| 11 through 100 | 500 |
| 101+ | 100 |

NYSE Arca proposes revised Annual Fees for Structured Products based on total shares outstanding for each issue, as follows:

| Shares outstanding | Fee |
|---|---|
| Up to 6 million | $10,000 |
| 6+ to 7 million | 12,000 |
| 7+ to 8 million | 14,000 |
| 8+ to 9 million | 16,000 |
| 9+ to 10 million | 18,000 |
| 10+ to 15 million | 20,000 |
| 15+ to 25 million | 25,000 |

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For purposes of this proposal, Structured Products include securities qualified for listing and trading on NYSE Arca under the following NYSE Arca Equities Rules: Rule 5.2(j)(1) (Other Securities), 5.2(j)(2) (Equity Linked Notes), Rule 5.2(j)(4) (Index-Linked Exchangeable Notes), Rule 5.2(j)(6) (Equity Index-Linked Securities, Commodity-Linked Securities and Currency-Linked Securities) and Rule 8.3 (Currency and Index Warrants), as these rules may be amended from time to time.

| Shares outstanding | Fee |
|---|---|
| 25+ to 50 million | 42,000 |
| in excess of 50 million | 55,000 |

The Annual Fees for Structured Products are billed each calendar quarter and are apportioned based on the number of shares outstanding for an issue at the end of the preceding quarter. While the Exchange imposes a maximum total fee of $250,000 paid by an issuer each year, this maximum fee does not apply to Structured Products.

2. Statutory Basis

NYSE Arca believes that the proposal is consistent with Section 6(b) of the Act [4] in general, and Section 6(b)(4) of the Act [5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its issuers and other persons using its facilities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2007–87 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2007–87. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commissionwill post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2007–87 and should be submitted on or before December 6, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

**Florence E. Harmon,**

*Deputy Secretary.*

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[4] 15 U.S.C. 78f (b).

[5] 15 U.S.C. 78f (b)(4).

[6] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–56750; File No. SR–Phlx–2007–85]**

## If-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending Phlx Rule 607

November 6, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 1, 2007, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Phlx proposes to amend Phlx Rule 607 to remove language regarding the NMS Linkage Plan (''Plan''). The Plan was utilized by certain exchanges, including Phlx, for the purpose of routing and receiving orders in NMS Stocks. The Plan ended by its own terms on June 30, 2007.[5]

The text of the proposed rule change is available at Phlx, the Commission's Public Reference Room, and *http://www.phlx.com.*

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to update Phlx Rule 607 to reflect the termination of the Plan. Phlx Rule 607 permits Phlx to collect the Covered Sale Fee [6] from its members and member organizations. In order to facilitate the collection of the Covered

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act No. 54551 (September 29, 2006), 71 FR 59148 (October 6, 2006).

[6] Under Section 31 of the Act, the Exchange must pay certain fees to the Commission. To help fund the Exchange's obligations to the Commission under Section 31, a Covered Sale Fee is assessed by the Exchange on members and member organizations.

Sale Fee, Phlx amended Phlx Rule 607 to permit the Exchange to enter into agreements with other exchanges and with Participants in NASD's (n/k/a FINRA) Alternative Display Facility (''ADF Participant'') to pass the Covered Sale Fee among the applicable exchanges or ADF Participants where the Exchange has collected the Covered Sale Fee from its members and member organizations for sale transactions executed on another exchange or ADF Participant through the Plan and when other exchanges or ADF Participants have collected the Covered Sale Fee from their members for sale transactions executed on the Exchange through the Plan.[7]

With the termination of the Plan, the agreements with the other exchanges and the ADF Participants are no longer needed.[8] When the Plan began, certain exchanges and ADF Participants were unable to supply clearing or member information on orders routed through the Plan to other markets and therefore routed orders directly through the Plan without identifying a member or subscriber of the destination market.[9] Because no member or subscriber of the destination market was involved in the transaction, there was no mechanism for the destination market to collect the Covered Sale Fee. The agreements provided for in Phlx Rule 607 permitted destination markets to collect the Covered Sale Fee for orders routed through the Plan that did not involve members or subscribers of the destination market. Now that the Plan has terminated, all access to the destination market is provided through members or subscribers, which are subject to the fees charged pursuant to rule or subscriber agreement.

Therefore, Phlx proposes to delete that section of Phlx Rule 607 referring to agreements with other exchanges and ADF Participants. Phlx does not intend this deletion to affect any rights or obligations that have accrued to any party up to this point in time pursuant to any such agreements.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[10] in general and furthers the objectives of Section 6(b)(5)[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13] As required under Rule 19b–4(f)(6)(iii) under the Act,[14] the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change.

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[15] However, Rule 19b–4(f)(6)(iii)[16] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay and render the proposed rule change operative immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the 30-day operative delay would enable the Exchange to delete language in Phlx Rule 607 that is no longer needed due to the termination of the Plan as quickly as possible and prevent any potential confusion as to the applicability of this language. For the reasons stated above, the Commission therefore designates the proposal to become operative immediately.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2007–85 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2007–85. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

[7] *See* Securities Exchange Act Release No. 54555 (October 2, 2006), 71 FR 59577 (October 10, 2006).

[8] *See* Securities Exchange Act Release Nos. 56361 (September 6, 2007), 72 FR 52192 (September 12, 2007) (SR–Phlx–2007–66, deleting references to the Plan in the XLE Fee Schedule); 55569 (April 2, 2007), 72 FR 17978 (April 10, 2007) (SR–Phlx–2007–31, deleting references to the Intermarket Trading System (''ITS'') Plan in Phlx Rule 607, when the ITS Plan terminated.)

[9] *See* Securities Exchange Act Release No. 54548 (September 29, 2006), 71 FR 59159 (October 6, 2006) (footnote 6).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] *Id.*

[16] *Id.*

[17] For purposes of waiving the operative date of this proposal only, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2007–85 and should be submitted on or before December 6, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–22293 Filed 11–14–07; 8:45 am]

**BILLING CODE 8011–01–P**

[18] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–56760; File No. SR–Phlx–2007–40]**

## Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No. 3, Relating to Complex Orders

November 7, 2007.

### I. Introduction

On May 21, 2007, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Phlx Rule 1066, ''Certain Types of Orders Defined,'' to revise the definition of ''synthetic option,'' and to amend Phlx Rule 1083(c) to modify the definition of ''Complex Trade'' as it relates to the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage (''Linkage Plan''). The Exchange filed Amendment No. 1 to the proposal on September 4, 2007, and withdrew Amendment No. 1 on October 1, 2007. The Exchange filed Amendment No. 2 to the proposal on October 1, 2007, and withdrew Amendment No. 2 on the same day. The Phlx filed Amendment No. 3 to the proposal on October 1, 2007.[3] The proposed rule change, as modified by Amendment No. 3, was published for comment in the **Federal Register** on October 11, 2007.[4] The Commission received no comments regarding the proposed rule change, as amended. This order approves the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 3 replaces and supersedes the original filing and previous amendments in their entirety.

[4] *See* Securities Exchange Act Release No. 56608 (October 3, 2007), 72 FR 57985.

### II. Description of the Proposal

*A. Phlx Rule 1066(g)*

Currently, Phlx Rule 1066(g) defines a ''synthetic option'' as an order to buy or sell a stated number of option contracts and the underlying stock or Exchange-Traded Fund Share in an amount that would offset the options position on a one-for-one basis. The Phlx proposes to amend Phlx Rule 1066(g) to define a ''synthetic option'' as an order to buy or sell a stated number of units of an underlying stock or a security convertible into the underlying stock (''convertible security'') coupled with either (i) the purchase or sale of option contract(s) on the opposite side of the market representing either the same number of units of the underlying stock or convertible security or the number of units of the underlying stock or convertible security necessary to create a delta neutral position; or (ii) the purchase or sale of an equal number of put and call option contracts, each having the same exercise price, expiration date, and each representing the same number of units of stock as, and on the opposite side of the market from, the stock or convertible security portion of the order.

The revised definition of ''synthetic option'' will permit the purchase or sale of options on the opposite side of the market representing the number of units of the underlying stock or convertible security necessary to create a delta neutral position, rather than requiring that the stock and option components of the synthetic option order offset each other on a one-for-one basis. The revised definition is substantially similar to the definition of ''stock-option order'' adopted by other U.S. options exchanges.[5]

*B. Phlx Rule 1083(c)*

The Phlx also proposes to amend Phlx Rule 1083(c) to revise the definition of ''Complex Trade'' for purposes of the Linkage Plan, which provides an exception to Trade-Through[6] liability and Satisfaction Order[7] liability when the transaction that caused the Trade-Through was the result of a Complex Trade. The proposed changes to Phlx Rule 1083(c) are almost identical to changes proposed by the other Linkage Plan Participants,[8] which the Commission is approving in a separate order today.[9]

Specifically, the Phlx proposes to revise Phlx Rule 1083(c) to: (1) Provide that the option orders in a Complex Trade may be in a ratio equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.0); and (2) add a certain limited type of synthetic option order to the definition of Complex Trade. Phlx Rule 1083(c)(ii) defines a ''stock-option order'' as an order to buy or sell a stated number of units of an underlying stock or a security convertible into the underlying stock (''convertible security''), coupled with the purchase or sale of option contract(s) on the opposite side of the market representing either (A) the same number of units of the underlying stock or convertible security; or (B) the number of units of the underlying stock or convertible security necessary to create a delta neutral position, but in no case in a ratio greater than eight option contracts per unit of trading of the underlying stock or convertible security established for that series by the Clearing Corporation.

[5] *See, e.g.,* Amex Rule 950–ANTE(e)(viii)(1); CBOE Rule 1.1(ii); and ISE Rule 722(a)(5)(i).

[6] In connection with the Linkage Plan, a ''Trade-Through'' means a transaction in an options series at a price that is inferior to the National Best Bid or Offer (''NBBO''), but shall not include a transaction that occurs at a price that is one minimum quoting increment inferior to the NBBO provided a Linkage Order is contemporaneously sent to each Participant Exchange disseminating the NBBO for the full size of the Participant Exchange's bid (offer) that represents the NBBO. *See* Phlx Rule 1083(t).

[7] In connection with the Linkage Plan, a Satisfaction Order is an order sent through the Linkage to notify a member of another Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through. *See* Phlx Rule 1083(k)(iii).

[8] Phlx Rule 1083(c)(ii) refers to ''stock-option orders'' as synonymous with ''synthetic option orders'' to be consistent with the definitions proposed by the other Linkage Plan Participants.

[9] *See* Securities Exchange Act Release No. 56761 (November 7, 2007) (order approving File Nos. SR–Amex–2007–65; SR–BSE–2007–45; SR–CBOE–2007–64; SR–ISE–2007–44; and SR–NYSEArca–2007–65) (''Complex Trade Order'').

## III. Commission Findings and Order Granting Accelerated Approval of the Proposed Rule Change, as Amended

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[11] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the revised definition of ''synthetic option'' could help enable the Phlx to compete with other U.S. options exchanges whose definitions of ''stock-option order'' currently permit delta neutral positions, thereby increasing the number of markets in which customers may execute such orders. The Commission also believes that the proposed changes to Phlx Rule 1083(c) will ensure that the Phlx's definition of ''Complex Trade'' is consistent with the definition of ''Complex Trade'' adopted by the other Linkage Plan Participants. The Commission believes that by amending the definition of ''Complex Trade'' to include certain stock-option orders, as described above, and by providing a consistent definition of ''Complex Trade'' in the rules of the exchanges, the proposal may facilitate the execution of such Complex Trades.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The proposal was subject to a 21-day comment period, and the Commission received no comments on the proposal. In addition, as described more fully above, the revised definition of ''synthetic option'' in Phlx Rule 1066(g) is substantially similar to the definition of ''stock-option order'' adopted by other U.S. options exchanges [12] and does not raise new regulatory issues. Similarly, the proposed changes to Phlx Rule 1083(c) are nearly identical to changes proposed by the other Linkage Plan Participants that the Commission is approving in a separate order.[13] Accordingly, accelerated approval of the changes to Phlx Rule 1083(c) will ensure that the Phlx's definition of ''Complex Trade'' is consistent with the definition of ''Complex Trade'' adopted by the other Linkage Plan Participants. For these reasons, the Commission finds good cause, consistent with Sections 6(b)(5) and 19(b) of the Act, to approve the proposal, as amended, on an accelerated basis.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–Phlx–2007–40), as modified by Amendment No. 3, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–22294 Filed 11–14–07; 8:45 am]

**BILLING CODE 8011–01–P**

[10] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] *See supra* note 5.

[13] *See* Complex Trade Order, *supra* note 9.

[14] 15 U.S.C. 78s(b)(2).

[15] 15 17 CFR 200.30–3(a)(12).

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## SMALL BUSINESS ADMINISTRATION

### Small Business Size Standards: Waiver of the Nonmanufacturer Rule

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice of intent to Waive the Nonmanufacturer Rule for Irradiation Apparatus Manufacturing.

**SUMMARY:** The U.S. Small Business Administration (SBA) is considering granting a request for a waiver of the Nonmanufacturer Rule for Irradiation Apparatus Manufacturing, Computerized axial tomography (CT/CAT) scanners manufacturing; CT/CAT (computerized axial tomography) scanners manufacturing; Fluoroscopes manufacturing; Fluoroscopic X-ray apparatus and tubes manufacturing; Generators, X-ray, manufacturing; Irradiation equipment manufacturing; X-ray generators manufacturing; and X-ray irradiation equipment manufacturing. According to the request, no small business manufacturers supply these classes of products to the Federal government. If granted, the waiver would allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses; service-disabled veteran-owned small businesses or SBA's 8(a) Business Development Program.

**DATES:** Comments and source information must be submitted November 30, 2007.

**ADDRESSES:** You may submit comments and source information to Edith G. Butler, Program Analyst, U.S. Small Business Administration, Office of Government Contracting, 409 3rd Street, SW., Suite 8800, Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Edith G. Butler, Program Analyst, by telephone at (202) 619–0422; by FAX at (202) 481–1788; or by e-mail at *Edith.butler@sba.gov*.

**SUPPLEMENTARY INFORMATION:** Section 8(a)(17) of the Small Business Act (Act), 15 U.S.C. 637(a)(17), requires that recipients of Federal contracts set aside for small businesses, service-disabled veteran-owned small businesses, or SBA's 8(a) Business Development Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any ''class of products'' for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1202(c), in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines ''class of products'' based on six digit coding system. The coding system is the Office of Management and Budget North American Industry Classification System (NAICS).

The SBA is currently processing a request to waive the Nonmanufacturer Rule for Irradiation Apparatus Manufacturing, Computerized axial tomography (CT/CAT) scanners manufacturing; CT/CAT (computerized axial tomography) scanners manufacturing; Fluoroscopes manufacturing; Fluoroscopic X-ray apparatus and tubes manufacturing; Generators, X-ray, manufacturing; Irradiation equipment manufacturing; X-ray generators manufacturing; and X-ray irradiation equipment manufacturing, North American

Industry Classification System (NAICS) code 334517 product number 6525. The public is invited to comment or provide source information to SBA on the proposed waivers of the Nonmanufacturer Rule for this class of NAICS code within 15 days after date of publication in the Federal Business Opportunities.

Dated: November 6, 2007.

**Arthur E. Collins, Jr.,**

*Director for Government Contracting.*

[FR Doc. E7–22353 Filed 11–14–07; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

### Small Business Size Standards: Waiver of the Nonmanufacturer Rule

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice of intent to waive the Nonmanufacturer Rule for Electromedical and Electrotherapeutic Apparatus Manufacturing.

**SUMMARY:** The U.S. Small Business Administration (SBA) is considering granting a request for a waiver of the Nonmanufacturer Rule for Electromedical and Electrotherapeutic Apparatus Manufacturing, Diagnostic equipment, MRI (magnetic resonance imaging) manufacturing; Magnetic resonance imaging (MRI) medical diagnostic equipment manufacturing; Medical ultrasound equipment manufacturing; MRI (magnetic resonance imaging) medical diagnostic equipment manufacturing; Patient monitoring equipment (e.g., intensive care coronary care unit) manufacturing; PET (positron emission equipment tomography) scanners manufacturing; and Positron emission tomography (PET) scanners manufacturing. According to the request, no small business manufacturers supply these classes of products to the Federal government. If granted, the waiver would allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses; service-disabled veteran-owned small businesses or SBA's 8(a) Business Development Program.

**DATES:** Comments and source information must be submitted November 30, 2007.

**ADDRESSES:** You may submit comments and source information to Edith G. Butler, Program Analyst, U.S. Small Business Administration, Office of Government Contracting, 409 3rd Street, SW., Suite 8800, Washington, DC 20416.

**FOR FURTHER INFORMATI0N CONTACT:** Edith G. Butler, Program Analyst, by telephone at (202) 619–0422; by fax at (202) 481–1788; or by e-mail at *Edith.butler@sba.gov*.

**SUPPLEMENTARY INFORMATION:** Section 8(a)(17) of the Small Business Act (Act), 15 U.S.C. 637(a)(17), requires that recipients of Federal contracts set aside for small businesses, service-disabled veteran-owned small businesses, or SBA's 8(a) Business Development Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any ''class of products'' for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1202(c), in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines ''class of products'' based on a six digit coding system. The coding system is the Office of Management and Budget North American Industry Classification System (NAICS).

The SBA is currently processing a request to waive the Nonmanufacturer Rule for Electromedical and Electrotherapeutic Apparatus Manufacturing, Diagnostic equipment, MRI (magnetic resonance imaging) manufacturing; Magnetic resonance imaging (MRI) medical diagnostic equipment manufacturing; Medical ultrasound equipment manufacturing; MRI (magnetic resonance imaging) medical diagnostic equipment manufacturing; Patient monitoring equipment (e.g., intensive care coronary care unit) manufacturing; PET (positron emission equipment tomography) scanners manufacturing; and Positron emission tomography (PET) scanners manufacturing, North American Industry Classification System (NAICS) code 334510 product number 6525.

The public is invited to comment or provide source information to SBA on the proposed waivers of the Nonmanufacturer Rule for this class of NAICS code within 15 days after date of publication in the **Federal Register**.

Dated: November 6, 2007.

**Arthur E. Collins, Jr.,**

*Director for Government Contracting.*

[FR Doc. E7–22357 Filed 11–14–07; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

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

**ACTION:** Monthly Notice of PFC Approvals and Disapprovals. In October 2007, there were nine applications approved. This notice also includes information on two applications, approved in September 2007, inadvertently left off the September 2007 notice. Additionally, 14 approved amendments to previously approved applications are listed.

**SUMMARY:** The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph (d) of § 158.29.

**PFC Applications Approved**

*Public Agency:* City of Phoenix, Arizona.

*Application Number:* 07–08–C–00–PHX.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $202,200,000.

*Earliest Charge Effective Date:* August 1, 2008.

*Estimated Charge Expiration Date:* August 1, 2010.

**Class of Air Carriers Not Required To Collect PFC's**

(1) Non-scheduled, on-demand air carriers filing FAA Form 1800–31; (2) commuters or small certificated air carriers filing Department of Transportation Form 298—C T1 or E1 with less than 7,500 annual enplanements at Phoenix Sky Harbor International Airport (PHX); (3) large certificated air carriers filing Research and Special Programs Administration (RSPA) Form T–100 with less than 7,500 annual enplanements at PHX; and (4) foreign air carriers filing RSPA Form T–100(f) with less than 7,500 annual enplanements at PHX.

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that each approved class accounts for less than 1 percent of the total annual enplanements at PHX.

*Brief description of projects approved for collection and use at a $4.50 PFC Level:*

Taxiway improvements.

Noise mitigation program.

Security improvements.

*Brief Description of projects approved for collection and use at a $3.00 PFC level:*

Improved terminal facilities.

Passenger information and paging system.

*Decision Date:* September 27, 2007.

**FOR FURTHER INFORMATION CONTACT:** Kimchi Hoang, Los Angeles Airports District Office, (310) 725–3617.

*Public Agency:* City of Chicago Department of Aviation, Chicago, Illinois.

*Application Number:* 07–20–C–00–ORD.

*Application Type:* Impose and use a PFC.

*PFC Level:* $3.00.

*Total PFC Revenue Approved in This Decision:* $53,983,000.

*Earliest Charge Effective Date:* May 1, 2024.

*Estimated Charge Expiration Date:* October 1, 2024.

*Class of Air Carriers Not Required To Collect PFC's:* Air taxi.

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Chicago O'Hare International Airport.

*Brief Description of Projects Partially Approved for Collection and Use at a $3.00 PFC Level:*

Airport access road improvements.

*Determination:* After reviewing the information provided by the public agency, the FAA determined that portions of the roadways included in the project description are ineligible for PFC funding.

Airport transit system vehicle acquisition and system improvements.

*Determination:* After reviewing the materials provided by the public agency, the FAA determined there was a mathematical error in the cost estimate. Due to this error, the approved amount is less than the requested amount.

*Decision Date:* September 28, 2007.

**FOR FURTHER INFORMATION CONTACT:** Amy Hanson, Chicago Airports District Office, (847) 294–7354.

*Public Agency:* City of San Antonio, Texas.

*Application Number:* 07–05–C–00–SAT.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $24,265,453.

*Earliest Charge Effective Date:* March 1, 2018.

*Estimated Charge Expiration Date:* March 1, 2019.

*Class of Air Carriers Not Required To Collect PFC's:*

Part 135 on demand/air taxi operators filing FAA Form 1800–31.

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at San Antonio International Airport.

*Brief Description of Projects Approved for Collection and Use at a $3.00 PFC Level:*

Runway 21 extension (1,000 feet) and associated development.

Taxiway R extension.

*Brief Description of Projects Approved for Collection and Use At a $5.50 PFC Level:*

Terminal 1 modifications.

Runway safety action team improvements.

*Decision Date:* October 4, 2007.

**FOR FURTHER INFORMATION CONTACT:** Guillermo Villalobos, Texas Airports District Office, (817) 222-5657.

*Public Agency:* County of Okaloosa, Valparaiso, Florida.

*Application Number:* 07–03–C–00–VPS.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $1,143,526.

*Earliest Charge Effective Date:* December 1, 2019.

*Estimated Charge Expiration Date:* July 1, 2020.

*Class of Air Carriers Not Required To Collect PFC's:*

Air taxi/commercial operators.

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Okaloosa Regional Airport (VPS).

*Brief Description of Projects Approved for Collection at VPS and Use at VPS:*

East access, site development, and site utilities.

Construct cargo/maintenance building.

Expand terminal apron.

Relocate fuel farm.

Design terminal baggage and gate expansion.

Install backup emergency generator.

PFC program and administration costs.

*Brief Description of Project Approved for Collection at VPS and Use at VPS, CEW, and Destin-Fort Walton Beach Airport:*

Master Plan Updates.

*Brief Description of Project Partially Approved for Collection at VPS and Use at Crestview/Bob Sikes Airport (CEW):*

Rehabilitate runway 17/35 (phases 1, 2, and 3).

*Determination:* The FAA determined that only 6,500 feet of the runway length is eligible. Therefore, the approved amount is less than that requested by the public agency.

*Decision Date:* October 5, 2007.

**FOR FURTHER INFORMATION CONTACT:** Susan Moore, Orlando airports District Office, (407) 812–6331 extension 120.

*Public Agency:* Palm Beach Board of County Commissioners, West Palm Beach, Florida.

*Application Number:* 07–09–C–00–PBI.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $22,283,317.

*Charge Effective Date:* July 1, 2008.

*Estimated Charge Expiration Date:* October 1, 2010.

*Class of Air Carriers Not Required to Collect PFC's:*

Air taxi/commercial operators filing FAA Form 1800–31.

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Palm Beach International Airport.

*Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level:*

Extension of taxiway L.

Extension of taxiway F.

Replace two fire rescue vehicles.

Navigational aid relocation study.

*Brief Description of Project Approved for Collection for Future Use at a $4.50 PFC Level:*

Land acquisition.

*Decision Date:* October 9, 2007.

**FOR FURTHER INFORMATION CONTACT:** Susan Moore, Orlando Airports District Office, (407) 812–6331, extension 120.

*Public Agency:* County of Jefferson, Beaumont, Texas.

*Application Number:* 07–06–C–00–BPT.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $525,062.

*Charge Effective Date:* November 1, 2008.

*Estimated Charge Expiration Date:* February 1, 2012.

*Class of Air Carriers Not Required to Collect PFC's:*

None.

*Brief Description of Projects Approved for Collection and Use:*

Airfield equipment.

Apron F rehabilitation.

Airfield pavement joint rehabilitation.

Runway 12/30 rehabilitation (phase 1).

Airfield drainage system improvements.

Airfield electrical upgrades.

PFC application and administration fees.

Pavement maintenance plan.

*Decision Date:* October 9, 2007.

**FOR FURTHER INFORMATION CONTACT:** Ben Guttery, Texas Airports Development Office, (817) 222–5614.

*Public Agency:* Toledo-Lucas County Port Authority, Toledo, Ohio.

*Application Number:* 07–05–C–00–TOL.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved In This Decision:* $1,492,000.

*Charge Effective Date:* December 1, 2007.

*Estimated Charge Expiration Date:* December 1, 2010.

*Class of Air Carriers Not Required To Collect PFC's:* Non-scheduled/on-demand air carriers filing FAA Form 1800–31.

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Toledo Express Airport.

*Brief Description of Projects Approved for Collection and Use:*

Terminal improvements and reimbursement.

Rehabilitation of B–6, B–9, B–11, and B–1 design and construction.

Relocation of taxiway November design.

Rehabilitate runway 16/34 design.

Conduct airfield electrical master plan.

Acquire snow removal equipment.

Purchase of a vacuum truck/spill prevention.

Cargo deicing recovery system.

*Decision Date:* October 11, 2007.

**FOR FURTHER INFORMATION CONTACT:** Irene Porter, Detroit Airports District Office, (734) 229–2915.

*Public Agency:* Kent County Department of Aeronautics, Grand Rapids, Michigan.

*Application Number:* 07–04–C–00–GRR.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved In This Decision:* $5,525.000.

*Charge Effective Date:* March 1, 2032.

*Estimated Charge Expiration Date:* January 1, 2033.

*Class of Air Carriers Not Required To Collect PFC's:* Non-scheduled/on-demand air carriers filing FAA Form 1800–31.

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Gerald R. Ford International Airport.

*Brief Description of Projects Approved For Collection and Use:*

Passenger loading bridge replacement.

Public address system replacement.

*Brief Description of Project Partially Approved For Collection and Use:*

Radio system replacement.

*Determination:* The FAA determined that the public agency consulted on a different amount than the amount requested. Therefore, the FAA's approval is limited to the amount discussed in the air carrier consultation and public notice.

*Decision Date:* October 18, 2007.

**FOR FURTHER INFORMATION CONTACT:** Jason Watt, Detroit Airports District Office, (734) 229–2906.

*Public Agency:* Kent County Department of Aeronautics, Grand Rapids, Michigan.

*Application Number:* 07–05–U–00–GRR.

*Application Type:* Use PFC revenue.

*PFC Level:* $4.50

*Total PFC Revenue To Be Used In This Decision:* $2,129,985.

*Charge Effective Date:* October 1, 2016.

*Estimated Charge Expiration Date:* April 1, 2018.

*Class of Air Carriers Not Required To Collect PFC's:* No change from previous decision.

*Brief Description of Project Approved For Use:* Terminal B concourse expansion.

*Decision Date:* October 18, 2007.

**FOR FURTHER INFORMATION CONTACT:** Jason Watt, Detroit Airports District Office, (734) 229–2906.

*Public Agency:* Coos County Airport District, North Bend, Oregon.

*Application Number:* 07–08–C–00–OTH.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved In This Decision:* $403,360.

*Earliest Charge Effective Date:* January 1, 2011.

*Estimated Charge Expiration Date:* July 1, 2014.

*Class of Air Carriers Not Required To Collect PFC's:* Non-scheduled air taxi/commercial operators filing FAA Form 1800–31.

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Southwest Oregon Regional Airport.

*Brief Description of Project Approved for Collection and Use:* Relocation of taxiway C.

*Decision Date:* October 19, 2007.

**FOR FURTHER INFORMATION CONTACT:** Trang Tran, Seattle Airports District Office, (425) 227–1662.

*Public Agency:* Los Angeles County World Airports, Los Angeles, California

*Application Number:* 07–06–C–00–LAX.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved In This Decision:* $85,000,000.

*Earliest Charge Effective Date:* October 1, 2009.

*Estimated Charge Expiration Date:* July 1, 2010.

*Class of Air Carriers Not Required To Collect PFC's:* All non-scheduled/on-demand air taxi/commercial operators.

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Los Angeles International Airport.

*Brief Description of Project Approved for Collection and Use at a $4.50 PFC Level:*

Los Angeles residential soundproofing—phase II.

Noise mitigation program in other local jurisdictions—phase II.

*Decision Date:* October 19, 2007.

**FOR FURTHER INFORMATION CONTACT:** Ruben Cabalbag, Los Angeles Airports District Office, (310) 735–3630.

AMENDMENTS TO PFC APPROVALS

| Amendment No. city, state | Amendment approved date | Original approved net PFC revenue | Amended approved net PFC revenue | Original estimated charge exp. date | Amended estimated charge exp. date |
|---|---|---|---|---|---|
| 98–03–C–03–TLH, Tallahassee, FL | 09/27/07 | $6,848,783 | $3,770,045 | 10/01/02 | 10/01/02 |
| 93–01–C–04–GEG, Spokane, WA | 10/12/07 | 12,594,838 | 9,283,006 | 04/01/98 | 04/01/98 |
| 93–01–C–04–TPA, Tampa, FL | 10/15/07 | 133,682,614 | 145,316,784 | 04/01/01 | 04/01/01 |
| 94–02–U–03–TPA, Tampa, FL | 10/15/07 | NA | NA | 04/01/01 | 04/01/01 |
| 97–03–C–01–TPA, Tampa, FL | 10/16/07 | 25,540,952 | 25,460,336 | 06/01/02 | 06/01/02 |
| 02–05–C–01–TPA, Tampa, FL | 10/17/07 | 135,782,200 | 152,489,574 | 07/01/06 | 07/01/06 |
| 01–05–C–03–OTH, North Bend, OR | 10/19/07 | 541,602 | 638,079 | 08/01/05 | 07/01/06 |
| 04–09–C–02–CRW, Charleston, WV | 10/19/07 | 6,982,402 | 7,609,184 | 03/01/11 | 08/01/11 |
| 03–06–C–01–TPA, Tampa, FL | 10/23/07 | 298,115,400 | 323,388,300 | 09/01/13 | 03/01/14 |
| 98–03–C–02–EUG, Eugene, OR | 10/23/07 | 1,577,459 | 1,577,459 | 06/01/01 | 06/01/01 |
| 04–10–C–02–MKE, Milwaukee, WI | 10/23/07 | 11,775,601 | 12,025,601 | 04/01/18 | 04/01/18 |
| 06–13–C–01–MKE, Milwaukee, WI | 10/23/07 | 47,306,855 | 51,947,402 | 01/01/24 | 06/01/24 |
| 96–05–C–09–ORD, Chicago, IL | 10/24/07 | 467,714,130 | 488,140,368 | 04/01/08 | 06/01/08 |
| 03–04–C–02–PIH, Pocatello, ID | 10/25/07 | 497,218 | 294,313 | 04/01/08 | 04/01/08 |

Issued in Washington, DC, on November 6, 2007.

**Joe Hebert,**

*Manager, Financial Analysis and Passenger Facility Charge Branch.*

[FR Doc. 07–5645 Filed 11–14–07; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket Nos. FMCSA–01–9561, FMCSA–03–15268, FMCSA–05–21711]**

### Qualification of Drivers; Exemption Renewals; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 25 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has reviewed the comments submitted in response to the previous announcement and concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

#### Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov*.

#### Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statutes also allow the Agency to renew exemptions at the end of the 2-year period. The Notice was published on September 27, 2007. The comment period ended on October 29, 2007.

#### Discussion of Comments

FMCSA received no comments in this proceeding.

#### Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 25 renewal applications, FMCSA renews the Federal vision exemptions for Calvin D. Atwood, Gregory W. Babington, William P. Doolittle, Jonathan M. Gentry, John N. Guilford, Benny D. Hatton, Jr., Robert W. Healey, Jr., Nathaniel H. Herbert, Jr., Thomas D. Lambert, Thomas W. Markham, Raul Martinez, Joseph L. Mast, David McKinney, Kevin L. Moody, Charles W. Mullenix, Gary S. Partridge, Nathan D. Peterson, John N. Poland, Brent L. Seaux, Steven R. Smith, James T. Smith, Edd J. Stabler, Jr., Gary M. Wolff, John C. Young, and George R. Zenor.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: November 9, 2007.

**Larry W. Minor,**

*Associate Administrator for Policy and Program Development.*

[FR Doc. E7–22350 Filed 11–14–07; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–99–5578, FMCSA–99–5748, FMCSA–01–9258, FMCSA–02–12844, FMCSA–03–14223, FMCSA–03–15892, FMCSA–05–21254, FMCSA–05–21711]**

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 27 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has

concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

**DATES:** This decision is effective November 30, 2007. Comments must be received on or before December 17, 2007.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–99–5578, FMCSA–99–5748, FMCSA–01–9258, FMCSA–02–12844, FMCSA–03–14223, FMCSA–03–15892, FMCSA–05–21254, FMCSA–05–21711, using any of the following methods.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The DMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78; Apr. 11, 2000). This information is also available at *http://DocketInfo.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

## Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

## Exemption Decision

This notice addresses 27 individuals who have requested a renewal of their exemption in accordance with FMCSA procedures. FMCSA has evaluated these 27 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Thomas E. Adams
Terry J. Aldridge
Lennie D. Baker, Jr.
Grady L. Black, Jr.
Jerry D. Bridges
William J. Corder
Ralph E. Eckels
Tommy K. Floyd
Gary R. Gutschow
Richard J. Hanna
James J. Hewitt
Carl M. Hill
Albert E. Malley
Eugene P. Martin
Roger J. Mason
David L. Menken
Rodney M. Mimbs
Walter F. Moniowczak
William G. Mote
James R. Murphy
Chris A. Ritenour
Ronald L. Roy
Thomas D. Walden
Thomas E. Walsh
Kevin P. Weinhold
Charles M. Wilkins
Thomas A. Wise

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

## Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 27 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 27027; 64 FR 51568; 66 FR 48504; 68 FR 54775; 70 FR 53412; 66 FR 63289; 68 FR 64944; 70 FR 67776; 64 FR 40404; 64 FR 66962; 66 FR 17743; 66 FR 33990; 68 FR 35772; 70 FR 33937; 67 FR 68719; 68 FR 2629; 70 FR 61165; 68 FR 10301; 68 FR 19596; 68 FR 52811; 68 FR 61860; 70 FR 30999; 70 FR 46567; 70 FR 48797; 70 FR 61493). Each of these 27 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate

commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

**Request for Comments**

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by December 17, 2007.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 27 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: November 9, 2007.

**Larry W. Minor,**

*Associate Administrator for Policy and Program Development.*

[FR Doc. E7–22352 Filed 11–14–07; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[U.S. DOT Docket Number NHTSA–2007–0035 Draft ID 0001]**

### Reports, Forms, and Recordkeeping Requirements

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Request for public comment on proposed collection of information.

**SUMMARY:** Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes the collection of information under the Early Warning Reporting requirements enacted by the Transportation Recall Effectiveness, Accountability, and Documentation (TREAD) Act, Pub. L. 106–414, for which NHTSA, intends to seek OMB approval.

**DATES:** Comments must be received on or before January 14, 2008.

**ADDRESSES:** Comments must refer to the docket and notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB Clearance Number. It is requested, but not required, that 2 copies of the comment be provided. The section is open on weekdays from 10 a.m. to 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Complete copies of each request for collection of information may be obtained at no charge from Mr. Paul Simmons, Office of Defects Investigation, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590. Mr. Simmons can be contacted at (202) 366–2315. Please identify the relevant collection of information by referring to its OMB Control Number.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

(1) *Title:* Reporting of Information and Documents about Potential Defects—49 CFR part 579.

*OMB Control Number:* 2127–0616

*Affected Public:* Manufacturers of motor vehicles and motor vehicle equipment.

*Abstract:* Under Chapter 301 of the Title 49 of the United States Code, manufacturers of motor vehicles and items of motor vehicle equipment are periodically required to submit certain information to NHTSA, including information about claims and notices about deaths and serious injury, property damage data, communications to customers and others, and information on Safety Recalls and Campaigns in foreign countries covering vehicles or equipment that are identical or substantially similar to vehicles or equipment sold or offered for sale in the United States. The statute also authorized NHTSA to require the submission of other data that may assist in the identification of safety-related defects in vehicles and equipment. Review of the documents submitted is intended to provide NHTSA with ''early warning'' of potential safety-related defects in motor vehicles and motor vehicle equipment. NHTSA will rely on the information provided (as well as other relevant information) in deciding

whether to open safety defect investigations.

*Estimated Annual Burden:* The annual burden is estimated to be 84,218 hours. The estimated annual cost is $8,105,551.

*Number of Respondents:* 542.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

**Daniel C. Smith,**

*Associate Administrator for Enforcement.*

[FR Doc. E7–22265 Filed 11–14–07; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 35102]**

### Patriot Rail, LLC, Patriot Rail Holdings, LLC, and Patriot Rail Corp.—Control Exemption—Utah Central Railway Company

Patriot Rail, LLC (PRL) and its subsidiaries, Patriot Rail Holdings, LLC (PRH) and Patriot Rail Corp. (Patriot) (collectively, applicants), jointly have filed a verified notice of exemption to permit PRL, PRH, and Patriot to acquire control of Utah Central Railway Company (Utah Central) through Patriot's acquisition of 100% of the outstanding stock of Utah Central, pursuant to a Stock Purchase Agreement dated October 29, 2007 (Agreement).[1]

PRL is a noncarrier limited liability company that owns 51% of the stock of PRH. PRH is a noncarrier limited liability company that owns 100% of the stock of Patriot. Patriot is a noncarrier holding company that owns 100% of the stock of the Tennessee Southern Railroad Company, a Class III rail carrier, operating in Tennessee and Alabama, and 100% of the stock of Patriot Rarus Acquisition Corp., which owns 100% of the outstanding stock of Rarus Railway Company, a Class III rail carrier, operating in Montana.[2] Pursuant to the Agreement, Patriot will acquire direct control of Utah Central. PRL, through its control of PRH, and PRH, through its control of Patriot, will acquire indirect control of Utah Central. Utah Central is a Class III rail carrier that leases and operates a line of railroad from Union Pacific Railroad Company in the Ogden, UT area.[3] The trackage encompasses the former Denver, Rio Grande & Western Railroad main line trackage and appurtenances. Utah Central also acquired approximately 15 miles of trackage in the Ogden area.[4]

The transaction is scheduled to be consummated on or after the date that this notice becomes effective (which will occur on November 29, 2007).

Applicants state that: (i) The rail lines involved in this transaction do not connect with any rail lines now controlled, directly or indirectly, by PRL, PRH, or Patriot; (ii) the acquisition of control of Utah Central by PRL, PRH, and Patriot is not part of a series of anticipated transactions that would connect any of these railroads with each other or any railroad in their corporate family; and (iii) this transaction does not involve a Class I carrier. Therefore, this transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III rail carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than November 21, 2007 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35102, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Louis E. Gitomer, Esq., Law Offices of Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: November 8, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. E7–22212 Filed 11–14–07; 8:45 am]

BILLING CODE 4915–01–P

[1] The full version of the stock purchase agreement, as required by 49 CFR 1180.6(a)(7)(ii), concurrently was filed under seal along with a motion for protective order. A decision on the motion for protective order will be issued separately from this decision.

[2] *Patriot Rail, LLC and Patriot Rail Corp.—Control Exemption—Rarus Railway Company,* STB Finance Docket No. 35013 (STB served Apr. 11, 2007).

[3] *Utah Central Railway Company—Lease and Operation Exemption—Union Pacific Railroad Company,* STB Finance Docket No. 34051 (STB served Aug. 22, 2001).

[4] *Utah Central Railway Company—Acquisition and Operation Exemption—Boyer BDO, L.C. and City of Ogden, UT,* STB Finance Docket No. 34457 (STB served Feb. 6, 2004). By letter filed on November 7, 2007, counsel for applicants clarified that the location of the trackage is in the Ogden area.

## DEPARTMENT OF THE TREASURY

### Financial Crimes Enforcement Network; Proposed Collection; Comment Request; Registration of Money Services Business—Accompanied by FinCEN Form 107, Registration of Money Services Business

**AGENCY:** Financial Crimes Enforcement Network (''FinCEN''), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comment on a proposed information collection contained in a revised form, Registration of Money Services Business, FinCEN Form 107. The form will be used by currency dealers or exchangers; check cashers; issuers of traveler's checks, money orders or stored value; sellers of traveler's checks, money orders or stored value; redeemers of traveler's checks, money orders or stored value; and money transmitters to register with the Department of the Treasury as required by statute. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

**DATES:** Written comments are welcome and must be received on or before January 14, 2008.

**ADDRESSES:** Written comments should be submitted to: Office of Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box

39, Vienna, Virginia 22183, *Attention:* PRA Comments—MSB Registration-Form 107. Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.gov*, again with a caption, in the body of the text, ''Attention: PRA Comment—MSB Registration-Form 107.''

*Inspection of comments:* Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Vienna, VA. Persons wishing to inspect the comments submitted must request an appointment with the Disclosure Officer by telephoning (703) 905–5034 (Not a toll free call).

**FOR FURTHER INFORMATION CONTACT:** The FinCEN Regulatory helpline at (800) 949–2732 and select Option 1.

**SUPPLEMENTARY INFORMATION:**

*Title:* Registration of Money Services Business.

*OMB Number:* 1506–0013.

*Form Number:* FinCEN Form 107.

*Abstract:* The statute generally referred to as the ''Bank Secrecy Act,'' Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330, authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring records and reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters. Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311–5330) appear at 31 CFR Part 103. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of FinCEN.

Under 31 U. S. C. 5330 and its implementing regulations, money services businesses must register with the Department of the Treasury, maintain a list of their agents, and renew their registration every two years. Currently, money services businesses register by filing FinCEN Form 107, which is being revised, as explained below. The information collected on the revised form is required to comply with 31 U. S. C. 5330 and its implementing regulations. The information will be used to assist supervisory and law enforcement agencies in the enforcement of criminal, tax, and regulatory laws and to prevent money services businesses from being used by those engaging in money laundering. The collection of information is mandatory.

Money services businesses are advised that the draft form that appears at the end of this notice is presented only for purposes of soliciting public comment on the draft form. They should not use the draft form to register, renew, correct a prior report, or re-register with Treasury. A final version of the draft form will be made available at a later date. In the meantime, money services businesses can use the current FinCEN Form 107.

*Current Actions:* The current Form 107 and instructions are revised as follows: Part I, Item 1, of Form 107 is amended to read ''Indicate the type of filing by checking a, b, or d below (Check only one). If filing a *correction*, check ''c'' and either a, b, or d.'' The instructions are revised to read, ''Item 1—Check either box a, b, or d (only one) for the type of filing. If this report corrects an earlier filing, check box ''c'' and either box a, b, or d.'' In Part II, an asterisk has been added to items 3, 5, 6, 7, and 9, to indicate that these items are mandatory for a registration to be accepted as valid. Item 11, e-mail address, has been added to facilitate contacting the filer. All other current data elements, check boxes and the remaining forms instructions are unchanged.

*Type of Review:* Revision of currently approved collection report.

*Affected public:* Individuals, business or other for-profit institutions, and not-for-profit institutions.

*Frequency:* As required.

*Estimated Burden:* Reporting average of 30 minutes per response; recordkeeping average of 30 minutes per response.

*Estimated number of respondents:* 40,000.

*Estimated Total Annual Burden Hours:* 40,000 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the Bank Secrecy Act must be retained for five years. Generally, information collected pursuant to the Bank Secrecy Act is confidential, but may be shared as provided by law with regulatory and law enforcement authorities.

*Request for Comments:*

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: November 8, 2007.

**William F. Baity,**

*Deputy Director, Financial Crimes Enforcement Network.*

*Attachments:* Registration of Money Services Business, FinCEN Form 107, and instructions.

**BILLING CODE 4810–02–P**

**FinCEN Form 107**

Effective January, 2008

# Registration of Money Services Business

**Please type or print. Always complete entire report.**
**See instructions for items marked with an asterisk ( * ).**
**Previous editions will not be accepted after July 31, 2008.**

OMB No.1506-0013

*Complete and send to: Enterprise Computing Center-Detroit, Attn: Money Services Business Registration, P. O. Box 33116, Detroit, MI 48232-0116*

## Part I Filing Information

1 Indicate the type of filing by checking a, b, or d below (Check only one). If filing a correction, check "c" **and** either a, b, or d.

a ☐ Initial registration b ☐ Renewal c ☐ Correcting a prior filing d ☐ Re-registration

2 If you checked item 1 d please indicate the reason(s). Check all that apply

a ☐ Re-registered under state law b ☐ More than 10 percent transfer of equity interest c ☐ More than 50 percent increase in agents

## Part II Registrant Information

*3 Legal name of the money services business

4 Doing business as

| *5 Address | *6 City | *7 State | 8 ZIP Code |
|---|---|---|---|
| | | | – |

| *9 EIN (entity), SSN/ITIN (individual) | 10 Telephone number (include area code) | 11 E-mail address (If available) |
|---|---|---|
| | – | |

## Part III Owner or Controlling Person

| 12 Individual's last name, or organization's name | 13 First name | 14 Middle initial |
|---|---|---|
| | | |

15 Address

| 16 City | 17 State | 18 ZIP Code | 19 Country (if other than US) |
|---|---|---|---|
| | | – | |

| 20 Telephone number - (include area code) | 21 Date of birth | 22 SSN/ITIN (individual), EIN (entity) |
|---|---|---|
| ( ) – | ___ / ___ / ___ (MM DD YYYY) | |

23 Skip this item if you completed item 22.

If the owner or controlling person is an individual enter their form of identification, the ID number, and the issuing state or country.

a ☐ Driver's license/state ID b ☐ Passport c ☐ Alien registration d ☐ Other _____

e ID number _____ f Issuing state or country _____

## Part IV Money Services and Product Information

24 States and/or territories where the registrant, its agents or branches are located. Check as many as apply. If you check either "All States" or "All States & Territories", do not check any other boxes.

a ☐ All States & Territories
b ☐ All States

☐ Alabama (AL)
☐ Alaska (AK)
☐ American Somoa (AS)
☐ Arizona (AZ)
☐ Arkansas (AR)
☐ California (CA)
☐ Colorado (CO)
☐ Connecticut (CT)
☐ Delaware (DE)
☐ District of Columbia (DC)
☐ Florida (FL)
☐ Georgia (GA)
☐ Guam (GU)
☐ Hawaii (HI)
☐ Idaho (ID)
☐ Illinois (IL)
☐ Indiana (IN)
☐ Iowa (IA)
☐ Kansas (KS)
☐ Kentucky (KY)
☐ Louisiana (LA)
☐ Maine (ME)
☐ Maryland (MD)
☐ Massachusetts (MA)
☐ Michigan (MI)
☐ Minnesota (MN)
☐ Mississippi (MS)
☐ Missouri (MO)
☐ Montana (MT)
☐ Nebraska (NE)
☐ Nevada (NV)
☐ New Hampshire (NH)
☐ New Jersey (NJ)
☐ New Mexico (NM)
☐ New York (NY)
☐ North Carolina (NC)
☐ North Dakota (ND)
☐ N. Mariana Isls. (MP)
☐ Ohio (OH)
☐ Oklahoma (OK)
☐ Oregon (OR)
☐ Pennsylvania (PA)
☐ Puerto Rico (PR)
☐ Rhode Island (RI)
☐ South Carolina (SC)
☐ South Dakota (SD)
☐ Tennessee (TN)
☐ Texas (TX)
☐ Utah (UT)
☐ Vermont (VT)
☐ Virgin Islands (VI)
☐ Virginia (VA)
☐ Washington (WA)
☐ West Virginia (WV
☐ Wisconsin (WI)
☐ Wyoming (WY)

## Part IV (continued) 2

25 Enter the number of branches of the registrant. **Reminder: do not separately register each branch.** See instructions for an explanation of the term "branch".

26 Money services business activities of the registrant. Check as many as apply. See instructions for an explanation of the terms " issuer", "seller", "redeemer", "check casher", and "money transmitter".

a ☐ Issuer of traveler's checks
b ☐ Seller of traveler's checks
c ☐ Redeemer of traveler's checks
d ☐ Issuer of money orders
e ☐ Seller of money orders
f ☐ Redeemer of money orders
g ☐ Currency dealer or exchanger
h ☐ Check casher
i ☐ Money transmitter

27 Is any part of the registrant's money services business an informal value transfer system? See the explanation of "money transmitter" in the instructions. a ☐ Yes b ☐ No

28 Is any part of the registrant's money services business conducted as a mobile operation? a ☐ Yes b ☐ No

29 Enter the number of agents authorized to conduct each money services business activity. Do not include branches, or persons who are solely employees. See instructions for an explanation of the term "agent"

a Traveler's check sales
b Traveler's check redemption
c Money order sales
d Money order redemption
e Currency exchange or dealer
f Check cashing
g Money transmission

## Part V Primary Transaction Account for MSB Activities

30 If the registrant has more than one transaction account for money services business activities check here. ☐
See instructions for an explanation of the term "transaction account".
The registrant's primary transaction account is the one that has the greatest annual dollar amount of money services business activity.
In items 30 through 35 enter information about the registrant's primary transaction account for money services business activities.

31 Name of financial institution where the primary transaction account is held

32 Address

33 City

34 State

35 ZIP Code

36 Primary transaction account number

## Part VI Location of Supporting Documentation

If the supporting documentation is kept at the U.S. location reported in Part II check here ☐ and continue to Part VII.

37 Address

38 City

39 State

40 ZIP Code

## Part VII Authorized Signature

I am authorized to file this form on behalf of the money services business listed in Part II. I declare that the information provided is true, correct and complete. I understand that the money services business listed in Part II is subject to the Bank Secrecy Act and its implementing regulations. See 31 CFR Part 103. The money services business listed in Part II maintains a current list of all agents, an estimate of its business volume in the coming year, and all other information required to comply with 31 U.S.C. 5330 and the regulations thereunder. **The signature of the owner, controlling person or authorized corporate officer is mandatory.**

41 Signature

42 Print name

43 Title

44 Date of signature ____ / ____ / ____ MM DD YYYY

**FinCEN Form 107a** **Registration of Money Services Business Instructions** **1**

# General Information

## Who Must Register

Generally each money services business must register with the Department of the Treasury. This form must be used by a money services business (also referred to as an MSB) to register. However, not all MSBs are required to register. For example, if you are an MSB solely because you are an agent of another MSB, you are not required to register. The discussion below will help you determine whether or not you are an MSB that is required to register. For more information visit **www.msb.gov**.

The term money services business includes:

1. Currency dealers or exchangers who exchange more than $1,000 for any one customer on any day.

2. Check cashers who cash checks totaling more than $1,000 for any one customer on any day.

3. Issuers of traveler's checks, money orders or stored value who issue more than $1,000 in traveler's checks, money orders or stored value for any one customer on any day.

4. Sellers of traveler's checks, money orders or stored value who sell more than $1,000 in traveler's checks, money orders or stored value for any one customer on any day.

5. Redeemers of traveler's checks, money orders or stored value who redeem more than $1,000 in traveler's checks, money orders or stored value for any one customer on any day.

6. Money transmitters.

7. U.S. Postal Service.

The following are not required to register:

1. A business that is an MSB solely because it serves as an agent of another MSB. For example, a supermarket corporation that sells money orders for an issuer of money orders is not required to register. This is true even if the supermarket corporation serves as an agent for two or more MSBs. However, an MSB that serves as an agent of another MSB and engages in MSB activities on its own behalf must register. For example, a supermarket corporation must register if, in addition to acting as an agent of the money order issuer, it provides check cashing or currency exchange services on its own behalf in an amount greater than $1,000 for any one person on any day.

2. The United States Postal Service, any agency of the United States, of any state, or of any political subdivision of any state.

3. At this time, persons are not required to register to the extent that they issue, sell or redeem stored value. If, however, a money services business provides money services in addition to stored value, the provision of stored value services does not relieve it of the responsibility to register, if required, as a provider of those other services.

For the regulatory definition of "money services business" see 31 CFR 103.11(n) and (uu).

The following terms are used in the form and instructions to describe a money services business.

1. An "agent" is a separate business entity from the issuer that the issuer authorizes, through written agreement or otherwise, to sell its instruments or, in the case of funds transmission, to sell its send and receive transfer services. A person who is solely an employee of the MSB is not an agent of that MSB.

2. A "branch" is an owned location of either an issuer or agent at which financial services are sold. An MSB should not separately register each of its branches. A mobile operation owned by an MSB is a branch of that MSB. The MSB's headquarters is not a branch. If the MSB has only one location, that location is not a branch.

3. A "check casher" is a person engaged in the business of providing cash to persons in return for a check.

4. A "currency dealer or exchanger" is a person who engages in the physical exchange of currency for retail customers.

5. "Informal value transfer system". See explanation of the term money transmitter.

6. An "issuer" is the business that is ultimately responsible for payment of money orders or travelers checks as the drawer of such instruments, or a money transmitter that has the obligation to guarantee payment of a money transfer.

7. A "money transmitter" is a person that engages as a business in the transfer of funds through a financial institution.
Generally, acceptance and transmission of funds as an integral part of the execution and settlement of a transaction other than the funds transmission itself (for example, in connection with the bona fide sale of securities) will not cause a person to be a money transmitter.
An "informal value transfer system" is a kind of money transmitter. An informal value transfer system includes any person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system.

8. A "person" is an individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, an Indian Tribe (as that term is defined in the Indian Gaming Regulatory Act), and all entities cognizable as legal personalities.

9. A "redeemer" is a business that accepts instruments in exchange for currency or other instruments for which it is not the issuer. You are not a redeemer if you take the instruments in exchange for goods or general services, provided that the amount of cash returned is not more than $1,000 for any one customer on any day.

10. A "seller" is a business that issuers authorize, through written agreement or otherwise, to sell their instruments or their send and receive transfer services.

11. A "transaction account" is a deposit or account on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone transfers, or other similar items for the purpose of making payments or transfers to third persons or others. Such terms include demand deposits, negotiable order of withdrawal accounts, savings deposit subject to automatic transfers, and share draft accounts. See 12 USC 461(b)(1)(c).

## When to Register

*Initial registration:* File the form within 180 days after the date the business is established.

*Renewal:* Each MSB must renew its registration every two years, on or before December 31. See 31 CFR 103.41(b)(2). For example, if an MSB registered on October 15, 2003, it must file a renewal by December 31, 2004, and then every 24 months thereafter (on or before December 31, 2006, then December 31, 2008, etc.).

*Correction:* Use the form to correct a prior report. Complete Part I in its entirety and only those other entries that are being added or changed. Staple a copy of the prior report (or the acknowledgement from FCC-D if received) to the corrected report.

*Re-registration:* Refile a new registration form when one of the following events occurs:

1. a change in ownership requiring re-registration under state registration law;
2. more than 10 percent of voting power or equity interest is transferred (except certain publicly-traded companies) or;
3. the number of agents increases by more than 50 percent.

## Where to Register

Send your completed form to:

**Enterprise Computing Center - Detroit**
**Attn: Money Services Business Registration**
**P.O. Box 33116**
**Detroit, MI 48232-0116**

The Enterprise Computing Center-Detroit (ECC-D) will send an acknowledgement of receipt to the registrant listed in Part II within approximately 60 days after the form is processed (See note below). ECC-D can respond to general questions over the phone at telephone (800) 800-2877.

## General Instructions

**NOTE: All items on FinCEN Form 107 should be completed fully and accurately. Items marked with an asterisk (*) must be completed for the registration to be accepted, processed, and recorded. Acknowledgement letters will not be provided if these items are not complete.**

1. This form is available on the Financial Crimes Enforcement Network's web site for MSBs at www.msb.gov, or FinCEN's web site at www.fincen.gov, or by calling the IRS Forms Distribution Center at (800) 829-2437.

2. Unless there is a specific instruction to the contrary, leave blank any items that do not apply or for which information is not available.

3. Complete the form by providing as much information as possible.

4. Do not include supporting documents with this form.

5. Type or complete the form using block written letters.

6. Enter all dates in MM / DD / YYYY format where MM = month, DD = day, and YYYY = year. Precede any single number with a zero, *i.e.*, 01,02, etc.

7. List all U.S. telephone numbers with area code first and then the seven-digit phone number, using the format (XXX) XXX-XXXX

8. Always enter an individual's name as last name, first name, and middle initial (if known). If a legal entity is listed, enter its name in the last name field.

9. Enter identifying numbers starting from left to right. Do not include spaces, dashes, or other punctuation. Identifying numbers include social security number (SSN), employer identification number (EIN), individual taxpayer identification number (ITIN), alien registration number, driver's license/state identification, foreign national identification, and passport number.

10. Enter all Post Office ZIP Codes from left to right with at least the first five numbers, or with all nine (ZIP + 4) if known.

11. Addresses: Enter the permanent street address, city, two-letter state or territory abbreviation used by the U.S. Postal Service and ZIP Code (ZIP + 4 if known) of the individual or entity. A post office box number should not be used for an individual, unless no other address is available. For an individual, also enter any apartment number, suite number, or road or route number. If a P.O. Box is used for an entity, enter the street name, suite number, and road or route number. If the address of the individual or entity is in a foreign country, enter the city, province or state, postal code and the name of the country. Complete any part of the address that is known, even if the entire address is not known. If the address is in the United States leave country code blank.

## Specific Instructions

### Part I Filing Information

See "When to Register" in the General Information part of these instructions.

**Item 1--** Check either box a, b, or d (only one) for the type of filing. If this report corrects an earlier filing, check box **"c" and** either box a, b, or d.

**Item 2--** If you checked box 1d, please indicate the reason by checking boxes a, b, or c (check all that apply).

### Part II Registrant Information

**Item *3--Legal name of the money services business.** Enter the full legal name of the registrant money services business as it is shown on the charter or other document creating the entity. For example, enter Good Hope Enterprises, Inc when the money services business is Good Hope Enterprises, Inc. If a sole proprietorship, enter the business name of the proprietorship.

**Item 4-- Doing business as.** If applicable, enter the separate doing business as name of the registrant. For example, enter in item 4, Joe's Check Cashing, when the money services business is Good Hope Enterprises, Inc., d b.a. Joe's Check Cashing.

**Items *5, *6, *7 and 8-- Address.** Enter the permanent address of the registrant.

**Item *9--EIN (entity), SSN/ITIN (individual).** If the registrant is an entity enter its employer identification number (EIN). If the registrant is an individual and a U. S. Citizen or an alien with a social security number, enter his/her SSN. If the registrant is an individual who is an alien and has an individual taxpayer identification number, enter his/her ITIN.

**Item 10-- Telephone number.** Enter the telephone number of the MSB listed in item 3.

**Item 11-- E-mail address (Optional).** If the MSB has an e-mail address please enter it here. An e-amil address may be used to contact the MSB should questions arise regarding their registeration.

### Part III Owner or Controlling Person

**General:** Any person who owns or controls a money services business is responsibile for registering the MSB. Only one registration form is required for any business in any registration period. If more than one person owns or controls the business, they may enter into an agreement designating one of them to register the business. The designated owner or controlling person must complete Part III and provide the requested information. In addition, that person must sign and date the form as indicated in Part VII. Failure by the designated person to register the business does not relieve any other person who owns or controls the business of the liability for failure to register the business.

An "Owner or Controlling Person" includes the following:

| *Registrant Business* | *Owner or Controlling Person* |
|---|---|
| Sole Proprietorship. .... .. .... .. | the individual who owns the business |
| Partnership..... | a general partner |
| Trust..... ..... | a trustee |
| Corporation..... | the largest single shareholder |

If two or more persons own equal numbers of shares of a corporation, those persons may enter into an agreement as explained above that one of those persons may register the business.

If the owner or controlling person is a corporation, a duly authorized officer of the owner-corporation may execute the form on behalf of the owner-corporation.

**Item 12--Individual's last name, or organization's name.** If the registrant is a publicly held corporation, it is sufficient to write "public corporation" in item 11. Where registrant is a public corporation, a duly authorized officer of the registrant must execute the form in Part VII.

**Items 13 to 22--**Enter the applicable information for the owner or controlling person. Their home address and phone number should not be used, unless a business address and phone number are unavailable.

**Item 23--Identification information.** If you completed item 22, you may omit this item. If you did not complete item 22, enter separately the form of identification, the ID number, and the issuing state or country. Do not provide "other" identification unless no driver's license/state ID, passport or alien registration number is available. "Other" identification includes any unexpired official identification that is issued by a governmental authority. If you check item 23d, give a brief description of the "other" identification.

### Part IV Money Services and Product Information

**Item 24--States and/or territories where the registrant, its agents or branches are located.** Check the box(es) for any state, territory or district in which the money services business offers services through its branches and/or agents. If a service is offered on tribal lands, mark the box for the state, territory or district in which the tribal lands are located. If you checked either "All States" or "All States & Territories", do not check any other states or territories.

## FinCEN Form 107 Registration of Money Services Business Instructions 3

**Item 25--Enter the number of branches of the registrant.** Enter the number of branches of the money services business at which one or more MSB activities are offered. If there are no branches, enter zero. See the General Information for an explanation of the term "branch".

**Item 26--MSB activities of the registrant.** Items 26a through 26i are MSB activities. Check the box of each MSB activity conducted by the registrant at its branches. See the General Information for an explanation of the terms "issuer", "seller", "redeemer", "check casher", and "money transmitter".

**Item 27--Informal value transfer system.** If any part of the registrant's money services business is an informal value transfer system, check yes. An informal value transfer system is a kind of money transmitter. See the General Information explanation of the term "money transmitter".

**Item 28--Mobile operation.** If any part of the registrant's money services business is conducted as a mobile operation, check yes. A mobile operation is one based in a vehicle. For example, a check cashing service offered from a truck is a mobile operation. For purposes of Item 25, each mobile operation should be counted as a separate branch.

**Item 29--Number of agents.** Enter the number of agents that the registrant has authorized to sell or distribute its MSB services. Do not count branches or any person who is solely an employee of the MSB. A bank is not an agent for this purpose. See the General Information for an explanation of the term "agent".

### Part V Primary Transaction Account for MSB Activities

**Item 30--**Check the box if the registrant has more than one primary transaction account for money services business activities. Example: If the registrant is both an issuer of money orders and an issuer of traveler's checks and the registrant has separate clearing accounts for money orders and traveler's checks, the box should be checked.

**Item 31--Name of the financial institution where the primary transaction account is held.** Enter the name of the bank or other financial institution where the registrant has its primary transaction account. If you indicated that the registrant has more than one primary transaction account in Item 30, enter information about the account with the greatest money service activity transaction volume as measured by value in dollars. See the General Information for an explanation of the term "transaction account".

**Items 32 to 35--**Enter the permanent address for the financial institution.

**Item 36--Primary transaction account number.** Enter the primary transaction account number.

### Part VI Location of Supporting Documentation

**General:** The registrant must retain for five (5) years certain information at a location within the United States. That information includes:

**1.** A copy of the registration form.

**2.** Annual estimate of the volume of the registrant's business in the coming year.

**3.** The following information regarding ownership or control of the business: the name and address of any shareholder holding more than 5% of the registrant's stock, any general partner, any trustee, and/or any director or officer of the business.

**4.** An agent list.

If the registrant has agents it must prepare and maintain a list of its agents. That agent list must be updated annually and retained by the business at the location in the United States reported on this registration form in Part II or Part VI. The agent list **should not** be filed with this registration form.

The agent list must include:

a. Each agent's name,

b. Each agent's address,

c. Each agent's telephone number,

d. The type of service(s) provided by each agent on behalf of the registrant,

e. A listing of the months in the immediately preceding 12 months in which the gross transaction amount of each agent with respect to financial products/services issued by the registrant exceeds $100,000,

f. The name and address of any depository institution at which each agent maintains a transaction account for the money services business activities conducted by the agent on behalf of the registrant,

g. The year in which each agent first became an agent of the registrant, and

h. The number of branches or subagents of each agent.

**Items 37 to 40--**If the supporting documentation is retained at a location other than the address listed in Part II, enter the location information in items 37 through 40.

### Part VII Authorized Signature

**Items 41 to 44--**The owner or controlling person listed in Part III must sign and date the form as indicated in Part VII. If the owner or controlling person is a corporation, a duly authorized officer of the corporation must execute the form on behalf of the corporation. Enter the date this document was signed.

**Penalties for failure to comply:** Any person who fails to comply with the requirements to register, keep records, and/or maintain agent lists pursuant to 31 CFR 103.41 may be liable for civil penalties of up to $5,000 for each violation. Failure to comply also may subject a person to criminal penalties, which may include imprisonment for up to five (5) years and criminal fines. See 18 USC 1960. **Note: This registration does not satisfy any state or local licensing or registration requirements.**

**Paperwork Reduction Act Notice.**

The purposes of this form are to provide an effective and consistent means for money services businesses to register with the Financial Crimes Enforcement Network, and to assure maintenance of reports or records where such reports or records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. This report is required by law, pursuant to authority contained in Public Law 103-305; 31 USC 5330; 5 USC 301; 31 CFR 103. The information collected may be provided to those officers and employees of any constituent unit of the Department of the Treasury who have a need for the records in the performance of their duties. The records may be referred to any other department or agency of the United States, to any State, or Tribal Government. Public reporting and recordkeeping burden for this information collection is estimated to average 30 minutes per response, and includes time to gather and maintain data for the required report, review the instructions, and complete the information collection. Send comments regarding this burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget Paperwork Reduction Project, Washington, DC 20503 *and* to the Paperwork Reduction Act; Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183-0039. The agency may not conduct or sponsor, and an organization (or a person) is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**Privary Act Notice.**

Pursuant to the requirements of Public Law 93-579 (Privacy Act of 1974), notice is hereby given that, in accordance with 5 U.S.C. 552a(e), the authority to collect information on **FinCEN Form 107** is Public Law 103-305; 31 USC 5330; 5 USC 301; 31 CFR 103. The Department of the Treasury may use and share the information with any other department or agency of the United States, to any State, or Tribal Government, or part thereof, upon the request of the head of such department or agency, or authorized State or Tribal Government official for use in a criminal, tax, or regulatory investigation or proceeding, and to foreign governments in accordance with an agreement, or a treaty. Disclosure of this information is mandatory. Civil and criminal penalties, including in certain circumstances a fine of not more than $5,000 per day and imprisonment of not more than five years, are provided for failure to file the form, supply information requested by the form, and for filing a false or fraudulent form. Disclosure of the social security number or taxpayer identification number is mandatory. The authority to collect is 31 CFR 103. The social security number/taxpayer identification number will be used as a means to identify the individual or entity who files the report.

[FR Doc. 07–5686 Filed 11–14–07; 8:45 am]

BILLING CODE 4810–02–C

## DEPARTMENT OF THE TREASURY

### Open Meeting of the Advisory Committee on the Auditing Profession

**AGENCY:** Office of the Undersecretary for Domestic Finance, Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** The Department of the Treasury's Advisory Committee on the Auditing Profession will convene a meeting on Monday, December 3, 2007, in the Cash Room of the Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC, beginning at 10 a.m. Eastern Time. The meeting will be open to the public.

**DATES:** The meeting will be held on Monday, December 3, 2007 at 10 a.m. Eastern Time.

**ADDRESSES:** The Advisory Committee will convene a meeting in the Cash Room of the Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC. The public is invited to submit written statements with the Advisory Committee by any of the following methods:

**Electronic Statements**

- Use the Department's Internet submission form (*http://www.treas.gov/offices/domestic-finance/acap/comments*); or

**Paper Statements**

- Send paper statements in triplicate to Advisory Committee on the Auditing Profession, Office of Financial Institutions Policy, Room 1418, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

In general, the Department will post all statements on its Web site (*http://www.treas.gov/offices/domestic-finance/acap/comments*) without change, including any business or personal information provided such as names, addresses, e-mail addresses, or telephone numbers. The Department will also make such statements available for public inspection and copying in the Department's Library, Room 1428, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect statements by telephoning (202) 622–0990. All statements, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Kristen E. Jaconi, Senior Policy Advisor to the Under Secretary for Domestic Finance, Department of the Treasury, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, at (202) 927–6618.

**SUPPLEMENTARY INFORMATION:** In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, section 10(a), and the regulations thereunder, David G. Nason, Designated Federal Officer of the Advisory Committee, has ordered publication of this notice that the Advisory Committee will convene a meeting on Monday, December 3, 2007, in the Cash Room in the Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC, beginning at 10 a.m. Eastern Time. The meeting will be open to the public. Because the meeting will be held in a secured facility, members of the public who plan to attend the meeting must contact the Office of Domestic Finance, at (202) 622–4944, by 5 p.m. Eastern Time on November 29, 2007, to inform the Department of the desire to attend the meeting and to provide the information that will be required to facilitate entry into the Main Department Building. The agenda for this meeting consists of hearing oral testimony from witnesses and considering written statements that those witnesses have filed with the Advisory Committee in connection with the meeting. The oral testimony will focus on the issues impacting the sustainability of the auditing profession, including issues mentioned in the Discussion Outline, which was presented at the initial meeting of the Advisory Committee on October 15, 2007 (*http://www.treas.gov/offices/domestic-finance/acap/agendas/outline-10-15-07.pdf*), and published in the **Federal Register** for comment on October 31, 2007 (*http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/E7-21402.pdf*).

Dated: November 7, 2007.

**Taiya Smith,**

*Executive Secretary.*

[FR Doc. E7–22254 Filed 11–14–07; 8:45 am]

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Federal Register

Thursday,
November 15, 2007

# Part II

# Department of the Interior

## Fish and Wildlife Service

## 50 CFR Part 17

## Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Five Endangered and Two Threatened Mussels in Four Northeast Gulf of Mexico Drainages; Final Rule

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018–AU87**

# Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Five Endangered and Two Threatened Mussels in Four Northeast Gulf of Mexico Drainages

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), are designating critical habitat for the endangered fat threeridge (*Amblema neislerii*), shinyrayed pocketbook (*Lampsilis subangulata*), Gulf moccasinshell (*Medionidus penicillatus*), Ochlockonee moccasinshell (*Medionidus simpsonianus*), and oval pigtoe (*Pleurobema pyriforme*), and the threatened Chipola slabshell (*Elliptio chipolaensis*) and purple bankclimber (*Elliptoideus sloatianus*) (collectively referred to as the seven mussels) under the Endangered Species Act of 1973, as amended (Act). The total length of streams designated is approximately 1,185.9 river miles (river mi) (1,908.5 river kilometers (river km)). The critical habitat is located in Houston and Russell counties, Alabama; in Alachua, Bay, Bradford, Calhoun, Columbia, Franklin, Gadsden, Gulf, Jackson, Leon, Liberty, Union, Wakulla, and Washington counties, Florida; and in Baker, Calhoun, Coweta, Crawford, Crisp, Decatur, Dooly, Dougherty, Early, Fayette, Grady, Lee, Macon, Marion, Meriwether, Miller, Mitchell, Peach, Pike, Schley, Spalding, Sumter, Talbot, Taylor, Terrell, Thomas, Upson, Webster, and Worth counties, Georgia.

**DATES:** This rule becomes effective on December 17, 2007.

**ADDRESSES:** Comments and materials received, as well as supporting documentation used in the preparation of this final rule, will be available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Panama City Ecological Services Office, 1601 Balboa Avenue, Panama City, FL 32405 (telephone 850–769–0552). The final rule, economic analysis, and maps will also be available via the Internet at *http://www.fws.gov/panamacity/.*

**FOR FURTHER INFORMATION CONTACT:** Gail Carmody, Field Supervisor, Panama City Ecological Services Office, 1601 Balboa Avenue, Panama City, FL 32405; telephone 850–769–0552; facsimile 850–763–2177. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

## Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this final rule. For additional information on the seven mussels, refer to the final listing rule published in the **Federal Register** on March 16, 1998 (63 FR 12664), the final recovery plan that was approved September 19, 2003 (available from our Panama City, Florida Office or online at *http://www.fws.gov/endangered/recovery/Index.html#plans*), and the proposed critical habitat rule published in the **Federal Register** on June 6, 2006 (71 FR 32746).

The shinyrayed pocketbook was listed as federally endangered under the scientific name *Lampsilis subangulata.* The shinyrayed pocketbook and three other Lampsilis species are now assigned to the newly recognized genus *Hamiota* (Roe and Hartfield 2005, p. 1). The Service intends to implement the name change in a separate rulemaking. In November 2006, an Auburn University scientist working under contract for the Service identified eight mussels as shinyrayed pocketbooks that he found in a segment of Econfina Creek (M. Gangloff, personal communication November 3, 2006). This stream segment is within the area designated in this rule as critical habitat for the Gulf moccasinshell and oval pigtoe. If the identification is correct, this find represents the first record of the shinyrayed pocketbook in the Econfina Creek Basin, which was previously known only from the Apalachicola-Chattahoochee-Flint (ACF) and Ochlockonee basins. The Service intends to conduct further surveys to confirm whether the species is in Econfina Creek and, if so, to estimate its range and abundance in the basin. In this rule, we do not designate Econfina Creek as critical habitat for the shinyrayed pocketbook.

## Previous Federal Actions

On March 15, 2004, the Center for Biological Diversity (Center) filed a lawsuit against the Department of the Interior and the Service (Civil Action No. 1:04 CV–0729–GET) challenging the failure to designate critical habitat for the seven mussels. In a settlement agreement dated August 31, 2004, the Service agreed to reevaluate the prudency of critical habitat for the seven mussels and, if prudent, submit a proposed designation of critical habitat to the **Federal Register** by May 30, 2006, and a final designation by May 30, 2007. On March 7, 2007, the court granted an extension and set the new final designation deadline for October 31, 2007.

We published the proposed critical habitat rule for the seven mussels in the **Federal Register** on June 6, 2006 (71 FR 32746). We accepted public comments on the proposal for 60 days until August 7, 2007. We completed a draft economic analysis (DEA) for the proposed designation on June 6, 2007, and published a notice of availability for this DEA in the **Federal Register** on June 21, 2007 (72 FR 34215). The public comment period for the DEA was open until August 6, 2007.

For more information on previous Federal actions concerning the seven mussels, refer to the proposed critical habitat designation (71 FR 32746, June 6, 2006) and our notice of availability of the draft economic analysis (72 FR 34215, June 21, 2007). This final rule complies with the settlement agreement.

## Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for the seven mussels in the proposed rule, and again in the subsequent notice of availability (72 FR 34215). On both occasions, we contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule. Three public hearings were held during the second comment period on July 9, 2007, in Columbus, Georgia, July 10, 2007, in Albany, Georgia, and July 11, 2007, in Tallahassee, Florida.

During the first comment period that opened on June 6, 2006, and closed on August 7, 2006, we received comments from 30 entities that directly addressed the proposed critical habitat designation: one from a peer reviewer, 3 from Federal agencies, 16 from State and local governmental agencies, and 10 from organizations or individuals. We received 4 requests for a public hearing, all from entities in the LaGrange and Columbus, Georgia, area. During the second comment period that opened on June 21, 2007, and closed on August 6, 2007, including the three public hearings, we received comments from 25 entities that directly addressed the proposed critical habitat designation or the draft economic analysis: 4 from peer reviewers, 3 from Federal agencies, 7

from State and local governmental agencies, and 11 from organizations or individuals. Of the comments provided during both comment periods, six commenters supported the designation of critical habitat for the seven mussels and nine opposed the designation. Forty commenters provided suggestions or information, but did not indicate support or opposition to the critical habitat designation. We received comments that were grouped into 70 issues specifically relating to the proposed critical habitat designation for the seven mussels, and are addressed in the following summary and incorporated into the final rule as appropriate.

**Peer Review**

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from seven knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received responses from four of the peer reviewers. The peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve the final critical habitat rule. We address peer reviewer comments in the following summary and incorporate into the final rule as appropriate.

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding critical habitat for the seven mussels, and address them in the following summary.

*Peer Reviewer Comments*

(1) *Comment:* The Service stated in the proposed rule that ''Most of the tributary streams in the four basins that may support one or more of the seven species have never been surveyed.'' This seems to cast doubt on the adequacy of the data used to designate critical habitat. Most streams in this region that are large enough to support these species have been surveyed at least to some extent.

*Our Response:* We acknowledge that a substantial fraction of the unsurveyed tributary streams in the region are probably not large enough to support populations of the seven mussels. However, the drainage area associated with the upstream-most location in most of the occupied watersheds is often quite small (e.g., less than about 5,000 ha (20 $mi^2$)), and we have no data for a majority of locations in the four basins that drain areas of this size. Regardless, we have considered all available survey data in our analysis for identifying critical habitat. We designated only where presence is confirmed by surveys.

(2) *Comment:* The designation of critical habitat should consider whether re-establishing populations in streams where a species formerly occurred is necessary to fully recover the species.

*Our Response:* The Act provides for designating areas that are unoccupied at the time of listing when such areas are essential for the conservation of a listed species. We listed the seven mussels based on a substantial decline in range and abundance and threats to their habitats. Our recovery plan (USFWS 2003:76–83) quantifies the amount of range expansion into formerly occupied areas that we believe is necessary to achieve recovery for the five species we listed as endangered. By delineating critical habitat units as the collective extent of occurrence of all seven listed species within a sub-basin, our proposed critical habitat included a stream length that met the recovery plan's geographic range recovery criteria for each of the five endangered species. We do not believe a substantial increase in extent of occurrence is either feasible or necessary for the recovery of the two threatened species, which have experienced a lesser decline in range than the five endangered species. The seven mussels historically occupied overlapping but also different portions of the eleven units, and it is not necessary for each species to occupy all suitable habitat within its designated critical habitat units to achieve recovery. We considered designating units for species that are entirely extirpated from those units but determined that doing so is not essential for their conservation.

(3) *Comment:* Characterizing the stream substrates that are essential to the conservation of the seven mussels as composed of predominantly coarse materials is too simplistic and potentially misleading. Fine sediments (silts and clays) are a natural component of stream substrates in the coastal plain, including substrates used by the seven listed species. In this region, very coarse substrates are often associated with channel scouring and are devoid of mussels.

*Our Response:* We agree that some amount (generally less than 50 percent by dry weight) of fine sediment is a normal component of the substrate that is essential to the conservation of the seven mussels. Coarse sands without any silt or clay, for example, lack cohesiveness and do not appear to support many mussels, including the listed species. By emphasizing the adverse affects of excessive amounts of fine sediments, we may have implied that the seven mussels are altogether intolerant of fine sediments, which is not the case. Therefore, we have revised the substrate primary constituent element (PCE) and our discussion of substrate quality to acknowledge the appropriate role of fine sediments in substrate quality.

(4) *Comment:* The proposed rule stated that the three other species reassigned from the genus *Lampsilis* to the newly recognized genus *Hamiota* are not federally listed, but two of these are: *H. altilis* and *H. perovalis*. The third, *H. australis*, is considered a candidate for protection under the Act.

*Our Response:* The comment is correct. We erred in stating that the three other species are not federally listed, and we have revised the text of the final rule accordingly.

(5) *Comment:* Because other portions of the Uchee Creek sub-basin besides those proposed for designation have supported the shinyrayed pocketbook and other listed species as recently as 1973, but have not been surveyed much or at all since then, the rule should designate all portions of this sub-basin below the Fall Line as critical habitat.

*Our Response:* Riverine habitats are dynamic and subject to a variety of threats, which makes survey data about the presence of particular mussel species time-specific. It is not feasible to routinely survey the full range of the seven species, which collectively spans over 1,000 river miles. We chose post-1990 live occurrence records as a criterion for evidence that a site has supported recent occupancy because a great deal of our data comes from a range-wide status survey conducted in 1991 and 1992, shortly before the species were proposed for listing in 1994. Occurrence records from 1973 do not meet the criterion we set for evidence of recent occupancy; therefore, we did not designate other portions of the Uchee Creek sub-basin. Our method of identifying stream segments that meet the criterion of recent occupancy by one or more of the listed species and then delineating units as contiguous groups of these stream segments resulted in designating a total length of stream habitat meets our recovery plan's geographic range recovery criteria for each of the seven mussels (see response to Comment #2). Therefore, we believe that designating additional areas for which we do not have evidence of recent occupancy is not essential to their conservation. Listed species that may occur outside of designated critical habitat still receive protection under the

jeopardy standard of section 7 and the take prohibition of section 9 of the Act.

(6) *Comment:* Because Sawhatchee and Kirkland creeks are separated by unsuitable habitat in an impounded section of the Chattahoochee River, these creeks should be designated as separate critical habitat units.

*Our Response:* We have grouped Sawhatchee and Kirkland creeks in the same unit because they share two of three listed species in common and flow unimpeded by fish passage barriers into a common water body. Host fish, such as largemouth bass, could conceivably transport glochidia between these two streams.

*Comments from States*

Section 4(i) of the Act states, ''the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition.'' We address comments received from States regarding the proposal to designate critical habitat for the seven mussels below.

(7) *Comment:* The designation is overly broad because it includes areas at high elevations within the lateral boundaries and areas between the upstream and downstream boundaries that do not support the mussels.

*Our Response:* Our regulations allow the inclusive designation of occupied and unoccupied areas in proximity to each other that are each essential to the conservation of a species (50 CFR 424.12(d)). We agree that the adult seven mussels are seldom found at or near the ordinary high water marks in a stream, as this portion of the stream bed is inundated only during relatively high flows; however, we have determined that the entire stream channel between the ordinary high water marks is essential to their conservation as the larval life stage of these mussels while attached to a fish host or drifting in the current could ''occupy'' all habitats that the fish visits or the current takes them, including places at or near the ordinary high water marks during high water conditions. The location of suitable areas for mussel habitat is dependent on fluvial dynamics that occur mostly within the channel up to the ordinary high water marks. A stable stream bank that is laterally adjacent to but vertically above a mussel bed is essential to the viability of the mussel bed. Further, our regulations prescribe the use of reference points and lines as found on standard topographic maps for describing the boundaries of critical habitat (50 CFR 424.12(c)). The ordinary high water marks as defined in the Corps' navigation regulations (33 CFR 329.11) roughly correspond to how river channels are represented on standard topographic maps. We agree also that the adult seven mussels are not found at all locations between the upstream and downstream boundaries given the unit descriptions. However, as with the lateral boundaries, we have determined that the entire stream channel between the upstream and downstream limits is essential to their conservation. Riverine habitats are dynamic, and locations that provide suitable conditions for mussels may shift over time between these upstream and downstream limits. Connectivity between the upstream and downstream limits provides for host fish movement, gametes transport, dispersal into newly suitable habitats, and food items transport. Therefore, we have kept these areas in the designation.

(8) *Comment:* The designation is contrary to the Act because it includes areas that do not contain all of the physical and biological features that the Service determined are essential to the conservation of a listed species and may require special management (PCEs). For example, Unit 8 (Apalachicola River) includes the distributary Swift Slough, which has aggraded (filled with sediment) in recent years and no longer flows continuously.

*Our Response:* Each of the 11 units designated as critical habitat contains all of the PCEs, and each stream segment listed in the unit descriptions contains one or more of the PCEs. Neither the Act nor our regulations require that all portions of a designated critical habitat unit contain all of the PCEs. Mobile animals typically satisfy various life history requirements by relying upon different habitat features in different portions of their range. While juveniles and adults of the seven mussels are relatively immobile animals, their glochidia (larvae) and host fish are not. Dispersal via fish hosts is how the species colonize new areas and is necessary to achieve recovery, although mussels are also sometimes moved into new areas by high-flow events. Mussels will best survive and reproduce in specific areas that consistently provide all of the PCEs, but do not necessarily persist permanently in any one area given the dynamic nature of the riverine environment. Interrupted flow due to the accumulation of sediment in the bed of Swift Slough has recently led to substantial mortality of listed mussels in this stream during periods of low-flow in the Apalachicola River. However, it does not follow that this or any particular area within a critical habitat unit that lacks all of the PCEs cannot be included in a critical habitat unit. Stream bed aggradation in Swift Slough signals the need for special management of the channel stability PCE in at least the Swift Slough portion of Unit 8. While permanently flowing water, channel stability, etc., are features essential to the conservation of the seven mussels in each designated unit, we recognize that some portions of all 11 units have problems with at least one of the PCEs that may require special management or protections.

(9) *Comment:* Florida Fish and Wildlife Conservation Commission personnel found shell material of the listed species in the Brushy Creek ''feeders'' (floodplain distributaries of the Apalachicola River that flow into Brushy Creek). The Service must determine whether the Brushy Creek feeders were likely occupied in 1998 (the time of listing), and if so, designate those streams if they otherwise qualify as critical habitat. Areas like the Brushy Creek feeders, currently unoccupied, should be designated anyway if they are essential for the conservation of the species. Areas like the Brushy Creek feeders are key to the recovery of mussels because they can act as nursery areas and provide for population expansion.

*Our Response:* We relied upon post-1990 live occurrence records to provide evidence that areas were likely occupied at the time of listing, and we have no such evidence for the Brushy Creek feeders. Dead shells found recently in these distributaries, which receive flow directly from a part of the main channel of the Apalachicola River where listed species are known to occur, is not evidence that these streams support the listed species now or at the time of listing. It is more likely that the shells found in the Brushy Creek feeders were transported by currents from the main channel. We believe that areas for which we have no evidence of recent occupancy are not essential to the conservation of the listed mussels (see responses to comments #2 and #5). We do not believe that the Brushy Creek feeders or other similar sites not included in this designation provide ''nursery'' areas for mussels that are necessary for their recovery. The concept of a nursery area implies that mussels occupy one area as juveniles and another as adults. We have no evidence that such movements are occurring.

*Public Comments*

(10) *Comment:* Line Creek in Unit 5 (Upper Flint River) does not provide suitable habitat for the listed mussels.

*Our Response:* Live listed species have been found in Line Creek downstream of its confluence with Whitewater Creek since 1990, and this segment contains PCEs. Consistent with our criteria for identifying critical habitat, we included this section of Line Creek in Unit 5.

(11) *Comment:* Critical habitat designation will add costly delays to permitting a recreational reservoir on Tired Creek, which is upstream of designated habitat in Unit 9 (Upper Ochlockonee River).

*Our Response:* The Service is designating critical habitat only where the mussels are currently present. Therefore, a Federal action that ''may affect'' critical habitat (and would trigger formal interagency consultation) would also result in a ''may affect'' determination for one or more mussel species (requiring formal consultation in and of itself). Our regulations prescribe specific timeframes in which to complete the formal consultation process with Federal agencies. These timeframes are the same whether or not critical habitat is designated and consulted upon during the required consultation process. Critical habitat designation does not create a separate consultation process. While the need to consult on adverse modification on critical habitat does not increase the statutorily allowed amount of time for consultation, it could increase the amount of effort that goes into the consultation process due to the different criteria for a jeopardy consultation versus an adverse modification consultation. Consideration of designated critical habitat in other environmental requirements (such as National Environmental Policy Act (42 U.S.C. 4321 *et seq.*)), similarly would not add to the length of time needed to comply with those requirements.

(12) *Comment:* The proposed critical habitat for the seven mussels overlooks large areas of potential habitat and essentially disregards the Service's own recovery goals for these species. The Service should designate unoccupied areas containing PCEs within the historical range of the seven mussels.

*Our Response:* Our June 6, 2006, proposed rule explained how we delineated the upstream and downstream limits of proposed critical habitat using the collective current distribution (post-1990 surveys) of all seven mussels and landscape features (e.g., tributary confluence, upstream extent of a reservoir) that indicated a significant change in aquatic habitat conditions (71 FR 32757–32758 ''Criteria Used To Identify Critical Habitat''). This approach resulted in 11 hydrologically and ecologically contiguous units, each of which is a collection of stream segments that flow unimpeded by fish passage barriers into a common reservoir or estuary. Moreover, as we noted in our response to peer-review comment #2, the total stream length delineated by these methods meets the geographic range recovery criteria in the recovery plan (Service 2003) for each of the five species listed as endangered.

(13) *Comment:* Currently occupied habitat is insufficient for conservation of the seven mussels and, therefore, the critical habitat designation must include unoccupied habitat. Unsurveyed tributary creeks that likely support the seven mussels are excluded from the proposed critical habitat because the Service cannot confirm that mussels are present.

*Our Response:* Our recovery plan for the seven mussels (Service 2003) notes that re-introduction in presently unoccupied habitat is needed for the conservation of the five mussels listed as endangered, but not for the two threatened, species. The two threatened species, the Chipola slabshell and the purple bankclimber, each occupy well more than 50 percent of the historical range, which is the criterion we adopted for range expansion as a measure of recovery in the recovery plan. For the five endangered species, the stream length included in the designation meets the recovery plan's geographic range recovery criteria (see our responses to peer-review comment #2). Therefore, we believe the units designated provide a sufficient amount of habitat to support recovery, which precludes the need to designate unsurveyed tributaries that are not known to support the seven mussels. Nevertheless, we would recognize the contribution towards recovery of any populations found in previously unsurveyed streams in our periodic reviews of the conservation status of the seven species.

(14) *Comment:* While permanently flowing water is essential to the seven mussels' survival, flowing water alone is insufficient for the conservation of these species. The final rule should adopt the Service-Environmental Protection Agency (EPA) instream flow guidelines as the flow-related PCE.

*Our Response:* We discussed in the June 6, 2006, proposed rule the role of natural variability in the flow regime to the structure, composition, and functioning of riverine biological communities. The Service-EPA flow guidelines are measures of flow variability that may serve as thresholds for ''may affect'' determinations for proposed Federal actions that would alter a flow regime (e.g., water withdrawals, dam operations). It was not practical or useful to compute the flow guidelines for the entire region that this designation spans, because the guidelines were designed as a tool for site- and project-specific analysis. Further, the guidelines do not establish a general standard or ''bottom line'' for flow regime features that are essential to the conservation of listed species. Recognizing the many complexities involved in quantifying essential flow regime features for the seven mussels, we adopted a qualitative expression that applies throughout the range of the seven mussels and is clearly necessary for their recovery: ''permanently flowing water.''

(15) *Comment:* Riparian buffers are essential to the conservation of the seven mussels and should be designated as primary constituent elements. If the final rule does not include intact riparian buffers as a primary constituent element, it should address riparian zones as a necessary element of related primary constituent elements.

*Our Response:* Many factors operating outside the channel in the larger watershed affect streams and their inhabitants. Conditions in the riparian zone are among the most influential of these factors by virtue of immediate proximity to the stream channel, but the seven mussels do not occur in the riparian zone. A wide array of riparian buffer dimensions and vegetative characteristics are associated with the mussels. Activities within the riparian zone are among those that may adversely affect the PCEs, and likewise, some conservation actions to protect or enhance the PCEs may occur within the riparian zone. However, specific biological and physical features within the riparian zone are themselves not essential to the conservation of the seven mussels. We have used the ordinary high water marks of the channel as the lateral bounds for this designation (see also our response to comment #7), which encompasses all of the PCEs that we have defined for this designation.

(16) *Comment:* One PCE recognizes fish hosts as necessary to ''support the larval life stages of the seven mussels,'' but none address the habitat needs of the host fish species. The final critical habitat designation should be consistent with the rule for five Tennessee and Cumberland River mussels, which defined ''Fish hosts with adequate living, foraging, and spawning areas for them'' as a PCE, and also linked the ''flow regime'' and ''water quality'' PCEs

for the mussels with the needs of the host fish.

*Our Response:* PCEs are essential physical and biological features that are found within critical habitat, the lateral boundaries of which we have delimited as the ordinary high water marks of the stream channel. The final critical habitat rule for five endangered mussels in the Tennessee and Cumberland River basins also used the same criteria (ordinary high water mark) to define the lateral boundaries of critical habitat. Therefore, while the wording of the PCEs might be different, the protection levels are the same since both use the ordinary high water mark to delineate the lateral boundaries of critical habitat.

Several fish species that have been identified through laboratory tests as potential hosts for the seven mussels are known to spawn most successfully in floodplain habitats (e.g., largemouth bass), which occur outside the critical habitat boundaries. We agree that the habitat needs of host fish are important considerations in mussel conservation, but as with our response to Comment #15 regarding riparian buffers, we distinguish between PCEs and factors that may affect PCEs. The timely presence of appropriate host fish is the habitat feature that is essential for the survival and recovery of the mussels (i.e., the PCE itself), whereas the habitat requirements of the host fish are factors affecting that PCE.

(17) *Comment:* The rule does not contain the summary of data on which the proposal is based, does not show the relationship of such data to the rule proposed, or provide citations to the mussel surveys relied upon, as required by the Service's regulations at 50 CFR 424.16.

*Our Response:* Our summary of data supporting the PCEs is provided in the ''Primary Constituent Elements'' section. Our summary of data supporting the delineation of units is given in the ''Criteria Used To Identify Critical Habitat'' section. The mapping process involved an overlay of all available site-specific locality data for the seven mussels, which itself was not included in the published proposed rule and is not included in this final rule. The sources for all mussels survey data used in the mapping process are cited at the conclusion of each unit's description, where we list the species for which each unit is designated. A complete list of these and all references cited in this rulemaking is available upon request from the Panama City Ecological Services Office (see **ADDRESSES**).

(18) *Comment:* The Service should not designate Swift Slough, which is part of Unit 8 (Apalachicola River), because it does not have the permanently flowing water PCE.

*Our Response:* It is not necessary for all PCEs to be present in all portions of critical habitat at all times (see our response to Comment #8). Habitat features change over time, and different portions of a unit will provide a different mix of the PCEs. At the time we initially drafted the proposed rule, we were not yet aware of sediment accumulation in Swift Slough that now results in its disconnection from the main channel of the Apalachicola River during low flows. Although mussels in Swift Slough have suffered considerable mortality since the summer of 2006, some animals persist from what was apparently a relatively large population. Swift Slough still meets the criteria we used to identify critical habitat; therefore, it is still included in the designation.

(19) *Comment:* Water withdrawals are mentioned as causing changes in riverine habitats. This is a mis-statement of facts. If water is withdrawn and used and properly treated and returned to the basin of origin, it does not change the riverine habitat.

*Our Response:* Most out-of-stream uses of water return less than 100 percent of the water that is withdrawn, due to evaporation and other losses. In 2005, about half of the water withdrawn for municipal and industrial use in the Chattahoochee Basin upstream of West Point Dam was not returned to the river (Georgia Environmental Protection Division, unpublished data). Water withdrawals may affect aquatic habitat conditions and aquatic communities, depending on their timing and magnitude relative to stream flow. For example, fish assemblages were significantly less diverse downstream from relatively large water withdrawals and downstream from water supply reservoirs in the lower Piedmont region of Georgia (Freeman 2005).

(20) *Comment:* The fact that the fecal coliform bacteria standard is violated in some reaches of the critical habitat has no effect on mussels. This standard is set to protect humans engaging in whole body contact with the water such as swimming.

*Our Response:* We agree that fecal coliform bacteria standards are established to protect human health and violations of these standards do not necessarily indicate conditions that are harmful to mussels. However, it is possible that some of the bacteria and protozoans associated with wastewater discharges, which often includes fecal coliform bacteria, may adversely affect mussel reproduction (Goudreau *et al.* 1993:221). High fecal coliform levels may also derive from non-point sources such as pastures and farms following rain events. Because the overland runoff that delivers fecal coliform bacteria from non-point sources to streams may also carry pesticides, fertilizers, and other pollutants, elevated levels of other pollutants are often associated with high coliform counts.

(21) *Comment:* The statements that ''Many pollutants in the ACF Basin originate from * * * and municipal waste water facilities'' in the proposed rule implies that waste water facilities are the source of pollutants that are harmful to the mussels. This is not correct if the waste water facilities are in compliance with National Pollutant Discharge Elimination System (NPDES) permits. All NPDES permits are required to ''not violate water quality standards,'' therefore the mussels would be protected. The fact that someone counted 137 municipal waste water facilities in the ACF basin is not relevant to the protection of the mussels assuming that these facilities all have NPDES permits and are in compliance. To arbitrarily assume that these facilities are not in compliance without factual data is wrong and is unscientific.

*Our Response:* Municipal waste water treatment processes remove most but generally not 100 percent of all pollutants. Although treatment facilities and other point-source discharges may comply with NPDES permit conditions, the combined pollutant loading from all sources in a watershed may contribute to a total loading such that some reaches do not meet one or more water quality standards. When a stream is identified as impaired under the Clean Water Act (33 U.S.C. 1251 *et seq.*), the States initiate a process for developing total maximum daily load regulations under their delegated administration of the Clean Water Act. Our proposed rule indicated which critical habitat units contain stream segments on the impaired waters lists of the States. Our reference to the number of treatment facilities in the ACF Basin was part of describing the environmental setting of the critical habitat units. We did not assume or mean to imply that treatment facilities in the ACF were or were not in compliance with NPDES permits.

(22) *Comment:* These two statements in the proposed rule contradict each other: (1) ''The ranges of several standard physical and chemical water quality parameters (such as temperature, DO, pH, conductivity) that define suitable habitat conditions for the seven mussels have not been specifically investigated;'' and (2) ''Various contaminants in point and non-point

source discharges can degrade water and substrate quality and adversely affect mussel populations.''

*Our Response:* Our reference to ''several standard physical and chemical water quality parameters'' did not include contaminant concentrations. Parameters are those that aquatic biologists routinely measure with instruments in the field. Concentrations of contaminants that are known to adversely affect mussels, such as ammonia and heavy metals, are generally measured using water or sediment samples taken to a laboratory and not using instruments in the field. We have revised the rule language to avoid the apparent contradiction of these two statements.

(23) *Comment:* There is no scientific basis given for implying that septic systems are responsible for mussel threats.

*Our Response:* We include maintaining septic systems among the management considerations to deal with the threat of pollution to mussel habitats because inadequately maintained systems may contribute nutrients and other pollutants to ground water that can seep into surface water bodies. Nutrient loading can lead to algal blooms and low dissolved oxygen levels that adversely affect mussels, which we discuss under the water quality PCE.

(24) *Comment:* The impacts associated with Whitewater Creek Park are minimal; therefore, the Service should exclude Macon County, Georgia, from the designation.

*Our Response:* We do not include Whitewater Creek and Whitewater Creek Park in Macon County in designated critical habitat for the seven mussels. However, we do include a different Whitewater Creek in Fayette County, Georgia. We also include the main channel of the Flint River and Hogcrawl Creek in Macon County as parts of Unit 5 (Upper Flint River).

(25) *Comment:* Critical habitat for the seven mussels is not determinable because the Service has insufficient data. Most of the mussel distributional records are from the early 1990s and further studies are needed to define suitable habitat conditions for the seven mussels.

*Our Response:* Much of the survey data upon which we relied dates from the early 1990s, but this does not in and of itself render critical habitat undeterminable. The Act contemplates critical habitat designation ''at the time it [the species] is listed'' (Sect. 3(5)(A)(i)); therefore, we must necessarily rely on distributional data from the time of listing as well as more recent data. It happens that most of our records are from the early 1990s because the most comprehensive survey effort in the range of the seven mussels immediately preceded the listing proposal, which was published on August 3, 1994 (59 FR 39524). Due to a moratorium on listing actions declared by Congress shortly thereafter, we did not publish a final rule until March 16, 1998 (63 FR 12664). We agree that further studies are needed to more quantitatively define the seven mussels habitat requirements; however, the best available information regarding those requirements is sufficient to define qualitative but workable and meaningful PCEs. Further, the PCEs adopted in this rule are generally consistent with those adopted in previous rules designating critical habitat for freshwater mussels.

(26) *Comment:* Contrary to the Service's regulations at 50 CFR 424.12(c), the Service has used an imprecise ephemeral boundary, the ordinary high water marks, to define the lateral extent of the proposed critical habitat area.

*Our Response:* Although the ordinary high water marks of a stream may shift location over time, they do not disappear. The intent of the regulation cited is avoiding reliance in critical habitat descriptions on ephemeral features, i.e., features that last a relatively short time. We agree that the ordinary high water marks are not a precise or a fixed set of coordinates over time, but they are an appropriate descriptor for dynamic riverine habitat. A fixed set of coordinates that would fully encompass the areas we have determined are essential would either become quickly obsolete through natural or human-induced lateral channel migration, or would delineate an overly broad area by including a fair amount of terrestrial habitat.

(27) *Comment:* The analysis of what activities may affect the proposed critical habitat designation set forth in the proposed rule is both misleading and incomplete. As a result some persons may conclude by default that any and all activities affecting portions of the critical habitat, however minimally, will require consultation under section 7 of the Act.

*Our Response:* The section 7 consultation process applies only to Federal actions. Federal agencies are responsible for determining whether their actions may affect listed species or designated critical habitats. Action for which the action agency makes ''no effect'' determinations does not require further consultation with the Service. Service concurrence is required for other determinations, and the Service routinely assists Federal agencies in defining classes of actions that may comply with section 7 through informal consultation. The formal consultation process, which requires the Service to prepare a biological opinion, applies to those actions that Federal agencies determine may adversely affect the listed species or designated habitat. We do not expect the designation of critical habitat to appreciably increase either the number of actions per year to which the consultation process applies or for which formal consultation is required.

(28) *Comment:* The proposed rule provides no guidance for determining which features of the flow regime are important to mussels and their host fishes. Therefore, it is impossible to determine whether the Service has actually made a determination that certain activities presumptively ''may affect'' critical habitat. The Service-United States Environmental Protection Agency instream flow guidelines referenced in the proposed rule do not provide a sufficient or appropriate basis for evaluating proposed activities, because the guidelines are not self-explanatory and are not obviously relevant to the seven mussels.

*Our Response:* The measures of flow magnitude, duration, frequency, and seasonality that are included in the Service-USEPA instream flow guidelines (USFWS and USEPA 1999) may be used to determine whether Federal actions may affect listed species. This is the express purpose of the guidelines, which is relevant to the seven mussels. Application of the guidelines for this purpose is a site-specific and data-intensive process that involves computing long-term flow statistics for a project area with and without a proposed Federal action. Actions that would alter the flow parameters included in the guidelines, e.g., increase the maximum number of days per year that flow is less than 25 percent of average annual discharge, may adversely affect listed species and require formal consultation. The process for computing and applying the guidelines is explained in the guidelines document. However, to provide more information about the guidelines in this designation, we have added a listing of the flow regime features that are included in the guidelines to the flow regime PCE discussion.

(29) *Comment:* The Service should follow the procedures prescribed by the National Environmental Policy Act (NEPA) as part of this rulemaking.

*Our Response:* It is our position that, outside the jurisdiction of the Tenth Federal Judicial Circuit, we are not required to prepare environmental analyses as defined by NEPA in

connection with designating critical habitat under the Endangered Species Act of 1973, as amended (see Required Determinations—NEPA).

(30) *Comment:* The Service fails to note that impoundments are very efficient in removing sediment, with large southeastern reservoirs trapping 80–90% of the incoming sediment.

*Our Response:* In the ''Summary of Threats to Surviving Populations'' section, we note how impoundments block the natural downstream movement of sediment, which commonly leads to channel degradation in the tailwaters of dams built in alluvial rivers (Williams and Wolman 1984, p. 14; Lignon *et al.* 1995, p. 187). Rather than providing a net benefit to mussels by trapping excessive sediment loads, dams may largely remove native riverine mussels from tailwater areas through channel scouring processes as well as from stream segments inundated by reservoirs. For example, the fat threeridge was formerly abundant but is now rare in the upstream reaches of the Apalachicola River, most likely due to substantial channel incision resulting from the construction of Jim Woodruff Lock and Dam.

(31) *Comment:* The Service fails to note that impoundments with large storage capacity may increase base flows downstream during periods of drought. Increased minimum flow may benefit downstream mussel habitat. The storage capacity of large reservoirs may also reduce the impact of flood flows that historically would result in scour and bank erosion.

*Our Response:* The seven mussels evolved under natural flow regimes that include droughts and floods. Human consumptive uses of water may decrease stream flow below naturally occurring levels, and releases from reservoirs may offset the impact of this depletion, depending on how reservoirs are operated. However, reservoirs generally reduce the average annual discharge of a river by increasing evaporative losses via a greater water surface area. Increasing river flow with releases from reservoir storage necessarily requires decreasing river flow at other times to replenish storage, which may adversely affect mussels. However, we are aware of no evidence that the magnitude, frequency, duration, or timing of flood flows has been appreciably altered by dams in the stream reaches that are included in this critical habitat designation.

(32) *Comment:* Relative to the application of the jeopardy and adverse modification standards, the Service provides no evidence that the operation of dams would alter flows in a manner that would destroy or adversely modify critical habitat.

*Our Response:* Federal actions that would destroy or adversely modify critical habitat are those that alter the PCEs to an extent that the conservation value of the habitat is appreciably reduced. We included dam operations as an activity that could, but does not necessarily, significantly alter flow regimes. Determining whether dam operations may adversely affect critical habitat is a site- and project-specific analysis. The Service-USEPA instream flow guidelines (USFWS and USEPA 1999) are an appropriate tool for making such determinations (see comment #28). It is not necessary to establish that an action, such as dam operations, is certain to adversely modify critical habitat in order to name it in our designation among the actions that could do so.

(33) *Comment:* The Service is required to list the specific PCEs for each individual mussel in each unit designated as critical habitat. The Service does not provide evidence, explanations, or citations detailing the requirements of each species relative to each of the PCEs.

*Our Response:* The Act and our regulations do not prohibit multi-species critical habitat designation rules, and the Service has previously issued several multi-species critical habitat rules in which a common set of PCEs applies to more than one species (for example, July 17, 2007, final rule for Peck's Cave amphipod, Comal Springs dryopid beetle, and Comal Springs riffle beetle, 72 FR 39248). We acknowledge that each of the seven mussels has a unique life history and niche in the riverine environment, but that these are similar enough to describe PCEs for the seven mussels as a group. Although the PCEs are the same for all seven mussels, the mix of units designated as critical habitat for each species is unique, reflecting differences in their spatial distribution.

(34) *Comment:* The rule should address the threat of dam removal to the mussels and include dam removal as an action that could appreciably alter the channel stability and flow PCEs.

*Our Response:* The Service is unaware of dam removal proposals within the areas we are designating as critical habitat. Dam removal could conceivably initiate channel instability; however, the most likely motivation for a dam removal project would be restoration of free-flowing conditions that were previously impaired by impoundment. This is the motivation for the proposed removal of the Eagle-Phenix Dam and the City Mills Dam, which would restore a total of approximately 2.3 miles of the biologically significant Fall Line shoal habitat in the Chattahoochee River. Although this area has not been designated as critical habitat, it is within the historical range of some of the seven mussels. Eagle-Phenix and City Mills dams do not store an appreciable volume of water, and removing these dams would not affect downstream flow regimes.

(35) *Comment:* The proposed rule cites no evidence to support the assertion that the seven mussels are not found in impoundments.

*Our Response:* Brim Box and Williams (2000) surveyed 324 sites in the ACF, including several sites within several impoundments, including Lake Seminole, Lake Walter F. George, and West Point Lake. They found no live individuals of the listed species within any of the impoundments.

*Economic Analysis—Policy Issues*

(36) *Comment:* Multiple commenters requested the economic analysis consider those impacts due solely to the designation of critical habitat for the seven mussels.

*Our Response:* Appendix B of the Final Economic Analysis (FEA) estimates the potential incremental impacts of critical habitat designation for the seven mussels. It does so by attempting to isolate those direct and indirect impacts that are expected to be triggered specifically by the critical habitat designation. The incremental conservation efforts and associated impacts included in Appendix B would not be expected to occur absent the designation of critical habitat for the seven mussels. Total present value potential incremental impacts are estimated to be $501,000. All other impacts quantified in the FEA are considered baseline impacts and are not expected to be affected by the critical habitat designation.

(37) *Comment:* Several commenters stated the Initial Regulatory Flexibility Analysis does not adequately estimate the potential impacts to small entities.

*Our Response:* Appendix C in the FEA has been revised and now considers the extent to which the incremental impacts analysis described in Appendix B could be borne by small entities and the energy industry as opposed to fully co-extensive impacts quantified in Sections 3 though 6. The incremental impacts of the rulemaking are considered most relevant for the small business and energy impacts analyses as they are expected to stem from the critical habitat designation, and are therefore not expected to occur in the case that critical habitat is not

designated for the seven mussels. The analysis concludes that one hydropower operator and 10 deadhead logging companies may be affected by critical habitat designation as proposed.

(38) *Comment:* One commenter states that the Draft Economic Analysis (DEA) explains that no estimates of minimum flow have been developed by the Service or any other entity. In order to assess ultimate hydropower impacts, these estimates must be made, and included in the economic analysis.

*Our Response:* In the absence of information on minimum flow levels for the seven mussels the FEA relies on the best available information solicited from resource managers on the likely efforts that would be needed to protect the seven mussels to estimate the potential future impacts associated with conservation efforts in areas proposed for designation.

(39) *Comment:* One commenter indicates that the impacts of implementing the U.S. Army Corps of Engineers (USACE) Modified Interim Operating Plan (Modified IOP) need to be distributed between gulf sturgeon and mussels, as it considers both.

*Our Response:* The Modified IOP is intended to protect the mussels, their host fish, and gulf sturgeon. Specific information on which species generated which conservation efforts in the plan is not available. This analysis therefore quantifies the full impact of the plan as co-extensive with seven mussels conservation. Appendix B in the Final Economic Analysis (FEA) estimates the incremental impacts associated solely with the designation of critical habitat for the seven mussels; impacts associated with the Modified IOP are not considered to be incrementally due to critical habitat.

(40) *Comment:* Several commenters state that potential benefits of critical habitat designation should be quantified.

*Our Response:* The economic analysis conducted for this rule points out that there are some potential benefits of critical habitat designation. However, it is difficult to develop credible estimates of such values, as they are not readily observed through typical market transactions and can only be inferred through advanced, tailor-made studies that are time consuming and expensive to conduct. We currently lack both the budget and time needed to conduct such research before meeting our court-ordered final rule deadline. The economic analysis is done primarily to provide decisionmakers with information about potential exclusions from the rule. Given the impracticality of conducting this additional analysis we do not believe it is necessary to quantify the positive consequences of this rule in order to weigh the benefits of including versus excluding areas from the rule. The Congress has already determined that the benefits of species recovery are high. Therefore, we do not require quantification of how high in order to make a sound decision.

*Economic Analysis—Economic Issues*

(41) *Comment:* One commenter states that the DEA did not desegregate impacts in Unit 8, Apalachicola River to focus on Swift Slough, River Styx, and Kennedy Slough.

*Our Response:* The water management adopted per Reasonable and Prudent Measure (RPM) 3 of the Biological Opinion for USACE operations at Jim Woodruff Dam raised the minimum flow in the Apalachicola River to 6,500 cfs when composite storage (all reservoirs combined) is above zone 3, at which time it reverts to 5,000 cfs. At this time the Service does not anticipate maintaining higher minimum flows for Swift Slough, River Styx, and Kennedy Slough than already considered in the Modified IOP. Therefore, the FEA does not estimate any additional impacts associated with these tributaries.

(42) *Comment:* One stakeholder commented that the Modified IOP is an interim plan and can change soon. Another commenter noted that the USACE 2007 Environmental Assessment quoted in Section 4 of the report has not been vetted through an official process, and that a May 16, 2007, letter from USACE to the Service indicates that changes to Modified IOP operations are ongoing, and make USACE statements suspect as they are subject to change.

*Our Response:* The USACE currently manages its operations in accordance with the 1989 Draft Water Control Plan for the Apalachicola-Chattahoochee-Flint (ACF) reservoir system and makes minor adjustments as necessary to accommodate changes in current needs. Current management under the Draft Water Control Plan is set out in the Modified IOP. The Modified IOP reflects how the USACE is regulating the minimum releases and maximum fall rates at Jim Woodruff Dam. In 2007, the USACE completed an Environmental Assessment of the Modified IOP. Finalization of the Draft Water Control Plan depends on the result of ongoing litigation filed by the State of Alabama in 1990. Although it is expected that the Water Control Plan, and the Modified IOP will be updated subsequent to the resolution of the litigation process, information is not available to identify what changes to management may occur. The FEA therefore applies the best information available, i.e., the Modified IOP and Draft Water Control Plan, regarding water management and acknowledges the uncertainty regarding this activity in the future.

(43) *Comment:* A few commenters stated that the input parameters that the USACE uses for its HEC–5 hydrological model differ from the parameters used by Georgia and Florida and that the results presented in the DEA could change if these different input parameters are included in the analysis.

*Our Response:* To address the comment, the FEA includes additional results from Georgia Environmental and Protection Division's (EPD) analysis of the Modified IOP. Section 2 has been updated with a detailed discussion of how the USACE's assessment of the depletion of water storage in the major dams on the Chattahoochee River is consistently less than Georgia EPD's assessment. Several exhibits have been added that compare the two agencies' interpretations of the impact of the Modified IOP on reservoir storage capacity. The comparisons are made for both year 2000 and year 2030 water demand levels, and for normal and drought conditions. Section 3 of the FEA was revised to include these new estimates. Using this new information the present value of potential economic impacts to recreationists associated with conservation efforts for the seven mussels in Unit 8, Apalachicola River, increased to be between $27.7 million and $54.1 million (discounted at three percent).

(44) *Comment:* A commenter stated that the Service's use of instream flow guidelines in Section 2 of the DEA was not mentioned in the September 2006 Biological Opinion on USACE's IOP for Jim Woodruff Dam.

*Our Response:* Instream flow guidelines discussed in the DEA are as described by the Service in the June 6, 2006, proposed rule for the critical habitat designation of the seven mussels, not the 2006 biological opinion. The EPA–USFWS guidelines are referenced in Section 2 of the FEA.

(45) *Comment:* One commenter stated that the assumption that municipal and industrial impacts may result due to USACE's water management operations of the ACF system is directly contradicted by USACE language, which indicates that lake levels will not fall below water intake structures because of operations under the Modified IOP.

*Our Response:* The USACE analysis of the impacts of the Modified IOP impacts models year 2000 water demand; it does not assess the impact of the Modified IOP for year 2030 water demands.

However, Georgia EPD provides simulated lake levels for both year 2000 and year 2030 water demand levels. Section 2 of the FEA, discusses how model simulations conducted by the Georgia EPD suggest that lake levels may go below water intake structures in the future, especially under year 2030 water demand levels. This can happen even without the modifications introduced by the Modified IOP. Thus, in the case that sustained drought conditions exist in the future, the Modified IOP can potentially further decrease lake levels.

**Potential Economic Impacts Related to Changes in Water Use and Management**

(46) *Comment:* A few commenters have expressed reservations about attributing the impact of the Modified IOP on municipal and industrial water supply and recreation to the critical habitat of the three mussels found in the Apalachicola River complex because the Modified IOP predates the designation.

*Our Response:* The impact of the Modified IOP on municipal and industrial water supply is not quantified in the DEA. For recreation related impacts, which are quantified in Section 3, the FEA quantifies the fully co-extensive impacts of any Federal, State, or local regulations or guidelines that may benefit the seven mussels in the proposed critical habitat area. Appendix B of the FEA acknowledges that implementing the Modified IOP is not an incremental impact attributable to the proposed rule.

(47) *Comment:* Several commenters have indicated that water quality could become a concern at lower lake levels.

*Our Response:* Section 2 of the FEA notes these concerns based on Georgia EPD's analysis of how declining lake levels during sustained periods of drought could expose the water intake structures of several local governments in Georgia. Additionally, Georgia EPD concludes that the Modified IOP leads to an increase in the number of days that the desired flow for wastewater assimilation below the Columbus gage will not be met. Section 5 discusses other potential water quality-related impacts. These potential water quality impacts are associated with Modified IOP implementation and are not expected to result from the critical habitat designation as proposed.

(48) *Comment:* One commenter mentioned that there is no mechanism for the Flint River Drought Prevention Act (FRDPA) to restrict agricultural uses based solely on impacts to protected mussels.

*Our Response:* The DEA does not make assumptions or recommendations regarding how changes in irrigated agricultural use will occur, or who will bear the cost of changes in water management and use. As discussed in Section 6 of the FEA, the Georgia Department of Natural Resources, Wildlife Resources Division plans to develop a Habitat Conservation Plan (HCP) to address agriculture related impacts to seven mussels conservation in the Lower Flint River Basin. The HCP is expected to reduce irrigation in the Lower Flint River Basin during severe drought. In addition, there were reverse auctions conducted associated with the Flint River Drought Protection Act (2000), during which irrigation rights were purchased from farmers, during the drought periods in 2001 and 2002.

(49) *Comment:* Several commenters indicate that information necessary to quantify municipal and industrial impacts is ''readily available and should have been collected and analyzed as part of the economic analysis.''

*Our Response:* Section 3 of the FEA explains that it was unable to estimate the impacts of mussel conservation efforts on municipal and industrial water supply because of numerous uncertainties in the relationship between water management under the Modified IOP and water supply. To quantify these impacts, the following information is needed: (a) The relationship between lower lake levels due to the Modified IOP and the risk that municipal water use will be restricted in some way (i.e., the marginal increase in risk of droughts being declared); (b) the amount of water lost from each sector (e.g., industry) within Chattahoochee River Basin municipalities due to drought restrictions and quantification of the effect of timing restrictions on water availability; and (c) data to estimate the value of less transparent water uses (e.g., lawn watering). These data are currently not available.

(50) *Comment:* One commenter indicated that the DEA underestimates the economic impacts associated with critical habitat designation at West Point Lake, citing preliminary results from an ongoing study. The FEA indicates that impacts associated with low water levels (i.e., water levels below top pool elevations) not specifically due to the Modified IOP may be as high as $90 million. The commenter states the following: (a) Recreation visits are underestimated, (b) the DEA did not consider estimates of rapid growth associated with the greater LaGrange, Georgia area, (c) property value changes in response to changes in lake level are not analyzed, and (d) the estimate of average boating expenditures within 30 miles ($68 per trip) is low.

*Our Response:* The West Point Lake study described by this commenter was commissioned to investigate the economic impact of low water levels, which are only in part influenced by the mussel conservation efforts. In response to the specific points: (a, b) A new source of data on visitation to West Point Lake has been identified and incorporated into the FEA (increasing the present value estimate of potential future impacts to recreationists at West Point Lake to between $11.0 million and $16.5 million, discounted at three percent). (c) Estimating property value impacts would require a study that has: (i) Estimated how property values in the region (ideally, at West Point Lake) have changed in response to changing lake levels and (ii) is capable of characterizing the marginal change in property values of changes in lake levels. Such a study has not been identified. (d) Average boating expenditures are used in the regional impact analysis. The within 30-mile expenditure value of $68 per trip is the best estimate currently available. The $95 estimate includes nationwide travel expenditures to Lake Lanier and therefore cannot be used to estimate regional impacts.

(51) *Comment:* Several commenters indicate that McMahon et al. 2004 is inappropriate to use in the DEA to estimate potential impacts of lower lake levels on recreation. Specifically, (a) McMahon *et al.* use 1995 boater visitation data that is outdated; and (b) omitting impacts on non-boaters would result in a significant underestimate of impacts.

*Our Response:* An extensive literature review of the recreation literature (refer to Appendix F of the FEA) was conducted and did not identify any other studies that were transferable to the situation at Lake Lanier. McMahon et al. was selected for a few reasons: (a) The robustness of the method (Random Utility Model), (b) the geographic appropriateness of the analysis, and (c) the transferability of the results (elasticity measures). This study provided the best available information for this particular analysis. Additionally, data are not currently available on use levels to incorporate non-boater effects in the FEA. The commenter does not identify any potentially applicable studies or data.

(52) *Comment:* Several commenters indicate that recreational damages are more sensitive to changes in shoreline than changes in lake surface area, and that it is therefore not appropriate to use lake levels as a proxy for changes in

recreation. Additionally, the commenters indicate that the shapes of the different lakes vary considerably, so that the draw down of West Point Lake exposes far more shoreline than Lake Lanier, creating greater economic impacts to recreational and property interests on the shore.

*Our Response:* Information at this level of specificity is not currently available to relate water withdrawal to shoreline changes. Section 3 of the FEA acknowledges this limitation. However, some aspects of lake shape are implicitly incorporated into the modeled relationship between drawdown and surface levels; for example, a steep-walled lake will have very little change in surface area as water levels fall, whereas a lake with relatively flat shorelines will experience the opposite effect, and thus have a greater level of estimated impacts to recreation.

(53) *Comment:* One commenter indicated that the DEA models willingness to accept rather than willingness to pay for recreation. Because willingness to accept is generally higher than willingness to pay, the analysis overestimates impacts.

*Our Response:* This comment misinterprets the DEA. The analysis models the compensating variation associated with these trips, which is a measure similar to consumer surplus. These values were developed in the context of random utility models, created from a travel cost framework. Travel expenditures are most reflective of willingness to pay rather than willingness to accept values.

(54) *Comment:* Several commenters suggest that the DEA does not consider the lake elevations corresponding to water supply intakes and boat ramps in the DEA's estimation of recreational costs; therefore, costs are underestimated.

*Our Response:* Declines in lake levels may affect some water intakes and boat ramps. As discussed in Section 3 of the FEA, impacts may vary as water levels reach boat ramps and docks, but sufficient information on the lake levels at which boat ramps and docks are stranded and recreationists responses to these changes is not available to estimate these potential impacts.

(55) *Comment:* Several stakeholders express concerns that water may not be removed from low value uses first, and that the FEA should provide the institutional mechanisms that will drive this process. As an example, a stakeholder mentions that agricultural uses in other portions of the ACF basin will continue unabated, even during drought.

*Our Response:* Because of the uncertainty regarding the uses most likely to be affected by changes in water allocation this discussion has been removed from the FEA.

(56) *Comment:* One stakeholder expresses concerns that insufficient attention is paid to the adaptations that are available to minimize withdrawals for agriculture, and that the DEA therefore overestimates impacts.

*Our Response:* The DEA may overstate agricultural impacts due to insufficient information on the adaptive ability of irrigators. As discussed in the caveats of Section 3 of the FEA, various adaptive management strategies may be available that could reduce estimated economic impacts on agriculture. Specific information on these strategies and their applicability is unavailable.

(57) *Comment:* One commenter indicates that Exhibit 3–16 in the DEA treats expenditures foregone as an element of regional economic loss when, in fact, it is the producer surplus foregone that is the basis of the impact on the region.

*Our Response:* The DEA uses a software program called IMPLAN to estimate the regional economic effects of reductions in economic activity in agriculture and recreation-related industries associated with seven mussels conservation efforts. As discussed in Section 3 of the FEA, the input to this program is expenditures rather than producer surplus, as the costs to some suppliers are revenues to others further up the supply chain. Depending on the characteristics of the region (i.e., imports versus exports), these costs may therefore also accrue as revenues to the region. Regional and sectoral multipliers in IMPLAN account for this effect.

(58) *Comment:* One commenter indicates that the fixed cost of irrigation equipment should not be included an element of damage; it is a sunk cost and is not imposed by water use restrictions and cannot be avoided in the event of restrictions.

*Our Response:* It is appropriate to include a portion of fixed costs in the agricultural impact estimates. Unlike variable costs, fixed costs are often unrecoverable. Under these circumstances, they are an element of damage: although fixed costs themselves are not imposed by water use restrictions, the inability to recover these sunk costs of purchasing irrigation equipment is caused by the imposition of these water use restrictions.

(59) *Comment:* One commenter indicates that if voluntary auctions are held where irrigators are paid to temporarily dryland farm certain acres, then the local and regional economic impacts identified in the analysis may be partly or wholly offset.

*Our Response:* As indicated in Section 3 of the FEA, the FEA makes no assumptions about how the reductions in agricultural water withdrawals will occur, nor who will bear these costs. In other words, the economic analysis only uses the voluntary auctions as evidence that institutional mechanisms exist to provide water for mussels' conservation.

(60) *Comment:* Several commenters indicate that the DEA should assume a more frequent severe drought interval based on the more recent rainfall record.

*Our Response:* The one in 20-year drought interval is based on information provided by the Georgia State Climatologist for pre-2000 conditions. The frequency of droughts may have increased from this estimate, however, as no study has forecasted drought frequency for future years, the analysis uses the pre-2000 information. If updated frequencies were made available that indicated a shorter drought interval, forecasted impacts in the Lower Flint Basin would increase (i.e., if drought frequency increased from one in 20 years to one in 10 years, impacts would increase roughly by a factor of two).

(61) *Comment:* One commenter indicated that more appropriate data on agricultural acreages and crop yields during dry years are readily available and should be incorporated into the DEA.

*Our Response:* New information on crop acreages and crop yields has been incorporated into the FEA, increasing the present value of agricultural impacts over 20 years from $2.16 million to $29.0 million (discounted at three percent).

(62) *Comment:* One commenter suggests using gross revenues instead of net revenues for the irrigated versus dryland impacts to agriculture.

*Our Response:* For individual farmers, the FEA assumes that conversion to dryland farming will reduce revenues, but will also reduce costs. Accordingly, the agricultural subsection of Section 3 in the FEA estimates impacts on a net revenue, rather than gross revenue basis. Later in Section 3, a regional economic impact subsection is presented, where impacts to the region are estimated based on lost gross revenues.

(63) *Comment:* One commenter indicates that a consistent measurement standard should be employed to assess economic impacts, and that the study does not indicate the measurement standard that is being used. Specifically, it is not clear if the DEA is presenting marginal values or average values. The

commenter states that additionally the DEA appears to do an inconsistent job of forecasting future economic conditions. In some cases future demands are established, while in other cases they are ignored.

*Our Response:* Section 1 of the FEA describes the framework for the analysis including measurement standards. As discussed in Section 1, forecasting is conducted where data are available. In many instances, forecasting was not possible (e.g., forecasting agricultural water demands) given data constraints.

*Potential Economic Impacts to Hydropower, Water Supply, and Other Impoundment Projects*

(64) *Comment:* Several commenters state that potential impacts to hydropower are understated and should be quantified. Specific concerns relate to the lack of information on the difference in value between peaking and non-peaking power, and that any change in the capability to generate power may result in impacts.

*Our Response:* Quantification and monetization of the potential impacts to hydropower are not possible absent information on the potential change in operations and associated timing of releases that may result from mussel conservation efforts. Specifically, without information regarding how operations under the Modified IOP for the listed mussels in the Apalachicola River would affect timing of hydropower generation, potential impacts to hydropower generation cannot be quantified. As discussed in Section 4 of the FEA, the value of power fluctuates on an hourly basis while the data available for this analysis describe power production on a monthly basis. If releases for hydropower cannot be made, replacement power must be purchased to meet demand. While all these potential impacts are described qualitatively, the USACE states in its public comment that the allowable hydropower schedule remains unchanged from the existing hydropower operations prior to the Modified IOP. Potential impacts to hydropower are therefore uncertain.

(65) *Comment:* Two commenters state that the DEA inaccurately ascribes value to the hydropower generated at USACE projects from information provided by Southeastern Power Administration (SEPA).

*Our Response:* Based on follow-up communication with SEPA, these dollar amounts have been removed from the FEA. They represent a composite of various expenses and cost obligations, and are not indicative of the relative importance of the projects. The relative value or revenues associated with individual projects cannot be disaggregated from the full system from which hydropower is marketed.

(66) *Comment:* One commenter states that impacts associated with relicensing the Bartlett's Ferry and other non-Federal FERC-licensed projects on the Chattahoochee River should be included.

*Our Response:* The Bartlett's Ferry Project is on the Chattahoochee River. Its current FERC license will expire in 2014. The projects for which mussel conservation efforts (surveys and monitoring) associated with FERC relicensing are quantified in Section 4 of the DEA are on the Flint River bordering critical habitat, where listed mussels are present. No information is available that suggests that projects undergoing FERC relicensing on the Chattahoochee River will be required to conduct similar efforts as the river channels with which they are associated are not proposed for critical habitat designation, do not have any known populations of any of the seven mussels, and do not have the capability to affect downstream flow in the manner that the USACE-operated reservoirs do.

(67) *Comment:* One commenter stated that the number and estimated impacts of future smaller water supply projects are incorrectly estimated and inadequately described.

*Our Response:* The report relies on the best available information to estimate potential impacts associated with seven mussel conservation efforts. In this case, past and current permitting information from the U.S. Army Corps of Engineers, and the Georgia Department of Environmental Protection is combined with cost estimates for water projects in the same geographic area. This represents the best information available at this time. The commenter does not provide improved information.

*Potential Water Quality-Related Impacts*

(68) *Comment:* One commenter requested that the DEA quantify impacts to water quality management.

*Our Response:* As discussed in Section 5 of the FEA, agriculture, urban stormwater runoff, forestry, and industrial and municipal point sources may influence water quality in the proposed critical habitat rivers. The economic analysis determined that, overall, these activities are not among the major categories of activities that may be affected by conservation efforts for the seven mussels.

(69) *Comment:* One commenter states that the DEA fails to consider the economic effects of lost commercial navigation.

*Our Response:* The U.S. Army Corps of Engineers submitted in its public comment that ''the State of Florida has denied Section 401 water quality certification and Coastal Consistency Certification for the Apalachicola River portions of the federal ACF navigation project. The denial contained costly alternative provisions that are not currently funded by Congress, and it has been agreed to defer dredging unless and until additional direction from the U.S. Congress provides necessary authority and funding for the Florida requested changes to the dredged material management plan for the Apalachicola River. We have estimated the additional costs to the navigation project due to the Florida-requested provisions, but these additional costs are unrelated to mussel conservation efforts.''

Section 6 of the FEA acknowledges USACE's comment and that the federal navigation project is still authorized. Given the ongoing issues unrelated to mussels that have precluded navigation activities in the ACF basin, however, the FEA does not quantify impacts of potential changes to navigation. If Congress approves funding for the alternatives in Florida's permit conditions, and if Florida provides a permit to the USACE to continue navigation dredging activities, and if the presence of the seven mussels or their critical habitat then affects dredge material disposal or other navigation activities this report may have underestimated impacts to navigation.

(70) *Comment:* One commenter requested that the DEA quantify impacts to sand and gravel mining.

*Our Response:* As discussed in Section 6 of the FEA, sand and gravel extraction from riverbeds was once common in the ACF Basin, but ceased several years ago. Permitting authorities have indicated that future operations are unlikely.

*Summary of Changes From Proposed Rule*

We have reconsidered our proposed critical habitat designation for the seven mussels relative to comments received during the two public review periods and three public hearings, the economic analysis, and new information that has become available since we published the proposed rule on June 6, 2006. Based on information received during the first comment period, we made three changes to the proposed critical habitat designation, which we published for public comment in the June 21, 2007, notice of availability for the draft

economic analysis (72 FR 34215). We now adopt these changes in this final rule as follows:

(1) We enlarge Unit 2 (Chipola River) and Unit 8 (Apalachicola River). In Unit 2, we extend the upstream boundary of Big Creek by 5.1 km (3.2 mi), and add the downstream-most portion of Cowarts Creek (33.5 km (20.8 mi)). In Unit 8, we add the downstream-most portions of three tributaries to the Apalachicola River: River Styx, Kennedy Slough, and Kennedy Creek.

(2) We add the fat threeridge to the list of species associated with Unit 7 (Lower Flint River).

(3) We correct an error by deleting Clayton County, Georgia, from the list counties in which the proposed critical habitat units occur.

We make no further changes to the geographic description of critical habitat in this final rule. Otherwise, this final rule differs from the proposed rule by minor editorial changes, clarifying revisions to one of the PCEs, and clarifying revisions to the discussions that support the PCEs. Based on the comments and recommendations we received, we have changed the following:

(1) We revise the substrate quality PCE to clarify the role of fine sediments. While excessive amounts of silts and clays accumulating in mussel habitat via channel instability and/or erosive land uses are harmful to the seven mussels, a moderate amount of silt and clay is normal and beneficial throughout most of the range of the seven mussels. The substrate quality PCE was proposed as ''A predominantly sand, gravel, and/or cobble stream substrate'', and is now stated as: ''A predominantly sand, gravel, and/or cobble stream substrate with low to moderate amounts of silt and clay.''

(2) To avoid implying that little is known about the tolerances of mussels relative to all physical and chemical water quality parameters, we revised the statement: ''The ranges of several standard physical and chemical water quality parameters (such as temperature, DO, pH, conductivity) that define suitable habitat conditions for the seven mussels have not been specifically investigated;'' to read instead ''The temperature, dissolved oxygen (DO), pH, and conductivity ranges that define suitable habitat conditions for the seven mussels have not been specifically investigated.''

(3) We revise the discussion of the flowing water PCE to provide more information about site-specific flow regime features that are relevant to the seven mussels. Specifically, we have added a listing of the flow regime features that are included in the Service-USEPA instream flow guidelines.

(4) We correct our characterization of three congeners of the shinyrayed pocketbook that were reassigned from the genus *Lampsilis* to the genus *Hamiota* as species that are not protected under the Act. Two of three species are listed under the Act.

**Critical Habitat**

Critical habitat is defined in section 3 of the Act as (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Conservation, as defined under section 3 of the Act means to use and the use of all methods and procedures that are necessary to bring any endangered species or threatened species to the point at which the measures provided under the Act are no longer necessary.

Critical habitat receives protection under section 7(a)(2) of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by the landowner.

To be included in a critical habitat designation, the habitat within the geographical area occupied by the species at the time it was listed must contain features that are essential to the conservation of the species. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Occupied habitat that contains the features essential to the conservation of the species meets the definition of critical habitat only if those features may require special management considerations or protection.

Under the Act, we can designate unoccupied areas as critical habitat only when we determine that the best available scientific data demonstrate that the designation of that area is essential to the conservation needs of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, the Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions are based on the best scientific data available. They require Service biologists to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When determining which areas are critical habitat, a primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge. All information is used in accordance with the provisions of Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that we may eventually determine, based on scientific data not now available to the Service, are necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery of the species.

Areas that support populations of the seven mussels, but are outside the critical habitat designation, will continue to be subject to conservation

actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available scientific information at the time of the action. Section 7(a)(1) directs all other Federal agencies to utilize their authorities in furtherance of the purposes of the Act by carrying out programs for the conservation of listed species. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts, as any new information available to these planning efforts calls for a different outcome.

**Primary Constituent Elements**

In accordance with section 3(5)(A)(i) of the Act and the regulations at 50 CFR 424.12, in determining which areas occupied at the time of listing to designate as critical habitat, we consider those physical and biological features that are essential to the conservation of the species, and within areas occupied by the species at the time of listing, that may require special management considerations or protection. The physical and biological features essential to the conservation of the species are the primary constituent elements (PCEs) laid out in an appropriate quantity and spatial arrangement for recovery. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The specific PCEs required for the seven mussels are derived from the biological needs of the seven mussels as described in the final listing rule (63 FR 12664, March 16, 1998), the proposed critical habitat rule (71 FR 32746, June 6, 2006), and information contained in this final rule.

Space for individual and population growth and normal behavior, and sites for reproduction and development of offspring are provided for the seven mussels on and within the streambed of stable channels with a suitable substrate, which we have captured in the PCEs regarding channel stability, substrate quality, and flow regime. Because the seven mussels are dependent on fish to complete their larval life stage, the PCE regarding fish hosts is a further requirement for successful reproduction. Various nutritional and physiological requirements are captured in the PCEs regarding flow regime and water quality. These PCEs are explained in additional detail below.

Based on our current knowledge of the life history, biology, and ecology of the seven mussels, and the habitat requirements for sustaining their essential life history functions, we have determined that the seven mussels require the PCEs described below.

PCE 1. A geomorphically stable stream channel (a channel that maintains its lateral dimensions, longitudinal profile, and spatial pattern over time without a consistent aggrading or degrading bed elevation).

Unstable channels do not favor mussels in part because adults and juveniles are relatively sedentary animals. They are unable to move quickly or across great distances from unsuitable to suitable microhabitats on and in the stream bed. Several researchers have reported direct adverse effects to mussels in aggrading (filling) and degrading (scouring) channels (Vannote and Minshall 1982, p. 4106; Kanehl and Lyons 1992, p. 7; Hartfield 1993, p. 133; Brim Box and Mossa 1999, p. 99–117). In degrading channels, mussels lose the substrate sediment in which they anchor themselves against the current. Mussels have been extirpated from streams experiencing a ''headcut'' (stream bed degradation progressing in an upstream direction) and from degrading reaches immediately downstream of dams. In aggrading channels or in channels with actively eroding stream banks, excess sediment fouls the gills of mussels, which reduces feeding and respiratory efficiency, disrupts metabolic processes, reduces growth rates, and physically smothers mussels (Ellis 1936, p. 39; Stansbery and Stein 1971, p. 2178; Marking and Bills 1979, p. 209–210; Kat 1982, p. 123; Vannote and Minshall 1982, p. 4105–4106; Aldridge *et al.* 1987, p. 18; Waters 1995, p. 173–176; Brim Box 1999, p. 65).

In addition to the direct effects above, channel instability indirectly affects mussels and their fish hosts in several ways. Channels becoming wider and shallower via bank erosion develop more extreme daily and seasonal temperature regimes, which affects dissolved oxygen levels and many other temperature-regulated physical and biological processes. Mussels in wider and shallower channels are likely more susceptible to predation. Erosive channels lose the habitat complexity provided by mature bank-side vegetation, which reduces diversity and abundance of fish species. Fewer fish means lower probability of mussel recruitment. The many direct and indirect adverse effects of channel instability on mussels and their fish hosts strongly suggest that channel stability is a habitat feature essential to their conservation.

PCE 2. A predominantly sand, gravel, and/or cobble stream substrate with low to moderate amounts of silt and clay.

Adult unionid mussels are generally found in localized patches (beds) almost completely burrowed in the substrate with only the area around their siphons exposed (Balfour and Smock 1995, p. 255–268). The composition and abundance of adult mussels have been linked to bed sediment distributions (Neves and Widlak 1987, p. 5; Leff *et al.* 1990, p. 415). Substrate texture (particle size distribution) affects the ability of mussels to burrow in the substrate and anchor themselves against stream currents (Lewis and Riebel 1984, p.2025). Texture and other aspects of substrate composition, including bulk density (ratio of mass to volume), porosity (ratio of void space to volume), and sediment sorting may also influence mussel densities (Brim Box 1999, p. 1–86; Brim Box and Mossa 1999, p. 99–117). Although several studies have reported adult habitat selection by substrate composition, most species are found in a relatively broad range of substrate types (Tevesz and McCall 1979, p. 114; Strayer 1981, p. 411; Hove and Neves 1994, p. 36; Strayer and Ralley 1993, p. 255), with few exceptions (Stansbery 1966, p. 29–30). The seven mussels are found in a variety of substrates, ranging from pockets of sand on bedrock to sandy mud, but only rarely in substrates composed of predominantly fine materials (more than 50 percent silt or clay by dry weight) (Brim Box and Williams 2000, p. 1–143; Blalock-Herod 2000, p. 1–72). Although excessive amounts of fine sediments may adversely affect the seven mussels, some amount of silt and clay is a normal component of the substrate at most locations at which they are found. In stream beds composed mostly of sandy materials, moderate amounts of silt and

clay increase substrate cohesiveness and local stability.

Interstitial spaces (pores) in coarse stream substrates may become clogged when fine sediment input to streams is excessive (Gordon *et al.* 1992, p. 1–444). Reduced pore space and pore flow rates reduce habitat for juvenile mussels, which tend to burrow entirely beneath the substrate surface, and for some adult mussels as well (Brim Box and Mossa 1999, p. 99–117). At least some species of juvenile unionids feed primarily on particles associated with sediments and pore water during their early development (Yeager *et al.* 1994, p. 221). Fine sediments act as vectors in delivering contaminants such as nutrients, heavy metals, and pesticides to streams (Salomons *et al.* 1987, p. 13). Most toxicity data for freshwater mussels is from tests with water-only exposures, despite reports that contaminated sediments have contributed to mussel declines (Newton 2003, p. 2543; Wilson *et al.* 1995, p. 213–218).

Because the juveniles and adults of the seven mussels live in a variety of substrates ranging from pockets of sand on bedrock to sandy mud, but only rarely in substrates comprised of more than 50 percent by dry weight silt and clay materials, and because the introduction of fine-grained sediments and various pollutants is likely detrimental to one or more of their life stages, we have determined that substrate quality is a habitat feature essential to their conservation.

PCE 3. Permanently flowing water.

The species that are the subject of this rule are all riverine unionid mussels and are not found in natural or manmade ponds and lakes. One known exception is a single large (and presumably old) purple bankclimber found in Goat Rock Reservoir on the Chattahoochee River by malacologist C. Stringfellow (Columbus State University) in 2000. Otherwise, none of the seven mussels tolerate impounded conditions or persist in intermittent streams (Brim Box and Williams 2000, p. 1–141); therefore, continuously flowing water is a habitat feature associated with all potentially viable populations. Flowing water transports food items to the sedentary juvenile and adult life stages and provides oxygen for mussel respiration at depths that would be anoxic in a pond setting. At least three of the seven mussels are known to attract host fishes visually by apparently disguising their glochidia as potential prey items (O'Brien and Brim Box 1999, p. 135–136; O'Brien and Williams 2002, p. 154), and some of these mechanisms appear to require flowing water to function effectively as lures. For example, flowing water is required to suspend the several-feet-long superconglutinate of the shinyrayed pocketbook in the water column so that the glochidia packet at the end of it, which resembles a small fish, is visible to fish (O'Brien and Brim Box 1999, p. 135, 138).

Quantifying the amount of flowing water that is essential to the conservation of the seven mussels is complicated by the broad size range of streams they inhabit, from small tributaries near watershed headwaters to the Apalachicola River, which is the world's 82nd largest river by discharge (Leopold 1994, p. 101). These seven mussels are often found near the toe of stable stream banks associated with roots and other instream cover or structure. A flow sufficient to inundate the stream bed from bank toe to bank toe with adequately oxygenated water deep enough to deter terrestrial predators is several orders of magnitude greater at a site on the lower Apalachicola River compared to a site on a tributary stream in the upper Ochlockonee River.

Quantifying the amount of flowing water that is essential to the conservation of the seven mussels is also complicated by their dependency on various species of fishes to serve as hosts for their glochidia. Mussel population viability is likely dependent on features of the flow regime that influence fish host population density as well as features that directly affect adult and juvenile mussel survival. For example, the largemouth bass, which is a lab-verified host for the fat threeridge and shinyrayed pocketbook (O'Brien and Brim Box 1999, p. 136; O'Brien and Williams 2002, p. 150), is known to utilize seasonally inundated floodplain habitats for spawning and rearing (Kilgore and Baker 1996, p. 291–294), habitats which do not support adult or juvenile mussels because they are dry for several months of most years. Year class strength of largemouth bass has been positively correlated with flows in several river systems due to the additional habitat available in high-flow years (Raibley *et al.* 1997, p. 852–853), and fish host density is a factor in mussel recruitment (see ''Fish Hosts'' discussion below). Year class strength is abundance of a cohort (born in a particular year) relative to other cohorts. A strong year class is represented in much greater numbers than a weak year class, presumably because the strong year class experienced more favorable conditions for recruitment.

Riverine ecologists have recognized that variable flow creates variable physical and chemical conditions that limit the distribution and abundance of riverine species (Power *et al.* 1995, p. 166; Resh *et al.* 1988, p. 443). Altering natural long-term patterns of flow changes the structure, composition, and function of riverine communities (Bain *et al.* 1988, p. 382–392; Hill *et al.* 1991, p. 198–210; Sparks 1995, p. 172–173; Scheidegger and Bain 1995, p.134). Poff *et al.* (1997, p.770) and Richter *et al.* (1997b, p. 243) concluded that the accumulated research on the relationship between hydrologic variability and riverine ecological integrity overwhelmingly supported a ''natural flow paradigm,'' that is, the patterns of variability in a river's natural flow regime are critical in sustaining its ecological integrity. Richter *et al.* (1996, p. 1165, 1997b, p. 236) proposed a set of parameters collectively termed ''indicators of hydrologic alteration'' (IHA) for characterizing ecologically relevant features of a flow regime.

The Service and USEPA adapted a subset of the IHA parameters as instream flow guidelines for protecting riverine ecosystems under a possible interstate water allocation formula between Alabama, Florida, and Georgia for the ACF Basin (USFWS and USEPA 1999, p. 1). Although the three States failed to agree upon an allocation formula and the ACF Compact authorizing their negotiations expired, the Service has applied the instream flow guidelines in consultations with Federal agencies on actions affecting the species addressed in this rule. The Service-USEPA guidelines are definitions of measures of flow magnitude, duration, frequency, and seasonality that may serve as thresholds for ''may affect'' determinations for proposed Federal actions that would alter a flow regime (for example, water withdrawals and dam operations). These measures include the following: monthly 1-day minima; annual low-flow duration; monthly average flow; annual 1-day maximum; annual high-flow duration. Thresholds for these measures are computed from long-term flow records appropriate to the proposed action, such as daily flow records from a stream gage in the action area. It is not practical or useful to compute the flow guidelines for the entire region that this designation spans, because the guidelines were designed as a tool for site- and project-specific analysis. Further, the guidelines do not establish a general standard or ''bottom line'' for flow regime features that are essential to the conservation of listed species. Recognizing the many complexities involved in quantifying essential flow regime features for the seven mussels,

we have adopted a qualitative expression that applies throughout the range of the seven mussels and is clearly necessary for their conservation: ''permanently flowing water.''

PCE 4. Water quality (including temperature, turbidity, dissolved oxygen, and chemical constituents) that meets or exceeds the current aquatic life criteria established under the Clean Water Act (CWA) (33 U.S.C. 1251–1387).

The temperature, dissolved oxygen (DO), pH, and conductivity ranges that define suitable habitat conditions for the seven mussels have not been specifically investigated. As sedentary animals, mussels must tolerate the full range of these parameters to persist in a stream. Quantifying water quality tolerances for the seven mussels is further complicated by their dependency on fish hosts, which may exhibit different tolerances.

Most mussels are considered sensitive to low DO levels and high temperatures (Fuller 1974, p. 245). Johnson (2001, p. 8–11) monitored water quality and mussel mortality during a drought year in the lower Flint River Basin. Low DO levels, which occurred during low flow periods, were associated with high weekly mussel mortality. Species-specific mortality varied considerably. The shinyrayed pocketbook and Gulf moccasinshell were among the species with the highest mortality rates when exposed to DO concentrations less than 5 milligrams per liter (mg/L). The oval pigtoe demonstrated moderate, but significantly higher than average, mortality when DO was less than 5 mg/L.

Juvenile mussels may spend their first few years buried in the sediments of the stream bed. Interstitial water (pore water) in sediments is generally less oxygenated than flowing water in the stream above (Sparks and Strayer 1998, p. 129). Sparks and Strayer (1998, p. 132) observed marked differences in behavior between juvenile Eastern elliptio (*Elliptio complanata*), congener of the Chipola slabshell, that were exposed to DO levels of 2 mg/L and 4 mg/L, and most juveniles of this species that were exposed to 1.3 mg/L for a week died. In general, juveniles are sensitive to low DO levels. Interstitial DO levels in streams of the eastern United States are usually less than 4 mg/L in the summer and may fall below 1 mg/L (Sparks and Strayer 1998, p. 132).

Water temperature affects the amount of oxygen that can be dissolved in water and the toxicity of various pollutants. The toxic effects of ammonia are more pronounced at higher temperatures and at higher pH (Mummert *et al.* 2003, p. 2545, 2550; Newton 2003, p. 2543). High temperatures or decreasing pH may increase the toxicity of metals to unionids (Havlik and Marking 1987, p. 14). Watters and O'Dee (2000, p. 136) suggested that the release of glochidia is regulated by water temperature. In Texas, exceptionally warm temperatures appeared to prompt early initiation of mussel reproductive activity, and cool temperatures appeared to delay activity (Howells 2000, p. 40). Temperature may affect immune system response in fish. Some fish species that reject infections by mussel glochidia at higher temperatures are infected at lower temperatures (Roberts and Barnhart 1999, p. 484).

Various contaminants in point- and non-point-source discharges can degrade water and substrate quality and adversely affect mussel populations (Horne and McIntosh 1979, p. 119–133; Neves and Zale 1982, p. 53; McCann and Neves 1992, p. 77–81; Havlik and Marking 1987, p. 1–20). Naimo (1995, p. 341) suggested that chronic, low-level contamination of streams may explain the widespread decreases in mussel density and diversity. Mussels appear to be among the organisms most sensitive to heavy metals (Keller and Zam 1991, p. 539), several of which are lethal at relatively low levels (Havlik and Marking 1987, p. 3). Cadmium appears to be the most toxic (Havlik and Marking 1987, p. 3), although copper, mercury, chromium, and zinc may also impair physiological processes (Jacobson et al. 1993, p. 879; Naimo 1995, p. 353–355; Keller and Zam 1991, p. 539–546; Keller and Lydy 1997, p. 3). Metals stored in mussel tissues indicate recent or current exposure (Havlik and Marking 1987, p. 12), while concentrations in shell material indicate past exposure (Imlay 1982, p. 7; Mutvei *et al.* 1994, p. 163–186). Highly acidic pollutants such as metals may contribute to mussel mortality by dissolving shells (Stansbery 1995, p. 2–3). Low levels of some metals may inhibit glochidial attachment (Huebner and Pynnönen 1992, p. 2349). Mussel recruitment may be reduced in habitats with low but chronic heavy metal and other toxicant inputs (Yeager *et al.* 1994, p. 221; Naimo 1995, p. 341; Ahlstedt and Tuberville 1997, p. 72–77).

Water pollutants associated with agricultural activity may adversely affect mussels. Arsenic trioxide, which is used in the poultry industry as a feed additive, is lethal to adult mussels at concentrations of 16.0 parts per million (ppm), and ammonia is lethal at concentrations of 5.0 ppm (Havlik and Marking 1987, p. 3, 13). Ammonia is associated with animal feedlots, nitrogenous fertilizers, and the effluents of older municipal wastewater treatment plants. Ammonia causes a shift in glucose metabolism (Chetty and Indira 1995, p. 84) and alters the utilization of lipids, phospholipids, and cholesterol (Chetty and Indira 1994, p. 693). Stream ecosystems are altered when nutrients are added at concentrations that cannot be assimilated (Stansbery 1995, p. 2–3). Excessive nutrients promote the growth of filamentous algae in streams, which may render substrates unsuitable for mussels of all life stages and degrade water quality by consuming oxygen during night-time respiration and during decay to levels that mussels cannot tolerate. Several studies have described adverse effects of pesticides on mussels (Fuller 1974, p. 215–257; Havlik and Marking 1987, p. 13; Moulton *et al.* 1996, p. 131). Commonly used pesticides were cited as the likely cause of a mussel die-off in a North Carolina stream (Fleming *et al.* 1995, p. 877–879).

Gourdreau *et al.* (1993, p. 211–230) examined mussel populations relative to the discharges of two municipal wastewater treatment plants on the Clinch River in Tazewell County, Virginia. Mussels were absent or present in low numbers immediately downstream of these discharges, but occurred in greater diversity and abundance immediately upstream and farther downstream. The investigators hypothesized that, in addition to chemicals of known toxicity to glochidia, the bacteria and protozoans associated with wastewater discharges may also adversely affect mussel reproduction. Glochidia are vulnerable to attack by bacteria and protozoans before and after they are released from the adult female mussel (Fuller 1974, p. 219; Goudreau *et al.* 1993, p. 221).

Adults of some mussel species may tolerate short-term exposure to various contaminants by closing their valves (Keller 1993, p. 701). Juveniles and glochidia appear more sensitive than adults to heavy metals (McCann and Neves, 1992, p. 77–81) and to ammonia (Goudreau *et al.* 1993, p. 224). Ammonia is lethal to juveniles at concentrations as low as 0.7 ppm total ammonia nitrogen, normalized to pH 8, and lethal to glochidia at concentrations as low as 2.4 ppm (Augspurger *et al.* 2003, p. 2569–2575). In streams, ammonia may occur at highest concentrations in substrate interstitial spaces where juvenile mussels live and feed (Whiteman *et al.* 1996, p. 794; Hickey and Martin 1999, p. 38; Augspurger *et al.* 2003, p. 2569–2575).

In general, we believe the numeric standards for pollutants and water quality parameters (for example, heavy metals and DO) that are adopted by the States under the CWA represent levels that are essential to the conservation of the seven mussels. However, some State standards may not adequately protect mussels, such as the standard for ammonia (Augspurger *et al.* 2003, p. 2571; Newton *et al.* 2003, p. 2559). USEPA and FWS and National Marine Fisheries Service (the Services) agreed to a national consultation on the CWA Section 304(a) aquatic life criteria as part of a Memorandum of Agreement regarding interagency coordination under the CWA and the Act (66 FR 11202, February 22, 2001). The criteria for some pollutants, such as ammonia, are presently under review. Although the State standards adopted consistent with the USEPA criteria generally represent levels that are safe for the seven mussels, these standards are sometimes violated in some streams within their current range. Rather than specify the ranges of dozens of water quality parameters for the seven mussels, it is more practical to deal with cases where the national criteria are not protective of these and other listed species under the national consultations with USEPA. For purposes of this rule, the evidence for the dependency of the seven mussels on good water quality supports identifying water quality generally as a habitat feature that is essential to their conservation.

PCE 5. Fish hosts (such as largemouth bass, sailfin shiner, brown darter) that support the larval life stages of the seven mussels.

Most unionid mussels, including the seven species, parasitize fish during the larval life stage, depending on fish hosts not only for the physiological transformation from larval to juvenile form (Isom and Hudson 1982, p. 147–151), but also for spatial dispersal (Neves 1993, p. 4). The distribution and diversity of unionids is strongly related to the distribution and diversity of fish species (Watters 1992, p. 488; Haag and Warren 1998, p. 298). Bogan (1993, p. 600) identified the dependency of mussels on fish hosts, which are affected by exploitation and a variety of common habitat alterations, as one of several contributing causes in the extinction of several unionid species worldwide. Haag and Warren (1998, p. 303) identified host fish availability and density as significant factors influencing where certain mussel populations can persist.

Although female mussels may produce 75,000 to 3.5 million glochidia (Surber 1912, p. 3–10; Coker *et al.* 1921, p. 144; Yeager and Neves 1986, p. 333), contact of the glochidia with a suitable host fish is a low-probability event (Neves *et al.* 1997, p. 60). Contact is dependent on many factors, including the timely presence of the host fish, the feeding and respiratory behaviors of the fish (Dartnall and Walkey 1979, p. 36; Neves *et al.* 1985, p. 17–18), and for some species, the behavior of the mussel when the fish is present (Davenport and Warmuth 1965, p. R77; Kraemer 1970, p. 225–282). Contact between glochidia and host fish does not ensure successful larval development to the juvenile form, because some fish species have natural immunity to glochidial infestation and others acquire immunity following infestation (Watters and O'Dee 1996, p. 387). Glochidia that contact a host with natural immunity are rejected and die, usually within 11 days (Neves *et al.* 1985, p. 15, 17; Yeager and Neves 1986, p. 338; Waller and Mitchell 1989, p. 86). In the case of acquired immunity, glochidia experience decreased transformation rates with subsequent infections of an initially suitable host fish (Arey 1932, p. 372; Bauer and Vogel 1987, p. 393; Luo 1993, p. 26). The number of exposures associated with glochidial sloughing is variable (Watters and O'Dee 1996, p. 385, 387).

As few as 1 to as many as 25 fish species are known to serve as suitable hosts for particular species of mussels (Fuller 1974, p. 238; Trdan and Hoeh 1982, p. 386; Gordon and Layzer 1989, p. 1–98; Hoggarth 1992, p. 3). Some mussels are host-fish specialists that parasitize a few fish species (Zale and Neves 1982, p. 2540; Yeager and Saylor 1995, p. 4; Neves *et al.* 1985, p. 13, 17), and others are generalists that parasitize a great variety of host fishes (Trdan and Hoeh 1982, p. 386). Generally, mussels that are known host-fish specialists tend to release glochidia in conglutinates (multiple glochidia in a packet versus a stream of single glochidia) or use various means of attracting a fish host before releasing multiple glochidia (Watters 1997, p. 45). Because fish that are not naturally immune to glochidial infection develop some immunity after infection, securing a host fish is to some degree a ''first come, first served'' situation. Some researchers have hypothesized that mussels may compete for fish hosts (Watters 1997, p. 57; Trdan and Hoeh 1982, p. 384–385).

Watters (1997, p. 45–62) developed individual-based models of mussel-fish interactions to simulate unionid reproductive strategies, showing specialists tended to have lower population sizes and were less sensitive to fluctuating host fish density than generalists, which attained much higher population sizes when host fish density was high and declined when host fish density declined.

Haag and Warren (1998, p. 297–306) examined patterns of fish and mussel community composition in two north Alabama drainages. They found that densities of host-generalist mussels and of host-specialist mussels with elaborate host-attracting mechanisms were independent of host-fish densities, and were present throughout the two drainages. Densities of host-specialist mussels without elaborate host-attracting mechanisms were positively correlated with host-fish densities and were absent or rare near the drainages' headwaters.

Host-fish specificity has been examined in laboratory tests for five of the seven mussels: The fat threeridge, Gulf moccasinshell, oval pigtoe, purple bankclimber (O'Brien and Williams 2002, p. 151), and shiny-rayed pocketbook (O'Brien and Brim Box 1999, 136). The fat threeridge lacks mantle modifications or other morphological specializations that would serve to attract host fishes and appears to be a host-fish generalist that may infect fishes of at least three different fish families. Glochidia transformed to juveniles under laboratory conditions on five of seven fish species tested: weed shiner (*Notropis texanus*), bluegill (*Lepomis macrochirus*), redear sunfish (*L. microlophus*), largemouth bass (*Micropterus salmoides*), and blackbanded darter (*Percina nigrofasciata*) (O'Brien and Williams 2002, p. 152).

The elaborate superconglutinate of the shiny-rayed pocketbook suggests it is a host-fish specialist that targets sight-feeding piscivorous fishes, such as bass. O'Brien and Brim Box (1999, p. 136) confirmed that largemouth bass and spotted bass (*Micropterus punctulatus*) are likely primary hosts (all fishes infected produced juvenile mussels) among 11 species tested. Low transformation rates were associated with fish such as the eastern mosquitofish (*Gambusia holbrooki*) and bluegill.

The Gulf moccasinshell is probably a host-fish specialist that primarily parasitizes darters. It visually lures host fish by undulating its dark mantle flaps against swollen white gills (O'Brien and Williams 2002, p. 154). O'Brien and Williams (2002, p. 152) lab-tested eight fish species for suitability as hosts, finding that all black-banded darters and brown darters (*Etheostoma edwini*) exposed to infection transformed glochidia to juveniles. Other fishes, including the eastern mosquitofish, also

transformed glochidia, but at lower percentage rates.

The extreme rarity of the Ochlockonee moccasinshell has precluded any opportunities to explore its life history. We assume its reproductive biology is similar to its congener, the Gulf moccasinshell, which uses darters as host fish.

The oval pigtoe releases rigid white to pinkish conglutinates, which passively drift in the current and may resemble the food organisms of small-bodied fishes. O'Brien and Williams (2002, p. 152) tested 11 fish species as hosts, finding that glochidia transformed on the gills of fish such as the sailfin shiner (*Pteronotropis hypselopterus*) and eastern mosquitofish. They considered only the sailfin shiner as a primary host, as it was the only species upon which the transformation rate exceeded 50 percent.

We are aware of no studies of the reproductive biology of the Chipola slabshell. It is likely that the species expels glochidia in a conglutinate, as do several other members of the genus *Elliptio* that occur in the ACF Basin (Brim Box and Williams 2000, p. 34–47). Keller and Ruessler (1997, p. 402–407) identified centrarchids (sunfishes) as host fishes of other southeastern *Elliptio*.

O'Brien and Williams (2002, p. 153) observed in the laboratory that purple bankclimber conglutinates readily disintegrated when they contained mature glochidia, and these were easily suspended in the water by the aerators in their holding tanks. They speculated that the species may rely on stream currents to carry glochidia to host fish, which is typical of host-fish generalist species. Of the 14 fish species they tested as potential hosts, only a few species transformed glochidia, including the eastern mosquitofish and blackbanded darter. Only the mosquito fish was 100 percent effective (all fish tested transformed glochidia), but it is an unlikely primary host fish. The mosquito fish occupies backwater areas and stream margins with little or no current (Lee *et al.* 1980, p. 1–854), while the bankclimber is found mostly in the main channels of larger streams and rivers. The primary host fishes of the purple bankclimber are still unknown.

Data that might suggest densities of the various primary host fish species named above that are sufficient to support normal mussel recruitment and dispersal rates are not available. Stochastic simulations of fish'mussel interactions indicate that mussel populations are extirpated if a threshold host fish density is not exceeded (Watters 1997, p. 60). Further studies of fish and mussel population dynamics are necessary to quantify species-specific thresholds; however, we recognize that the presence of host fish is a biological habitat feature essential to the conservation of the seven mussels.

This designation is designed for the conservation of PCEs necessary to support the life history functions of the species and the areas containing these PCEs. We propose units for designation based on sufficient PCEs being present to support at least one of the species' life history functions. Some units contain all of these PCEs and support multiple life processes, while some units contain only a portion of these PCEs, those necessary to support the species' particular use of that habitat.

**Special Management Considerations or Protections**

When designating critical habitat, we assess whether the occupied areas contain the features essential to the conservation of the species that may require special management considerations or protections. Activities in or adjacent to each of the critical habitat units described in this rule may affect one or more of the PCEs that are found in the unit. These activities include, but are not limited to, those listed in the Adverse Modification Standard section as activities that may affect critical habitat. We find that the features essential to each of the seven mussel species contained within the areas of this designation may require special management considerations or protections due to known or probable threats from these activities. We summarize here the nature of the threats and the resulting conservation needs for both the mussels and their host fish across the range of the seven mussels.

Sedimentation is an almost ubiquitous threat in the range of the seven mussels. A wide variety of activities, such as livestock grazing, road and bridge construction, clear-cut logging, and off-road vehicle use, that are common in all 11 units may increase erosion rates, either in the banks of the stream channel itself or elsewhere in the watershed, and cause the accumulation of fine sediments on the stream bed. Management considerations to deal with this threat include protecting streams from sedimentation through application of agricultural and forestry best management practices, avoiding soil- and vegetation-disturbing activity in the riparian zone, restoring unstable stream channels and other erosive areas, and other practices that prevent or reduce erosion.

Urbanization, road and bridge construction, and other large-scale alterations of land cover that substantially alter the runoff characteristics of the watershed may threaten channel stability in units near the major urban areas of Dothan, Alabama (unit 2); Panama City and Tallahassee, Florida (units 1 and 10); Albany, Atlanta, and Columbus, Georgia (units 3, 5, 6, and 7); and other cities. Management considerations to deal with the threat of channel instability include avoiding soil- and vegetation-disturbing activity in the riparian zone, limiting impervious surface area, and other urban storm water runoff control methods. Sand and gravel mining (unit 3), dredging and channelization (unit 8), and dam construction (unit 5) may also affect channel stability.

The construction and operation of dams, water withdrawals, and water diversions may alter features of the flow regime important to the mussels and their host fishes. This threat is present to some degree in all 11 units, but is greatest in units 5, 6, 7, 8, and 10, which are downstream of the major mainstem dams or are areas of relatively high municipal, industrial, or agricultural water use. Measures to deal with this threat include water conservation and operational strategies that manage water storage capacity and water demands in combination to minimize departures from the natural flow regime.

Water pollution, especially from non-point (dispersed release) sources, is another almost ubiquitous threat in all 11 units. Water quality is reported as impaired or potentially impaired in some portions of all four river basins within the current range of the seven mussels, according to the water quality agencies of the three States in their periodic assessments under Section 305(b) of the Clean Water Act (CWA) (see ''Summary of Threats to Surviving Populations'' in the proposed rule published in the **Federal Register** on June 6, 2006 (71 FR 32746)). Streams that receive a high proportion of their flow from the discharge of springs are vulnerable to nutrient enrichment from fertilizers and to other pollutants applied in the recharge areas of those springs (units 1, 2, and 7), which may extend far from the streams themselves. Management considerations to deal with the threat of pollution include applying agricultural and forestry best management practices, preserving native vegetation in riparian zones, maintaining septic systems, and taking other measures to minimize pollutant-laden runoff to streams.

**Criteria Used To Identify Critical Habitat**

As required by section 4(b)(1) of the Act, we used the best scientific and commercial data available in determining areas that contain the features that are essential to the conservation of the seven mussels. We reviewed the available information pertaining to their historical and current distributions, life histories, host fishes, habitats, and threats to mussels in general, and threats to the seven mussels in particular. This information includes our own site-specific species and habitat data; unpublished survey reports; notes and communications with other qualified biologists or experts; peer-reviewed scientific publications; the final listing rule for the seven mussels; and our final recovery plan for the seven mussels.

Our principal sources of information for identifying the specific areas within the occupied range of the seven mussels on which are found those features essential to their conservation were: the collective database of locality records for the seven mussels, which is tabulated in our 2003 final recovery plan and has been supplemented with surveys completed since then, and the peer-reviewed scientific literature on mussels' life history and habitat requirements. Our 1998 final listing rule relied extensively upon data obtained in a rangewide status survey of the seven mussels commissioned by the Service and conducted in 1991 and 1992 (cited as Butler (1993, p. 1–30) in the final listing). Most of these data were taken in the ACF basin and have since been published by Brim Box and Williams (2000, p. 3). Although mussel surveys have been conducted since publication of the final listing rule at various locations in the four river basins that encompass their known range, the 1991–1992 status survey still provides a majority of the most recent distributional records for these seven mussels. For purposes of this final rule, the Service considers the most recent post-1990 survey data at a particular location as representing a species' current presence or absence at that location, and we consider pre-1990 survey data as representing historical distribution. We must extend the definition of current distribution back to 1990 because mussels are sedentary, long-lived animals, some species attaining maximum life spans of 100 to 200 years (Neves and Moyer 1988, p. 185; Bauer 1992, p. 425; Mutvei *et al.* 1994, p. 163–186). It was rare in the 1991–1992 survey, and is still rare, to find juveniles of the seven mussels.

We relied on a variety of information sources for identifying occupied areas in which the features essential to the conservation of the seven mussels may require special management considerations or protection, including land and water management plans of State and regional government agencies, surveys of stream channel condition, water quality assessments, and distributional information for host fishes. We used the sources cited in our final recovery plan's summary of known threats to the seven mussels to identify which essential features may be most vulnerable in certain portions of the occupied range.

We began our analysis by examining the full extent of each species' historical and current range. As discussed under ''Summary of Threats to Surviving Populations'' in the proposed rule published in the **Federal Register** on June 6, 2006, (71 FR 32746) , the declining range and abundance of the seven mussels is due mostly to changes in their riverine habitats resulting from dams, dredging, mining, channelization, pollution, sedimentation, and water withdrawals. The Econfina, ACF, Ochlockonee, and Suwannee drainages contain about 54,000 km (33,500 mi) of perennial streams (USGS 1:100,000 National Hydrography Data). From mussel survey records, the historical range of the seven mussels collectively spanned about 3,300-km (2,050-mi), or 6 percent, of the river and stream channels in these drainages, but no one species accounts for more than about 2,300 km (1,445 mi) of that total (USFWS 2003, p. 78–80). We estimate that the five species listed as endangered are each extirpated from over half of their historical range, and the two threatened species are extirpated from about one-third of theirs, but none are extirpated entirely from the four major drainages in which they each occurred historically. All seven mussels were more widespread and more abundant within each of the four drainages historically.

The largest single portion of the historical range lost to the seven mussels is the mainstem of the Chattahoochee River. The Chattahoochee comprised over 700 km (435 mi), or almost one-quarter, of the 3,300-km (2,050-mi) collective historical range, and supported the shinyrayed pocketbook, Gulf moccasinshell, oval pigtoe, and purple bankclimber. It is now impounded by several major dams for much of its length and no longer supports the listed mussels. With the exception of a single live animal found in Goat Rock Reservoir in 2000, the purple bankclimber appears extirpated from the entire Chattahoochee Basin, but at least one of the other three species persist in three of its tributaries: Uchee Creek, Sawhatchee Creek, and Kirkland Creek. Elsewhere in the four major drainages, the pattern of extirpation is more variable, with one or more of the seven species persisting in portions of a drainage where others have disappeared. The collective range of the seven species now spans about 1,900 km (1,180 mi) of river and stream channels. Within this collective range, the species presently occur in as little as 55 km (34 mi) (the Ochlockonee moccasinshell) to as much as 785 km (488 mi) (the shinyrayed pocketbook) (USFWS 2003, p. 78–80).

To identify the specific areas that were occupied at the time of listing by each of the seven mussels and that contain one or more of the PCEs, we used post-1990 mussel survey results. Because mussels are sedentary and long-lived animals, occupancy is strong evidence that some or all of the PCEs are present, except where it is apparent that one or a few adult individuals remain at a location with little or no possibility of reproducing due to substantial habitat alteration (such as the single purple bankclimber found in Goat Rock Reservoir). It is not feasible to survey all potential habitat for the seven species; therefore, to delineate a species' occupied range in the larger stream network, it is necessary to extrapolate from the available survey data. Most of the tributary streams in the four basins that may support one or more of the seven species have never been surveyed, and we are not designating any unsurveyed streams as critical habitat. We used USGS 1:100,000 digital stream maps to delineate the probable upstream and downstream limits to the seven species' distribution in streams surveyed since 1990, according to the criteria listed below. These limits form the boundaries of critical habitat units as explained below.

(a) The lateral boundaries of a unit are the ordinary high-water marks on each bank of currently occupied streams. We recognize the dynamic nature of riverine systems and that floodplains and riparian areas are integral parts of those systems. Processes that occur and habitat characteristics that are found outside the stream banks are important in maintaining channel morphology, providing energy and nutrients, and protecting the instream environment from pollutants and excessive sediments. Similarly, floodplain and backwater habitats may be important in the life cycle of fish that serve as hosts for mussel larvae. Although factors affecting the PCEs may occur outside

the channel, the PCEs themselves occur within the channel.

(b) The upstream boundary of a unit in an occupied stream is the first perennial tributary confluence or first permanent barrier to fish passage (such as a dam) upstream of the upstream-most current occurrence record. Many of the mussel survey sites are located near watershed headwaters. In these areas, the confluence of a tributary typically marks a significant change in the size of the stream and is a logical and recognizable upstream boundary for habitat conditions that are similar to the upstream-most occurrence record. Likewise, a dam or other barrier to fish passage marks the upstream extent to which mussels at the upstream-most occurrence may disperse via their fish hosts. Therefore, a unit encapsulates habitat containing essential features used by host fish and the seven mussels for successful natural reproductive process. Habitat above these boundaries does not contain features essential to the conservation of the species.

(c) The downstream boundary of a unit in an occupied stream is the mouth of the stream, the upstream extent of tidal influence, or the upstream extent of an impoundment, whichever comes first, downstream of the downstream-most occurrence record. Many survey sites are located near the mouths of streams, the upstream extent of impoundments, or the upstream extent of tidal influence. Survey locations are typically at road crossings, because that is where surveyors can most easily gain access to the stream. These road crossings do not typically represent a meaningful ecological boundary for longitudinal stream habitat conditions. Mussels are dispersed via host fish, and because these host fish traverse freely in the area between the upstream-most occurrence and any existing downstream restriction to fish passage, larvae drop off their host fish at random points along the stream flow segments traversed by fish. Further, the sperm of all seven species and the conglutinates (glochidia packets) of some of the seven may be carried downstream by currents and are viable for several hours to several days unless they reach unsuitable habitat conditions, such as intolerable salinity or still water, in which either would sink to the bottom and be smothered in the sediments. Therefore, we are designating stream segments that have mussel point locations from the upstream limit as defined in (b) above to the downstream location where the PCEs are no longer present.

The application of these criteria resulted in the identification of 11 units occupied by one or more of the seven mussels and that contain one or more of the PCEs as indicated by the presence and persistence of one or more of the listed mussels (see ''Critical Habitat Designation''). Based on fish distributional records (Lee *et al.* 1980, p. 1–854) and our experience sampling fish in these drainages, these areas also support shiners, darters, and other fishes that have been identified as hosts or potential hosts for one or more of the seven mussels.

When determining critical habitat boundaries, we made every effort to avoid including within the boundaries of the map contained within this final rule developed areas such as buildings, paved areas, and other structures that lack PCEs for the seven mussels. The scale of the maps prepared under the parameters for publication within the *Code of Federal Regulations* may not reflect the exclusion of such developed areas. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7 consultation, unless they affect the species or PCEs in adjacent critical habitat.

We are designating 11 critical habitat units in areas that were occupied at the time of listing and contain sufficient PCEs to support life history functions essential for the conservation of the species, which may require special management considerations or protection. Each unit is a collection of stream segments that flow unimpeded by fish passage barriers into a common reservoir or estuary. One or more of the seven listed species persist at locations that are distributed across the full breadth of each unit, including one or more locations in each stream segment listed in the unit descriptions that follow. Each of the 11 units designated as critical habitat contain all of the PCEs, and each stream segment listed in the unit descriptions contains one or more of the PCEs. Most segments contain all PCEs and support multiple life processes. Some segments may contain only a portion of the PCEs necessary to support long-term use of that habitat, due to the dynamic nature of the riverine environment.

A brief discussion of each area designated as critical habitat is provided in the unit descriptions below. Additional detailed documentation concerning the essential nature of these areas is contained in our supporting record for this rulemaking.

**Critical Habitat Designation**

We are designating 11 groups of river and stream segments (units) as critical habitat for the fat threeridge, shinyrayed pocketbook, Gulf moccasinshell, Ochlockonee moccasinshell, oval pigtoe, Chipola slabshell, and purple bankclimber. The river and stream segments comprising each unit are contiguous to allow for the movement of fish hosts dispersing the larval life stages of the seven mussels within the unit. Barriers to the movement of fish hosts (dams and salt water) separate the units from each other. Each unit is designated only for those species that currently occupy it.

The critical habitat units described below constitute our best assessment currently of areas that meet the definition of critical habitat for the species. The 11 units, and the States in which they occur, are: (1) Econfina Creek (FL), (2) Chipola River (AL, FL), (3) Uchee Creek (AL), (4) Sawhatchee Creek and Kirkland Creek (GA), (5) Upper Flint River (GA), (6) Middle Flint River (GA), (7) Lower Flint River (GA), (8) Apalachicola River (FL), (9) Upper Ochlockonee River (FL, GA), (10) Lower Ochlockonee River (FL), and (11) Santa Fe River and New River (FL). Collectively, the total length of the river and stream segments of all of the areas (units) designated is approximately 1,908.5 km (1,185.9 mi). Table 1 shows the approximate length of rivers and streams designated as occupied critical habitat for each of the seven mussels in the 11 units.

TABLE 1.—LENGTH OF CRITICAL HABITAT UNITS DESIGNATED FOR THE FAT THREERIDGE, SHINYRAYED POCKETBOOK, GULF MOCCASINSHELL, OCHLOCKONEE MOCCASINSHELL, AND OVAL PIGTOE, CHIPOLA SLABSHELL, AND PURPLE BANKCLIMBER

| Species, critical habitat unit, and state(s) | Length | |
|---|---|---|
| | Kilometers | Miles |
| Fat threeridge | | |
| 2. Chipola River, AL, FL | 228.7 | 142.1 |
| 7. Lower Flint River, GA | 396.7 | 246.5 |
| 8. Apalachicola River, FL | 161.2 | 100.2 |
| Total | 786.6 | 488.8 |
| Shinyrayed pocketbook | | |
| 2. Chipola River, AL, FL | 228.7 | 142.1 |
| 3. Uchee Creek, AL | 34.2 | 21.2 |
| 4. Sawhatchee Creek and Kirkland Creek, GA | 37.8 | 23.5 |
| 5. Upper Flint River, GA | 380.4 | 236.4 |
| 6. Middle Flint River, GA | 302.3 | 187.8 |
| 7. Lower Flint River, GA | 396.7 | 246.5 |
| 9. Upper Ochlockonee River, FL, GA | 177.3 | 110.2 |
| Total | 1557.4 | 967.7 |
| Gulf moccasinshell | | |
| 1. Econfina Creek, FL | 31.4 | 19.5 |
| 2. Chipola River, AL, FL | 228.7 | 142.1 |
| 4. Sawhatchee Creek and Kirkland Creek, GA | 37.8 | 23.5 |
| 5. Upper Flint River, GA | 380.4 | 236.4 |
| 6. Middle Flint River, GA | 302.3 | 187.8 |
| 7. Lower Flint River, GA | 396.7 | 246.5 |
| Total | 1377.3 | 855.8 |
| Ochlockonee moccasinshell | | |
| 9. Upper Ochlockonee River, FL, GA | 177.3 | 110.2 |
| Total | 177.3 | 110.2 |
| Oval pigtoe | | |
| 1. Econfina Creek, FL | 31.4 | 19.5 |
| 2. Chipola River, AL, FL | 228.7 | 142.1 |
| 4. Sawhatchee Creek and Kirkland Creek, GA | 37.8 | 23.5 |
| 5. Upper Flint River, GA | 380.4 | 236.4 |
| 6. Middle Flint River, GA | 302.3 | 187.8 |
| 7. Lower Flint River, GA | 396.7 | 246.5 |
| 9. Upper Ochlockonee River, FL, GA | 177.3 | 110.2 |
| 11. Santa Fe and New Rivers, FL | 83.1 | 51.6 |
| Total | 1637.7 | 1017.6 |
| Chipola slabshell | | |
| 2. Chipola River, AL, FL | 228.7 | 142.1 |
| Total | 228.7 | 142.1 |
| Purple bankclimber | | |
| 5. Upper Flint River, GA | 380.4 | 236.4 |
| 6. Middle Flint River, GA | 302.3 | 187.8 |
| 7. Lower Flint River, GA | 396.7 | 246.5 |
| 8. Apalachicola River, FL | 161.2 | 100.2 |
| 9. Upper Ochlockonee River, FL, GA | 177.3 | 110.2 |
| 10. Lower Ochlockonee River, FL | 75.4 | 46.9 |
| Total | 1493.3 | 928 |
| Total Designated for All 11 Units (All Species) | 1,908.50 | 1,185.90 |

States were granted ownership of lands beneath navigable waters up to the ordinary high water mark upon achieving statehood (*Pollard* v. *Hagan*, 44 U.S. (3 How.) 212 (1845)). Prior sovereigns or the States may have made grants to private parties that included lands below the ordinary high water mark of some navigable waters that are included in this rule. We believe that most, if not all, lands beneath the navigable waters included in this rule are owned by the States of Alabama, Florida, and Georgia. The lands beneath most nonnavigable waters and most riparian lands along the navigable and nonnavigable waters included in this rule are in private ownership. Table 2 lists the parcels of publicly owned lands within or adjacent to each designated critical habitat unit. Units not listed do not contain publicly owned lands.

TABLE 2.—PUBLIC LANDS WITHIN OR ADJACENT TO DESIGNATED CRITICAL HABITAT UNITS

| Critical habitat unit | Public lands |
|---|---|
| 1. Econfina Creek | Econfina Creek WtrMA. |
| 2. Chipola River | Upper Chipola River WtrMA, South Marianna Trail and Canoe Launch, Apalachicola River WtrMA, Apalachicola River WEA, Chipola River GW, Florida Caverns SP, Judges Cave WEA, Marianna GW. |
| 5. Upper Flint | Joe Kurz WMA, Sprewell Bluff SP and WMA, Big Lazer WMA, Montezuma NA, Flint River WMA. |
| 7. Lower Flint | Flint River GW, Radium Springs Tract, Chickasawhatchee WMA, Elmodel WMA, Lake Seminole WMA. |
| 8. Apalachicola River | Angus Gholson Jr. Nature Park of Chattahoochee, Apalachicola River WtrMA, Apalachicola River WEA, Fort Gadsden HS, Torreya SP, Apalachicola NF. |
| 9. Upper Ochlockonee | Joe Budd WMA, Lake Talquin SF. |
| 10. Lower Ochlockonee | Lake Talquin SP, Lake Talquin SF, Tate's Hell SF, Apalachicola NF. |
| 11. Santa Fe River and New River. | Santa Fe River Ranch, O'Leno SP, River Rise Preserve SP, Graham CA, Palatka-Lake Butler ST. |

*Abbreviations*: CA=Conservation Area, GW=Greenway, HS=Historic Site, NA=Natural Area, NF=National Forest, SF=State Forest, SP=State Park, ST=State Trail, WEA=Wildlife and Environmental Area, WMA=Wildlife Management Area, WtrMA=Water Management Area.

Brief descriptions of each unit follow, listing the rivers and streams included, the upstream and downstream extent of the unit in those rivers and streams, and which of the seven mussels were present at the time of listing. Each critical habitat unit includes the channels of the rivers and streams listed between the ordinary high water mark on each bank, which is defined in 33 CFR 329.11 as ''the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.'' In the unit descriptions, distances between landmarks marking the upstream or downstream extent of a particular stream in the unit are given in kilometers (km) and equivalent miles (mi), as measured tracing the course of the stream, not straight-line distance.

Unit 1: Econfina Creek, Florida

Unit 1 includes the main stem of Econfina Creek and one of its tributaries in Bay and Washington counties, Florida, encompassing a total stream length of 31.4 km (19.5 mi). The main stem of Econfina Creek as designated extends from its confluence with Deer Point Lake at the powerline crossing located 3.8 km (2.3 miles) downstream of Bay County Highway 388, Bay County, Florida, upstream 28.6 km (17.8 mi) to Tenmile Creek in Washington County, Florida. Unit 1 also includes the tributary stream Moccasin Creek from its confluence with Econfina Creek upstream 2.8 km (1.7 mi) to Ellis Branch in Bay County. Unit 1 is designated for the Gulf moccasinshell and oval pigtoe (Blalock-Herod unpub. data 2002–03; Brim Box unpub. data 1996; Williams unpub. data 1993). PCEs in Unit 1 are vulnerable to impacts from sedimentation, urbanization, and pollution, as described under ''Special Management Considerations or Protections.''

Unit 2: Chipola River, Alabama and Florida

Unit 2 includes the main stem of the Chipola River (including the reach known as Dead Lake) and six of its tributaries, encompassing a total stream length of 190.0 km (118.1 mi) in Houston County, Alabama; and in Calhoun, Gulf, and Jackson counties, Florida. The main stem of the Chipola River as designated extends from its confluence with the Apalachicola River in Gulf County, Florida, upstream 144.9 km (90.0 mi) to the confluence of Marshall and Cowarts creeks in Jackson County, Florida. A short segment of the Chipola River that flows underground within the boundaries of Florida Caverns State Park in Jackson County, Florida, is not included in Unit 2. The downstream extent of each tributary within the unit is its mouth (its confluence with the water body named), and the upstream extent is the landmark listed. The tributaries of the Chipola River included in Unit 2 are: Dry Creek, from the Chipola River upstream 7.6 km (4.7 mi) to Ditch Branch in Jackson County, Florida; Rocky Creek, from the Chipola River upstream 7.1 km (4.4 mi) to Little Rocky Creek in Jackson County, Florida; Waddells Mill Creek, from the Chipola River upstream 3.7 km (2.3 mi) to Russ Mill Creek in Jackson County, Florida; Baker Creek, from Waddells Mill Creek upstream 5.3 km (3.3 mi) to the confluence with Tanner Springs in Jackson County, Florida; Marshall Creek, from the Chipola River upstream 13.7 km (8.5 mi) to the Alabama-Florida State line in Jackson County, Florida (this creek is known as Big Creek in Alabama); Big Creek, from the Alabama-Florida State line upstream 13.0 river km (8.1 river mi) to Limestone Creek, in Houston County, Alabama; and Cowarts Creek from the Chipola River in Jackson County, Florida, upstream 33.5 river km (20.8 river mi) to the Edgar Smith Road bridge, in Houston County, Alabama.

This unit is designated for the fat threeridge (Brim Box and Williams 2000, p. 92–93; Miller 1998, p. 54), shinyrayed pocketbook (Williams unpub. data 2002; Brim Box and Williams 2000, p. 109–110; Smith unpub. data 2001; Blalock-Herod unpub. data 2000, 2003; Butler unpub. data 1993, 1994, 1999, 2000); Gulf moccasinshell (Butler unpub. data 1999, 2002; Brim Box and Williams 2000, p. 113–114; D.N. Shelton pers. comm. 1998); oval pigtoe (Butler unpub. data 1993, 1999, 2002; Brim Box and Williams 2000, p. 116–117; Williams unpub. data 2000); and Chipola slabshell (Butler unpub. data 1993, 2000; Brim Box and Williams 2000, p. 95–96). PCEs in Unit 2 are vulnerable to impacts from sedimentation, urbanization, and pollution, as described under ''Special Management Considerations or Protections.''

Unit 3: Uchee Creek, Alabama

Unit 3 encompasses 34.2 km (21.2 mi) of the main stem of Uchee Creek from its confluence with the Chattahoochee River upstream to Island Creek in Russell County, Alabama. This unit is designated for the shinyrayed pocketbook (Brim Box and Williams 2000, p. 109–110; Gangloff unpublished data 2005). PCEs in Unit 3 are vulnerable to impacts from sedimentation, urbanization, and pollution, as described under ''Special Management Considerations or Protections.''

Unit 4: Sawhatchee Creek and Kirkland Creek, Georgia

Unit 4 includes the main stems of Sawhatchee Creek and Kirkland Creek and one tributary of Sawhatchee Creek, encompassing a total stream length of 37.8 km (23.5 mi) in Early County, GA.

The main stem of Sawhatchee Creek as designated extends from its confluence with the Chattahoochee River upstream 28.6 km (17.8 mi) to the powerline crossing located 1.4 km (0.87 mi) upstream of County Road 15, Early County, GA. The main stem of Kirkland Creek extends from its confluence with the Chattahoochee River upstream 6.1 km (3.8 mi) to Dry Creek, Early County, GA. The tributary, Sheffield Mill Creek, is included from its confluence with Sawhatchee Creek upstream 3.1 km (1.9 mi) to the powerline crossing located 2.3 km (1.4 mi) upstream of Sowhatchee Road, Early County, GA. Unit 4 is designated for the shinyrayed pocketbook, Gulf moccasinshell, and oval pigtoe (Brim Box and Williams 2000, p. 109–110, 113–114, 116–117; Abbott pers. comm. 2005; Stringfellow pers. comm. 2003). PCEs in Unit 4 are vulnerable to impacts from sedimentation and pollution, as described under ''Special Management Considerations or Protections.''

Unit 5: Upper Flint River, Georgia

Unit 5 includes the main stem of the Flint River and eight of its tributaries upstream of Lake Blackshear, plus two tributaries that flow into Lake Blackshear, encompassing a total stream length of 380.4 km (236.4 mi) in Coweta, Crawford, Crisp, Dooly, Fayette, Macon, Meriwether, Peach, Pike, Spalding, Sumter, Talbot, Taylor, Upson, and Worth counties, Georgia. The main stem of the Flint River in designated Unit 5 extends from the State Highway 27 bridge (Vienna Road) in Dooly and Sumter counties, Georgia (the river is the county boundary), upstream 247.4 km (153.7 mi) to Horton Creek in Fayette and Spalding counties, Georgia (the river is the county boundary). The downstream extent of each tributary within the unit is its mouth (its confluence with the water body named), and the upstream extent is the landmark listed. The nine tributary streams in Unit 5 are: Swift Creek, from Lake Blackshear upstream 11.3 km (7 mi) to Rattlesnake Branch in Crisp and Worth counties, Georgia (the creek is the county boundary); Limestone Creek, from Lake Blackshear in Crisp County, Georgia, upstream 8.8 km (5.5 mi) to County Road 89 in Dooly County, Georgia; Turkey Creek, from the Flint River upstream 21.7 km (13.5 mi) to Rogers Branch in Dooly County, Georgia; Pennahatchee Creek, from Turkey Creek upstream 4.8 km (3 mi) to Little Pennahatchee Creek in Dooly County, Georgia; Little Pennahatchee Creek, from Pennahatchee Creek upstream 5.8 km (3.6 mi) to Rock Hill Creek in Dooly County, Georgia; Hogcrawl Creek, from the Flint River upstream 21.6 km (13.4 mi) to Little Creek in Dooly and Macon counties, Georgia (the creek is the county boundary); Red Oak Creek, from the Flint River upstream 21.7 km (13.5 mi) to Brittens Creek in Meriwether County, Georgia; Line Creek, from the Flint River upstream 15.8 km (9.8 mi) to Whitewater Creek in Coweta and Fayette counties, Georgia (the creek is the county boundary); and Whitewater Creek, from Line Creek upstream 21.5 km (13.4 mi) to Ginger Cake Creek in Fayette County, Georgia.

Unit 5 is designated for the shinyrayed pocketbook (Dinkins pers. comm. 1999, 2003; P.D. Johnson pers. comm. 2003; Brim Box and Williams 2000, p. 109–110; Roe 2000; L. Andrews pers. comm. 2000; Blalock-Herod unpub. data 1997; Butler and Brim Box 1995, p. 3); Gulf moccasinshell (Edwards Pittman Environmental 2004; McCafferty pers. comm. 2003; Dinkins pers. comm. 2002; Brim Box and Williams 2000, p. 113–114; Andrews pers. comm. 2000; Blalock-Herod unpub. data 1997; Butler and Brim Box 1995, p. 3); oval pigtoe (Edwards Pittman Environmental 2004; McCafferty pers. comm. 2003; Dinkins pers. comm. 2002, 2003; Stringfellow pers. comm. 2000, 2003; Abbott pers. comm. 2001; Brim Box and Williams 2000, p. 116–117; Andrews pers. comm. 2000; Blalock-Herod unpub. data 1997); and purple bankclimber (Winterringer CCR pers. comm. 2003; Dinkins pers. comm. 2003; P.D. Johnson pers. comm. 2003; Albanese pers. comm. 2003 regarding unpub. data from De Genachete and CCR; Brim Box and Williams 2000, p. 105–106; E. Van De Genachete pers. comm. 1999). PCEs in Unit 5 are vulnerable to impacts from sedimentation, urbanization, hydrologic alteration, and pollution, as described under ''Special Management Considerations or Protections.''

Unit 5 is divided into two maps in the Regulation Promulgation section of this rule, one for the southern part and one for the northern part of the unit. The ''match line'' for joining these two maps is where the county boundary between Crawford and Upson counties, Georgia, meets the Flint River.

Unit 6: Middle Flint River, Georgia

Unit 6 includes the main stem of the Flint River between Lake Worth (impounded by the Flint River Dam near Albany) and the Warwick Dam (which impounds Lake Blackshear), and nine tributaries, encompassing a total stream length of 302.3 km (187.8 mi) in Dougherty, Lee, Marion, Schley, Sumter, Terrell, Webster, and Worth counties, Georgia. The main stem of the Flint River in Unit 6 extends from Piney Woods Creek in Dougherty County, Georgia (the approximate upstream extent of Lake Worth), upstream 39.9 km (24.8 mi) to the Warwick Dam in Lee and Worth counties, Georgia. The downstream extent of each tributary within the unit is its mouth (its confluence with the water body named), and the upstream extent is the landmark listed. The nine tributaries of the Middle Flint River in Unit 6 are: Kinchafoonee Creek, from the Lee-Dougherty county line (the approximate upstream extent of Lake Worth) upstream 107.6 km (66.8 mi) to Dry Creek in Webster County, Georgia; Lanahassee Creek, from Kinchafoonee Creek upstream 9.3 km (5.8 mi) to West Fork Lanahassee Creek in Webster County, Georgia; Muckalee Creek, from the Lee-Dougherty county line (the approximate upstream extent of Lake Worth) upstream 104.5 km (64.9 mi) to County Road 114 in Marion County, Georgia; Little Muckalee Creek, from Muckalee Creek in Sumter County, Georgia, upstream 7.2 km (4.5 mi) to Galey Creek in Schley County, Georgia; Mill Creek, from the Flint River upstream 3.2 km (2 mi) to Mercer Millpond Creek in Worth County, Georgia; Mercer Millpond Creek, from Mill Creek upstream 0.45 km (0.28 mi) to Mercer Millpond in Worth County, Georgia; Abrams Creek, from the Flint River upstream 15.9 km (9.9 mi) to County Road 123 in Worth County, Georgia; Jones Creek, from the Flint River upstream 3.8 km (2.4 mi) to County Road 123 in Worth County, Georgia; and Chokee Creek, from the Flint River upstream 10.5 km (6.5 mi) to Dry Branch Creek in Lee County, Georgia.

Unit 6 is designated for the shinyrayed pocketbook (Crow CCR pers. comm. 2004; Edwards Pittman Environmental 2004; Albanese pers. comm. 2003 regarding unpub. data from CCR; DeGarmo unpub. data 2002; McCafferty pers. comm. 2000, 2001; Golladay unpub. data 2001, 2002; P. Johnson unpub. data 1999; Blalock-Herod unpub. data 1997; Dinkins pers. comm. 1995; Brim Box and Williams 2000, p. 109–110), Gulf moccasinshell (Wisnewski unpub. data 2005; DeGarmo unpub. data 2002; Albanese pers. comm. 2003 regarding unpub. data from D. Shelton; P. Johnson unpub. data 1999; Brim Box and Williams 2000, p. 113–114; Weston 1995), oval pigtoe (Wisnewski unpub. data 2005; Crow CCR pers. comm. 2004; Albanese pers. comm. 2003 regarding unpub. data from CCR; DeGarmo unpub. data 2002;

Stringfellow unpub. data 2002; Golladay unpub. data 2001, 2002; Brim Box and Williams 2000, p. 116–117; P. Johnson unpub. data 1999; Blalock-Herod unpub. data 1997; Weston 1995), and purple bankclimber (Tarbell 2004; Brim Box and Williams 2000, p. 105–106). PCEs in Unit 6 are vulnerable to impacts from sedimentation, urbanization, hydrologic alteration, and pollution, as described under ''Special Management Considerations or Protections.''

Unit 6 is divided into two maps in the Regulation Promulgation section of this rule, one for the western part and one for the eastern part of the unit. The ''match line'' for joining these two maps is Lake Worth in Dougherty County, Georgia.

Unit 7: Lower Flint River, Georgia

Unit 7 includes the main stem of the Flint River between Lake Seminole (impounded by the Jim Woodruff Lock and Dam) and the Flint River Dam (which impounds Lake Worth), and nine tributaries, encompassing a total stream length of 396.7 km (246.5 mi) in Baker, Calhoun, Decatur, Dougherty, Early, Miller, Mitchell, and Terrell counties, GA. The main stem of the Flint River in Unit 7 extends from its confluence with Big Slough in Decatur County, GA (the approximate upstream extent of Lake Seminole) upstream 116.4 km (72.3 mi) to the Flint River Dam in Dougherty County, GA. The downstream extent of each tributary within the unit is its mouth (its confluence with the water body named), and the upstream extent is the landmark listed. The nine tributaries of the Lower Flint River in Unit 7 are: Spring Creek, from Smith Landing in Decatur County, Georgia (the approximate upstream extent of Lake Seminole), upstream 74.2 km (46.1 mi) to County Road 35 in Early County, Georgia; Aycocks Creek, from Spring Creek upstream 15.9 km (9.9 mi) to Cypress Creek in Miller County, Georgia; Dry Creek, from Spring Creek upstream 9.9 km (6.1 mi) to Wamble Creek in Early County, Georgia; Ichawaynochaway Creek, from the Flint River in Baker County, Georgia, upstream 68.6 km (42.6 mi) to Merrett Creek in Calhoun County, Georgia; Mill Creek, from Ichawaynochaway Creek upstream 7.4 km (4.6 mi) to County Road 163 in Baker County, Georgia; Pachitla Creek, from Ichawaynochaway Creek upstream 18.9 km (11.8 mi) to Little Pachitla Creek in Calhoun County, Georgia; Little Pachitla Creek, from Pachitla Creek upstream 5.8 km (3.6 mi) to Bear Branch in Calhoun County, Georgia; Chickasawhatchee Creek, from Ichawaynochaway Creek in Baker County, GA, upstream 64.5 km (40.1 mi) to U.S. Highway 82 in Terrell County, Georgia; and Cooleewahee Creek, from the Flint River upstream 15.1 km (9.4 mi) to Piney Woods Branch in Baker County, Georgia.

Unit 7 is designated for the shinyrayed pocketbook (Gangloff 2005; McCafferty pers. comm. 2004; Stringfellow unpub. data 2003; Dinkins pers. comm. 2001, 2003; Golladay unpub. data 2001, 2002; P. Johnson unpub. data 1999; Albanese pers. comm. 2003 regarding unpub. data from CCR; Andrews pers. comm. 2000; Blalock-Herod unpub. data 1997; Brim Box and Williams 2000, p. 109–110; Butler unpub. data 1993), Gulf moccasinshell (Abbott pers. comm. 2005; Golladay unpub. data 2001, 2002; P. Johnson unpub. data 1999; Brim Box and Williams 2000, p. 113–114; Butler unpub. data 1998; Blalock-Herod unpub. data 1997), oval pigtoe (Dinkins pers. comm. 2001; Golladay unpub. data 2001, 2002; Andrews pers. comm. 2000; Brim Box and Williams 2000, p. 116–117; P. Johnson unpub. data 1999; Butler unpub. data 1998; Blalock-Herod unpub. data 1997), and purple bankclimber (S. Carlson unpub. data 2002; Brim Box and Williams 2000, p. 105–106). PCEs in Unit 7 are vulnerable to impacts from sedimentation, urbanization, hydrologic alteration, and pollution, as described under ''Special Management Considerations or Protections.''

Unit 7 is divided into two maps in the Regulation Promulgation section of this rule, one for the western part and one for the eastern part of the unit. The western part (Map 10) depicts the Spring Creek system and the eastern part (Map 11) depicts the lower Flint River system.

Unit 8: Apalachicola River, Florida

Unit 8 includes the main stem of the Apalachicola River; two distributaries (channels flowing out of the main stem), and three tributaries, encompassing a total stream length of 155.4 km (96.6 mi) in Calhoun, Franklin, Gadsden, Gulf, Jackson, and Liberty counties, Florida. The main channel of the Apalachicola River in Unit 8 extends from the downstream end of Bloody Bluff Island (river mile 15.3 on U.S. Army Corps of Engineers Navigation Charts) in Franklin County, Florida, upstream to the Jim Woodruff Lock and Dam in Gadsden and Jackson counties, Florida (the river is the county boundary). The upstream extent of each distributary within the unit is its point of departure from the main channel of the Apalachicola River, and its downstream extent is the landmark listed. The two distributaries of the Apalachicola River in Unit 6 are: Chipola Cutoff, from the Apalachicola River in Gulf County, Florida, downstream 4.5 km (2.8 mi) to its confluence with the Chipola River in Gulf County, Florida; and Swift Slough, from the Apalachicola River in Liberty County, Florida, downstream 3.6 km (2.2 mi) to its confluence with the River Styx in Liberty County, Florida. The downstream extent of each tributary within the unit is its confluence (mouth) with the main channel of the Apalachicola River, and its upstream extent is the landmark listed. The three tributaries of the Apalachicola River within the unit are: River Styx from the mouth of Swift Slough in Liberty County, Florida, downstream 3.8 km (2.4 mi) to its mouth; Kennedy Slough from −85.07 longitude, 30.01 latitude in Liberty County, Florida, downstream 0.9 km (0.5 mi) to its confluence with Kennedy Creek; and Kennedy Creek from Brushy Creek Feeder (−85.06 longitude, 30.01 latitude) in Liberty County, Florida, downstream 1.1 km (0.7 mi) to its mouth.

Unit 8 is designated for the fat threeridge (Brim Box and Williams 2000, p. 92–93; Williams unpub. data 2000; Miller 1998, p. 54, 2000; Richardson and Yokley 1996, p. 137; Flakes 2001) and purple bankclimber (Brim Box and Williams 2000, p. 105–106; Miller 1998, p. 55, 2000; Richardson and Yokley 1996, p. 137; Butler unpub. data 1993; Flakes 2001). PCEs in Unit 8 are vulnerable to impacts from sedimentation, hydrologic alteration, and pollution, as described under ''Special Management Considerations or Protections.''

Unit 9: Upper Ochlockonee River, Florida, Georgia

Unit 9 includes the main stem of the Ochlockonee River upstream of Lake Talquin (impounded by the Jackson Bluff Dam) and three tributaries, encompassing a total stream length of 177.3 km (110.2 mi) in Gadsden and Leon counties, Florida, and Grady and Thomas counties, Georgia. The main stem of the Ochlockonee River in Unit 9 extends from its confluence with Gulley Branch (the approximate upstream extent of Lake Talquin) in Gadsden and Leon counties, Florida (the river is the county boundary), upstream to Bee Line Road/County Road 306 in Thomas County, Georgia. The downstream extent of each tributary within the unit is its mouth (its confluence with the water body named), and the upstream extent is the landmark listed. The three tributary streams in Unit 9 are: Barnetts Creek, from the Ochlockonee River upstream 20 km (12.4 mi) to Grady County Road 170/

Thomas County Road 74 in Grady and Thomas counties, Georgia (the creek is the county boundary); West Barnetts Creek, from Barnetts Creek upstream 10 km (6.2 mi) to GA Highway 111 in Grady County, Georgia; and Little Ochlockonee River, from the Ochlockonee River upstream 13.3 km (8.3 mi) to Roup Road/County Road 33 in Thomas County, Georgia.

Unit 9 is designated for the shinyrayed pocketbook (Blalock-Herod 2003, p. 1; McCafferty pers. comm. 2003; Williams unpub. data 1993), Ochlockonee moccasinshell (Brim Box and Williams 2000, p. 60; Williams and Butler 1994, p. 64), oval pigtoe (Edwards Pittman Environmental 2004; Blalock-Herod unpub. data 2003; Blalock-Herod 2003, p. 1; Williams unpub. data 1993), and purple bankclimber (Blalock-Herod unpub. data 2003; Blalock-Herod 2002, p. 1; Smith FDOT unpub. data 2001; Williams unpub. data 1993). PCEs in Unit 9 are vulnerable to impacts from sedimentation and pollution, as described under ''Special Management Considerations or Protections.''

Unit 10: Lower Ochlockonee River, Florida

Unit 10 encompasses 75.4 km (46.9 mi) of the main stem of the Ochlockonee River from its confluence with Syfrett Creek in Wakulla County, Florida, upstream to the Jackson Bluff Dam (which impounds Lake Talquin) in Leon and Liberty counties, Florida. Unit 10 is designated for the purple bankclimber (Blalock-Herod unpub. data 2003; Williams unpub. data 1993). PCEs in Unit 10 are vulnerable to impacts from sedimentation, urbanization, hydrologic alteration, and pollution, as described under ''Special Management Considerations or Protections.''

Unit 11: Santa Fe River and New River, Florida

Unit 11 includes the main stem of the Santa Fe River and its tributary the New River, encompassing a total stream length of 83.1 km (51.6 mi) in Alachua, Bradford, Columbia, and Union counties, Florida. The main stem of the Santa Fe River as designated extends from where the river goes underground in O'Leno State Park in Alachua and Columbia counties, Florida (the river is the county boundary) upstream 60.2 km (37.4 mi) to the powerline crossing located 1.9 km (1.2 mi) downstream of U.S. Highway 301 in Alachua and Bradford counties, Florida (the river is the county boundary). The New River in Unit 11 extends from its confluence with the Santa Fe River at the junction of Alachua, Bradford, and Union counties, Florida, upstream 22.9 km (14.2 mi) to McKinney Branch in Bradford and Union counties, Florida (the river is the county boundary). Unit 11 is designated for the oval pigtoe (Blalock-Herod and Williams 2001, p. 5; Blalock-Herod 2000, p. 1–72; Williams unpub. data 1993, 1996–98). PCEs in Unit 11 are vulnerable to impacts from sedimentation and pollution, as described under ''Special Management Considerations or Protections.''

*Section 7 Consultation*

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the 5th and 9th Circuit Court of Appeals have invalidated our definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442F (5th Cir 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the PCEs to be functionally established) to serve its intended conservation role for the species.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. ''Reasonable and prudent alternatives'' are defined at 50 CFR 402.02 as alternative actions identified during consultation that:

- Can be implemented in a manner consistent with the intended purpose of the action,
- Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,
- Are economically and technologically feasible, and
- Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or would retain its current ability for the PCEs to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that appreciably reduces the conservation value of critical habitat for the seven mussels. Generally, the conservation role of the seven mussels critical habitat units is to support viable core area populations.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that

designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and, therefore, should result in consultation for the seven mussels include, but are not limited to:

(1) Actions that would induce channel instability or significantly alter channel morphology. Such activities could include, but are not limited to, channelization, impoundment, road and bridge construction, mining, dredging, destruction of riparian vegetation, and changes in land cover, such as urbanization and clear-cut logging, that substantially alter the runoff characteristics of the watershed. These activities may alter sediment and water discharge in the channel, which results in smothering the stream bed with, or eroding it to, materials that are unsuitable substrates for the normal behavior, growth, and survival of the adult and juvenile life stages. These activities may initiate or accelerate bank erosion, which results in wider and shallower channels, more extreme temperatures, and chemical properties that are unsuitable for the normal behavior, growth, and survival of one or more life stages.

(2) Actions that would significantly decrease the proportion of coarse sediments (sand, gravel, cobble) in the stream bed. Such activities could include, but are not limited to, sedimentation from livestock grazing, road and bridge construction, mining, dredging, timber harvest, off-road vehicle use, and other activities that increase erosion rates in the channel or the watershed and deposition of fine sediments. These activities could reduce or eliminate the coarse substrates that provide for the normal behavior, growth, and survival of all life stages, and could increase the exposure of the juvenile and adult life stages to harmful contaminants that adhere to fine sediments.

(3) Actions that would significantly alter the flow regime. Such activities could include, but are not limited to, the construction and operation of dams, water withdrawals, water diversions, and changes in land cover that substantially alter the runoff characteristics of the watershed, such as urbanization and clear-cut logging. These activities could alter the spatial distribution, timing, and duration of depths and velocities in the channel that provide for the normal behavior, growth, and survival of one or more mussel life stages.

(4) Actions that would significantly alter physical and chemical water conditions. Such activities could include, but are not limited to, the release of chemicals, nutrients, biological pollutants, or heated effluents into the surface water or connected groundwater at a point source or by dispersed release (non-point source). These activities could alter water conditions that provide for the normal behavior, growth, and survival of one or more mussel life stages. These activities could promote the excessive growth of filamentous algae and other organisms that preclude the normal behavior, growth, and survival of one or more mussel life stages.

(5) Actions that would significantly reduce the density of host fishes. Such activities could include, but are not limited to, channelization, impoundment, mining, and dredging. These activities could alter the composition of the fish community such that the rate of host fish infection and completion of the larval life stage is too low to sustain a stable or increasing mussel population and normal rates of dispersal and genetic exchange with other areas.

We consider all of the units designated as critical habitat to contain features essential to the conservation of the seven mussels. All of the units are within the geographic range of the seven species, were occupied at the time of listing (based on surveys completed 1990 to 1998), and are likely occupied currently (based on additional surveys between 1998 and the present, and on the longevity and relative immobility of mussels).

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the Secretary is afforded broad discretion, and the Congressional record is clear that, in making a determination under the section, the Secretary has discretion as to which factors and how much weight will be given to any factor.
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**Economic Impacts**

Economic analyses typically measure impacts against a baseline, which is normally described as the way the world would look absent the proposed action. This is often referred to as the ''incremental'' approach. In 2001, the U.S. Tenth Circuit Court of Appeals found that the incremental approach provided ''meaningless'' results and instructed the Service to conduct a full analysis of all of the economic impacts of proposed critical habitat, regardless of whether those impacts are attributable coextensively to other causes (*New Mexico Cattle Growers Assn* v. *U.S.F.W.S.*, 248 F.3d 1277 (10th Cir. 2001)). However, since that decision, courts in several other cases have held or implied that an incremental analysis is proper (see *Cape Hatteras Access Preservation Alliance* v. *Department of Interior*, 344 F. Supp. 2d 108 (D.D.C.); *CBD* v. *BLM,* 422 F. Supp/ .2d 1115 (N.D. Cal. 2006).

Accordingly, we have reevaluated the baseline used for critical habitat economic analyses. The economic analysis should use a traditional regulatory analysis approach and examine the economic impact of the regulatory change being considered. However, because there is interest by the courts and the public in seeing the total costs of regulation, the analyses should quantify the existing regulatory baseline. When quantifying the baseline, the analyses should look back to the time of listing.

When estimating the incremental impacts of the critical habitat designation, the Service must consider that most courts have agreed with the *New Mexico Cattle Growers* court when it determined that the Service cannot simply equate adverse modification standard and the jeopardy standard and conclude that there are no economic costs. The *New Mexico Cattle Growers* court said ''Congress clearly intended that economic factors were to be considered.'' Therefore, when conducting this analysis, it is important to attempt to distinguish between the regulation that would exist prior to the designation of critical habitat, under the jeopardy standard, and under Sections 9 and 10 of the Act, and the additional regulation that would exist with designation of critical habitat.

Following the publication of the proposed critical habitat designation, we conducted an economic analysis to estimate the potential economic effect of the designation. This draft analysis was

based on the coextensive approach only and estimated the potential future impacts associated with conservation efforts for the seven mussels in areas proposed for critical habitat designation. The draft analysis was made available for public review on June 21, 2007 (72 FR 34215). We accepted comments on the draft analysis until August 6, 2007. The final economic analysis added the incremental approach, which can be found in Appendix B of the report.

The primary purpose of the economic analysis is to estimate the potential economic impacts associated with the designation of critical habitat for the seven mussels. This information is intended to assist the Secretary in making decisions about whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas in the designation. This economic analysis considers the economic efficiency effects that may result from the designation, including habitat protections that may be coextensive with the listing of the species and the incremental impacts of the critical habitat designation itself. It also addresses distribution of impacts, including an assessment of the potential effects on small entities and the energy industry. This information can be used by the Secretary to assess whether the effects of the designation might unduly burden a particular group or economic sector. We based our decision on whether to exclude any areas due to economic reasons on the incremental impacts in the final economic analysis.

The final economic analysis evaluated the potential future effects associated with the listing of the seven mussels, as well as any potential effect of the designation of critical habitat above and beyond those regulatory and economic impacts associated with the listing. To quantify the proportion of total potential economic impacts attributable to the critical habitat designation, the analysis evaluated a ''without critical habitat'' baseline and compared it to a ''with critical habitat'' scenario. The ''without critical habitat'' baseline represented the current and expected economic activity under all modifications prior to the critical habitat designation, including protections afforded the species under Federal and State laws. The difference between the two scenarios measured the net change in economic activity attributable to the designation of critical habitat.

The economic analysis estimates total potential future impacts associated with conservation efforts for the seven mussels in areas designated to be $83.1 million to $135.0 million over the next 20 years (undiscounted). The present value of these impacts is $62.3 million to $101.0 million, using a discount rate of three percent, or $45.0 million to $71.7 million, using a discount rate of seven percent. The annualized value of these impacts is $4.13 million to $6.70 million, using a discount rate of three percent, or $4.13 million to $6.60 million, using a discount rate of seven percent. All of these impacts are baseline impacts and are not expected to be affected by critical habitat designation.

The economic analysis further refines these numbers by estimating the incremental impacts of the critical habitat designation. The incremental impacts are forecast to be $501,000 (discounted at three percent) over 20 years. These incremental impacts are of additional administrative effort in considering adverse modification in section 7 consultation.

Because our economic analysis did not identify any disproportionate costs resulting from the designation, we did not consider excluding any areas from this designation of critical habitat based on economic impacts.

A copy of the final economic analysis with supporting documents may be obtained by contacting U.S. Fish and Wildlife Service, Branch of Endangered Species (see **FOR FURTHER INFORMATION CONTACT**) or by downloading from the Internet at *http://www.fws.gov/panamacity/.*

**Other Relevant Impacts**

Under section 4(b)(2) of the Act, we must consider, in addition to economic impacts, all other relevant impacts resulting from critical habitat designation. We consider a number of factors in this part of a section 4(b)(2) analysis. We consider whether there are lands owned or managed by the Department of Defense (DOD) where a national security impact might exist. We also consider whether the landowners have developed any conservation plans for the area, or whether there are conservation partnerships that would be encouraged by designation, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of designation.

In this instance, we have determined that the lands within the designation of critical habitat for the seven mussels are not owned or managed by the Department of Defense, there are currently no habitat conservation plans for the seven mussels, and the designation does not include any Tribal lands or trust resources. We did not identify any social impacts that might occur based on designation. Since no ''other relevant factors'' apply to this designation, we are not considering exclusions from this final designation based on the non-economic impacts.

Based on the above analysis (i.e., of the economic and other relevant impacts), the Service is not excluding any areas from critical habitat designation under section 4(b)(2) of the Act.

**Required Determinations**

*Regulatory Planning and Review*

In accordance with Executive Order 12866, this document is a significant rule because it may raise legal and policy issues. Based on our economic analysis, the estimate of total potential future costs associated with conservation efforts for the seven mussels in areas designated is $83.1 million to 135.0 million over the next 20 years (undiscounted). The present value of these impacts is $62.3 million to 101.0 million, using a discounted rate of three percent, or $45.0 million to 71.7 million, using a discount rate of seven percent. The annualized value of these impacts is $4.13 million to $6.70 million, using a discount rate of three percent, or $4.13 million to 6.60 million, using a discount rate of seven percent. Therefore, we do not believe that the designation of critical habitat for the seven mussels would result in an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed the rule or accompanying economic analysis.

Further, Executive Order 12866 directs Federal Agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget, Circular A–4, September 17, 2003). Pursuant to Circular A–4, once it has been determined that the Federal regulatory action is appropriate, the agency will need to consider alternative regulatory approaches. Because the determination of critical habitat is a statutory requirement under the ACT, we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts pursuant to section 4(b)(2) of the Act. Based on the

discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or combination thereof, in a designation constitutes our regulatory alternative analysis.

*Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a statement of factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

Small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (such as housing development, grazing, oil and gas production, timber harvesting). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the seven mussels. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities.

We conducted a Final Regulatory Impact Assessment for this rule, and our FRIA concludes that, of the land use activities considered in sections 3 to 6 of this analysis, incremental impacts of critical habitat designation to the following activities may be borne by small entities:

- Water management; and
- Deadhead logging.

Water management effects may occur to one hydropower operation, and result in costs of approximately $1000 for the additional burden of consultation that considers critical habitat. Deadhead logging impacts may affect 10 businesses, for an estimated impact of $3800 per business. We do not consider these effects to be substantial.

In summary, we have considered whether this would result in a significant economic effect on a substantial number of small entities. We have determined, for the above reasons and based on currently available information, that it will not affect a substantial number of small entities.

*Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 et seq.)*

Under SBREFA, this rule is not a major rule. Our detailed assessment of the economic effects of this designation is described in the economic analysis. Based on the effects identified in the economic analysis, we believe that this rule will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this determination.

*Executive Order 13211*

On May 18, 2001, the President issued Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This final rule to designate critical habitat for the seven mussels is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

*Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from

participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities who receive Federal funding, assistance, permits or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. As such, a Small Government Agency Plan is not required.

*Takings*

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating 1,908.5 river km (1,185.9 river mi) in portions of Alabama, Florida, and Georgia as critical habitat for the seven mussels in a takings implications assessment. The takings implications assessment concludes that this final designation of critical habitat does not pose significant takings implications for lands within or affected by the designation.

*Federalism*

In accordance with Executive Order 13132 (Federalism), the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with the Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this final critical habitat designation with appropriate State resource agencies in Alabama, Florida, and Georgia. The designation of critical habitat in areas currently occupied by the seven mussels may impose additional regulatory restrictions to those currently in place and, therefore, may have some incremental impact on State and local governments and their activities. The designation also may have some benefit to these governments in that the areas that contain the features essential to the conservation of the species are more clearly defined, and the PCEs of the habitat necessary to the conservation of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

*Civil Justice Reform*

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Endangered Species Act. This final rule uses standard property descriptions and identifies the PCEs within the designated areas to assist the public in understanding the habitat needs of the seven mussels.

*Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

*National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et. seq.)*

It is our position that, outside the Jurisdiction of the Tenth Federal Circuit, we do not need to prepare environmental analyses as defined by NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 516 U.S. 1042 (1996)).

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997, ''American Indian Tribal Rights, Federal—Tribal Trust Responsibilities, and the Endangered Species Act, we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We have determined that there are no Tribal lands that were occupied by the seven mussels at the time of listing containing the features essential for their conservation, and no Tribal lands that are unoccupied by the seven mussels but are essential for their conservation. Therefore, critical habitat for the seven mussels has not been designated on tribal lands.

**References Cited**

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Panama City Ecological Services Office (see **ADDRESSES**).

**Author(s)**

The primary author of this package is staff of the Panama City Ecological Services Office.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Regulation Promulgation**

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.11(h), revise the entries for ''Bankclimber, purple (mussel),'' ''Moccasinshell, Gulf,'' ''Moccasinshell, Ochlockonee,'' ''Pigtoe, oval,'' ''Pocketbook, shinyrayed,'' ''Slabshell, Chipola,'' and ''Threeridge, fat (mussel),'' under ''CLAMS'' to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| * | * | * | * | * | * | * | * |
| CLAMS | | | | | | | |
| * | * | * | * | * | * | * | * |
| Bankclimber, purple (mussel). | *Elliptoideus sloatianus* | U.S.A. (AL, FL, GA) | NA | T | 633 | 17.95(f) | NA |
| * | * | * | * | * | * | * | * |
| Moccasinshell, Gulf | *Medionidus penicillatus.* | U.S.A. (AL, FL, GA) | NA | E | 633 | 17.95(f) | NA |
| * | * | * | * | * | * | * | * |
| Moccasinshell, Ochlockonee. | *Medionidus simpsonianus.* | U.S.A. (FL, GA) | NA | E | 633 | 17.95(f) | NA |
| * | * | * | * | * | * | * | * |
| Pigtoe, oval | *Pleurobema pyriforme* | U.S.A. (AL, FL, GA) | NA | E | 633 | 17.95(f) | NA |
| * | * | * | * | * | * | * | * |
| Pocketbook, shinyrayed | *Lampsilis subangulata* | U.S.A. (AL, FL, GA) | NA | E | 633 | 17.95(f) | NA |
| * | * | * | * | * | * | * | * |
| Slabshell, Chipola | *Elliptio chipolaensis* | U.S.A. (AL, FL) | NA | T | 633 | 17.95(f) | NA |
| * | * | * | * | * | * | * | * |
| Threeridge, fat (mussel). | *Amblema neislerii* | U.S.A. (FL, GA) | NA | E | 633 | 17.95(f) | NA |
| * | * | * | * | * | * | * | * |

■ 3. In § 17.95, at the end of paragraph (f), add an entry for seven mussel species (in four northeast Gulf of Mexico drainages) to read as follows:

**§ 17.95 Critical habitat—fish and wildlife.**

* * * * *

(f) *Clams and snails.*

* * * * *

Seven mussel species (in four northeast Gulf of Mexico drainages): Purple bankclimber (*Elliptoideus sloatianus*), Gulf moccasinshell (*Medionidus penicillatus*), Ochlockonee moccasinshell (*Medionidus simpsonianus*), oval pigtoe (*Pleurobema pyriforme*), shinyrayed pocketbook (*Lampsilis subangulata*), Chipola slabshell (*Elliptio chipolaensis*), and fat threeridge (*Amblema neislerii*).

(1) Critical habitat units are depicted on the maps below for the following counties:

(i) *Alabama:* Houston and Russell;

(ii) *Florida:* Alachua, Bay, Bradford, Calhoun, Columbia, Franklin, Gadsden, Gulf, Jackson, Leon, Liberty, Union, Wakulla, and Washington; and

(iii) *Georgia:* Baker, Calhoun, Coweta, Crawford, Crisp, Decatur, Dooly, Dougherty, Early, Fayette, Grady, Lee, Macon, Marion, Meriwether, Miller, Mitchell, Peach, Pike, Schley, Spalding, Sumter, Talbot, Taylor, Terrell, Thomas, Upson, Webster, and Worth.

(2) The primary constituent elements of critical habitat for the purple bankclimber (*Elliptoideus sloatianus*), Gulf moccasinshell (*Medionidus penicillatus*), Ochlockonee moccasinshell (*Medionidus simpsonianus*), oval pigtoe (*Pleurobema pyriforme*), shinyrayed pocketbook (*Lampsilis subangulata*), Chipola slabshell (*Elliptio chipolaensis*), and fat threeridge (*Amblema neislerii*) are:

(i) A geomorphically stable stream channel (a channel that maintains its lateral dimensions, longitudinal profile, and spatial pattern over time without a consistent aggrading or degrading bed elevation);

(ii) A predominantly sand, gravel, and/or cobble stream substrate with low to moderate amounts of silt and clay;

(iii) Permanently flowing water;

(iv) Water quality (including temperature, turbidity, dissolved oxygen, and chemical constituents) that meets or exceeds the current aquatic life criteria established under the Clean Water Act (33 U.S.C. 1251–1387); and

(v) Fish hosts (such as largemouth bass, sailfin shiner, brown darter) that support the larval life stages of the seven mussels.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, airports, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule and not containing one or more of the primary constituent elements.

(4) Critical habitat unit maps. Data layers defining map units were created with USGS National Hydrography Dataset (NHD) GIS data. The 1:100,000 river reach (route) files were used to calculate river kilometers and miles. The following data sources were referenced to identify upstream and downstream extents of critical habitat units: USGS 7.5' quadrangles; Georgia Department of Transportation county highway maps; U.S. Census Bureau 1:100,000 TIGER line road data; 1993 Georgia digital orthographic quarter quads (DOQQs); 2004 Florida DOQQs; and DeLorme Atlas and Gazetteers for Alabama, Florida, and Georgia. The projection used in mapping all units was Universal Transverse Mercator (UTM), NAD 83, Zone 16 North.

(5) Note: Index map of critical habitat units in the States of Alabama, Florida, and Georgia for the seven mussels follows:

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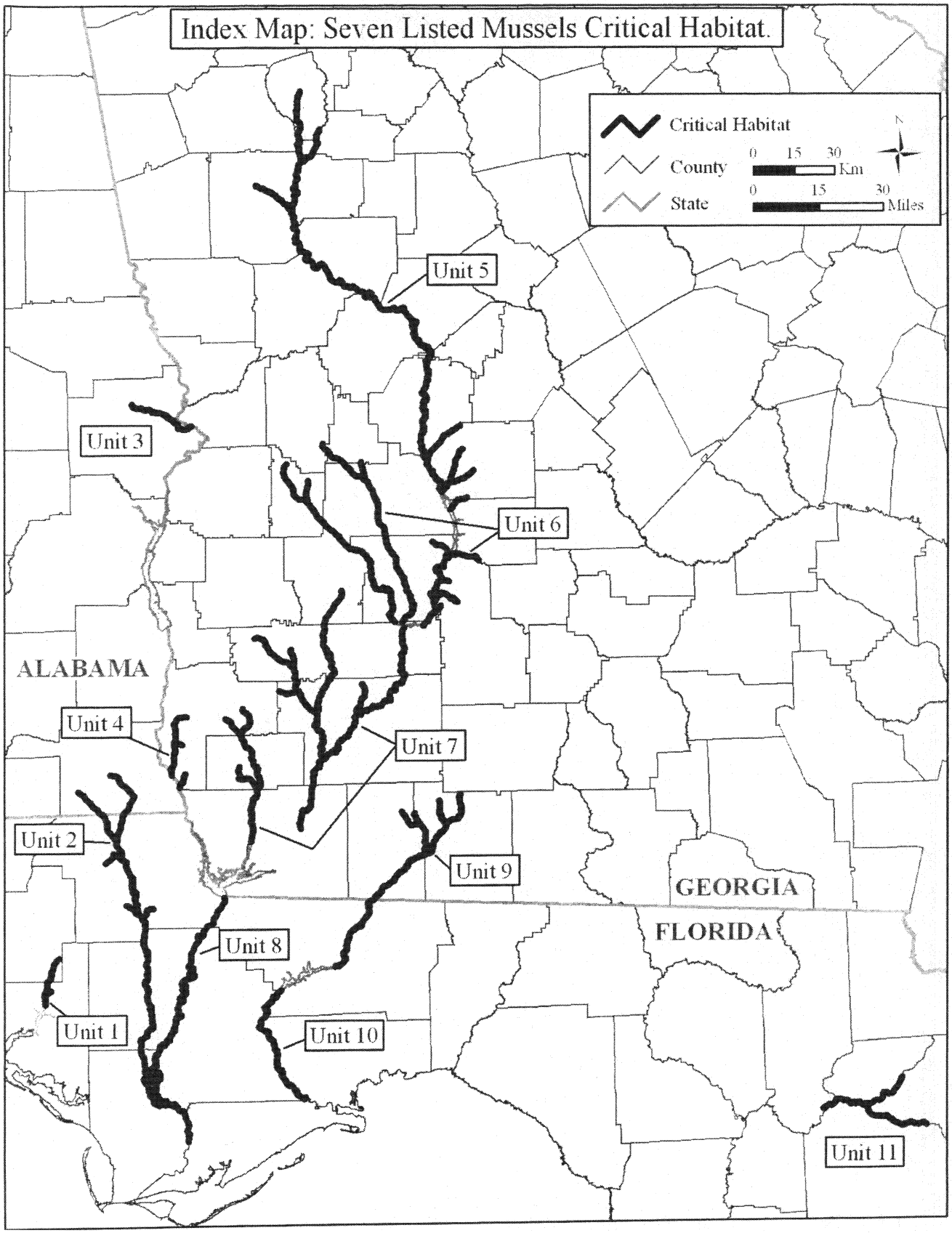
Index Map: Seven Listed Mussels Critical Habitat.
Critical Habitat
County
State
0 15 30 Km
0 15 30 Miles
N
Unit 1
Unit 2
Unit 3
Unit 4
Unit 5
Unit 6
Unit 7
Unit 8
Unit 9
Unit 10
Unit 11
ALABAMA
GEORGIA
FLORIDA

(6) Table of listed species and critical habitat units. A table showing the listed species, their respective critical habitat units, and the States that contain those habitat units follows. Detailed critical habitat unit descriptions and maps appear below in paragraphs (7) through (17).

| Species | Critical habitat units | States |
|---|---|---|
| Purple bankclimber (*Elliptoideus sloatianus*) | Units 5, 6, 7, 8, 9, 10 | AL, FL, GA |
| Gulf moccasinshell (*Medionidus penicillatus*) | Units 1, 2, 4, 5, 6, 7 | AL, FL, GA |
| Ochlockonee moccasinshell (*Medionidus simpsonianus*) | Unit 9 | FL, GA |
| Oval pigtoe (*Pleurobema pyriforme*) | Units 1, 2, 4, 5, 6, 7, 9, 11 | AL, FL, GA |
| Shinyrayed pocketbook (*Lampsilis subangulata*) | Units 2, 3, 4, 5, 6, 7, 9 | AL, FL, GA |
| Chipola slabshell (*Elliptio chipolaensis*) | Unit 2 | AL, FL |
| Fat threeridge (mussel) (*Amblema neislerii*) | Units 2, 7, 8 | AL, FL, GA |

(7) Unit 1. Econfina and Moccasin creeks, Bay and Washington Counties, Florida. This is a critical habitat unit for the Gulf moccasinshell and oval pigtoe.

(i) *General Description:* Unit 1 includes the main stem of Econfina Creek and one of its tributaries, Moccasin Creek, encompassing a total stream length of 31.4 kilometers (km) (19.5 miles (mi)). The main stem of Econfina Creek extends from its confluence with Deer Point Lake at the powerline crossing located 3.8 km (2.3 mi) downstream of Bay County Highway 388 (−85.56 longitude, 30.36 latitude), Bay County, Florida, upstream 28.6 km (17.8 mi) to Tenmile Creek (−85.50 longitude, 30.51 latitude), Washington County, Florida; and Moccasin Creek from its confluence with Econfina Creek upstream 2.8 km (1.7 mi) to Ellis Branch (−85.53 longitude, 30.41 latitude), Bay County, Florida.

(ii) Note: Unit 1 map follows:

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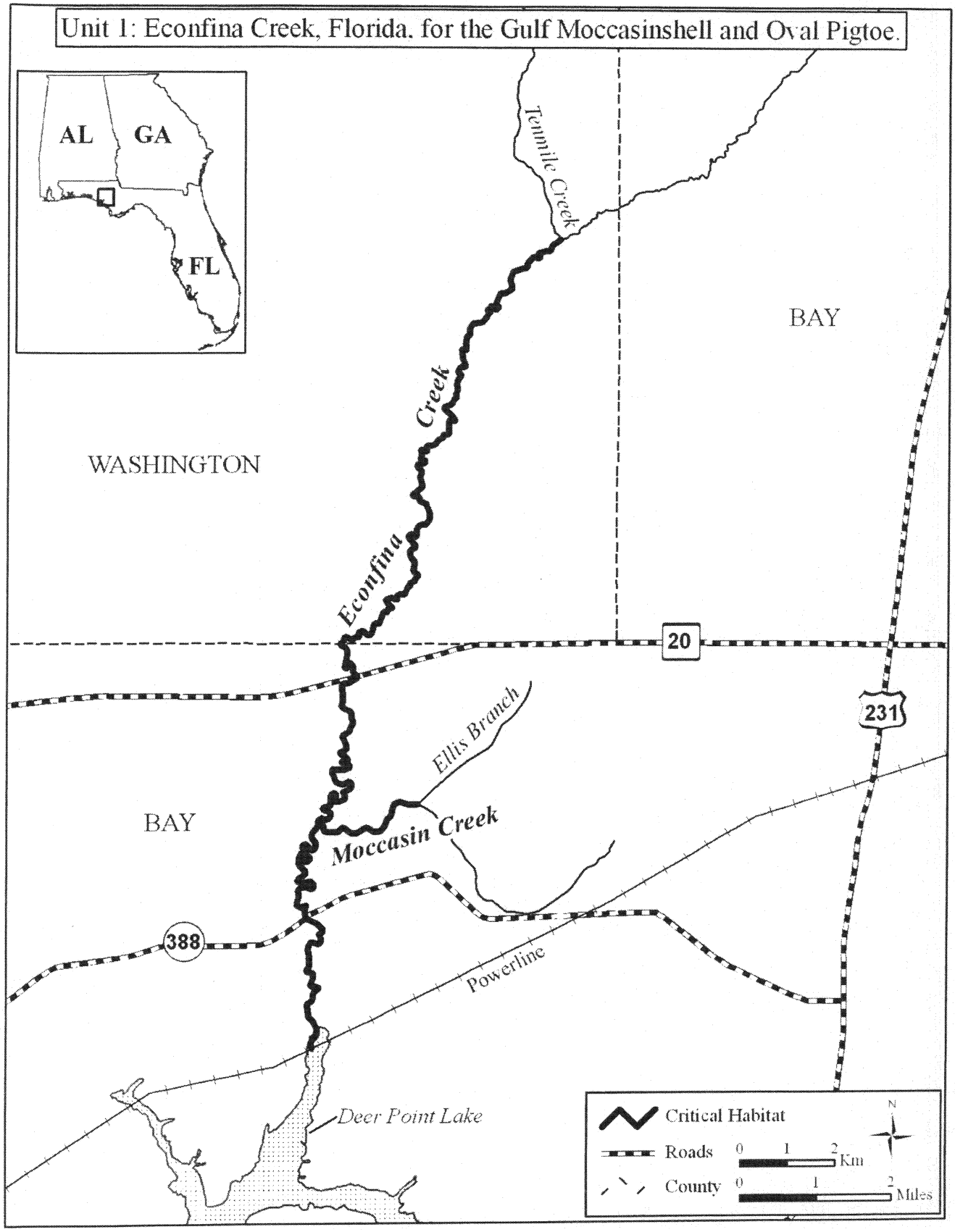


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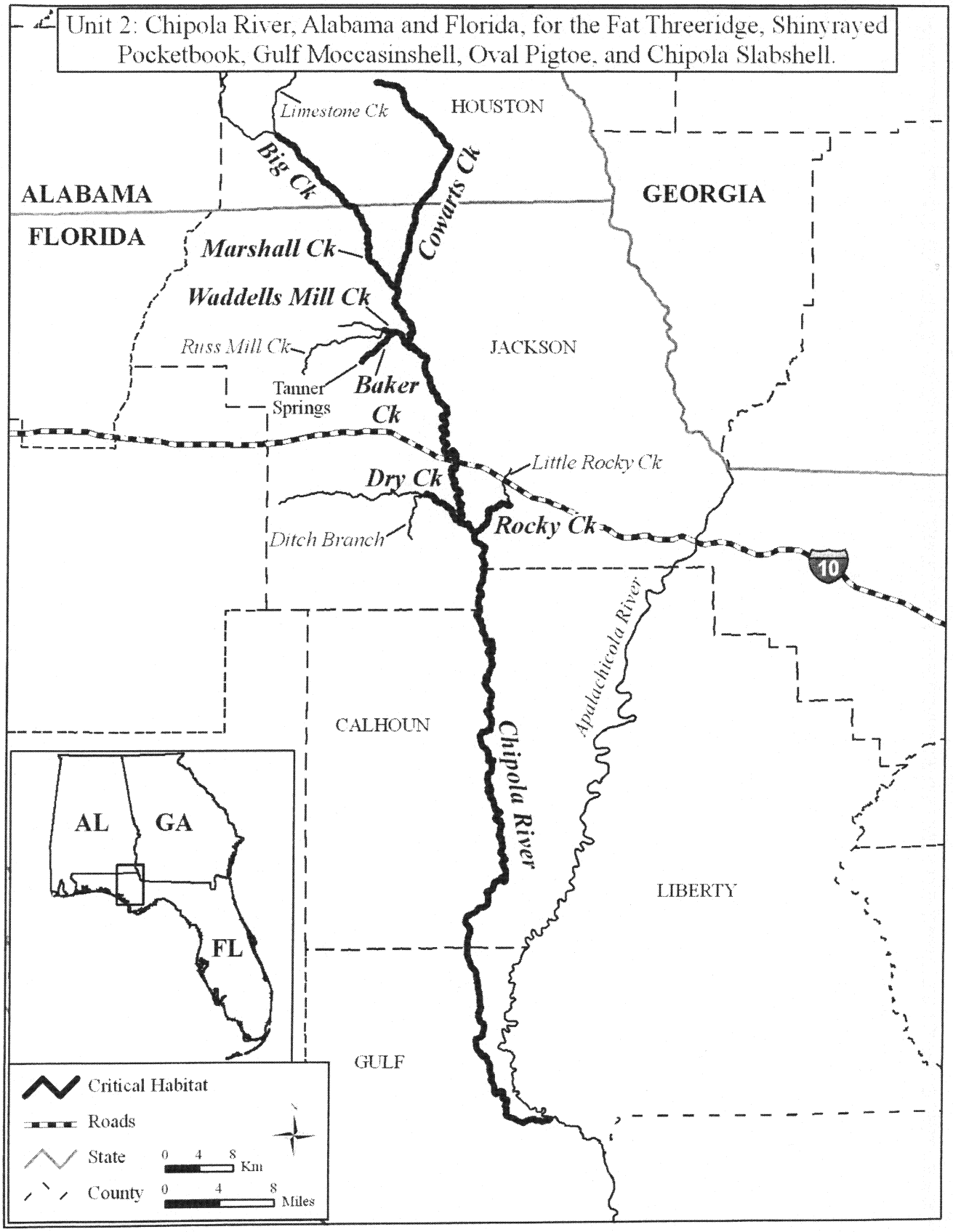
(8) Unit 2. Chipola River and Dry, Rocky, Waddells Mill, Baker, Marshall, Big, and Cowarts Creeks in Houston County, Alabama, and in Calhoun, Gulf, and Jackson counties, Florida. This is a critical habitat unit for the fat threeridge, shinyrayed pocketbook, Gulf moccasinshell, oval pigtoe, and Chipola slabshell.

(i) *General Description:* Unit 2 includes the main stem of the Chipola River and seven of its tributaries, encompassing a total stream length of 228.7 km (142.1 mi). The main stem of the Chipola River extends from its confluence with the Apalachicola River (−85.09 longitude, 30.01 latitude) in Gulf County, Florida, upstream 144.9 river km (90.0 river mi), including the reach known as Dead Lake, to the confluence of Marshall and Cowarts creeks (−85.27 longitude, 30.91 latitude) in Jackson County, Florida; Dry Creek from the Chipola River upstream 7.6 river km (4.7 river mi) to Ditch Branch (−85.24 longitude, 30.69 latitude), Jackson County, Florida; Rocky Creek from the Chipola River upstream 7.1 river km (4.4 river mi) to Little Rocky Creek (−85.13 longitude, 30.68 latitude), Jackson County, Florida; Waddells Mill Creek from the Chipola River upstream 3.7 river km (2.3 river mi) to Russ Mill Creek (−85.29 longitude, 30.87 latitude), Jackson County, Florida; Baker Creek from Waddells Mill Creek upstream 5.3 river km (3.3 river mi) to Tanner Springs (−85.32 longitude, 30.83 latitude), Jackson County, Florida; Marshall Creek from the Chipola River upstream 13.7 river km (8.5 river mi) to the Alabama–Florida State line (−85.33 longitude, 31.00 latitude), Jackson County, Florida; Cowarts Creek from the Chipola River in Jackson County, Florida, upstream 33.5 river km (20.8 river mi) to the Edgar Smith Road bridge (−85.29 longitude, 31.13 latitude), Houston County, Alabama; and Big Creek from the Alabama–Florida State line upstream 13.0 river km (8.1 river mi) to Limestone Creek (−85.42 longitude, 31.08 latitude), Houston County, Alabama. The short segment of the Chipola River that flows underground within the boundaries of Florida Caverns State Park is not included within this unit.

(ii) Note: Unit 2 map follows:

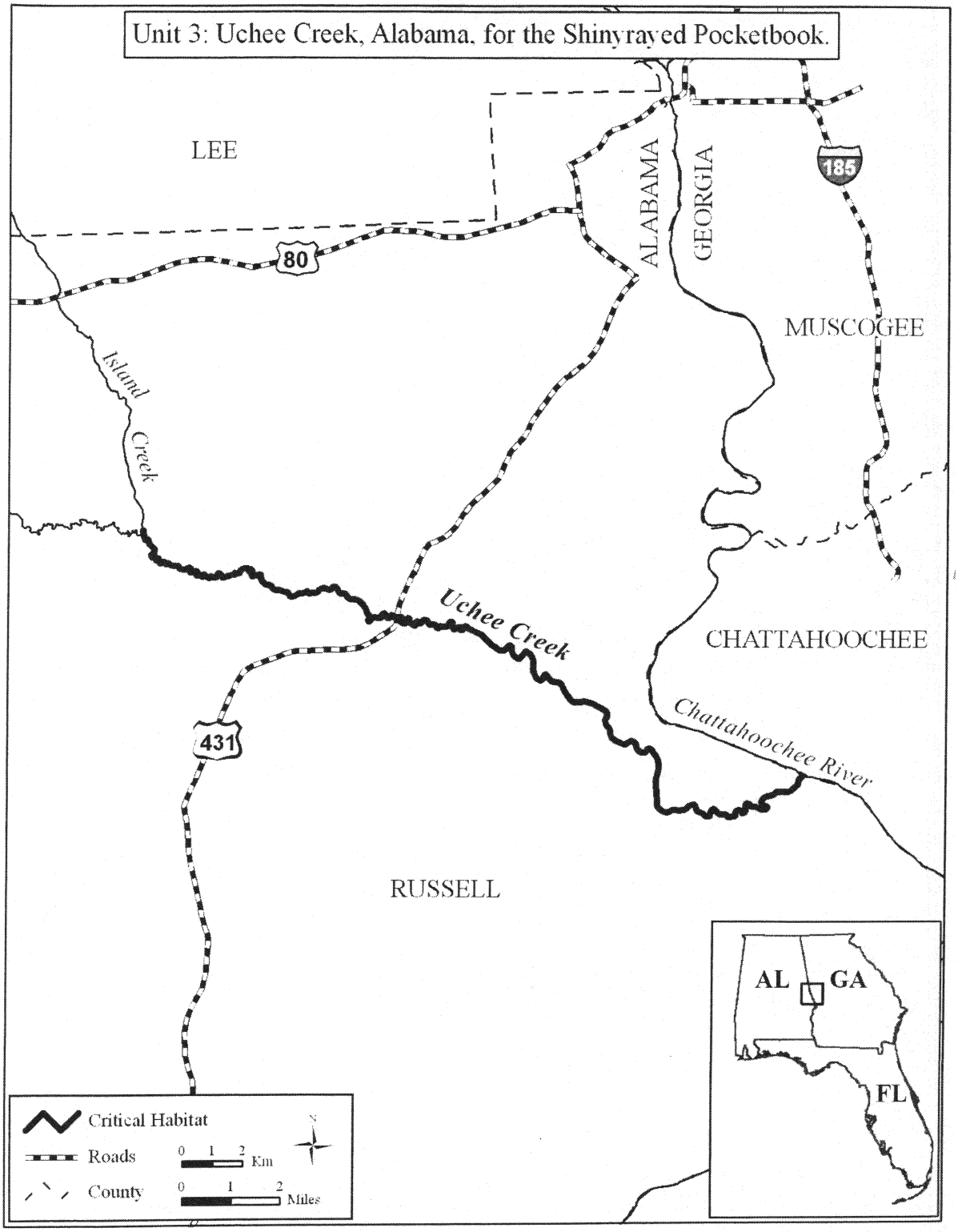
BILLING CODE 4310–55–P


Unit 2: Chipola River, Alabama and Florida, for the Fat Threeridge, Shinyrayed Pocketbook, Gulf Moccasinshell, Oval Pigtoe, and Chipola Slabshell.
Limestone Ck
HOUSTON
Big Ck
Cowarts Ck
ALABAMA
GEORGIA
FLORIDA
Marshall Ck
Waddells Mill Ck
Russ Mill Ck
JACKSON
Tanner Springs
Baker Ck
Little Rocky Ck
Dry Ck
Rocky Ck
Ditch Branch
10
Apalachicola River
CALHOUN
Chipola River
LIBERTY
GULF
AL
GA
FL
Critical Habitat
Roads
State
County
0 4 8 Km
0 4 8 Miles

(9) Unit 3. Uchee Creek, Russell County, Alabama. This is a critical habitat unit for the shinyrayed pocketbook.

(i) *General Description:* Unit 3 includes the main stem of Uchee Creek from its confluence with the Chattahoochee River upstream 34.2 km (21.2 mi) to Island Creek (−85.18 longitude, 32.38 latitude), Russell County, Alabama, encompassing a total stream length of 34.2 km (21.2 mi).

(ii) Note: Unit 3 map follows:

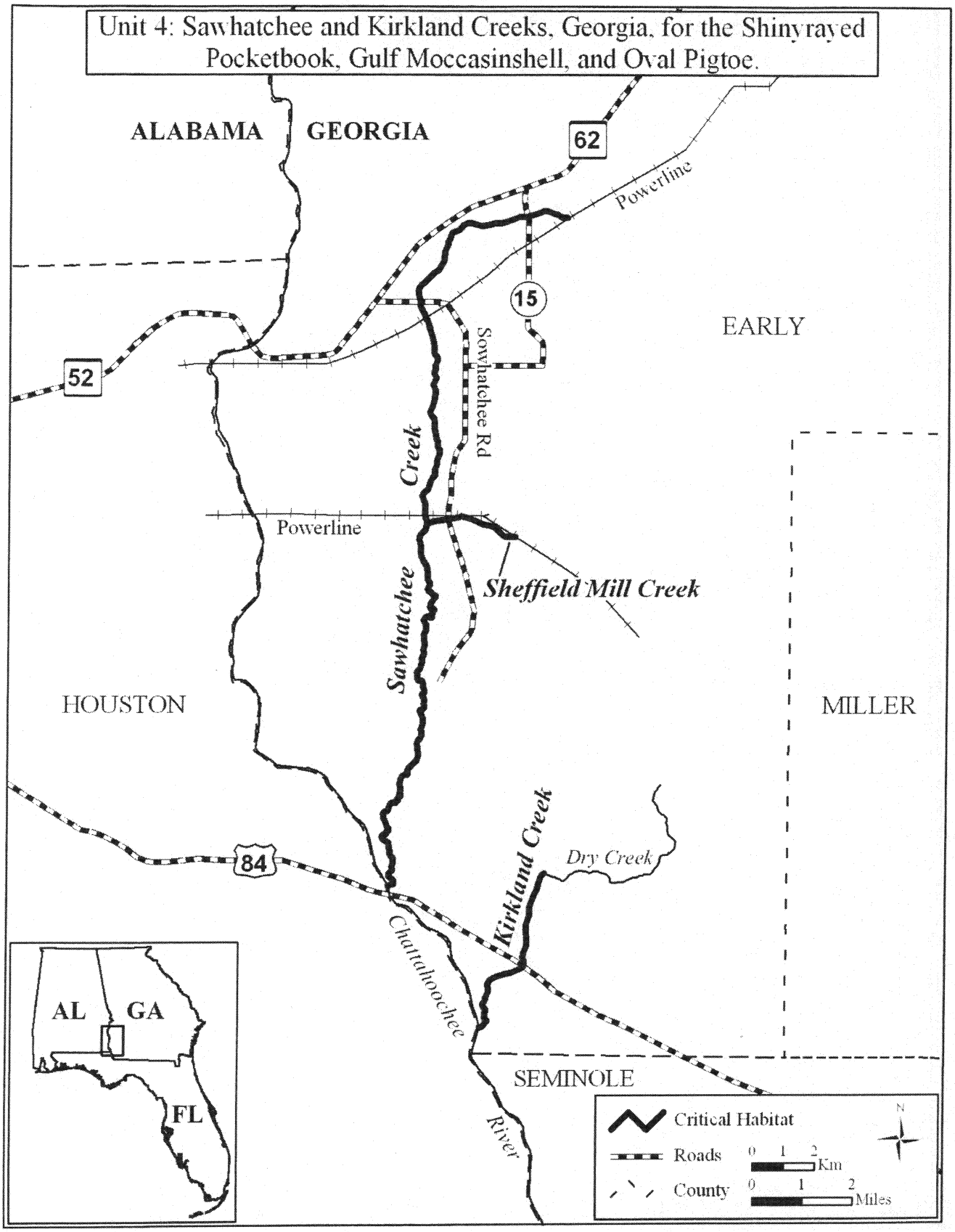


(10) Unit 4. Sawhatchee, Sheffield Mill, and Kirkland creeks, Early County, Georgia. This is a critical habitat unit for the shinyrayed pocketbook, Gulf moccasinshell, and oval pigtoe.

(i) *General Description:* Unit 4 includes the main stems of Sawhatchee and Kirkland creeks, and one tributary, encompassing a total stream length of 37.8 km (23.5 mi). Unit 4 includes Sawhatchee Creek from its confluence with the Chattahoochee River upstream 28.6 km (17.8 mi) to the powerline crossing located 1.4 km (0.87 mi) upstream of Early County Road 15 (−84.99 longitude, 31.32 latitude); Sheffield Mill Creek, the tributary, from its confluence with Sawhatchee Creek upstream 3.1 km (1.9 mi) to the powerline crossing located 2.3 km (1.4 mi) upstream of Sowhatchee Road (−85.01 longitude, 31.23 latitude); Kirkland Creek from its confluence with the Chattahoochee River upstream 6.1 km (3.8 mi) to Dry Creek (−85.00 longitude, 31.13 latitude).

(ii) Note: Unit 4 map follows:

BILLING CODE 4310–55–P



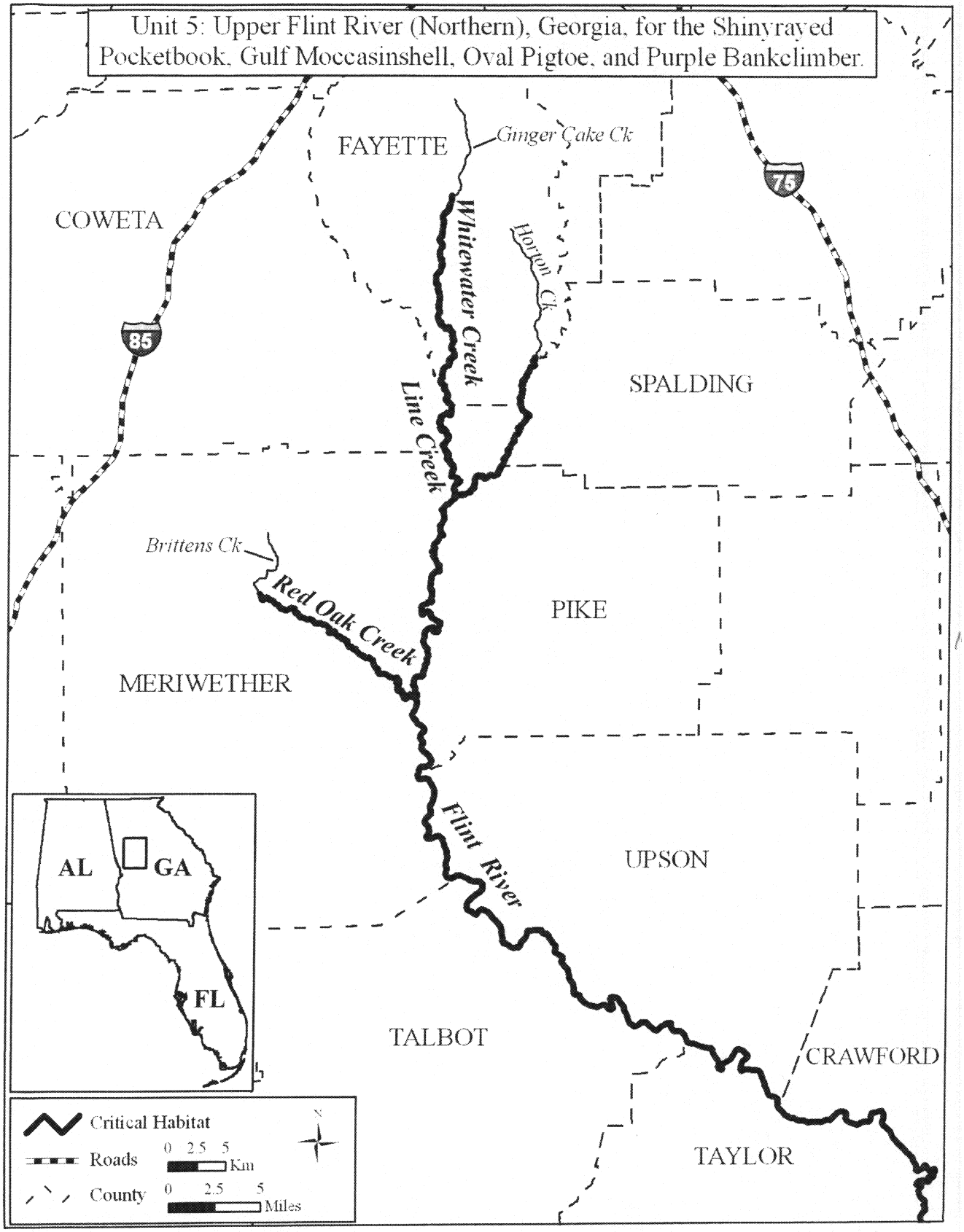

BILLING CODE 4310–55–C

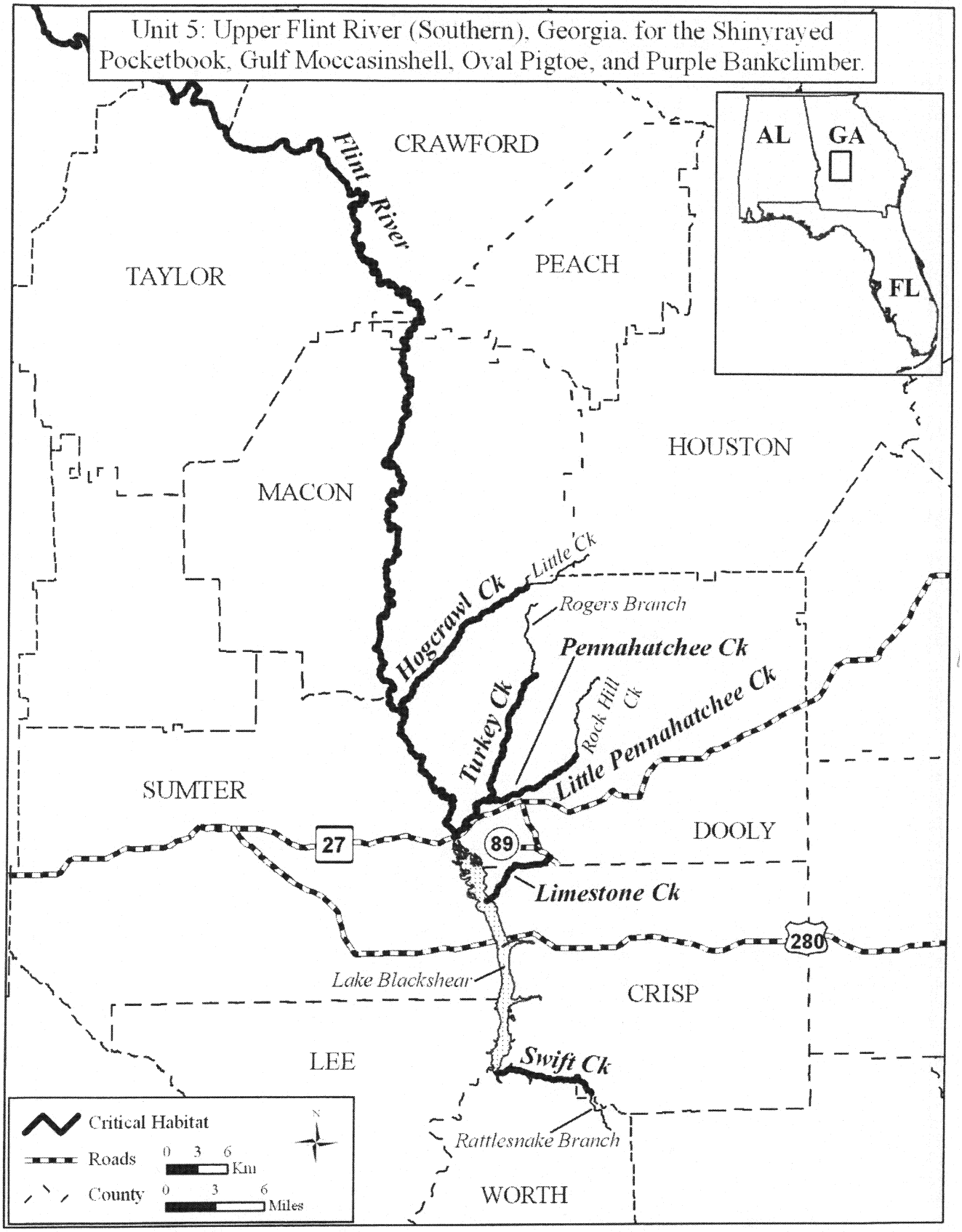
(11) Unit 5. Upper Flint River and Swift, Limestone, Turkey, Pennahatchee, Little Pennahatchee, Hogcrawl, Red Oak, Line, and Whitewater creeks in Coweta, Crawford, Crisp, Dooly, Fayette, Macon, Meriwether, Peach, Pike, Spalding, Sumter, Talbot, Taylor, Upson, and Worth counties, Georgia. This is a critical habitat unit for the shinyrayed pocketbook, Gulf moccasinshell, oval pigtoe, and purple bankclimber.

(i) *General Description:* Unit 5 encompasses a total stream length of 380.4 km (236.4 mi) and includes the Flint River from the State Highway 27 bridge (Vienna Road) (−83.98 longitude, 32.06 latitude) in Dooly and Sumter counties, Georgia (the river is the county boundary), upstream 247.4 km (153.7 mi) through Macon, Peach, Taylor, Crawford, Talbot, Upson, Pike, Meriwether, and Coweta counties, to Horton Creek (−84.42 longitude, 33.29 latitude) in Fayette and Spalding counties, Georgia (the river is the county boundary); Swift Creek from Lake Blackshear upstream 11.3 km (7 mi) to Rattlesnake Branch (−83.84 longitude, 31.82 latitude), Crisp and Worth counties, Georgia (the creek is the county boundary); Limestone Creek from Lake Blackshear, Crisp County, Georgia, upstream 8.8 km (5.5 mi) to County Road 89 (−83.88 longitude, 32.04 latitude), Dooly County, Georgia; Turkey Creek from the Flint River upstream 21.7 km (13.5 mi) to Rogers Branch (−83.89 longitude, 32.20 latitude), in Dooly County, Georgia; Pennahatchee Creek from Turkey Creek upstream 4.8 km (3 mi) to Little Pennahatchee Creek (−83.89 longitude, 32.10 latitude), Dooly County, Georgia; Little Pennahatchee Creek from Pennahatchee Creek upstream 5.8 km (3.6 mi) to Rock Hill Creek (−83.85 longitude, 32.13 latitude), Dooly County, Georgia; Hogcrawl Creek from the Flint River upstream 21.6 km (13.4 mi) to Little Creek (−83.90 longitude, 32.28 latitude), Dooly and Macon counties, Georgia (the creek is the county boundary); Red Oak Creek from the Flint River upstream 21.7 km (13.5 mi) to Brittens Creek (−84.68 longitude, 33.11 latitude), Meriwether County, Georgia; Line Creek from the Flint River upstream 15.8 km (9.8 mi) to Whitewater Creek (−84.51 longitude, 33.28 latitude), Coweta and Fayette counties, Georgia (the creek is the county boundary); and Whitewater Creek from Line Creek upstream 21.5 km (13.4 mi) to Ginger Cake Creek (−84.49 longitude, 33.42 latitude), Fayette County, Georgia.

(ii) Note: Two maps of unit 5—northern part of unit 5 and—southern part of unit 5 follow:

BILLING CODE 4310–55–P


Unit 5: Upper Flint River (Northern), Georgia, for the Shinyrayed Pocketbook, Gulf Moccasinshell, Oval Pigtoe, and Purple Bankclimber.
FAYETTE
Ginger Cake Ck
COWETA
Whitewater Creek
Horton Ck
Line Creek
SPALDING
Brittens Ck
Red Oak Creek
PIKE
MERIWETHER
Flint River
UPSON
AL
GA
FL
TALBOT
CRAWFORD
TAYLOR
Critical Habitat
Roads
County
0 2.5 5 Km
0 2.5 5 Miles
N



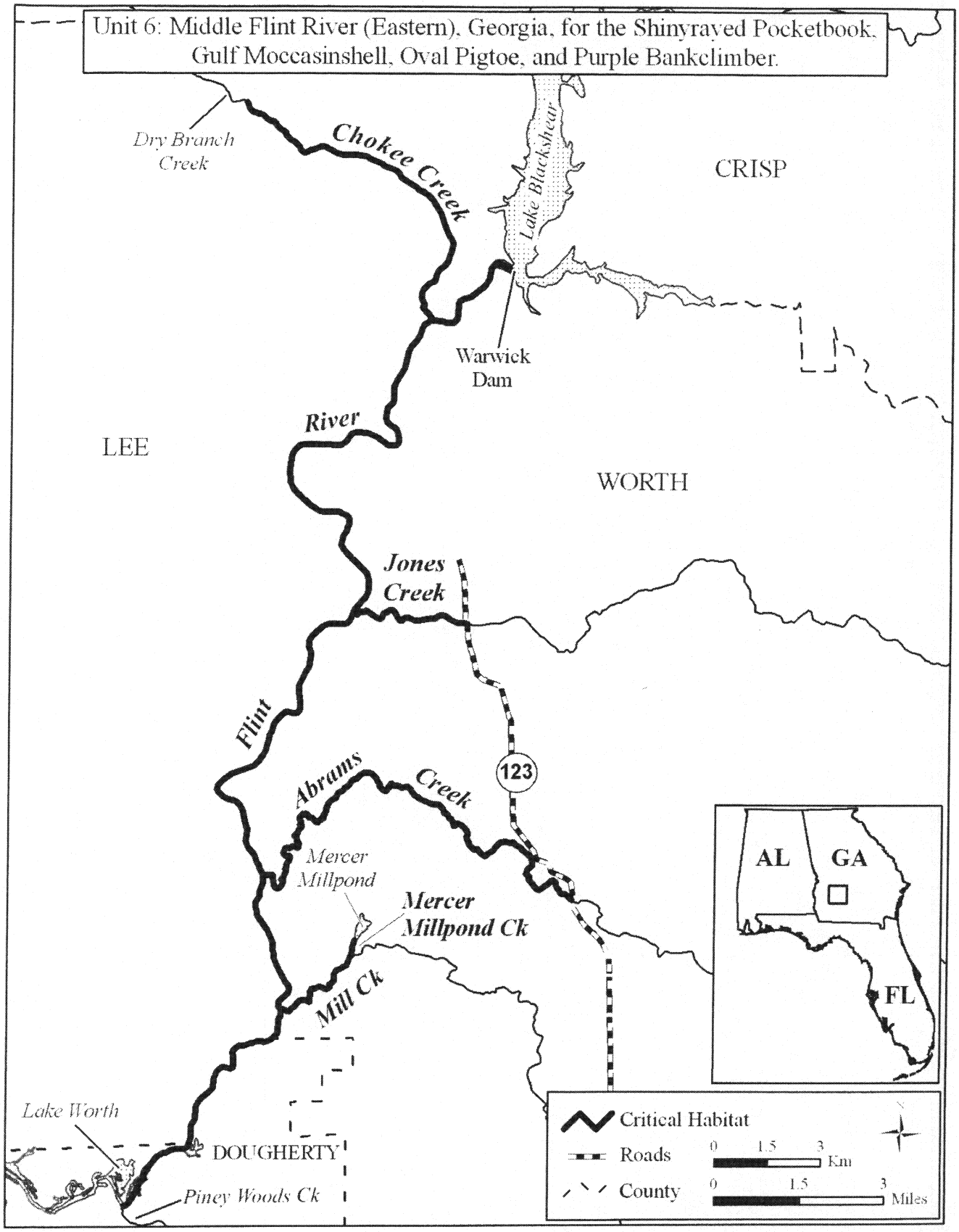

BILLING CODE 4310–55–C

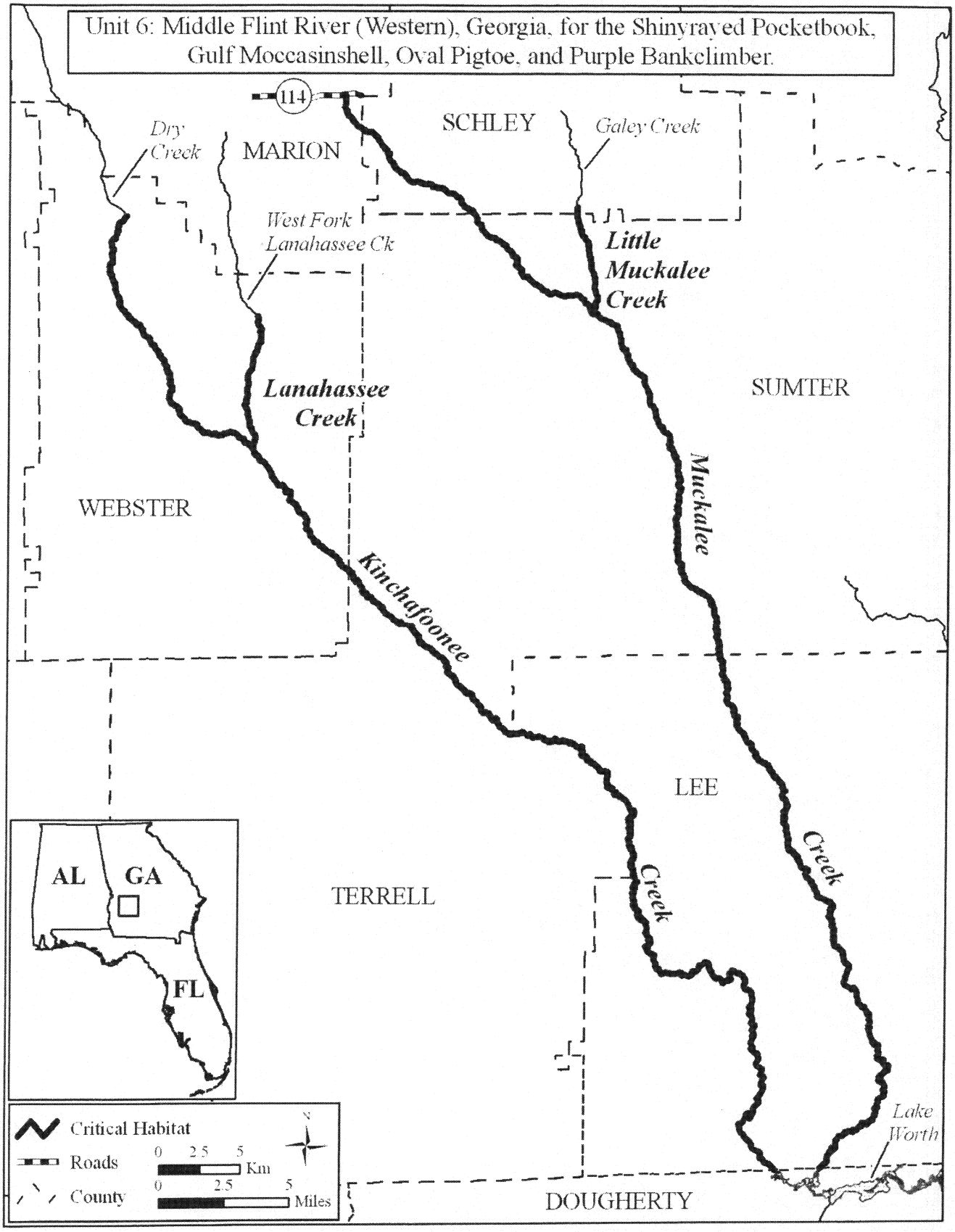
(12) Unit 6. Middle Flint River and Kinchafoonee, Lanahassee, Muckalee, Little Muckalee, Mill, Mercer Mill Pond, Abrams, Jones, and Chokee creeks in Dougherty, Lee, Marion, Schley, Sumter, Terrell, Webster, and Worth counties, Georgia. This is a critical habitat unit for the shinyrayed pocketbook, Gulf moccasinshell, oval pigtoe, and purple bankclimber.

(i) *General Description:* Unit 6 encompasses a total stream length of 302.3 km (187.8 mi) and includes the Flint River from Piney Woods Creek (−84.06 longitude, 31.61 latitude) in Dougherty County, Georgia (the upstream extent of Lake Worth), upstream 39.9 km (24.8 mi) to the Warwick Dam (−83.94 longitude, 31.85 latitude), Lee and Worth counties, Georgia; Kinchafoonee Creek from its confluence with Lake Worth at the Lee—Dougherty county line (−84.17 longitude, 31.62 latitude), upstream 107.6 km (66.8 mi) through Terrell and Sumter Counties, Georgia, to Dry Creek (−84.58 longitude, 32.17 latitude), Webster County, Georgia; Lanahassee Creek from Kinchafoonee Creek upstream 9.3 km (5.8 mi) to West Fork Lanahassee Creek (−84.50 longitude, 32.11 latitude), Webster County, Georgia; Muckalee Creek, from its confluence with Lake Worth at the Lee—Dougherty county line (−84.14 longitude, 31.62 latitude), upstream 104.5 km (64.9 mi) to County Road 114 (−84.44 longitude, 32.23 latitude), Marion County, Georgia; Little Muckalee Creek, from Muckalee Creek in Sumter County, Georgia, upstream 7.2 km (4.5 mi) to Galey Creek (−84.29 longitude, 32.17 latitude), Schley County, Georgia; Mill Creek from the Flint River upstream 3.2 km (2 mi) to Mercer Millpond Creek (−83.99 longitude, 31.67 latitude), Worth County, Georgia; Mercer Millpond Creek from Mill Creek upstream 0.45 km (0.28 mi) to Mercer Mill Pond (−83.99 longitude, 31.68 latitude), Worth County, Georgia; Abrams Creek from the Flint River upstream 15.9 km (9.9 mi) to County Road 123 (−83.93 longitude, 31.68 latitude), Worth County, Georgia; Jones Creek from the Flint River upstream 3.8 km (2.4 mi) to County Road 123 (−83.96 longitude, 31.76 latitude), Worth County, Georgia; and Chokee Creek, from the Flint River upstream 10.5 km (6.5 mi) to Dry Branch Creek (−84.02 longitude, 31.89 latitude), Lee County, Georgia.

(ii) Note: Two maps of unit 6—western part of unit 6 and—eastern part of unit 6 follow:

BILLING CODE 4310–55–P


Unit 6: Middle Flint River (Eastern), Georgia, for the Shinyrayed Pocketbook, Gulf Moccasinshell, Oval Pigtoe, and Purple Bankclimber.
Dry Branch Creek
Chokee Creek
Lake Blackshear
CRISP
Warwick Dam
River
LEE
WORTH
Jones Creek
Flint
Abrams Creek
123
Mercer Millpond
Mercer Millpond Ck
Mill Ck
Lake Worth
DOUGHERTY
Piney Woods Ck
AL
GA
FL
Critical Habitat
Roads
County
0 1.5 3 Km
0 1.5 3 Miles



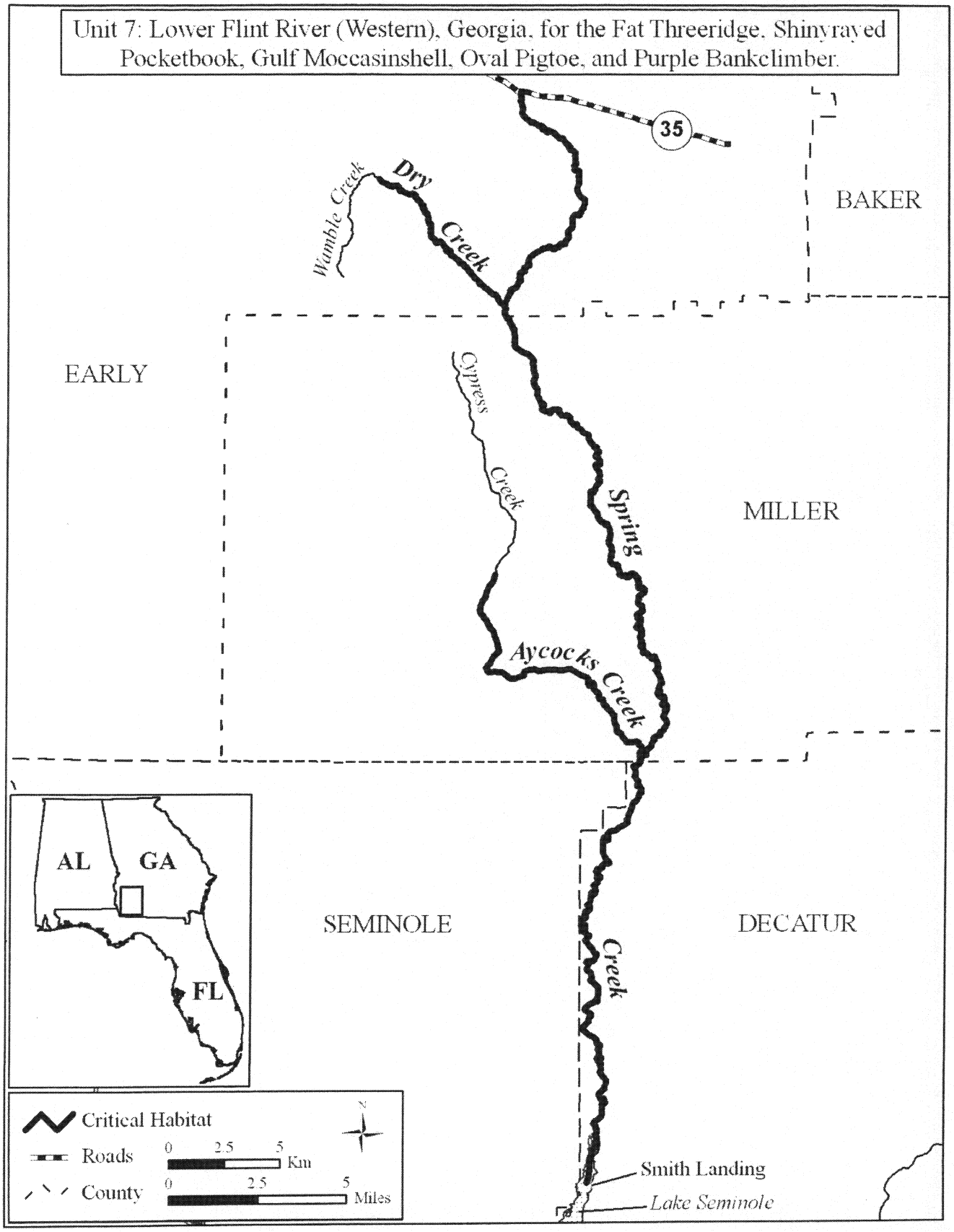

BILLING CODE 4310–55–C

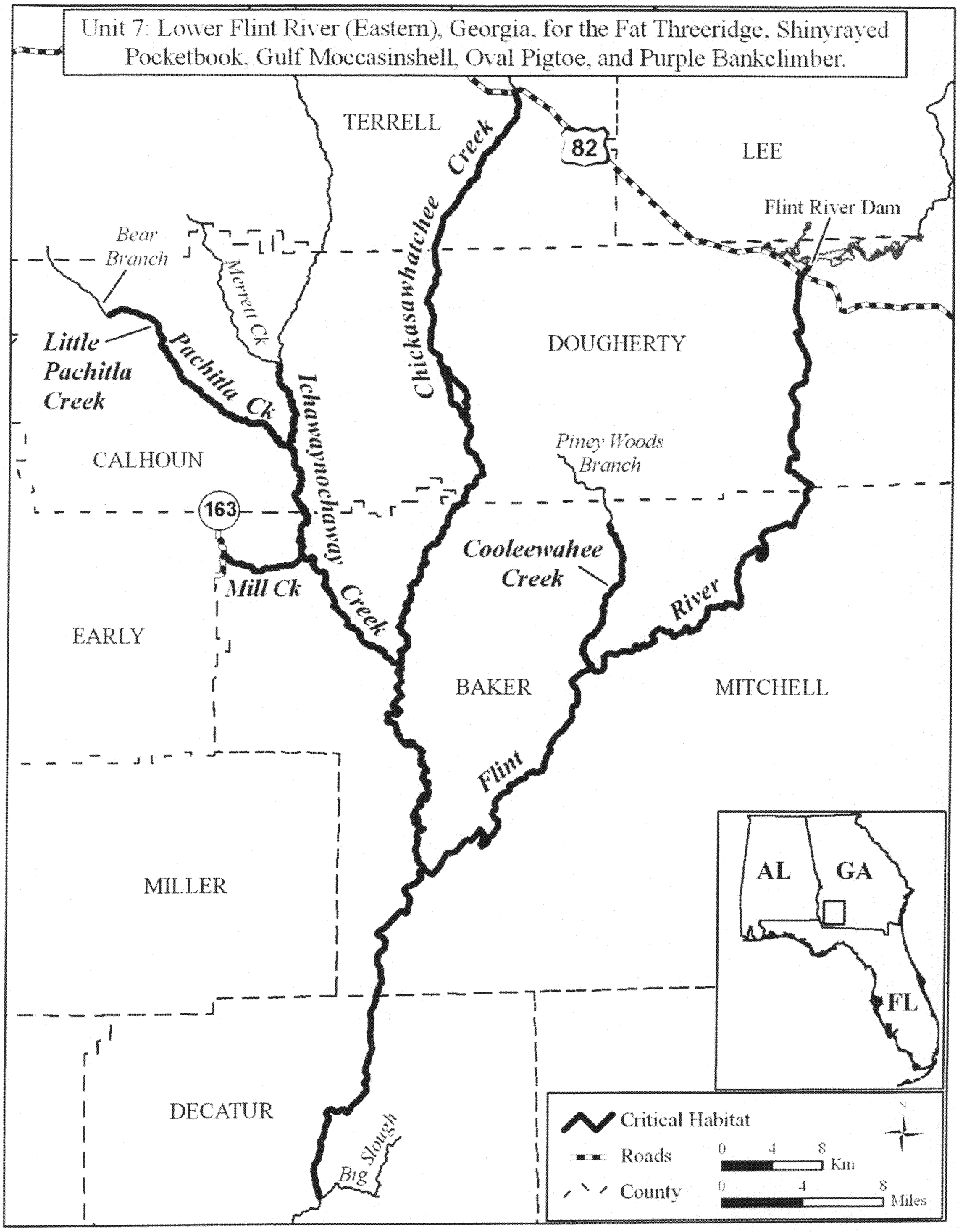
(13) Unit 7. Lower Flint River and Spring, Aycocks, Dry, Ichawaynochaway, Mill, Pachitla, Little Pachitla, Chickasawhatchee, and Cooleewahee creeks in Baker, Calhoun, Decatur, Dougherty, Early, Miller, Mitchell, and Terrell counties, Georgia. This is a critical habitat unit for the fat threeridge, shinyrayed pocketbook, Gulf moccasinshell, oval pigtoe, and purple bankclimber.

(i) *General Description:* Unit 7 encompasses a total stream length of 396.7 km (246.5 mi) and includes the Flint River from its confluence with Big Slough (−84.56 longitude, 30.93 latitude), Decatur County, Georgia, upstream 116.4 km (72.3 mi) through Baker and Mitchell Counties, Georgia, to the Flint River Dam (which impounds Lake Worth) (−84.14 longitude, 31.60 latitude), Dougherty County, Georgia; Spring Creek, from its confluence with Lake Seminole at Smith Landing (−84.75 longitude, 30.89 latitude), Decatur County, Georgia, upstream 74.2 km (46.1 mi) to County Road 35 (−84.78 longitude, 31.34 latitude), Early County, Georgia; Aycocks Creek from Spring Creek upstream 15.9 km (9.9 mi) to Cypress Creek (−84.79 longitude, 31.15 latitude), Miller County, Georgia; Dry Creek from Spring Creek upstream 9.9 km (6.1 mi) to Wamble Creek (−84.84 longitude, 31.31 latitude), Early County, Georgia; Ichawaynochaway Creek from the Flint River, Baker County, Georgia, upstream 68.6 km (42.6 mi) to Merrett Creek (−84.58 longitude, 31.54 latitude), Calhoun County, Georgia; Mill Creek from Ichawaynochaway Creek upstream 7.4 km (4.6 mi) to County Road 163 (−84.63 longitude, 31.40 latitude), Baker County, Georgia; Pachitla Creek, from Ichawaynochaway Creek upstream 18.9 km (11.8 mi) to Little Pachitla Creek (−84.68 longitude, 31.56 latitude), Calhoun County, Georgia; Little Pachitla Creek from Pachitla Creek upstream 5.8 km (3.6 mi) to Bear Branch (−84.72 longitude, 31.58 latitude), Calhoun County, Georgia; Chickasawhatchee Creek from Ichawaynochaway Creek, Baker County, Georgia, upstream 64.5 km (40.1 mi) to U.S. Highway 82 (−84.38 longitude, 31.74 latitude), Terrell County, Georgia; and Cooleewahee Creek from the Flint River upstream 15.1 km (9.4 mi) to Piney Woods Branch (−84.31 longitude, 31.42 latitude), Baker County, Georgia.

(ii) Note: Two maps of unit 7—western part of unit 7 and—eastern part of unit 7 follow:

BILLING CODE 4310–55–P


Unit 7: Lower Flint River (Western), Georgia, for the Fat Threeridge, Shinyrayed Pocketbook, Gulf Moccasinshell, Oval Pigtoe, and Purple Bankclimber.
35
BAKER
EARLY
MILLER
SEMINOLE
DECATUR
Wamble Creek
Dry Creek
Cypress Creek
Spring Creek
Aycocks Creek
Creek
AL
GA
FL
Critical Habitat
Roads
County
0 2.5 5 Km
0 2.5 5 Miles
N
Smith Landing
Lake Seminole



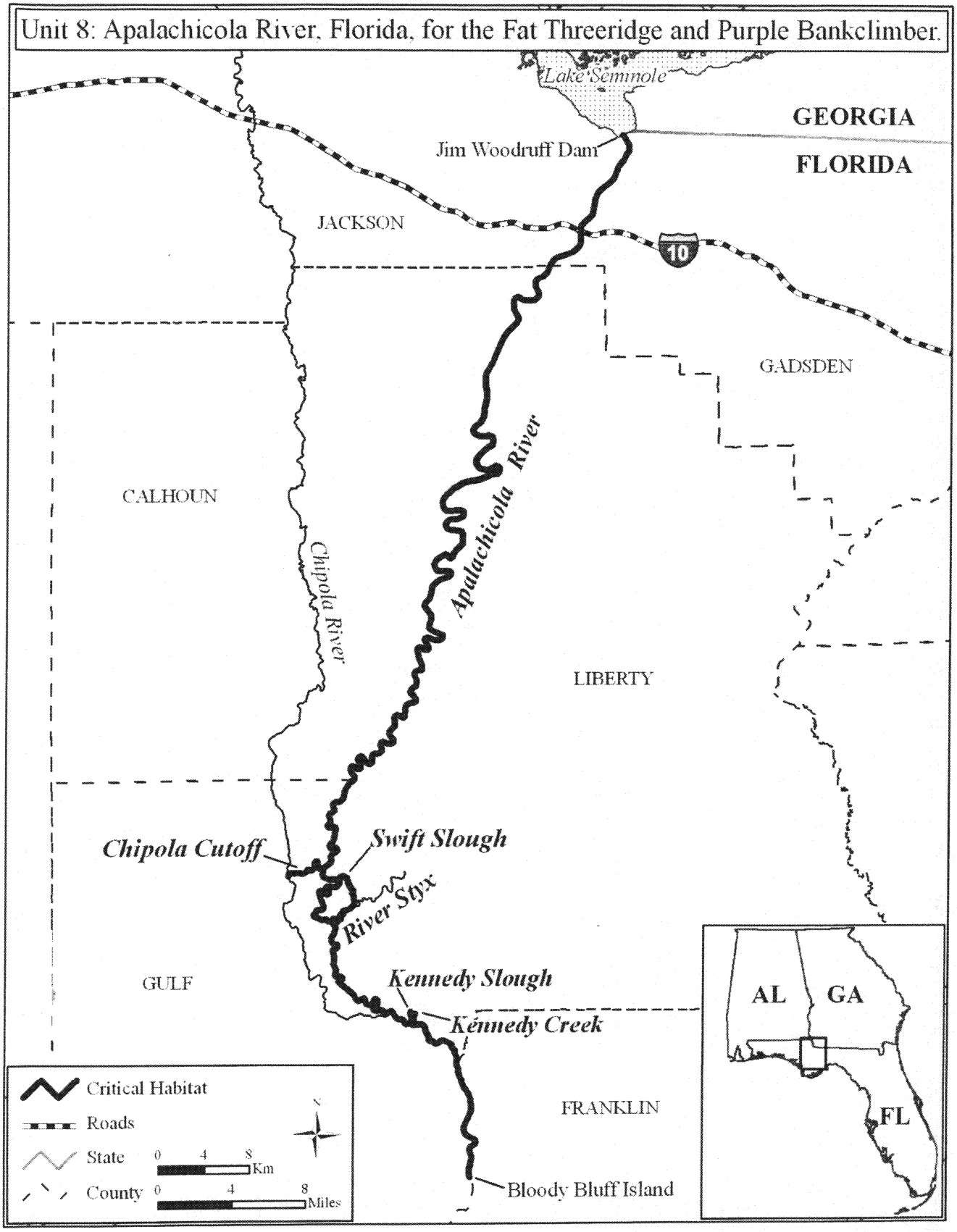

BILLING CODE 4310–55–C

(14) Unit 8. Apalachicola River, Chipola Cutoff, Swift Slough, River Styx, Kennedy Slough, and Kennedy Creek in Calhoun, Franklin, Gadsden, Gulf, Jackson, and Liberty Counties, Florida. This is a critical habitat unit for the fat threeridge and purple bankclimber.

(i) *General Description:* Unit 8 includes the main stem of the Apalachicola River, two of its distributaries, Chipola Cutoff and Swift Slough, and three of its tributaries, River Styx, Kennedy Slough, and Kennedy Creek, encompassing a total length of 161.2 river km (100.2 river mi). The main stem of the Apalachicola River extends from the downstream end of Bloody Bluff Island (river mile 15.3 on U.S. Army Corps of Engineers Navigation Charts) (−85.01 longitude, 29.88 latitude), Franklin County, Florida, through Calhoun and Liberty Counties, Florida, upstream to the Jim Woodruff Lock and Dam (which impounds Lake Seminole) (−84.86 longitude, 30.71 latitude), Gadsden and Jackson Counties, Florida; Chipola Cutoff from the Apalachicola River in Gulf County, Florida, downstream 4.5 river km (2.8 river mi) to its confluence with the Chipola River; Swift Slough from the Apalachicola River in Liberty County, Florida, downstream 3.6 river km (2.2 river mi) to its confluence with the River Styx (−85.12 longitude, 30.10 latitude); River Styx from the mouth of Swift Slough (−85.12 longitude, 30.10 latitude) in Liberty County, Florida, downstream 3.8 river km (2.4 river mi) to its confluence with the Apalachicola River; Kennedy Slough from −85.07 longitude, 30.01 latitude in Liberty County, Florida, downstream 0.9 river km (0.5 river mi) to its confluence with Kennedy Creek; and Kennedy Creek from Brushy Creek Feeder (−85.06 longitude, 30.01 latitude) in Liberty County, Florida, downstream 1.1 river km (0.7 river mi) to its confluence with the Apalachicola River.

(ii) Note: Unit 8 map follows:

BILLING CODE 4310–55–P



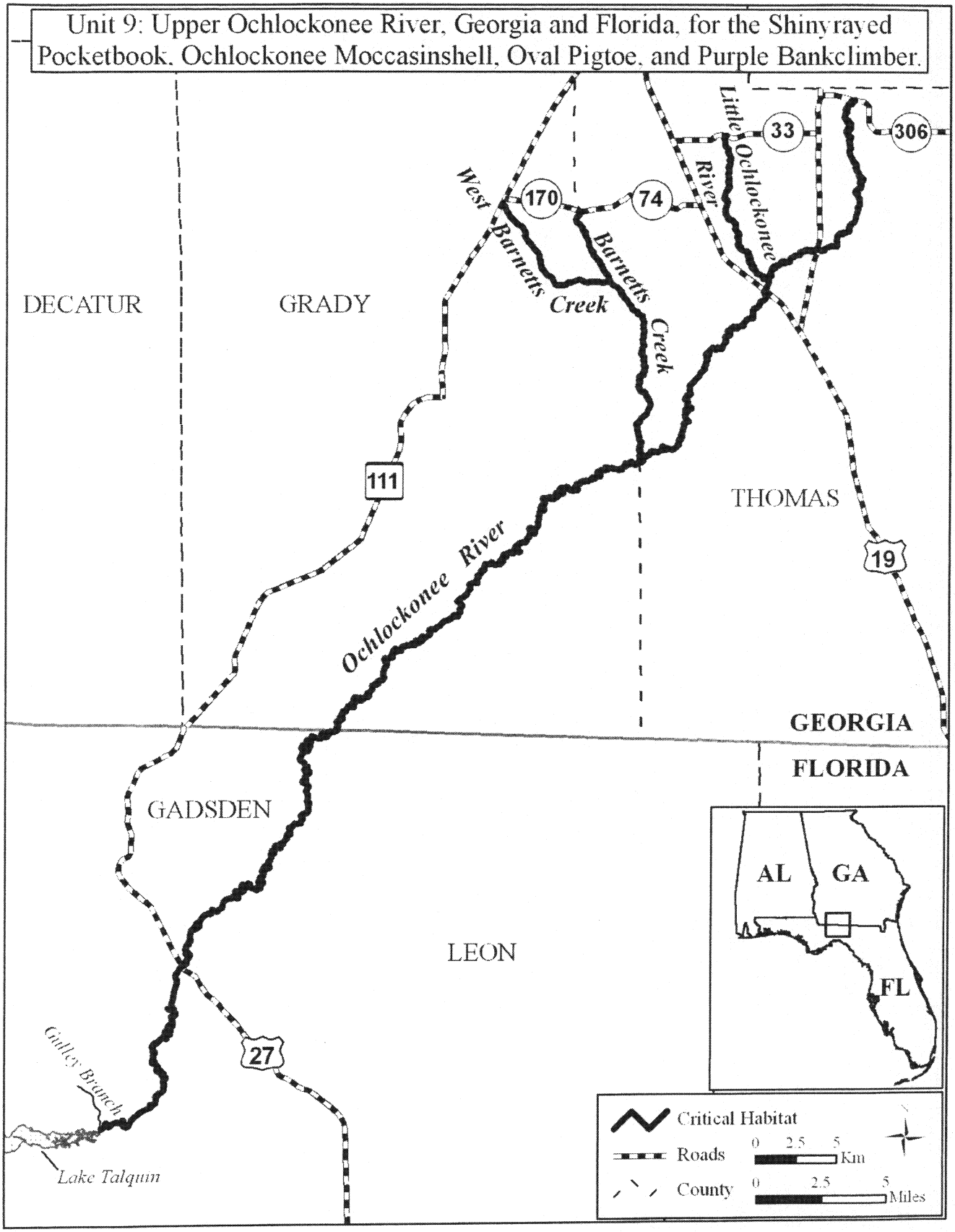

BILLING CODE 4310–55–C

(15) Unit 9. Upper Ochlockonee River and Barnetts and West Barnetts creeks, and the Little Ochlockonee River in Gadsden and Leon counties, Florida, and in Grady and Thomas counties, Georgia. This is a critical habitat unit for the shinyrayed pocketbook, Ochlockonee moccasinshell, oval pigtoe, and purple bankclimber.

(i) *General Description:* Unit 9 includes the main stem of the Ochlockonee River upstream of Lake Talquin and three tributaries encompassing a total stream length of 177.3 km (110.2 mi). The main stem of the Ochlockonee River extends from its confluence with Gulley Branch (the approximate upstream extent of Lake Talquin) (−84.44 longitude, 30.46 latitude), Gadsden and Leon counties, Florida, upstream 134.0 km (83.3 mi) to Bee Line Road/County Road 306 (−83.94 longitude, 31.03 latitude), Thomas County, Georgia; Barnetts Creek from the Ochlockonee River upstream 20 km (12.4 mi) to Grady County Road 170/Thomas County Road 74 (−84.12 longitude, 30.98 latitude), Grady and Thomas counties, Georgia; West Barnetts Creek from Barnetts Creek upstream 10 km (6.2 mi) to Georgia Highway 111 (−84.17 longitude, 30.98 latitude), Grady County, Georgia; and the Little Ochlockonee River from the Ochlockonee River upstream 13.3 km (8.3 mi) to Roup Road/County Road 33 (−84.02 longitude, 31.02 latitude), Thomas County, Georgia.

(ii) Note: Unit 9 map follows:

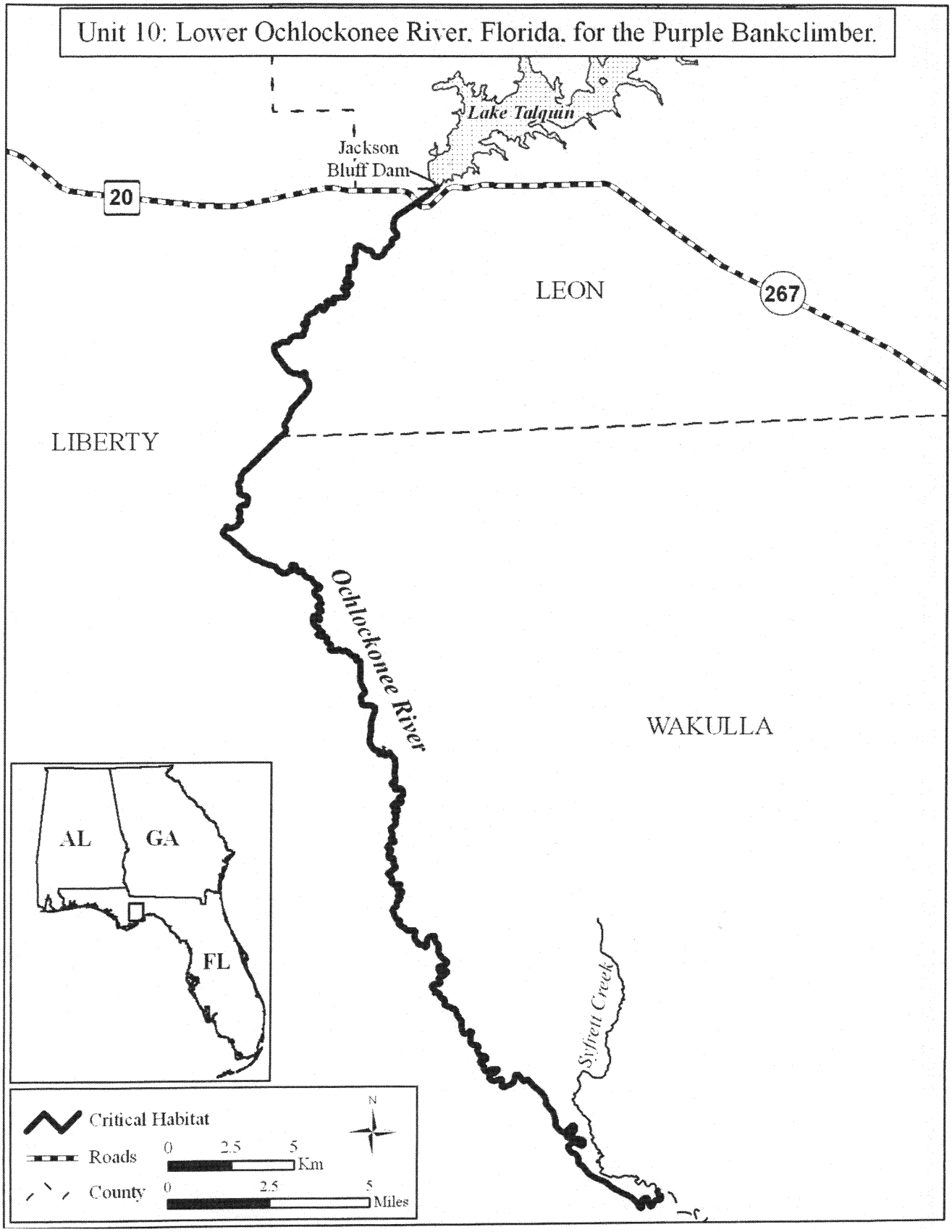
BILLING CODE 4310–55–P


Unit 9: Upper Ochlockonee River, Georgia and Florida, for the Shinyrayed Pocketbook, Ochlockonee Moccasinshell, Oval Pigtoe, and Purple Bankclimber.
DECATUR
GRADY
THOMAS
GADSDEN
LEON
GEORGIA
FLORIDA
Ochlockonee River
Little Ochlockonee River
West Barnetts Creek
Barnetts Creek
Gulley Branch
Lake Talquin
170
74
33
306
111
19
27
AL
GA
FL
Critical Habitat
Roads
County
0 2.5 5 Km
0 2.5 5 Miles

(16) Unit 10. Lower Ochlockonee River in Leon, Liberty, and Wakulla counties, Florida. This is a critical habitat unit for the purple bankclimber.

(i) *General Description:* Unit 10 encompasses a total stream length of 75.4 km (46.9 mi) and includes the main stem of the Ochlockonee River from its confluence with Syfrett Creek (−84.56 longitude, 30.02 latitude), Wakulla County, Florida, upstream 75.4 km (46.9 mi) to the Jackson Bluff Dam (which impounds Lake Talquin) (−84.65 longitude, 30.39 latitude), Leon and Liberty counties, Florida.

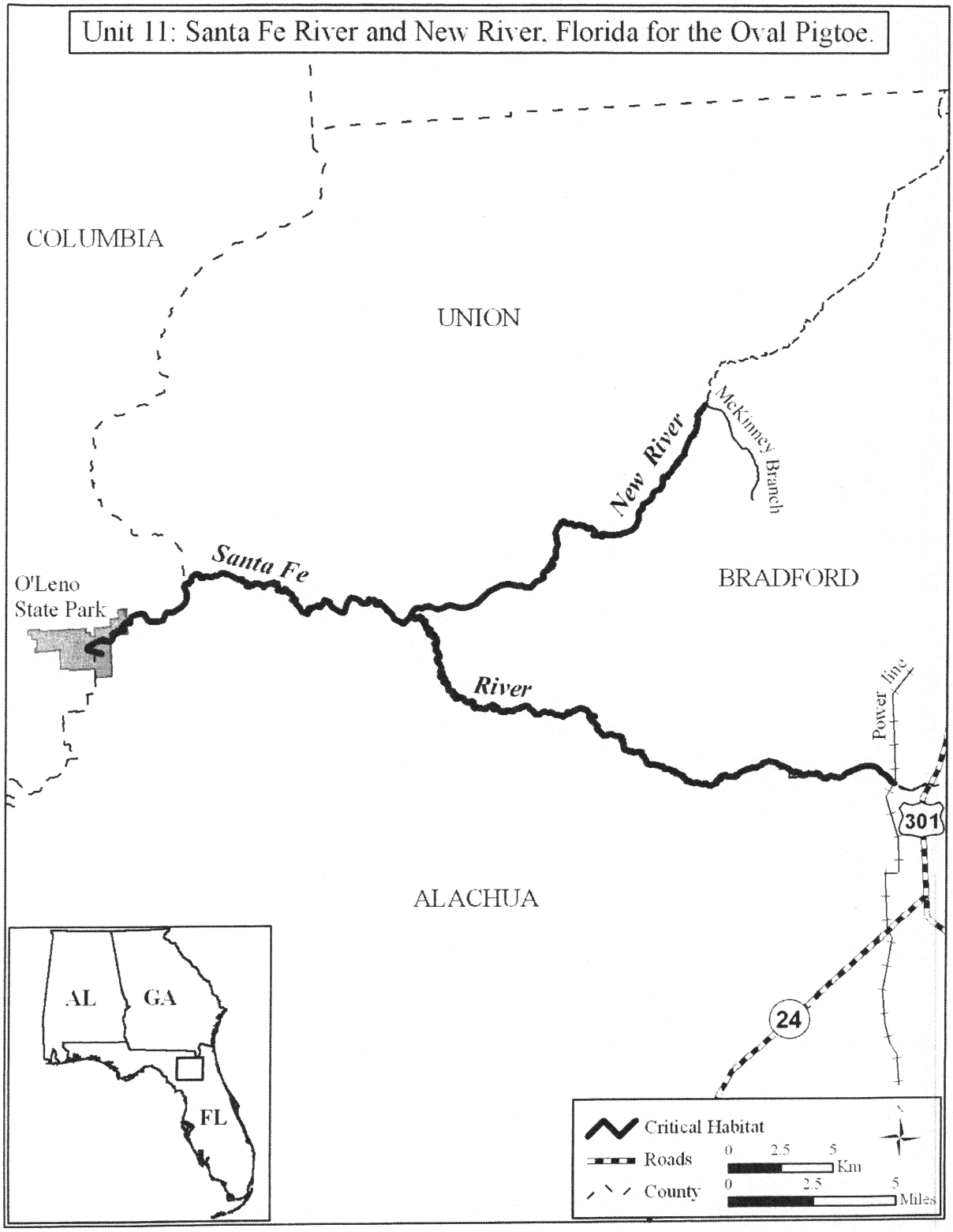
(ii) Note: Unit 10 map follows:


Unit 10: Lower Ochlockonee River, Florida, for the Purple Bankclimber.
Lake Talquin
Jackson Bluff Dam
20
267
LEON
LIBERTY
WAKULLA
Ochlockonee River
Sylvett Creek
AL
GA
FL
Critical Habitat
Roads
County
N
0 2.5 5 Km
0 2.5 5 Miles

(17) Unit 11. Santa Fe River and New River in Alachua, Bradford, Columbia, and Union counties, Florida. This is a critical habitat unit for the oval pigtoe.

(i) *General Description:* Unit 11 includes the main stem of the Santa Fe River and its tributary the New River encompassing a total stream length of 83.1 km (51.6 mi). The main channel of the Santa Fe River extends from where the river goes underground in O'Leno State Park (−82.57 longitude, 29.91 latitude), Alachua and Columbia counties, Florida, upstream 60.2 km (37.4 mi) to the powerline crossing located 1.9 km (1.2 mi) downstream from the U.S. Highway 301 bridge (−82.18 longitude, 29.84 latitude) in Alachua and Bradford counties, Florida; and the New River from its confluence with the Santa Fe River at the junction of Alachua, Bradford, and Union counties, Florida, upstream 22.9 km (14.2 mi) to McKinney Branch (−82.27 longitude, 30.01 latitude) in Bradford and Union counties, Florida.

(ii) Note: Unit 11 map follows:




* * * * *

Dated: October 31, 2007.

**David M. Verhey,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 07–5551 Filed 11–14–07; 8:45 am]

**BILLING CODE 4310–55–C**

Federal Register

Thursday,
November 15, 2007

# Part III

# Department of Labor

## Occupational Safety and Health Administration

## 29 CFR Parts 1910, 1915, 1917 et al.
## Employer Payment for Personal Protective Equipment; Final Rule

**DEPARTMENT OF LABOR**

**Occupational Safety and Health Administration**

**29 CFR Parts 1910, 1915, 1917, 1918 and 1926**

**[Dockets S–042 (OSHA docket office) and OSHA–S042–2006–0667 (regulations.gov)]**

**[RIN No. 1218–AB77]**

# Employer Payment for Personal Protective Equipment

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Final Rule.

**SUMMARY:** Many Occupational Safety and Health Administration (OSHA) health, safety, maritime, and construction standards require employers to provide their employees with protective equipment, including personal protective equipment (PPE), when such equipment is necessary to protect employees from job-related injuries, illnesses, and fatalities. These requirements address PPE of many kinds: hard hats, gloves, goggles, safety shoes, safety glasses, welding helmets and goggles, faceshields, chemical protective equipment, fall protection equipment, and so forth. The provisions in OSHA standards that require PPE generally state that the employer is to provide such PPE. However, some of these provisions do not specify that the employer is to provide such PPE at no cost to the employee. In this rulemaking, OSHA is requiring employers to pay for the PPE provided, with exceptions for specific items. The rule does not require employers to provide PPE where none has been required before. Instead, the rule merely stipulates that the employer must pay for required PPE, except in the limited cases specified in the standard.

**DATES:** This final rule becomes effective on February 13, 2008. The final rule must be implemented by May 15, 2008.

**ADDRESSES:** In accordance with 28 U.S.C. 2112(a), the Agency designates the Associate Solicitor of Labor for Occupational Safety and Health, Office of the Solicitor of Labor, Room S–4004, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, to receive petitions for review of the final rule.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kevin Ropp, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 693–1999.

**SUPPLEMENTARY INFORMATION:**

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## I. Introduction

In 1999, OSHA issued a proposal to require employers to pay for all protective equipment, including personal protective equipment (PPE), with explicit exceptions for certain safety shoes, prescription safety eyewear, and logging boots (64 FR 15402). The proposal cited two primary reasons for requiring employers to pay for PPE. First, OSHA preliminarily concluded that the Occupational Safety and Health Act of 1970 (OSH Act, or the Act) implicitly requires employers to pay for PPE that is necessary to protect the safety and health of employees. Second, OSHA preliminarily concluded that an across-the-board employer-payment requirement would result in safety benefits by reducing the misuse or non-use of PPE (64 FR 15406–07). Following an initial notice and comment period, an informal rulemaking hearing, a second notice and comment period on specific issues, and careful Agency deliberation, OSHA finds that its preliminary conclusions are appropriate and is therefore issuing this final standard requiring employers to pay for PPE, with limited exceptions.

## II. Background

Employees often need to wear protective equipment, including personal protective equipment (PPE), to be protected from injury, illness, and death caused by exposure to workplace hazards. PPE includes many different types of protective equipment that an employee uses or wears, such as fall arrest systems, safety-toe shoes, and protective gloves. Many OSHA standards require employers to provide PPE to their employees or to ensure the use of PPE. Some standards indicate in broad performance terms when PPE is to be used, and what is to be used (See, *e.g.,* 29 CFR 1910.132). Other provisions are very specific, such as 29 CFR 1910.266(d)(1)(iv), which requires that chain saw operators be provided with protective leggings during specific operations, and 29 CFR 1910.1027(g)(1), which requires respiratory protection for employees exposed to cadmium above a certain permissible exposure limit (PEL).

Some OSHA standards specifically require the employer to pay for PPE. However, most are silent with regard to whether the employer is obligated to pay. OSHA's health standards issued after 1978 have made it clear both in the regulatory text and in the preamble that the employer is responsible for providing necessary PPE at no cost to the employee (See, *e.g.,* OSHA's inorganic arsenic standard, 29 CFR 1910.1018(j)(1) and 43 FR 19584). In addition, the regulatory text and preamble discussion for some safety standards have also been clear that the employer must both provide and pay for PPE (See, *e.g.,* the logging standard, 29 CFR 1910.266(d)(1)(iii) and (iv) and 59 FR 51701).

For most PPE provisions in OSHA's standards, however, the regulatory text does not explicitly address the issue of payment for personal protective equipment. For example, 29 CFR 1910.132(a) is the general provision requiring employers to provide PPE when necessary to protect employees. This provision states that the PPE must be provided, used, and maintained in a sanitary and reliable condition. It does not state that the employer must pay for it or that it must be provided at no cost to employees. The provisions that are silent on whether the employer must pay have been subject to varying interpretation and application by employers, OSHA, the Occupational Safety and Health Review Commission (Review Commission), and the courts.

In 1994, OSHA established a nationwide policy on the issue of payment for required PPE in a memorandum to its field staff dated October 18, 1994, ''Employer Obligation to Pay for Personal Protective Equipment.'' OSHA stated that for all PPE standards the employer must both provide, and pay for, the required PPE, except in limited situations. The memorandum stated that where PPE is very personal in nature and used by the employee off the job, such as is often the case with steel-toe safety shoes (but not metatarsal foot protection), the issue of

payment may be left to labor-management negotiations.

However, the Review Commission declined to accept the interpretation embodied in the 1994 memorandum as it applied to 29 CFR 1910.132(a). In *Secretary of Labor* v. *Union Tank Car Co.*, 18 O.S.H. Cas. (BNA) 1067 (Rev. Comm. 1997), an employer was issued a citation for failing to pay for metatarsal foot protection and welding gloves. The Review Commission vacated the citation, finding that the Secretary had failed to adequately explain the policy outlined in the 1994 memorandum in light of several earlier letters of interpretation from OSHA that it read as inconsistent with that policy. In response to the *Union Tank* decision, OSHA issued the proposed standard on March 31, 1999 (64 FR 15402–15441).

## III. The Proposed Rule

The proposed rule would have established a uniform requirement that employers pay for all types of PPE required under OSHA standards, except for certain safety-toe shoes and boots, prescription safety eyewear, and logging boots. The proposal cited two main justifications for requiring employers to pay for PPE. First, OSHA preliminarily concluded that the OSH Act requires employers to pay for PPE that is necessary for employees to perform their jobs safely. Second, OSHA preliminarily concluded that the proposed rule would enhance compliance with existing PPE requirements in several practical ways, thereby significantly reducing the risk of non-use or misuse of PPE (64 FR 15406–07).

### *A. Preliminary Statutory Analysis*

OSHA advanced three main justifications for preliminarily interpreting the OSH Act to require employers to pay for virtually all PPE. As a threshold matter, OSHA cited the statute and legislative history that Congress intended that employers bear general financial responsibility for the means necessary to make workplaces safe (64 FR 15404). The Agency believed that this intent was evidenced by the fact that the statute makes employers solely responsible for compliance with safety and health standards. The employer's legal responsibility to ensure compliance implies an obligation to pay for the means necessary to that end (Id.). OSHA also relied upon statements in the legislative history demonstrating that lawmakers expected employers to bear the costs of complying with OSHA standards (Id.).

OSHA further preliminarily concluded that requiring employers to pay for PPE was a logical extension of the undisputed principle that employers must pay for engineering controls. The proposal noted that most standards require employers to install engineering controls, such as ventilation devices, and to implement administrative measures, such as establishing specific regulated areas or danger zones, as the primary means for reducing employee exposure to hazardous conditions. Since the Agency viewed PPE as another type of hazard control measure used to protect employees, there was no basis to distinguish PPE from other hazard controls such as engineering controls and administrative controls for purposes of cost allocation (64 FR 15408). OSHA also indicated that requiring employers generally to pay for PPE would be consistent with the Agency's approach of including explicit requirements in many health standards that PPE must be provided at no charge to employees.

### *B. Safety and Health Benefits*

Although OSHA proposed the PPE payment rule primarily to clarify employers' obligations under its standards that require employers to provide PPE, the Agency also believed that the revised rules would improve protections for employees who must wear PPE. OSHA cited a number of reasons underlying this belief in the preamble to the proposed rule. First, the Agency believed that employers were more knowledgeable about hazards existing in the workplace, and were therefore in the best position to identify and select the correct equipment and maintain it properly (Id. at 15409). Second, the Agency believed that employer payment for PPE would reduce the risk of employees not using or misusing PPE by ensuring that employers maintain central control over the selection, issuance, and use of PPE (Id.). Third, OSHA believed that employees would be more likely to cooperate in achieving full compliance with existing standards if protective equipment was provided at no charge (Id.). In the Agency's opinion, all of these considerations together would serve to increase the use and effectiveness of PPE, and thus reduce the incidence of injuries and illnesses that are caused by non-use or misuse of PPE.

### *C. Proposed Exceptions*

OSHA proposed to require the employer to pay for all PPE required by OSHA standards, with explicit exceptions for certain safety-toe protective footwear and prescription safety eyewear. Safety-toe protective footwear and prescription safety glasses were excepted from the employer payment requirement, in large part because these items were considered to be very personal in nature and were often worn off the jobsite. The proposal would have allowed the exceptions if they met the following conditions: (1) The employer permits such footwear or eyewear to be worn off the jobsite; (2) the footwear or eyewear is not used at work in a manner that renders it unsafe for use off the job-site; and (3) such footwear or eyewear is not designed for special use on the job. In addition, under the proposed revision, the employer would not have to pay for logging boots required by 29 CFR 1910.266(d)(1)(v) (Id. at 15403).

The limited exceptions to the general payment rule recognized that there are certain types of PPE that fall outside the scope of the general statutory requirement for employers to pay for the means of compliance with OSHA standards. While safety-toe protective shoes and boots, prescription safety eyewear, and logging boots are necessary to protect employees, the Agency considered other factors in deciding to exempt this equipment from the employer payment requirement, including that the equipment is very personal, is often used outside the workplace, and that it is taken by employees from jobsite to jobsite and employer to employer. The Agency stated that there is ''little statutory justification'' for requiring employers to pay for this type of PPE (Id. at 15407).

The proposal asked for comment on the exceptions to the general employer payment requirement. One alternative on which public input was specifically requested would have excepted any type of PPE that the employer could demonstrate was personal in nature and customarily used off the job (Id. at 15416). OSHA also sought comment on whether there were other specific types of PPE besides safety-toe shoes and boots and prescription safety eyewear that should be excepted, or whether employers should pay for all PPE including safety-toe shoes and boots and prescription safety eyewear (*Id.*). Finally, the proposal sought comment on whether the exceptions were appropriate in high-turnover industries like construction and whether unique issues in the maritime industry should affect the issue of who pays for PPE (*Id.*).

On July 8, 2004, OSHA published a notice to re-open the record on another category of PPE—tools of the trade—that some commenters suggested should be exempted from an employer payment requirement (69 FR 41221–41225). Specifically, OSHA asked a number of

questions and solicited comment on whether and how a final rule should address situations where PPE has been customarily provided by employees.

The comments received by the Agency during this limited re-opening are included in the discussion of the rulemaking record below.[1]

## IV. Rationale for Requiring PPE Payment and Description of the Final Rule

### *A. Rationale for Requiring PPE Payment*

In this final rule, OSHA is requiring employers to pay for the PPE used to comply with OSHA standards, with a few exceptions. OSHA is promulgating the final rule for three primary reasons. First, the rule effectuates the underlying requirement in the OSH Act that employers pay for the means necessary to create a safe and healthful work environment. This includes paying for the requirements in OSHA's safety and health standards. Second, the rule will reduce work-related injuries and illnesses. It is thus a legitimate exercise of OSHA's rulemaking authority to promulgate ancillary provisions in its standards that are reasonably related to the purposes of the underlying standards. Third, the rule will create a clear policy across OSHA's standards, thus reducing confusion among employers and employees concerning the PPE that employers must provide at no cost to employees.

#### 1. The OSH Act Requires Employer Payment for PPE

OSHA is requiring employers to pay for PPE used to comply with OSHA standards in order to effectuate the underlying cost allocation scheme in the OSH Act. The OSH Act requires employers to pay for the means necessary to create a safe and healthful work environment. Congress placed this obligation squarely on employers, believing such costs to be appropriate in order to protect the health and safety of employees. This final rule does no more than clarify that under the OSH Act employers are responsible for providing at no cost to their employees the PPE required by OSHA standards to protect employees from workplace injury and death.

This policy is consistent with OSHA's past practice in numerous rulemakings. Since 1978, OSHA has promulgated nearly twenty safety and health standards that explicitly require employers to furnish PPE at no cost. For example, the standards for logging (§ 1910.266), noise (§ 1910.95), lead (§ 1910.1025), asbestos (§ 1910.1001) and bloodborne pathogens (§ 1910.1030) require employers to provide employees with PPE at no cost to employees. In litigation following the issuance of some of these standards, the courts and the Review Commission have upheld OSHA's legal authority to require employers to pay for PPE.

#### 2. The Rule Will Result in Safety Benefits

Separate from effectuating the statutory cost allocation scheme, this rule will also help prevent injuries and illnesses. OSHA has carefully reviewed the rulemaking record and finds that requiring employers to pay for PPE will result in significant safety benefits. As such, it is a legitimate exercise of OSHA's statutory authority to promulgate these ancillary provisions in its standards to reduce the risk of injury and death.

There are three main reasons why the final rule will result in safety benefits:

- When employees are required to pay for their own PPE, many are likely to avoid PPE costs and thus fail to provide themselves with adequate protection. OSHA also believes that employees will be more inclined to use PPE if it is provided to them at no cost.
- Employer payment for PPE will clearly shift overall responsibility for PPE to employers. When employers take full responsibility for providing PPE to their employees and paying for it, they are more likely to make sure that the PPE is correct for the job, that it is in good condition, and that the employee is protected.
- An employer payment rule will encourage employees to participate whole-heartedly in an employer's safety and health program and employer payment for PPE will improve the safety culture at the worksite.

OSHA's conclusions regarding the safety benefits of the employer payment rule are supported by the numbers of independent occupational safety and health experts in the record who stated that employer payment for PPE will result in safer working conditions. Independent safety groups that supported the rule and agreed with OSHA's analysis that it will result in safety benefits include: The American College of Occupational and Environmental Medicine (ACOEM); the American Association of Occupational Health Nurses (AAOHN); and the American Society of Safety Engineers (ASSE). The National Institute for Occupational Safety and Health (NIOSH), the federal agency with expert responsibility for occupational safety and health research created by Congress in the OSH Act, also strongly supported OSHA's conclusions that an employer payment rule would result in significant safety benefits.

#### 3. Clarity in PPE Payment Policy

Another benefit of the final PPE payment rule is clarity in OSHA's policy. While it is true that most employers pay for most PPE most of the time, the practices for providing PPE are quite diverse. Many employers pay for some items and not for others, either as a matter of collective bargaining or long standing tradition. In some cases, costs are shared between employees and employers. In other workplaces, the employer pays for more expensive or technologically advanced PPE while requiring employees to pay for more common items. However, in some workplaces exactly the opposite is true.

Collective bargaining agreements often contain pages of text describing PPE provisions, including lists of the items employers will pay for and those that will be the responsibility of employees. Even these have little or no consistency. For example, Ms. Nowell of the United Food and Commercial Workers Union (UFCW) pointed to differences in PPE payment practices across food processing establishments:

> Our contracts show differences across industries, as well as across companies. We have also found differences between union plants and those that are non-union. Non-union workers [are] paying for more of their PPE.
>
> This variation has led to disparate treatment of workers who do the same jobs, sometimes for the same company, but at different locations. * * * One of the most inconsistent items, both as to their requirement and the issue of who pays, is rubber boots, often steel toed, for production workers. The floors in poultry and meat plants and other food processing as well * * * are wet, often from standing water, and slippery from fat and product that invariably covers the floors (Tr. 184–186).

Improved clarity in OSHA's standards, as well as a more consistent approach from company to company, will have benefits for both employers and employees. The record shows that PPE provision has been a contentious issue, and that employers and employees are spending an inordinate amount of time and effort discussing, negotiating, and generally working out who is to pay for PPE. The rulemaking will put some of that discussion to rest by providing clear requirements. As noted by ASSE ''[a] key issue for ASSE members in improving the efficiency/effectiveness of safety and health programs is consistency'' (Ex. 12: 110).

For these reasons, OSHA is promulgating this final rule requiring, with limited exceptions, employer

[1] Comments received in response to the re-opening are indicated as Exhibits ''45: X'' or ''46: X.'' All other citations refer to comments and testimony in response to the proposal.

payment for PPE used to comply with OSHA standards. (See Section XIV, ''Legal Authority,'' for a more detailed discussion of the justification for the final rule.)

*B. Description of the Final Rule*

This rule does not set forth new requirements regarding the PPE that must be provided and the circumstances in which it must be provided. The rule merely requires employers to pay for the PPE that is used to comply with the Parts amended. The rule generally requires employers to pay for PPE, and sets forth specific exceptions where employers are not required to pay for such equipment. The final rule includes the exceptions in the proposed rule, which have been clarified and simplified; clarifications of OSHA's intent in the proposed rule regarding everyday clothing and weather-related clothing; and clarifications regarding employee-owned PPE and replacement PPE that were raised by various commenters. While these clarifications have added several paragraphs to the regulatory text, the final rule provides employees no less protection than that provided by the proposal.

The first paragraph in the final rule contains the general requirement that employers must pay for the protective equipment, including personal protective equipment that is used to comply with the amended OSHA standards. (See 29 CFR 1910.132(h)(1); 1915.152(f)(1); 1917.96; 1918.106; 1926.95(d)(1)) The provisions that follow the first paragraph modify this general requirement for employer payment and include the limited exceptions to the employer-payment rule. Employers are responsible for paying for the minimum level of PPE required by the standards. If an employer decides to use upgraded PPE to meet the requirements, the employer must pay for that PPE. If an employer provides PPE at no cost, an employee asks to use different PPE, and the employer decides to allow him or her to do so, then the employer is not required to pay for the item.

The first exception addresses non-specialty safety-toe protective footwear and non-specialty prescription safety eyewear. (See 29 CFR 1910.132(h)(2); 1915.152(f)(2); 1917.96(a); 1918.106(a); 1926.95(d)(2)) The regulatory text makes clear that employers are not required to pay for ordinary safety-toe footwear and ordinary prescription safety eyewear, so long as the employer allows the employee to wear these items off the job-site.

The second exception relates to metatarsal protection. (See 29 CFR 1910.132(h)(2); 1915.152(f)(2); 1917.96(a); 1918.106(a); 1926.95(d)(2)) The final rule clarifies that an employer is not required to pay for shoes with integrated metatarsal protection as long as the employer provides and pays for metatarsal guards that attach to the shoes.

A third exception to the final rule is located only in the general industry standard (at 29 CFR 1910.132(h)(4)(i)) and exempts logging boots from the employer payment requirement. The logging standard does not require employers to pay for the logging boots required by 1910.266(d)(1)(v), but leaves the responsibility for payment open to employer and employee negotiation. The final rule makes clear that logging boots will continue to be excepted from the employer payment rule.

The fourth exception to employer payment in the final rule relates to everyday clothing. (See 29 CFR 1910.132(h)(4)(ii); 1915.152(f)(4)(i); 1917.96(d)(1); 1918.106(d)(1); 1926.95(d)(4)(i)) The final rule recognizes that there are certain circumstances where long-sleeve shirts, long pants, street shoes, normal work boots, and other similar types of clothing could serve as PPE. However, where this is the case, the final rule excepts this everyday clothing from the employer payment rule. Similarly, employers are not required to pay for ordinary clothing used solely for protection from weather, such as winter coats, jackets, gloves, and parkas (See 29 CFR 1910.132(h)(4)(iii); 1915.152(f)(4)(ii); 1917.96(d)(2); 1918.106(d)(2); 1926.95(d)(4)(ii)). In the rare case that ordinary weather gear is not sufficient to protect the employee, and special equipment or extraordinary clothing is needed to protect the employee from unusually severe weather conditions, the employer is required to pay for such protection. OSHA also notes that clothing used in artificially-controlled environments with extreme hot or cold temperatures, such as freezers, are not considered part of the weather gear exception.

The final rule clarifies the issue of who pays for replacement PPE. The final rule requires that the employer pay for the replacement of PPE used to comply with OSHA standards. (See 29 CFR 1910.132(h)(5); 1915.152(f)(5); 1917.96(e); 1918.106(e); 1926.95(d)(5)) However, in the limited circumstances in which an employee has lost or intentionally damaged the PPE issued to him or her, an employer is not required to pay for its replacement and may require the employee to pay for such replacement.

The final rule also clearly addresses the use of employee-owned PPE. (See 29 CFR 1910.132(h)(6); 1915.152(f)(6); 1917.96(f); 1918.106(f); 1926.95(d)(6)) The rule acknowledges that employees may wish to use PPE they own, and if their employer allows them to do so, the employer will not need to reimburse the employees for the PPE. However, the regulatory text also makes clear that employers cannot require employees to provide their own PPE or to pay for their own PPE. The employee's use of PPE they own must be completely voluntary.

The final provision in the rule provides an enforcement deadline of six months from the date of publication to allow employers time to change their existing PPE payment policies to accommodate the final rule. (See 29 CFR 1910.132(h)(7); 1915.152(f)(7); 1917.96(f); 1918.106(f); 1926.95(d)(7)) A note to the final standard also clarifies that when the provisions of another OSHA standard specify whether or not the employer must pay for specific equipment, the payment provisions of that standard will prevail.

Sections V through XI below further describe the final rule and discuss the comments received during the rulemaking process:

- Section V describes the PPE required to be paid for by employers, and the exceptions to the payment requirement. It also explains the final rule's treatment of replacement PPE.
- Section VI discusses the exception from employer payment when an employee owns appropriate PPE and asks to use it in place of the equipment the employer provides.
- Section VII discusses the industries affected by the final rule and how employer payment applies to different employment situations.
- Section VIII describes acceptable means for employers and employees to comply with the final rule and discusses various payment mechanisms employers and employees have created to effectuate payment for PPE.
- Sections IX through XI explain the effective date of the final rule, the effect of the rule on collective bargaining agreements, and how employer payment provisions in other standards affect the provisions in the final rule.

## V. PPE for Which Employer Payment Is Required

In this section, OSHA will address several key issues, including the personal protective equipment that employers are required to provide at no cost to their employees and the protective equipment that is exempted. OSHA wishes to emphasize that this

rulemaking does not change existing OSHA requirements as to the types of PPE that must be provided. Instead, the rule merely stipulates that the employer must pay for PPE that is required by OSHA standards, with the exceptions listed.

The items excepted from payment by this rule are:

- Non-specialty safety-toe protective footwear (including steel-toe shoes or steel-toe boots) and non-specialty prescription safety eyewear, that is allowed by the employer to be worn off the job-site;
- Shoes or boots with built-in metatarsal protection that the employee has requested to use instead of the employer-provided detachable metatarsal guards;
- Logging boots required by 1910.266(d)(1)(v);
- Everyday work clothing; or
- Ordinary clothing, skin creams, or other items used solely for protection from the weather.

This section is particularly important because commenters to the rulemaking record identified a number of items that they thought would be subject to the rule and asked the Agency to clarify whether the final rule would cover the items. Some of these items are: gloves (see, *e.g.,* Exs. 12: 7, 17, 19, 55, 68, 111, 129, 149, 163, 171, 217, 235), metatarsal shoes (see, *e.g.,* Exs. 12: 149, 235) , sunglasses (see, *e.g.,* Exs. 12: 129, 222), goggles (see, *e.g.,* Exs. 12: 111, 163), flame retardant clothing (see, *e.g.,* Exs. 12: 16, 132, 133, 183, 206, 221, 46: 46), personal apparel (see, *e.g.,* Exs. 12: 10, 16, 28), standard work apparel (see, *e.g.,* Exs. 12: 55, 129), long-sleeve shirts (see, *e.g.,* Exs. 12: 210, 222), long pants (see, *e.g.,* Exs. 12: 117, 222), jeans (see, *e.g.,* Ex. 12: 10), cotton coveralls (see, *e.g.,* Ex. 12: 210), cold weather gear (see, *e.g.,* Exs. 12: 129, 210), non safety-toe work boots (see, *e.g.,* Ex. 12: 10), hard hats (see, *e.g.,* Exs. 12: 29, 55, 68, 91, 112), aprons (see, *e.g.,* Exs. 12: 111, 163), rain suits (see, *e.g.,* Exs. 12: 55, 91, 210), back belts (see, *e.g.,* Ex. 12: 111, 163), coveralls (see, *e.g.,* Ex. 12: 111, 129, 163), tool belts (see, *e.g.,* Ex. 12: 129), and face masks in areas where respirators are not required (see, *e.g.,* Ex. 12: 109).

While OSHA believes it is setting forth a clear requirement in this final rule—that employers pay for PPE required by OSHA standards except for the exceptions listed in the standard—OSHA understands the request by commenters to provide guidance on the applicability of the standard to certain pieces of equipment. OSHA does that in this section. The section is divided into three discussions. First, the Agency discusses those items that are not PPE or are not required by OSHA standards and thus not covered by the final rule. Second, the Agency addresses the exceptions to the general employer payment requirement in the final rule. And third, OSHA describes other items the Agency determined needed more extensive discussion, based on the comments to the record.

*A. Items That Are Not Considered To Be PPE or Are Not Required by OSHA Standards*

The final rule clarifies that an employer's obligation to pay for PPE is limited to PPE that is used to comply with the OSHA standards amended by this rule, except for the specific listed exceptions. Thus, if a particular item is not PPE or is not required by OSHA standards, it is not covered by the final rule.

Many commenters sought clarification as to whether certain items were PPE and would therefore need to be paid for by employers. These items included coveralls (See, *e.g.,* Exs. 12: 111, 163, 206; 45: 28); aprons (See, *e.g.,* Exs. 12: 111, 163, 206); uniforms (See, *e.g.,* Exs. 12: 19, 55. 91); overalls (See, *e.g.,* Ex. 45: 28); standard work clothing (See, *e.g.,* Exs. 45: 28, 48; 12: 55, 91; 46: 44); and everyday work gloves (See, *e.g.,* Exs. 12: 6, 7, 22, 55, 68, 91, 109, 111, 129, 163, 171, 172, 173, 189, 206, 212, 221, 222; 45: 13, 28). In a representative comment, Rowan Companies, Inc. remarked that the standard should not be ''[a]n ''open checkbook'' to force employers to provide for common and routine items not necessary for personal protection.'' This commenter added:

> [o]ther items could be considered personal protective equipment by those wishing to unfairly benefit from this rulemaking * * * by using overly broad interpretations of the proposed wording, items such as cotton work gloves, rubber boots, rain suits, and uniforms could be labeled personal protective equipment (Ex. 12: 55).

A number of electrical contractors raised the issue of tools required for performing electrical work under the National Fire Protection Association's NFPA 70E (Standard for Electrical Safety in the Workplace) voluntary consensus standard, which requires certain tools to be voltage rated (See, *e.g.,* Exs. 41: 1; 45: 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 19, 20, 22, 23, 24, 29, 31, 38, 41, 44, 45, 46, 47; 46: 21, 22, 23, 24, 26, 29, 38, 40). Several electric utility firms noted that ''[s]ome equipment can be considered to be personal tools, or it may be used for convenience or cleanliness versus protection from hazards * * *'' (See, *e.g.,* Exs. 12: 107, 114, 150, 201, 206). Dow was concerned that the rule could be interpreted to mean that employers would be required to pay for ''[e]ven the most basic work clothes, hats, ear muffs, sunglasses, long sleeve shirts, pants, socks, etc.'' (Ex. 12: 129).

Under the final rule, employers are not required to pay for items that are not PPE. This includes some of the items identified by commenters above. Uniforms, caps, or other clothing worn solely to identify a person as an employee would not be considered to be PPE because such items are not being worn for protection from a workplace hazard. Similarly, items worn to keep employees clean for purposes unrelated to safety or health are not considered to be PPE. Thus, items such as denim coveralls, aprons or other apparel, when worn solely to prevent clothing and/or skin from becoming soiled (unrelated to safety or health), are not considered to be PPE and employer payment is not required by this rule.

The same is true for items worn for product or consumer safety or patient safety and health rather than employee safety and health. Several hearing participants in the food industry mentioned use of hair nets and beard nets in their discussion of PPE worn in food processing plants (Tr. 186–187, 190). To the extent that these items are not used to comply with machine guarding requirements, but are worn solely to protect the food product from contamination, this rule does not require employer payment. Similarly, plastic or rubber gloves worn by food service employees solely to prevent food contamination during meal preparation, and surgical masks worn by healthcare personnel solely to prevent transmitting organisms to patients are not covered by this rule. Of course, cut-proof gloves used to prevent lacerations will be covered by the rule, and employer payment is required.

Ordinary hand tools are also not PPE. While some specific and specialized tools have protective characteristics, such as electrically insulated ''hot sticks'' used by electric utility employees to handle live power lines, these tools are not considered to be PPE. They are more properly viewed as engineering controls that isolate the employee from the hazard—similar to safe medical devices (*e.g.,* self-sheathing needles) required under OSHA's Bloodborne Pathogens (BBP) standard—and thus would not be covered by this final rule. (As an engineering control method, however, employers must pay for this equipment.)

Numerous commenters noted that many types of equipment or clothing could be considered PPE and that the

proposed rule might then require employers to pay for those items. More specifically, Organization Resource Counselors, Inc. (ORC) stated:

> Many companies have long-standing general safety rules or policies requiring workers to wear types of work clothing or use items which are not specifically regulated by other OSHA standards, but which may help workers to avoid workplace injury. Examples are long sleeved shirts, long-legged pants, and simple work gloves (fabric or leather). All of these will help prevent abrasions to skin, but are not specified in any OSHA standard, are not currently viewed as PPE * * * Similarly, coats, hats, and gloves worn by employees working outdoors have an employee health enhancement aspect in that they protect against exposure to the elements * * * (Ex. 12: 222).

In a similar discussion, Bell Atlantic commented: ''Bell Atlantic requires its technicians to wear long sleeve shirts and long pants when climbing utility poles; this PPE protects the employee's skin from abrasion, irritation, splinters, etc. This clothing is personal in nature and it is worn off the job; we do not specify what types of long sleeve shirts and long pants must be worn'' (Ex. 12: 117). The National Arborist Association (NAA) also was concerned that the proposed rule would potentially:

> [y]ield absurd results such as shifting to employers the cost of purely personal clothing items which are required to be worn on the job for a protective function, but which are uniquely personal to the employee and are ubiquitously worn as much off the job as on the job—such items as required blue jeans rather than shorts to protect legs from being scratched from branches; tighter-fitting tee shirts or pants to prevent clothes from inadvertently becoming caught in a chain saw being used to cut a branch, or sturdy work boots required to be worn to provide ankle support and sole protection on rough terrain (Ex. 12: 10 pp. 2–3).

In response to each of these concerns, OSHA has included language in the standard to explicitly exclude normal work clothing from the employer payment requirement. OSHA believes that this reflects the original intent of the proposal (See Section B below). Thus, if the protective equipment is used to comply with an OSHA standard, and is not exempted from payment by this standard, the employer must provide it at no cost to his or her employees. Otherwise, the employer is not required to pay for it. For example, hearing protectors are required to be provided in general industry and construction under the provisions § 1910.95 and § 1926.101, respectively. Therefore, employers are required to pay for hearing protection.

On the other hand, dust masks and respirators that an employer allows employees to use under the voluntary use provisions of the § 1910.134 respiratory protection standard are not required to comply with an OSHA standard. Because of this, employer payment is not required.

The NAA also raised the question of whether Section 5(a)(1) of the OSH Act would require the provision of PPE that would be subject to an employer payment requirement (Ex. 12: 10, p. 11).[2] OSHA's PPE standards at § 1910.132, § 1915.152, § 1917.95, § 1918.105, and § 1926.95, already require employers to determine the PPE necessary for their work settings. OSHA is not aware of PPE that would protect against hazards subject to enforcement under the general duty clause that would not also be identified by such a determination. If there are any such hazards, then the PPE payment provisions of this standard would not apply since the provisions apply only to equipment used to comply with the Parts of OSHA's standards that this rule amends, not with section 5(a)(1) of the OSH Act.

Although employer payment is not required when an item of PPE is not used to comply with an OSHA standard, OSHA encourages employers to pay for this PPE, given the safety benefits OSHA finds will accrue when employers are responsible for providing and paying for PPE.

*B. Exceptions*

1. Safety-Toe Protective Footwear and Non-Specialty Prescription Safety Eyewear

The proposed rule included exemptions for safety-toe protective footwear, often called steel-toe shoes, and prescription safety eyewear. The proposal would have placed conditions on these exemptions: (1) The employer permits such footwear or eyewear to be worn off the jobsite; (2) the footwear or eyewear is not used at work in a manner that renders it unsafe for use off the jobsite; and (3) such footwear or eyewear is not designed for special use on the job (64 FR 15415). The final rule contains a similar condition; employers are not required to pay for these items when they are permitted to be worn off the jobsite.

In the proposed rule, the Agency reasoned that safety-toe protective footwear should be exempted because it was sized to fit a particular employee and is not generally worn by other employees due to size and hygienic concerns; was often worn away from the jobsite; was readily available in appropriate styles; and was customarily paid for by employees in some industries (Id. at 15415). OSHA also noted that the 1994 policy memorandum exempted safety shoes from the employer payment requirement (Id.). The Agency proposed to exempt prescription safety eyewear because it also was very personal in nature, could generally be used by only one employee, and was commonly used away from work (Id.).

Many commenters supported the proposed exceptions for safety-toe protective footwear and non-specialty prescription safety eyewear (See, *e.g.,* Exs. 12: 4, 7, 9, 28, 111, 113, 117, 163, 184, 201). In a representative comment, BP-Amoco stated:

> BP-Amoco concurs with OSHA's approach to this topic in the proposed rule. These two items are different than other types of personal protective equipment in that they are individually fitted and the styling of these items is important to many employees. Therefore, eyewear and safety shoes should be excluded from a general requirement for employers to pay for personal protective equipment. We further agree that the three conditions associated with this exception are appropriate and should be retained without modification in the final rule (Ex. 12: 28).

The Voluntary Protection Program Participants Association (VPPPA) added:

> As OSHA has proposed, it is reasonable for employees to pay for PPE that is used off the job as well as on (i.e. PPE that satisfies the proposed standard's 3 conditions) and it should be left to the employees and employer to reach an agreement for the purchase of this kind of PPE. Some facilities may decide it is in their best interest—for employee morale or other reasons—to pay for this equipment, but the decision should be voluntary (Ex. 12: 113).

Other commenters strongly objected to any exceptions, and urged OSHA to require employers to pay for all types of PPE. Several stated that PPE is part of the hierarchy of controls, and while OSHA would not ask an employee to pay for a ventilation system, neither should it expect the employee to pay for any PPE (See, *e.g.,* Exs. 12: 19, 12: 100, 22A, 23, 25, 26A, 37, 100; Tr. 173–174, Tr. 241, Tr. 320, Tr. 366, Tr. 463–464).

Some commenters expressed the opinion that the ''personal'' nature of certain types of PPE was not an appropriate basis for exempting the PPE from an employer payment requirement (Exs. 19, 23, 24A, 24B; Tr. 278, Tr. 337, Tr. 342).

In addition, there were a number of comments challenging the basis for

[2] Section 5(a)(1) is the general duty clause of the Act, which requires employers to ''furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees'' (29 U.S.C. 654).

exempting safety-toe protective footwear and prescription safety eyewear because employees can and do use them off the job site (see, *e.g.,* Exs. 22, 24B, 24C; Tr. 198–199, Tr. 264, Tr. 274, Tr. 280, Tr. 356–358, Tr. 372–373). NIOSH, ISEA, and the United Auto Workers (UAW) argued that off-the-job use of PPE should not relieve employers of their obligation to pay for PPE and that employers should, in fact, encourage the use of PPE off the jobsite to promote safe behaviors of their employees (Exs. 12: 130, 230, 23; Tr. 72–73, Tr. 450, Tr. 598).

After careful consideration of the comments, OSHA has decided to retain the exceptions for non-specialty safety-toe protective footwear and non-specialty prescription safety eyewear in the final PPE payment standard. The Agency believes that these two items have unique characteristics that continue to warrant exemption from employer payment.

OSHA believes employers should not have to pay for non-specialty prescription safety eyewear for several reasons. Prescription safety eyewear is designed for the use of a single individual. Some of the employees who require such correction wear contact lenses, thus allowing them to wear non-prescription safety eyewear. Additionally, employers would rarely, if ever, be required under an OSHA standard to provide non-specialty prescription safety eyewear to their employees. The eye protection standards for each affected industry (§ 1910.133, § 1915.153, § 1917.91, § 1918.101, and § 1926.102) allow the employer the option of providing either appropriate prescription safety eyewear or alternate protection that can fit over an employee's regular prescription glasses, such as goggles or a face shield. Each standard specifies that the alternate protection must not disturb the adjustment or positioning of the spectacles. This requirement ensures that an employee's vision is not altered by the safety device, which could create an additional safety concern. While it is true that non-specialty prescription safety eyewear may be less cumbersome than items worn over eyeglasses, because non-specialty prescription safety eyewear is not the only PPE option for achieving adequate eye protection, and is designed for the use of a single individual, employers should not be required to pay for this protection. Therefore, OSHA is retaining the exemption for non-specialty prescription safety eyewear in the final standard. (Prescription inserts for full-facepiece respirators and diving helmets are discussed later.)

Unlike non-specialty prescription safety eyewear, the use of safety-toe protective footwear is clearly required by OSHA standards when employees are exposed to hazards that could result in foot injuries. However, OSHA has historically taken the position that safety-toe protective footwear has certain attributes that make it unreasonable to require employers to pay for it in all circumstances, as further discussed in Section XIV, ''Legal Authority''. Safety footwear selection is governed by a proper and comfortable fit. It cannot be easily transferred from one employee to the next. Unlike other types of safety equipment, the range of sizes of footwear needed to fit most employees would not normally be kept in stock by an employer and it would not be reasonable to expect employers to stock the array and variety of safety-toe footwear necessary to properly and comfortably fit most individuals.

Furthermore, most employees wearing safety-toe protective footwear spend the majority of their time working on their feet, and thus such footwear is particularly difficult to sanitize and reissue to another employee. Other factors indicate as well that employers should not be required to pay for safety-toe protective footwear in all circumstances. Employees who work in non-specialty safety-toe protective footwear often wear it to and from work, just as employees who wear dress shoes or other non-safety-toe shoes do. In contrast, employees who wear specialized footwear such as boots incorporating metatarsal protection are likely to store this type of safety footwear at work, or carry it back and forth between work and home instead of wearing it. As explained in detail in the Legal Authority section, OSHA does not believe that Congress intended for employers to have to pay for shoes of this type.

For all of these reasons, OSHA has decided to continue to exempt non-specialty safety shoes from the employer payment requirement. OSHA, however, also wants to make clear that this exemption applies only to non-specialty safety-toe shoes and boots, and not other types of specialty protective footwear. Any safety footwear that has additional protection or is more specialized, such as shoes with non-slip soles used when stripping floors, or steel-toe rubber boots, is subject to the employer payment requirements of this standard. Put simply, the exempted footwear provides the protection of an ordinary safety-toe shoe or boot, while footwear with additional safety attributes beyond this (*e.g.,* shoes and boots with special soles) fall under the employer payment requirement. (OSHA also notes that normal work boots are exempted from employer payment under a different provision of the final rule, discussed later in this section.)

Finally, the rule essentially retains the conditions for the exceptions contained in the proposal, although OSHA has tried to simplify them in the regulatory text. The rule states that the employer is not required to pay for non-specialty safety-toe protective footwear (including steel-toe shoes or steel-toe boots) [3] and non-specialty prescription eyewear, provided that the employer permits such items to be worn off the jobsite. The term ''non-specialty'' is used to indicate that the footwear and eyewear being exempted is not of a type designed for special use on the job (*e.g.,* rubber steel-toe shoes). This is consistent with the condition in the proposed rule that the equipment not be ''designed for special use on the job.'' The final rule also incorporates the condition from the proposed rule that requires the employer to pay for PPE that is not permitted to be used off the job.

The proposed regulatory text also contained an employer payment condition for footwear or eyewear based on whether its use at work renders it unsafe for use off the jobsite. The Agency is concerned that this condition could be construed as creating a general requirement that contaminated equipment remain on-site. While this is a prudent practice in many instances, and a requirement in some substance-specific standards, making this a general requirement under the Parts amended by this rule is outside the scope of this rulemaking. OSHA also believes that an explicit condition for contaminated equipment is unnecessary. The final rule, like the proposal, requires employer payment if the employer does not permit the employee to take that equipment off the jobsite for any reason. Reasons for not permitting removal from the jobsite can include a requirement in an OSHA standard that such equipment not be taken off site because it is contaminated or an employer policy that contaminated equipment remain in a special area at the worksite. Because of this, OSHA does not believe it is necessary to include a separate condition related to contaminated PPE in the final rule.

[3] The parenthetical phrase ''including steel toe shoes or steel-toe boots'' is included since this terminology is commonly used in reference to non-specialty safety-toe protective footwear.

2. Everyday Work Clothing and Weather-Related Items

In the regulatory text of the final rule, OSHA is also specifically exempting everyday work clothing and ordinary clothing/items used solely for protection from the weather. OSHA did not intend to cover these items in the proposed rule. A number of commenters to the rulemaking record, however, questioned whether these items would be covered and requested that OSHA clarify its position (See, *e.g.,* Exs. 45: 28, 48; 46: 44; 12: 16, 55, 129). OSHA has determined that additional clarity was needed in the regulatory text regarding payment for everyday clothing and ordinary clothing used solely for protection from weather and has therefore made these exceptions explicit in the final regulatory text.

As explained in the Legal Authority section, OSHA does not believe that Congress intended for employers to have to pay for everyday clothing and ordinary clothing used solely for protection from the weather. While serving a protective function in certain circumstances, employees must wear such clothing to work regardless of the hazards found. OSHA is exercising its discretion through this rulemaking to exempt jeans, long sleeve shirts, winter coats, etc., from the employer payment requirement. As stated, this is consistent with OSHA's intent in the proposal and is also supported by the rulemaking record. A number of commenters stated that OSHA should exempt these items from the employer payment requirement (See, *e.g.,* Exs. 12: 10, 16, 28, 55, 117, 129, 210, 222).

Thus, OSHA is not requiring employers to pay for everyday clothing even though they may require their employees to use such everyday clothing items such as long pants or long-sleeve shirts, and even though they may have some protective value. Similarly, employees who work outdoors (*e.g.,* construction work) will normally have weather-related gear to protect themselves from the elements. This gear is also exempt from the employer payment requirement.

3. Logging Boots and Items in Other OSHA Standards

Under the final rule, the employer would not have to pay for logging boots required in 29 CFR 1910.266(d)(1)(v) (61 FR 15403). In the final logging standard, OSHA concluded that logging boots should be exempt from an employer payment. The final standard recognizes this exemption, as did the proposed rule. While some commenters suggested the exception should be eliminated, citing the same reasons given above for eliminating the exception for non-specialty safety-toe protective footwear, the submitted information has not convinced the Agency that employer payment for logging boots is necessary. This is particularly true given the extensive rulemaking record developed in support of the exemption during the rulemaking for the logging standard.

In addition to the provisions of the final rule clarifying the PPE that is not subject to the employer payment requirement, OSHA has added a regulatory note to each of the affected standards to make it clear that when the provisions of another OSHA standard specify whether or not the employer must pay for specific equipment, the payment provisions of that standard shall prevail. This approach provides for Agency determinations in future rulemakings that certain PPE should be specifically included or excluded from the PPE payment rule.

Table V–1 provides examples of PPE and other items that an employer is not required to pay for under the specific exceptions included in the standard. This table is intended to assist in identifying items exempt from the employer payment requirement. However, it should not be construed to be an all-inclusive list.

TABLE V–1.—EXAMPLES OF PPE AND OTHER ITEMS EXEMPTED FROM THE EMPLOYER PAYMENT REQUIREMENTS

| |
|---|
| Non-specialty safety-toe protective footwear (*e.g.,* steel-toe shoes/boots). |
| Non-specialty prescription safety eyewear. |
| Sunglasses/sunscreen. |
| Sturdy work shoes. |
| Lineman's boots. |
| Ordinary cold weather gear (coats, parkas, cold weather gloves, winter boots). |
| Logging boots required under § 1910.266(d)(1)(v). |
| Ordinary rain gear. |
| Back belts. |
| Long sleeve shirts. |
| Long pants. |
| Dust mask/respirators used under the voluntary use provisions in § 1910.134. |

*C. Other Items Raised in the Rulemaking Record*

If a particular item of PPE is used to comply with OSHA standards, and does not fall under the PPE standard's exceptions, then this PPE standard requires the employer to provide the item to his or her employees at no cost to the employees. OSHA solicited comment on several items in the preamble to the proposed standard, and commenters raised issues with several other items. The following discussion deals with each of these items, including prescription eyewear inserts in respirators, uniquely personalized components of personal protective equipment, welding PPE, metatarsal foot protection, equipment used by electric utility employees, and fabric or leather work gloves.

1. Prescription Eyewear Inserts in Respirators

Issue eight of the preamble to the proposed PPE payment standard asked for comment on specialized respirator inserts, as follows:

> Full-facepiece respirators present a unique problem for employees who need prescription glasses. The temples of the prescription glasses break the face-to-face piece seal and greatly reduce the protection afforded by the respirator. Special glasses and mounts inside the facepiece of the respirator are sometimes used to provide an adequate seal. Because of this special situation, OSHA believes that it is appropriate for the employer to provide and pay for the special-use prescription glasses used inside the respirator facepiece. Is it common industry practice for employers to pay for these special glasses? What is the typical cost for providing ''insert-type'' prescription glasses inside full-facepiece respirators? (64 FR 15416).

OSHA received no substantive adverse comment on employer payment for this equipment. Commenters offered a number of observations and recommendations, however, including that the employer should pay for all components needed to ensure the effectiveness of the PPE (Ex. 12: 134, 190, 218), the eyewear is part of the respirator (12: 134, 218), and the employer should pay for lenses and hardware, but the employee should pay for the doctor's exam (Ex. 12: 51). The ISEA noted that full-facepiece respirator inserts:

> [s]hould be supplied and paid for by the employer * * * A full-facepiece respirator insert costs roughly $50–$100, depending on the prescription (single, bifocal, etc.), the material (polycarbonate, etc.), and the fitting-delivery system used (Ex. 12: 230).

Additional comment on respirator inserts was provided by the ASSE, which stated that: ''[m]ost prescription safety eyewear will fit into a full-face respirator with the appropriate mounts. We are aware of some circumstances when an additional specific frame had to be ordered to work with such a facemask. Most of our members commented that from their experience, most employers would pay for the additional product in such a situation'' (Ex. 12: 110). Blais Consulting offered a somewhat different view, stating that:

Full face respirators do present a problem with spectacles as the temples frequently will break the face-to-face piece seal and greatly reduce the protection afforded by the respirator. * * * I concur with OSHA that it is appropriate for the employer to provide and pay for the special-use prescription glasses to use inside the respirator face piece as the spectacle must be worn to fulfill the requirements for the 29 CFR 1910.134 Respiratory Protection Standard and is not of a street-wear type spectacle (Ex. 12: 233).

Dow noted that:

[w]here full face respirators are required to be worn on the job, it is reasonable for the employer to pay for prescription glasses to be worn. OSHA allows the use of contact lenses when a full face respirator is worn. Dow does not believe that this regulation should be construed to require the employer provide contact lenses for employees who also happen to wear respirators on the job (Ex. 12: 129).

Corrective eyewear is necessary for the employee to see clearly in order to safely perform his or her job, yet not all employees who require vision correction and use full facepiece respirators wear contact lenses. A major concern with a full facepiece respirator is that the seal between the employee's face and the respirator must not leak. If it does, then the respirator will not provide the intended protection. Therefore, items that pass under the seal, such as the temple pieces of prescription glasses, break the face to facepiece seal. If the employee's prescription glasses cannot be fitted into the respirator without compromising the seal, then there is no alternative. Special lenses will be needed to protect the employee, and they must be provided at no cost to that employee. OSHA has determined that when special-use prescription lenses must be used or mounted inside the respirator facepiece, employers must pay for the lenses / inserts.

*2. Components of Personal Protective Equipment*

Issue ten of the preamble to the proposed PPE payment standard asked for comment on PPE components, such as shoe inserts, head coverings used under welding helmets and custom prescription lens inserts worn under a welding helmet or a diving helmet (64 FR 15416).

A number of commenters supported employer payment for components in some circumstances. Various commenters suggested that employers should pay because the only function of the component is to protect the employee from workplace hazards (See, *e.g.,* Exs. 12: 190, 218). The ISEA remarked that:

[e]mployers have an obligation to properly protect employees from all occupational hazards. If uniquely personalized components of PPE are protective in nature-such as winter liners for hardhats-then employers should pay for them. Employers should pay for custom prescription lens inserts used under a welding helmet because safety glasses should be worn when welding. It is not functional to wear street prescription glasses, a protective goggle and a welding helmet. All equipment necessary for employees to adequately perform their jobs should be paid for by the employer (Ex. 12: 230).

The UFCW raised the issue of shoe inserts, remarking that:

Shoe inserts, as personal protective equipment, are a control method for alleviating the hazard of standing for prolonged periods of time on hard surfaces. The United Auto Workers, through workplace surveys, has recently documented the need for shoe inserts for their members who work in the ''big three'' auto plants and stand all day. In fact, collective bargaining agreement language requires that the employer provide inserts, free of charge, to workers who need them.

Anti-fatigue mats are common in retail food stores, and in some manufacturing plants. These are provided by the employer to address this hazard, an acknowledgment on the part of the employer that this hazard does exist. As anti-fatigue mats are provided at no cost to provide some support and relief of the lower extremities and lower back, so should shoe inserts. In fact, shoe inserts can be used where anti-fatigue mats cannot, such as in locations in meat and poultry plants where they are impractical or a sanitation problem. Shoe inserts are also more practical for jobs which may require some walking or moving from one location to another, as the mats are stationary and do not move with the worker (Ex. 41).

Others stated that the employer should pay up to the basic cost of the minimum PPE (See, *e.g.,* Ex. 12: 228); the employer should pay if it is PPE (See, *e.g.,* Ex. 12: 32); and the employer should pay ''[i]f it cannot stand on its own use'' (Ex. 12: 52).

Still other commenters raised items or situations where they believed the employee, not the employer, should pay for the equipment. The reasons behind these comments include: The employee should pay if the item is personal in nature, such as shoe inserts (Ex. 12: 3); the employee should pay because this equipment is too personal (Ex. 12: 19); and employers should not be required to pay for equipment that is personal in nature and goes beyond what is required for employee safety (Ex. 12: 65). Douglas Battery remarked that:

In a related issue, employers should have the option of electing not to provide or reimburse employees for PPE which is personal in nature. An example of ancillary ''equipment'' which is personal in nature, but not required for safety, would include custom insoles for safety shoes which are not required in writing by a physician as a ''reasonable accommodation'' to performing the assigned job (Ex. 12: 3).

The question of when to require employer payment for PPE components and inserts is not easy to resolve due to their wide variety. However, the comments of ORC suggest a reasonable solution to the problem. ORC commented:

The employer should be required to provide and pay for PPE that is adequate to protect an employee from the workplace hazards identified. If a personalized component is necessary in order for the PPE to provide adequate protection, it is not something that is typically worn or used off the worksite and meets the criteria proposed [by ORC] for exception of personal items, it should be the employer's responsibility to provide it and pay for it. However, if the protection afforded by the PPE is not compromised by not providing the personalized component, the employer should be under no obligation to pay for the personalized component (Ex. 12: 222).

OSHA has decided to adopt the basic approach put forward by ORC. If the component is needed for the PPE to adequately protect the employee from the workplace hazard the PPE is designed to address, the employer must pay for it, provided the PPE does not fall within one of the exceptions listed in the final rule. For example, if prescription lenses are needed so an employee can wear a diving helmet to do his or her job, then the prescription lenses must be provided at no cost by the employer. This approach is the same as that taken in the standard for prescription lens inserts for full facepiece respirators.

However, if the component is not needed for the PPE to provide adequate protection, then the employer would not be required to pay for the component. For example, employers would not be required to pay for shoe inserts to prevent fatigue because the inserts are not needed for the PPE to perform as designed. In addition, if the PPE in which the component is placed is otherwise exempted from the final rule, the employer is not required to pay for the component. Thus, employers would not be required to pay for cold weather inserts worn under raincoats, because raincoats are otherwise exempt from employer payment.

OSHA also notes that if the component is needed for the PPE to fit the employee properly, then the employer is required to provide the item at no cost to the employee. The various general PPE standards require the employer to provide properly fitting PPE, and if it does not fit properly it will

not have the protective value it was designed to provide. Therefore, payment for items needed to make PPE fit properly is required.

Finally, although it may seem self-evident, personalized components or add-ons that do not affect safety are not covered by the final standard. For example, items chosen for aesthetic features (*e.g.,* logos, color, style) that have no additional safety purpose do not fall under the employer payment requirements.

3. Metatarsal Protection

While the non-specialized safety-toe protective footwear that is exempted from the PPE payment requirements contains a protective device for the toes, metatarsal protection is designed to protect the top of the foot from the toes to the ankle over the instep of the foot. This protection is required by the OSHA standards when there is a potential for injury to that part of the foot from impact or compression hazards that could occur, for example, from handling heavy pipes, or similar activities where loads could drop on or roll over an employee's feet. Metatarsal protection is available both as an integrated part of the footwear, and as a guard that can be attached to a shoe or boot to provide protection.

OSHA did not exempt metatarsal protection from the employer payment requirement in the proposed rule. In its introductory remarks at the informal public hearing, OSHA explained that ''* * * the proposed exception would not apply to metatarsal protection, metatarsal guards or protective footwear that incorporates metatarsal protection, or special cut-resistant footwear because these kinds of footwear are not generally used off the worksite and employers often reissue metatarsal guards and cut-resistant footwear to subsequent employees'' (Tr. 19–20).

A number of commenters suggested that metatarsal shoes should be exempted from the employer payment requirement (See, *e.g.,* Exs. 12: 66, 149, 155, 222, 235). Caterpillar, Inc. offered several reasons why metatarsal shoes should be exempted, stating:

> Virtually all metatarsal shoes with integral guards are personal in nature and belong to an individual employee. * * * OSHA states a belief that there is little statutory justification for requiring employers to pay for personal protective equipment if it is used away from the workplace and if three proposed conditions are met. The third condition contains an assumption that if 'the footwear has built-in metatarsal guards as well as safety-toes, it could not be worn off-site', which is not a valid assumption. Employees do wear their metatarsal shoes off-site (Ex. 12: 66).

The Specialty Steel Industry of North America (SSINA) remarked:

> SSINA member companies are committed to employee safety and health, and provide and pay for all types of personal protective equipment (''PPE''). Although SSINA supports the proposed rule in general, the association is concerned about the absence of a provision allowing payment terms for metatarsal shoes to be negotiated through collective bargaining agreements. Because of the importance of these shoes to specialty steel workers, the payment terms for this type of protective footwear are generally specified in collective bargaining agreements negotiated with labor unions. SSINA believes that the proposed PPE rule prohibits this process (12: 1498).

Consolidated Edison Company of New York, Inc. asked OSHA to clarify in the final rule that employers are not required to pay for shoes with metatarsal protection if the employer offers, free of charge, foot guards to be worn over regular safety footwear (Ex. 12: 155).

In the final standard, OSHA has decided not to exempt metatarsal protection from the PPE payment provisions. OSHA disagrees with those commenters who suggested that metatarsal protection is ubiquitous and is frequently worn by employees away from the worksite. Several hearing participants testified that this footwear is not normally worn off site (Tr. 203; 349; 390–391). Specifically, Jacqueline Nowell of the UFCW referenced a court decision requiring the employer to pay for metatarsal support boots. The judge based his finding on testimony that ''99 percent of the employees use their boots exclusively for work'' (Tr. 203). When asked about his experiences with employees wearing shoes with metatarsal guards off site, William Kojola of the AFL–CIO testified, ''I'm not aware of any, in my own experience aware of any circumstance where a worker would actually use that piece of equipment offsite'' (Tr. 349). Mr. Kajola continued that this was his experience regardless of whether the guard was built into the footwear or put on as a separate piece. After considering the comments, OSHA remains convinced that metatarsal protection is a specialized form of foot protection. In addition, OSHA has historically not exempted metatarsal protection from an employer payment requirement.

In the final standard, however, OSHA is making clear that employers may provide metatarsal guards to their employees to protect against hazards and are not required to provide metatarsal protection that is integrated in the shoe. The United Steelworkers Union recommended that removable metatarsal guards be banned, asserting that ''The removable metatarsal guard does not provide the needed protection that is provided by the built-in metatarsal guard that was designed for the specific shoe that it was attached to.'' (Tr. 378–379).

While OSHA appreciates the comment from the USWU, this rulemaking is limited to issues of PPE payment, and not the adequacy of certain types of PPE. OSHA's long-standing policy is that when conditions at the workplace require metatarsal protection, adequate protection can be achieved through the proper use of metatarsal guards. If the employer requires employees to wear metatarsal shoes or boots, the employer is required to pay for them. However, the final standard stipulates that when the employer provides metatarsal guards and allows the employee, at his or her request, to use shoes or boots with built-in metatarsal protection, the employer is not required to pay for the metatarsal shoes or boots. In this circumstance, the final standard does not prohibit employers from contributing to the cost of metatarsal shoes or boots should they choose to do so. Some employers currently offer their employees a choice between using a metatarsal guard provided and paid for by the employer or a metatarsal shoe or boot with some portion of the cost of the shoe or boot paid for by the employer, essentially establishing an allowance system. This practice is not prohibited by the rule, as described in the Acceptable Methods of Payment section below.

4. Welding Leathers

Issue six of the preamble to the proposed PPE payment standard requested comment on PPE employers provide to welders to protect them from welding hazards, such as molten metal. Specifically, the Agency asked: ''The proposal covers protective equipment and personal protective equipment used in welding, including protective gloves. Does welding PPE create any unique problems on the PPE payment issue? Does the employee usually pay for welding PPE?'' (64 FR 15416).

A number of commenters, many from the shipyard industry, recommended that OSHA exempt welding PPE from the employer payment requirement (See, *e.g.*, Exs. 7, 29, 32, 39, 65, 112, 228; 45: 52; 46: 32) indicating that it has been customary for welders in some industries to provide their own PPE. For example, a representative from the Shipbuilders Council of America (SCA) stated that:

> Tools of the trade for welding operations, such as face shields/goggles, fire resistant

shirts/jackets, sleeves and leather gloves have predominantly been provided by the employee because of the equipment's personal nature. The industry considers these to be tools of the trade because it is neither feasible for a different employee to wear the welders' gloves and leathers each day for hygienic reasons, nor is it feasible that upon resigning from the position that an employee will leave the leathers behind to be worn by another individual (Ex. 46: 32).

Other commenters stated that an exception for welding PPE was not needed (Ex. 12: 9, 17, 32, 134, 172, 190, 191, 218, 233; 45: 27). Shell Offshore, Inc. stated that ''* * * [a] problem could result if employees were expected to pay for welding PPE. The problem being that by requiring employees to pay for PPE may discourage use of PPE, or result in use of ineffective PPE'' (Ex. 12: 9). The International Union of Operating Engineers (IUOE) remarked that they ''* * * do not believe that there are unique problems relating to welding PPE. Workers do not generally pay for welding PPE. All welding PPE should be supplied by employers'' (12: 134). The National Association of Home Builders (NAHB) stated that ''Employers customarily pay for the PPE that is required for welding, including gloves, aprons, and face shields'' (Ex. 12: 212). Testimony of members of the Maritime Advisory Committee for Occupational Safety and Health (MACOSH) also indicated that other maritime employers provide and pay for welding PPE; consequently, MACOSH declined to make a recommendation to OSHA on whether such PPE should be exempted from a payment requirement (69 FR 41223).

OSHA has decided not to exempt welding equipment from the employer payment provisions of the final standard. All of the equipment mentioned is clearly PPE, and the comments are inconsistent as to whether or not this equipment has any special qualities that would warrant an exception. The most common concern is that welders in some industries have customarily supplied their own personal protective equipment. OSHA has determined that this is not an adequate basis to exempt PPE. To the extent that these individuals are independent contractors and not employees covered by the OSH Act, the standard does not apply to them. Further, as noted in the employee-owned PPE section of this preamble, employers may allow employees to bring PPE they already own to work, and are not required to reimburse the employee for that PPE. Thus, if a welder voluntarily brings his or her own PPE to the worksite, and the employer ensures that it is appropriate for the work to be performed, then the employer is not required to provide the PPE at no cost to that employee.

5. Non-Specialty Fabric or Leather Work Gloves

Many commenters stated that non-specialty fabric or leather work gloves should be excepted from the employer payment requirement (See, *e.g.*, Exs. 12: 6, 7, 17, 19, 29, 55, 68, 91, 109, 111, 112, 129, 163, 171, 172, 183, 217, 221, 222). Southwestern Bell (Ex. 12: 6) agreed that more specialized gloves should be provided and paid for by the employer, but stated that ''[w]e feel that everyday work gloves made of fabric and/or leather do meet those conditions because they can be worn off the job; they are not used in a manner that renders them unsafe for work off the job; and they are not designed for special use. Thus, we consider them to be personal in nature'' (Ex. 12: 6). The NAHB added that ''Many types of gloves can be used for personal use. Unless it's a very special glove, such as welding or wire-mesh gloves, these should be considered as an exception'' (Ex. 12: 212).

The Stevedoring Services of America (SSA) and the National Maritime Safety Association (NMSA) remarked that regular work gloves meet the intent of the proposed exemptions because they are purchased by size, are available in a variety of styles and are frequently worn off the job (Exs. 12: 17, 172). They also commented that most regular work gloves cannot be cleaned and sterilized and therefore cannot be worn by more than one employee (Id.). Specifically they stated that ''[r]egular work gloves, like safety shoes, certainly meet the intent of the Secretary's interpretation'' and continued with the reasoning that:

1. Regular work gloves are purchased by size.
2. Regular work gloves are available in a variety of styles.
3. Regular work gloves are frequently worn off the job.
4. It is not feasible that each day an employee wears regular work gloves that have been worn by another employee.
5. It is not feasible that upon resigning from a position that an employee leave regular work gloves behind for another employee to wear.
6. It is almost impossible to clean and sterilize most regular work gloves that have been previously worn.
7. The cost of issuing regular work gloves on a daily basis to thousands of dock workers nationwide would be extremely expensive to the employer (Id.).

The American Trucking Association recommended that OSHA exempt from employer payment non-specialty gloves that meet the same three conditions as those proposed for safety-toe shoes. The recommendation is based on the fact that such PPE is also often allowed to be used off-site by employees (Ex. 12: 171).

In the final standard, OSHA is requiring employer payment for work gloves when they are used for protection against workplace hazards. Thus, when used as PPE—to protect employees from such hazards as lacerations, abrasions, and chemicals—employers must provide them at no cost. This is consistent with the position OSHA has taken in the past with this important form of protection.

Furthermore, OSHA does not believe that gloves are similar to the other exempted items in the standard. Gloves may be distinguished from general work shoes and boots. Gloves are normally manufactured in only a few sizes. While gloves worn for a long period by one employee may become soiled, abraded, and so forth, they generally are not considered to be as highly personal in nature or in the same manner as footwear. Wear patterns of footwear differ between individuals resulting in a fit that may not conform to another individual's foot or gait. Gloves, however, can normally be worn by another employee. Finally, as opposed to work boots and shoes, many forms of gloves can be laundered and sanitized and used by more than one employee.

6. Electrical PPE

Table 1 of the preamble to the proposal listed a number of PPE items required by OSHA standards, including flame resistant jackets and pants (64 FR 15408). As a result, several comments were received regarding the issue of prohibited clothing in OSHA's power generation and transmission standard at § 1910.269(l)(6). That standard specifically requires the employer to ensure that each employee who is exposed to the hazards of flames or electric arcs does not wear clothing that, when exposed to flames or electric arcs, could increase the extent of injury that would be sustained by the employee. It further notes that clothing made from acetate, nylon, polyester, or rayon is prohibited unless the employer can demonstrate that the fabric has been treated to withstand the conditions that may be encountered or that the clothing is worn in a manner that eliminates the hazard. One method of meeting the requirements of § 1910.269, but not the only method, is for employers to require their employees to wear flame resistant clothing (FR clothing). This clothing is specifically designed to protect employees exposed to various levels of

heat energy from sustaining severe burn injuries in areas covered by the clothing.

A number of comments were received from electric utility employers, who stated that FR clothing is not PPE (See, *e.g.*, Exs. 12: 107, 114, 133, 150, 183, 201, 206, 221), that OSHA should exclude FR clothing from employer payment requirements (See, *e.g.*, Exs. 12: 16, 133), and that requiring employers to pay for FR clothing would conflict with previous interpretations by OSHA (See, *e.g.*, Exs. 12: 114, 133, 150, 206, 221). In a representative comment, the Edison Electric Institute (EEI) remarked:

> EEI is also concerned that compliance officers may inadvertently classify the apparel/clothing requirement under § 1910.269(l)(6) of the Electric Power Generation, Transmission and Distribution standard as personal protective equipment. Classification of apparel/clothing as PPE would be inconsistent with OSHA's current position stated in two interpretation letters. * * * In both of these interpretation letters it is stated that the apparel standard is not a PPE requirement. * * * EEI requests that OSHA state in the preamble of the final standard that the apparel/clothing required under § 1910.269(l)(6) of the Electric Power Generation, Transmission and Distribution standard is not personal protective equipment. This statement would avoid disagreements of interpretations after the rule is finalized (Ex. 12: 150).

Duke Energy suggested that OSHA ''[c]learly specify that flame retardant apparel is not considered personal protective equipment'' (Ex. 12: 133).

OSHA's existing clothing requirement in § 1910.269 does not require employers to protect employees from electric arcs through the use of flame-resistant clothing. It simply requires that an employee's clothing do no greater harm. The use of certain heavy-weight natural fiber materials, such as cotton, is allowed where the employer can assure that the clothing will not contribute to injury to the employee. Thus, the clothing requirement in § 1910.269 does not mandate employers provide any particular type of PPE to their employees and the payment requirement in this final rule would not apply to clothing permitted by § 1910.269.

It should be noted that the issue of whether FR clothing should be required by § 1910.269 is currently being considered by the Agency in a separate rulemaking to revise the electric power generation, transmission and distribution standard (70 FR 34822–34980, June 15, 2005). The preamble discussion for the proposed § 1910.269 revision included a full discussion of FR clothing in the electric utility industry and asked for specific public comment on this issue (70 FR 34866–34870). If OSHA determines in that rulemaking that FR clothing is required, it will then become subject to the PPE payment provisions of this rule, unless the final § 1910.269 and Part 1926 Subpart V standards specifically exempt FR clothing from employer payment.

Several electrical contracting and power companies also recommended exemptions for certain pole climbing equipment (See, *e.g.*, 12: 16, 38, 144, 161, 183, 206, 221; 46: 49). For example, the National Electrical Contractors Association (NECA) commented that

> [b]ody belts and straps for climbing poles and towers, climbing hooks, flame resistant clothing, and personal apparel of all description and usages should also be exempted from the final rule for the contracting electric power industry. These vary in design and material, have always been very much subject to personal preference and are not universally transferable from employee to employee'' (Ex. 12: 16).

In response to OSHA's request for comment on how a general requirement for employer payment for PPE should address the types of PPE that are typically supplied by the employee, taken from job site to job site or from employer to employer, (69 FR 41221 (July 8, 2004)), a number of electrical contractors submitted identical comments suggesting that several types of electrical safety equipment should be exempted from employer payment (See, *e.g.*, Exs. 45: 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 19, 20, 22, 23, 24, 29, 31, 37, 38, 41, 44, 45, 46, 47; 46: 21, 22, 23, 24, 25, 26, 27, 28, 29). They remarked that employers in general should pay for PPE used by their employees, but recommended OSHA provide exemptions for the following items:

> 1. Protective clothing as listed in NFPA 70E Table 130.7 (C)(10) for all Hazard/Risk Categories #2 and lower.
> 2. Protective equipment as listed in NFPA 70E Table 130.7 C (10) for all Hazard/Risk Categories #2 and lower. (Except for the equipment listed in FR Protective equipment subpart ''e'').
> 3. Voltage rated gloves required for work in NFPA 70E Hazard/Risk Categories #2 and lower.
> 4. Tools the employee is required to purchase, by an agreement between the employer and the employee, that are required by NFPA 70E, Hazard/Risk Categories #2 and lower, to be voltage rated.

This particular equipment was included in a table in the National Fire Protection Association (NFPA) 70E Electrical Safety Code. Table 130.7(C)(9)(a) of the Electrical Safety Code lists equipment that is to be used when working on various types of electrical systems, which are classified into four hazard/risk classes. OSHA wants to make clear that this equipment would only be covered by the final rule in those instances where it is required by OSHA standards.

The first item noted by these commenters is fire retardant clothing, as discussed above. The second item includes a variety of PPE, including hard hats, safety glasses or goggles, arc-rated face shields, hearing protection, leather gloves, and leather work shoes. Within the second item, except for leather work shoes, these items are required by § 1910.335 and other OSHA standards (depending on the exposures encountered) and are subject to the PPE payment provisions. Item three includes voltage rated gloves used to handle electrically charged lines. This is clearly a specialized item that employees are not required to purchase. As required by § 1910.137, employers must inspect and test the gloves at regular intervals to ensure their continued integrity, and they are so critical to the protection of employees performing this work that leather gloves are worn over them to prevent abrasions and holes that could compromise their integrity. Therefore, employers are required to provide them at no cost to their employees. The fourth item includes insulated hand tools such as pliers, screwdrivers, diagonal cutters and wire strippers. As discussed previously, the Agency has concluded that electrically insulated tools, while not considered to be PPE for the purpose of this standard, are a protective control measure and the employer must pay for them.

Table V–2 provides examples of PPE items that an employer is required to provide at no cost to employees under the final PPE payment standard. As with Table V–1, this table is not an exhaustive list of PPE that employers must provide to their employees at no cost.

TABLE V–2.—EXAMPLES OF PPE FOR WHICH EMPLOYER PAYMENT IS REQUIRED

[If used to comply with an OSHA standard]

| |
|---|
| Metatarsal foot protection. |
| Special boots for longshoremen working logs. |
| Rubber boots with steel toes. |
| Shoe covers—toe caps and metatarsal guards. |
| Non-prescription eye protection. |
| Prescription eyewear inserts/lenses for full face respirators. |
| Prescription eyewear inserts/lenses for welding and diving helmets. |
| Goggles. |
| Face shields. |
| Laser safety goggles. |
| Fire fighting PPE (helmet, gloves, boots, proximity suits, full gear). |

TABLE V–2.—EXAMPLES OF PPE FOR WHICH EMPLOYER PAYMENT IS REQUIRED—Continued

[If used to comply with an OSHA standard]

| |
|---|
| Hard hat. |
| Hearing protection. |
| Welding PPE. |
| Items used in medical/laboratory settings to protect from exposure to infectious agents (Aprons, lab coats, goggles, disposable gloves, shoe covers, etc). |
| Non-specialty gloves:<br>• Payment is required if they are PPE, i.e. for protection from dermatitis, severe cuts/abrasions.<br>• Payment is not required if they are only for keeping clean or for cold weather (with no safety or health consideration). |
| Rubber sleeves. |
| Aluminized gloves. |
| Chemical resistant gloves/aprons/clothing. |
| Barrier creams (unless used solely for weather-related protection). |
| Rubber insulating gloves. |
| Mesh cut proof gloves, mesh or leather aprons. |
| SCBA, atmosphere-supplying respirators (escape only). |
| Respiratory protection. |
| Fall protection. |
| Ladder safety device belts. |
| Climbing ensembles used by linemen (*e.g.,* belts and climbing hooks). |
| Window cleaners safety straps. |
| Personal flotation devices (life jacket). |
| Encapsulating chemical protective suits. |
| Reflective work vests. |
| Bump caps. |

*D. Replacement PPE*

Replacing PPE that is no longer functional is crucial to employee safety and health. OSHA finds that timely replacement of PPE is more likely to occur when the employer is responsible for bearing the cost. OSHA is requiring employers to not only pay for the initial issuance of PPE, but also its replacement, except when the employee has lost or intentionally damaged the PPE.

In the proposed rule, OSHA did not include language in the regulatory text setting forth an employer's obligation to pay for replacement PPE. However, in the preamble to the proposal OSHA stated:

> OSHA intends to require employers to pay for the initial issue of PPE and for replacement PPE that must be replaced due to normal wear and tear or occasional loss. Only in the rare case involving an employee who regularly fails to bring employer-supplied PPE to the job-site, or who regularly loses the equipment, would the employer be permitted to require the employee to pay for replacement PPE (64 FR 15414).

OSHA also noted that if an employee misuses or damages the PPE, the employer may ask the employee to pay for replacement:

> The proposed requirement would also make the employer responsible to provide, and pay for, replacement PPE when the original PPE wears out from normal wear and tear or in the event of occasional loss or accidental damage by the employee. However, if an employee regularly and with unreasonable frequency loses or damages the PPE, the employer may request that the employee pay for the replacement PPE (64 FR 15415).

In these discussions, OSHA attempted to set the parameters for when the employer would be responsible for paying for replacement PPE (*e.g.,* when the PPE wears out from ''normal wear and tear,'' ''occasional loss,'' etc.) and when the employer may request that the employee pay for the replacement (*e.g.,* ''[r]egularly and with unreasonable frequency loses or damages the PPE''). This position was also consistent with the past positions OSHA has taken on the issue of employer payment for replacement PPE. For example, OSHA determined that the employer must bear the cost of replacing worn out hearing protectors required under the occupational noise exposure standard, 29 CFR 1910.95, but stated its belief that employers should not have to pay for an unlimited supply of protectors or bear the expense in cases where an employee has been irresponsible (46 FR 4078, 4153–4154 (Jan. 16, 1981)).

While many commenters supported a general requirement that employers pay for replacement PPE (See, *e.g.*, Exs. 12: 9, 51, 110, 113, 116, 134, 141, 152, 188, 190, 222, 230, 233; Tr. 326, 376, 600, 631), there were two major issues raised by commenters regarding OSHA's position in the proposal. First, a substantial number of comments in the rulemaking record suggested that the proposed rule did not clearly set forth an employer's obligation to pay for replacement PPE. Many commenters urged the Agency to more clearly define those instances where an employer must pay for replacement PPE and those instances where it would be appropriate for employees to pay for the PPE. Several commenters suggested OSHA include specific regulatory language to address replacement PPE to clarify these issues, rather than simply dealing with the issue in the preamble (See, *e.g.,* Exs. 12: 3, 58, 188, 212; 46: 43). Second, commenters were concerned that OSHA's rule would prevent them from enforcing legitimate workplace rules regarding employee misuse and damage to PPE. OSHA addresses these issues below. OSHA also addresses comments in the record questioning acceptable replacement schedules and allowances.

1. Clarity

Several commenters raised issues about the clarity of OSHA's position in the proposed rule on replacement PPE. The majority of the comments on the issue of employer payment for replacement PPE asked OSHA to clarify its statements in the proposal as to when employers would and would not be required to pay for replacement PPE. The comments received included a number from employers who expressed concern that they would be paying for an endless stream of PPE. These commenters noted the uncertainty of determining the meaning of ''normal wear and tear'' and ''occasional loss'' in the context of the wide variety of PPE that is required and used in various industries.

A number of commenters suggested that OSHA should strictly define ''regular loss'' or ''occasional loss'' that were used in the preamble to the proposal, in the final rule by specifying it as two, three, or four occurrences (See, *e.g.,* Exs. 12: 14, 17, 41, 62, 87, 121, 143, 167, 168, 212, 242). BP-Amoco recommended that ''The particulars of any case of occasional loss or damage are going to be unique to each case, and the resolution of who should be responsible to pay is best left up to the contractual agreement or grievance procedures in place between the employer and employee group. For OSHA to attempt to regulate this issue would require OSHA to define what is occasional loss and when employee conduct becomes negligent—something that is not possible or desirable'' (Ex. 12: 28).

The Screenprinting & Graphic Imaging Association International (SGIA) also questioned the meaning of the term ''lost'':

> For example, an employee is wearing a pair of gloves while out on the loading dock as a shipment of ink is delivered. As the employee reaches for the load coming from the truck, one glove is pulled from the employee's hand, falls to ground and is blown away by the wind and cannot be found. In this instance, the PPE was not damaged, did not show normal wear and tear, yet requires replacement. The employee was not negligent, but the PPE is lost, and the employer should be responsible to pay for the replacement. If the same employee, however, were to have placed the gloves down on a table, walked off, then came back to find them missing, this can be seen as neglect and the employee pays for the replacement. Although these two examples are open for discussion, it shows that each worksite needs to make specific policies for what will constitute a lost item, and how to safe guard against abuse and negligence (Ex. 12–116, p. 2).

Other commenters expressed concern about the proposed language addressing the duty to replace PPE that has been lost or damaged beyond ''normal wear and tear.'' For example, ORC, Inc. recommended that:

> How an employer deals with replacement of PPE that is lost or damaged by employees beyond what would be expected through normal wear and tear, should be left to the employer's discretion'' (Ex. 12: 222).

In a comment that was echoed by approximately 60 associations of home builders, the Ohio Home Builders Association stated that:

> The proposed revision to the PPE standard does not allow employers much flexibility in how they manage safety and health on their jobsites. OSHA would require each employer to pay for all PPE used by employees with very few exceptions. Only in the rare case involving an employee who regularly fails to bring employer-supplied PPE to the job-site, or who regularly loses the equipment, would the employer be permitted to require the employee to pay for replacement PPE. How are we to define ''regularly'' in these scenarios? (Ex. 12–34).

Furthermore, a large number of commenters recommended OSHA include regulatory language in the final rule to clearly articulate when an employer could require the employee to replace the PPE at his or her own cost (See, *e.g.,* Exs. 12: 3, 21, 51, 58, 68, 79, 99, 101, 217; 46: 43).

OSHA has carefully considered these comments and has made changes to the approach in the proposed rule. First, OSHA has added new regulatory text to address specifically an employer's obligation to pay for replacement PPE. OSHA believes that because the issue of replacement PPE was not included in the regulatory text of the proposed rule, there was confusion amongst employers as to their precise obligations. By including replacement language in the regulatory text, OSHA believes that the rule will be clearer for employers and employees.

Second, in formulating the regulatory text, OSHA determined that using ''normal wear and tear'' as a benchmark was unhelpful, given the wide variety of PPE covered by the rule and the wide variety of uses for the PPE. OSHA was concerned that relying on ''normal wear and tear'' could result in employers not providing required replacement PPE at no cost to employees. Furthermore, OSHA determined that the term ''occasional loss'' was vague and could be subject to varying interpretations. OSHA thus determined that the rule would not rely on these terms, but would specify when employers are not required to bear the cost of replacement PPE. Thus, the rule requires employers to pay for replacement PPE, following the criteria in OSHA's existing standards governing when PPE must be replaced, except when the employee loses or intentionally damages the PPE.

By excepting employer payment for all ''lost'' PPE, OSHA hopes to avoid the confusion caused by using the terms ''occasional loss'' in the proposal. ''Occasional loss'' lacks reasonable precision given the universe of circumstances in which a wide variety of PPE may be lost either at work or off of the worksite. For these reasons, this rule does not require employers to bear the cost of replacing PPE that the employee has lost, even if it is a single instance. In addition, the PPE may be considered ''lost'' if the employee comes to work without the PPE that has been issued to him or her.

The employer is free to develop and implement workplace rules to ensure that employees have and use the PPE the employer has provided at no cost. For example, an employer may require employees to keep their PPE in a secured locker, or turn in the PPE at the end of the shift. Alternatively, employers may enter an agreement with the employee allowing the employee to take the PPE that the employer has provided at no cost to the employee off of the job site to use at home or for other employers. The agreement may stipulate that the employee is responsible for any loss of the PPE while it is off of the job site. The rule does not prohibit an employer from exercising his or her discretion to charge an employee for replacement PPE when the employee fails to bring the PPE back to the workplace.

Furthermore, by setting forth in the regulatory text that employers can ask employees to pay for replacement PPE needed as a result of an employee intentionally damaging PPE, OSHA is addressing the concerns of many commenters that the proposed rule would have required employers to pay for replacement PPE damaged due to employee misconduct (See, *e.g.,* Exs. 12: 21, 44, 58, 68, 79, 101, 152, 154, 165, 172, 182, 203, 210, 212, 228; Tr. 154, 549; 46: 23). OSHA wants to make clear, however, that the exception only applies when the damage was intentional. Accidental damage of the PPE by the employee does not qualify for the exception.

Finally, OSHA emphasizes that the final rule only requires the employer to pay for PPE that is used to comply with the Parts that the rule amends. Employers are not required to pay to replace PPE that is not used to comply with those Parts. Therefore, if the employer is not required to pay for the initial issue of PPE, the employer is not required to pay for the replacement of that PPE. However, if the working conditions have changed such that the PPE the employee had provided at his or her cost is now required under OSHA requirements, then the employer is required to pay for the replacement PPE it will have its employees use to comply with those requirements. When the PPE the employee already owns is adequate in these circumstances, the employee volunteers to use the PPE, and the employer allows the employee to use it in place of the PPE the employer must now provide, then the employer is not required to reimburse the employee. This is the same exception provided in the regulatory provision addressing employee-owned PPE. Similarly, as far as PPE that an employee has provided at his or her own cost, once that PPE is no longer adequate, the employer must pay for PPE that is required to comply with the rule, unless the employee voluntarily decides to provide and pay for his or her own replacement PPE (which may occur if the employee wants personalized or upgraded PPE). As with PPE owned by a newly hired employee, the employer is prohibited from requiring employees to provide their own PPE. The same replacement issues may arise if an employee no longer volunteers his or her own PPE for workplace use, and the same policies apply.

2. Disciplinary Policies

Commenters were also concerned that OSHA's rule would prevent them from effectuating their reasonable disciplinary policies and infringe upon legitimate management practices to enforce safety and health rules at the worksite. Some commenters argued that without employer disciplinary programs, abuse would occur (See, *e.g.,* Ex 12: 49), and stated that there were no provisions that would allow employers to enforce employee accountability (See, *e.g.,* Exs. 12: 31, 34, 68, 95, 167, 172, 212). As ORC, Inc. stated:

> How the employer chooses to deal with situations where an employee has lost or caused damage to required PPE should remain the decision of the employer. The situation is analogous to that confronting an employer when an employee fails to follow other safety and health requirements. There are a number of ways to deal with the problem, depending on the particular workplace, circumstances surrounding the particular incident, and the particular employee involved. It is up to the employer to determine what works best in his or her establishment (Ex. 12:222).

OSHA does not believe this rule would have that effect and certainly did

not intend this rule to have that effect. Therefore, OSHA wishes to emphasize that the rule does not prohibit employers from fairly and uniformly enforcing work rules within the context of a system of reasonable and appropriate disciplinary measures to ensure compliance with this rule. OSHA recommends that employers use employee disciplinary programs as part of their overall effort to comply with OSHA standards and establish effective workplace safety and health programs. This is therefore also the case when employers are providing PPE to their employees to protect them from workplace injury and illness. As the Society of Human Resource Management (SHRM) stated: ''An employer has both the right and the obligation (under the OSH Act) to use disciplinary procedures to ensure compliance with safety and health requirements'' (Ex. 46: 43, p. 9).

One aspect of ''reasonable and appropriate'' disciplinary measures is whether they are proportionate to the employee offense. For example, docking an employee's pay $100 for losing a $10 reflective vest would not be allowed as, the penalty is unreasonably disproportionate to the cost of the PPE. Likewise, requiring an employee to repay the full cost of a lost PPE item within days of its expected replacement date is not a fair policy and would not be allowed. Disciplinary systems must be implemented consistently for all employees, regardless of rank or role. Disciplinary systems that circumvent the PPE payment requirements and shift payment to employees when the PPE is not lost or intentionally damaged will be considered a violation of the standard. Finally, employers must take precautions to assure that disciplinary systems are not administered in a manner that infringes upon an employee's rights under the OSH Act.

The use of disciplinary systems is also recognized by employees as a valid means for dealing with PPE loss and abuse issues. In discussing situations where employers require that employees pay for lost equipment, Jacqueline Nowell, representing the UFCW, stated that management has full run of the plant and is permitted and capable of coming up with disciplinary policies (Tr. 216). Similarly, George Macaluso of the Laborer's Health and Safety Fund stated ''If an employer has a problem with a particular worker repeatedly losing or damaging equipment, that's a management or disciplinary issue, not a matter under OSHA's jurisdiction'' (Tr. 274). Further, Robert Krul of the Building Construction Trade Department's (BCTD) Safety and Health Committee, in discussing equipment abuse by employees, stated that management ''[e]ven has the right under our collective bargaining agreements in the management's rights clause to instill reasonable and fair rules, regulations, and disciplines on a job site that govern use of such equipment.'' Mr. Krul related an incident involving the blatant abuse of fall protection equipment:

> Now there is the odd case of, you know, somebody used as it was in the case of Roberts Roofing where an employee was seen using a safety harness to tow a pick up truck. Well, good Lord. I mean, you're the owner of the company and you see somebody abusing a piece of safety equipment like that. I'd either fire the guy or make sure he got his first notice of disciplinary action. What difference does it make if it's PPE or if it's one of his expensive tools on the job? If it's abuse of company property, it's abuse of company property. And that goes to the heart of reasonable, fair discipline, rules and regulations (Tr. 315–316).

OSHA has always encouraged employers to exercise control over the conditions at their workplace. OSHA also notes, as discussed in the preamble to the bloodborne pathogens standard, that disciplinary programs are not the only alternative employers can use to encourage employees to follow their PPE policies. Positive reinforcement approaches, the individual employee's performance evaluation, or increased education efforts, can also be used by employers to improve compliance and reduce employee misconduct (56 FR 64129).

OSHA sets forth much of its policy for evaluating the effectiveness of employers' safety and health programs in its Voluntary Protection Programs, or VPP. In 1989, OSHA issued voluntary guidelines for safety and health programs. In several sections of the **Federal Register** notice (54 FR 3904–3916) announcing the guidelines, OSHA stressed the need for effective, fair disciplinary programs. For example, OSHA stated that:

> When safe work procedures are the means of protection, ensuring that they are followed becomes critical. Ensuring safe work practices involves discipline in both a positive sense and a corrective sense. Every component of effective safety and health management is designed to create a disciplined environment in which all personnel act on the basis that worker safety and health protection is a fundamental value of the organization. Such an environment depends on the credibility of management's involvement in safety and health matters, inclusion of employees in decisions which affect their safety and health, rigorous worksite analysis to identify hazards and potential hazards, stringent prevention and control measures, and thorough training. In such an environment, all personnel will understand the hazards to which they are exposed, why the hazards pose a threat, and how to protect themselves and others from the hazards. Training for the purpose is reinforced by encouragement of attempts to work safely and by positive recognition of safe behavior.
>
> If, in such a context, an employee, supervisor, or manager fails to follow a safe procedure, it is advisable not only to stop the unsafe action but also to determine whether some condition of the work has made it difficult to follow the procedure or whether some management system has failed to communicate the danger of the action and the means for avoiding it. If the unsafe action was not based on an external condition or a lack of understanding, or if, after such external condition or lack of understanding has been corrected, the person repeats the action, it is essential that corrective discipline be applied. To allow an unsafe action to continue not only continues to endanger the actor and perhaps others; it also undermines the positive discipline of the entire safety and health program. To be effective, corrective discipline must be applied consistently to all, regardless of role or rank; but it must be applied.

In 2000, OSHA issued revisions to the Voluntary Protection Programs (64 FR 45649–45663), which included the following element of an effective safety and health program:

> c. Hazard Prevention and Control. Site hazards identified during the hazard analysis process must be eliminated or controlled by developing and implementing the systems discussed at (2) below and by using the hierarchy provided at (3) below.
>
> (1) The hazard controls a site chooses to use must be:
>
> (a) Understood and followed by all affected parties;
>
> (b) Appropriate to the hazards of the site;
>
> (c) Equitably enforced through a clearly communicated written disciplinary system that includes procedures for disciplinary action or reorientation of managers, supervisors, and non-supervisory employees who break or disregard safety rules, safe work practices, proper materials handling, or emergency procedures * * * [sections (2) and (3) include information on hazard control systems and the hierarchy of controls].

Further, the VPP policies and procedures manual (CSP 03–01–002 03/25/2003) advises the OSHA team reviewing a VPP applicant's safety and health program that:

> A documented disciplinary system must be in place. The system must include enforcement of appropriate action for violations of the safety and health policies, procedures, and rules. The disciplinary policy must be clearly communicated and equitably enforced to employees and management. The disciplinary system for safety and health can be a sub-part of an all-encompassing disciplinary system.

Thus, employers that do not have reasonable and appropriate safety and

health disciplinary systems are denied entry into the VPP program. As these longstanding policies display, OSHA not only allows employers to have disciplinary programs, the Agency encourages employers to have such programs and to manage them in a manner that supports occupational safety and health objectives.

OSHA has emphasized through its enforcement policies that employers must exercise control over the working conditions at their workplace. OSHA's Field Inspection Reference Manual (FIRM) CPL 2.103 (Sept. 26, 1994) is OSHA's primary reference document identifying the Agency's field office inspection responsibilities. It provides OSHA's field staff, including Compliance Safety and Health Officers (CSHOs) with direction on the Agency's inspection procedures, documentation requirements, citation policies, abatement verification procedures, and other procedures and policies needed to implement an effective and consistent national enforcement policy while providing needed latitude for local conditions.

The FIRM specifically recognizes the role of disciplinary programs that employers use to ensure that their employees follow adequate workplace safety and health rules. These programs may be used to establish the unpreventable employee misconduct defense to a citation issued against the employer for conditions violative of the OSH Act (CPL 2.103 section 7 ch. III C.8.c.1.).

The Firm explains that ''unpreventable employee misconduct'' is an ''affirmative defense,'' which is defined as ''any matter which, if established by the employer, will excuse the employer from a violation which has otherwise been proved by the CSHO.'' In other words, if the employer can prove each and every element of an affirmative defense to OSHA, the Agency may decide that a citation is not warranted. The elements of this defense, as set forth by the Review Commission and the courts, are that the condition that violated an OSHA standard was also a violation of the employer's own work rule, that the violation would not have occurred if the employee had obeyed the employer's work rule, that the employer's work rule was effectively communicated to the employee, and the employer's work rule was uniformly enforced by the employer. OSHA believes that an important aspect of exercising control over the workplace is the effective training and supervision of employees.

3. Replacement Schedules and Allowances

Several commenters raised issues related to regular replacement schedules and allowances used to replace PPE (See, *e.g.,* Exs. 12: 153, 188; 46: 43). The SHRM recommended that employers be allowed to set a pre-determined service life for PPE, and limit replacement of PPE to situations that involve normal wear and tear through a pre-determined length of time, stating that:

> Employers that provide PPE should be able to develop rules that take into account the service life of the PPE. Employers should not be required to pay for PPE and all replacements, regardless of whether service life has been met. Misuse and neglect will greatly shorten the service life of any PPE. Employers often pay for PPE and HR [human resources] professionals should be allowed to require employees to pay for their own replacement if such a replacement is needed prior to expiration of the equipment's service life. The purpose of such an approach would be to provide an incentive for employees to take better care of their equipment (Ex. 46: 43, p. 10).

In a similar comment, the Sheet Metal and Air Conditioning Contractors National Association suggested inserting language requiring employees to pay for replacement PPE if it has been lost or damaged ''[b]efore it has been used for its minimum anticipated use period, as determined by the employer and/or manufacturer * * *'' (Tr. 92–93). The ISEA stated that:

> It is important that any item of PPE be replaced immediately when an inspection reveals that it is damaged or no longer meets its intended use. Manufacturers provide guidelines to assist in making this determination. Employers should pay for these replacements under the same terms as they provide initial issue of PPE. Some companies provide an annual PPE benefit to employees based on expected use of PPE under normal conditions. If this amount is exceeded, employees would have to pay for replacement only if it is their fault for it being lost or damaged. The employer can, of course, pay more than this annual amount when circumstances warrant. Such a system would eliminate abuse of the program (Ex. 12: 230).

OSHA does not object to allowances as a means of paying for PPE, as long as the allowance policy assures that employees receive replacement PPE at no cost as required by the final rule. As several commenters noted, this is a common practice, and it appears that in many cases it is an effective and convenient method for providing PPE at no cost to employees.

Allowance systems are based on the expected service life of the PPE. The Screenprinting and Graphics Imaging Association (SGIA) noted several factors involved in service life estimation, stating that:

> Each worksite and employer would need to include in their PPE assessment, when and how PPE will be replaced. The employer needs to find what factors are and/or will be present at the worksite to cause the normal wear and tear and/or immediate damage to the PPE specified. Anything outside the guidelines of the established factors should require the employee to incur the replacement costs. However, a periodic evaluation of the PPE specified, the PPE assessment, and the factors regarding replacement, need to be performed in order to ensure that a reasonable and appropriate system is always in place (Ex. 11: 116).

OSHA believes that the expected service life for any PPE depends on several factors, and the manufacturer's recommendation is only one factor. OSHA believes other factors, such as the working conditions under which the PPE is used, the probability of workplace incidents damaging the PPE or making it otherwise unable to protect the employee, misuse, and any other conditions relevant to the worksite and the use of the PPE are highly relevant. OSHA does not object to employers considering expected service life in an allowance system. However, such systems must ensure that replacement PPE is provided at no cost to employees. In addition, these employers must have systems in place to deal with situations where PPE is damaged at work (*e.g.,* accidents) or lasts for a period shorter than the expected service life due to conditions other than loss or intentional damage.

Additionally, the Agency wants to be clear that the rule would not require that the employer provide and pay for replacement PPE whenever requested by an employee, as was the concern of one commenter (Ex. 46: 43, p. 8). If an employee requests replacement PPE, the employer should evaluate the PPE in question to determine if, in its present condition, the PPE provides the protection it was designed to provide. Employees can be charged for replacement PPE, but only when the PPE is lost or intentionally damaged by the employee.

OSHA notes that some employers currently convey ownership of PPE to employees, thus allowing employees to control the use of the PPE both on and off the job. OSHA's PPE rules require employers to ''provide'' PPE to their employees. OSHA does not require employers to transfer ownership and control over PPE to employees. Employers are free to choose that option and others if they so desire. For example, as pointed out by various commenters, the employer is free to

prohibit employees from taking employer-owned PPE away from the workplace and can elect to keep the PPE in question at the establishment with the use of lockers or other storage mechanisms (Tr. 203, 274, 312–313, 337). The employer may also retain ownership of the PPE and still allow employees to remove it from the workplace.

In summary, OSHA is requiring employers to pay for the initial issuance of PPE, as well as its replacement, except when the employee has lost or intentionally damaged the PPE. Adding regulatory text addressing the issue of payment for replacement PPE makes an employer's obligations clear. The rule does not prohibit the employer from using policies, such as allowances, to fulfill their obligations under the rule, so long as the policies assure that employees receive replacement PPE at no cost as required by the final rule. Neither does the rule prevent employers from fairly and uniformly enforcing work rules to ensure compliance with this rule. OSHA emphasizes the need for effective, fair disciplinary programs, as seen in its Voluntary Protection Programs. OSHA also believes that the rule is consistent with the duty that employers have with regard to working conditions because it reserves to them the right to control the use and maintenance of the PPE that is used at their workplace.

## VI. Employee-Owned PPE

The final PPE rule addresses employee-owned PPE in the workplace and states that, where an employee provides adequate protective equipment he or she owns, the employer may allow the employee to use it and is not required to reimburse the employee for it. This is included in the regulatory text at § 1910.132(h)(6) for general industry, § 1915.152(f)(6) for shipyard employment, § 1917.96(f) for longshoring, § 1918.106(f) for marine terminals, and § 1926.95(d)(6) for construction. The final rule also makes clear that employers shall not require employees to provide or pay for their own PPE, unless specifically excepted by the other provisions of the rule. This will prevent employers from avoiding their obligations under the standard by requiring their employees to purchase PPE as a condition of employment or placement.

This provision was not specifically included in the proposed rule. However, OSHA never intended in the proposed rule to prevent employees from voluntarily using PPE they own, so long as the PPE is adequate to protect them from hazards. Furthermore, OSHA did not intend for employers to have to reimburse employees for equipment that they voluntarily bring to the worksite and wish to use. A number of commenters to the proposal questioned OSHA's position regarding equipment owned by employees. This addition to the final rule is a reaction to these comments and clearly sets forth an employer's obligations with respect to employee-owned PPE. OSHA explains this provision and addresses relevant comments below.

### *A. Employer Responsibility To Ensure ''Adequate Protective Equipment''*

It is important at the outset to set forth an employer's existing obligations under OSHA standards with respect to employee-owned PPE. OSHA's current general industry standard states, ''[w]here employees provide their own protective equipment, the employer shall be responsible to assure its adequacy, including proper maintenance, and sanitation of such equipment'' (29 CFR § 1910.132(b)). The construction standards contain similar language in § 1926.95(b). These provisions ensure that all PPE used by employees has been evaluated and is adequate to protect the employee from hazards in the workplace. OSHA will not allow employers to escape their ongoing responsibility to assure that PPE used at their workplace is adequate simply because an employee may own the protective equipment. If that were permitted, employees would receive less effective PPE protection.

To recognize an employer's fundamental obligation to ensure that PPE used is adequate to protect affected employees, the final PPE payment rule refers to the employee providing his or her own ''adequate protective equipment.'' OSHA has included this phrase to ensure that employee-owned PPE is used only where the PPE is adequate to protect the employee from hazards in the particular workplace where it is being used. Furthermore, references to §§ 1910.132(b) and 1926.95(b) remain in the general industry and construction standards to ensure that when employers allow employees to use personally-owned PPE at work, the employer evaluates the PPE to make sure that it is adequate to protect employees, that it is properly maintained, and that it is kept in sanitary condition.[4] While the maritime standards in Parts 1915, 1917, and 1918 do not contain explicit language concerning employee-owned PPE as in §§ 1910.132(b) and 1926.95(b), the final PPE payment rule contains the phrase ''adequate protective equipment'' as a pre-requisite to use of the employee-owned PPE in the affected maritime workplaces. It is the Agency's position that when allowing the use of employee-owned PPE in the maritime setting, the employer is still obligated to ensure that the PPE used is appropriate and adequately protective of employees. These obligations are inherent in the requirement that the employer ''provide'' PPE. Several of the PPE provisions in the maritime standards also specifically require that employers ensure the use of ''appropriate'' PPE. (See, *e.g.,* 29 CFR 1915.152(a) (''The employer shall provide and shall ensure that each affected employee uses the appropriate personal protective equipment * * *.''))

### *B. Employees Who Already Own PPE*

The most common situation where employers may encounter employee-owned PPE is when newly hired employees report to the worksite with their own PPE. The employee may have been given the PPE by a former employer, may have purchased the PPE for a prior job or because of a personal preference for certain features or aesthetics, may have obtained the PPE from a friend or relative who no longer needed it, may have obtained PPE while in an educational program, or from some other source. This occurs in many industries but seems to be found more frequently in workplaces that use short-term labor.

OSHA recognizes that employees who change employers frequently may want to carry their PPE from job to job. Underlying reasons for this can include that the employee will be familiar with the PPE, will have ''broken it in,'' and especially if the employee purchased the PPE, will have the equipment that he or she prefers and finds the most comfortable and aesthetically pleasing. This practice is common in the construction, marine terminal, and shipyard industries, as well as workplaces employing individuals from temporary help services. (Application of the standard in these industries is addressed in more detail in the following section.)

As discussed previously and noted by many commenters, in some trades, industries, and/or geographic locations, PPE for employees who frequently change jobs can take on some of the qualities of a ''tool of the trade.'' In other words, the PPE is an item that the employee traditionally keeps with his or

[4] Use of the word ''sanitary'' does not indicate that the Agency expects PPE to be maintained at a level approaching ''hospital clean.'' ''Sanitary condition'' simply means that the PPE must be kept at a level of cleanliness such that it does not present a health hazard to the employee who is using it.

her tool box. This may be because the PPE is used while performing some type of specialized work, such as welding or electrical work, or because it is a tradition in the industry, such as in home building. OSHA has not included an exception to the payment requirement for tools of the trade because, among other things, of the difficulty of defining, with adequate precision, when an item of PPE is or is not a tool of the trade. However, because the rule does not require employers to reimburse employees for PPE they already own, it recognizes that some employees may wish to own their tools of the trade and bring that equipment to the worksite.

OSHA has further emphasized in the regulatory text that employees are under no obligation to provide their own PPE by stating that the employer shall not require an employee to provide or pay for his or her own PPE, unless the PPE is specifically excepted in the final rule. These provisions address the concern that employers not circumvent their obligations to pay for PPE by making employee ownership of the equipment a condition of employment or continuing employment or a condition for placement in a job. OSHA recognizes that in certain emergency situations, such as response to a natural disaster, where immediate action is required, it may be necessary for employers to hire or select employees already in possession of the appropriate PPE. As a general matter, however, employers must not engage in this practice. Taking PPE-ownership into consideration during hiring or selection circumvents the intent of the PPE standard and constitutes a violation of the standard.

*C. Employer Ownership and Control Over PPE*

When employers purchase PPE, they often retain ownership. In this situation, they ''provide'' the PPE to the employee without conveying ownership to the employee. This is similar to ''providing'' an employee a tool to use, a lift truck to drive, or a company automobile.

In some workplaces that follow this approach, the PPE is kept in on-site lockers or other storage facilities to prevent employees from using the PPE off the job, to avoid loss or damage to the PPE, to prevent contaminants from leaving the workplace on or in equipment, or simply as a convenience. In other workplaces, the employer purchases the PPE, retains ownership of the equipment, but allows (or even requires) the employee to remove the PPE from the worksite and return with it when it is next needed to protect against a hazard. In either case, when the employer retains ownership of the PPE, the employer has the right to control the use of the PPE, just as he or she would control any other equipment, tools, parts, or facilities that he or she owns.

Some commenters to the rulemaking questioned whether employers had the right to recover PPE once the employee no longer works for the providing employer. The NAHB asserted that ''[i]f an employer issues equipment that they have paid for, then they should expect to get it back; if not, the employer must be permitted to charge for the equipment'' (Ex 12: 68). A number of commenters asked if they could require employees to provide a deposit that would be returned when the employee returned the PPE (See, *e.g.,* Exs. 12: 12, 44, 68, 140, 153, 154, 165, 203). The Associated Building and Contractors, Inc. (ABC) stated that:

> [t]here are cases of the short-term employee, i.e., the person who is hired, given $150.00 plus in safety apparel, then decides construction is not for him or her and leaves the next day. For this reason, the employer should be allowed to require a deposit from short-term and temporary employees, to be refunded when the equipment is returned in satisfactory condition (Ex. 12: 153).

William McGill of the International Brotherhood of Electrical Workers described one such deposit system during his testimony. His bargaining unit reached an agreement with the company in which the employees put down a security deposit for their hard hats, and when they leave the company, the deposit is refunded when the hard hat is returned (Tr. 588–590).

After considering these comments, OSHA recognizes the concern of employers and addresses it as follows. If the employer retains ownership of the PPE, then the employer may require the employee to return the PPE upon termination of employment. If the employee does not return the employer's equipment, nothing in the final rule prevents the employer from requiring the employee to pay for it or take reasonable steps to retrieve the PPE, in a manner that does not conflict with federal, state or local laws concerning such actions. In these situations, OSHA notes that the employer is not allowed to charge the employee for wear and tear to the equipment that is related to the work performed or workplace conditions. As suggested by National Tank Truck Carriers, Inc., a written agreement, for example, between the employer and employee on the matter may be an effective method of ensuring that the employer's expectations of the employee are clear and unambiguous (Ex. 12: 12). Another acceptable alternative is a deposit system that provides an incentive for employees to return the equipment. However, the Agency cautions that the deposit system must not be administered in a fashion that circumvents the rule and results in an employee involuntarily paying for his or her PPE.

In some situations, an employer may prohibit an employee from using PPE that the employer has paid for while working for another employer or for personal purposes. Conversely, an employer may allow an employee to use employer-owned PPE while working for another employer or for personal purposes. Since the employer has retained ownership of the PPE, he or she can stipulate where it is used. OSHA does not object to either of the aforementioned practices.

The VPPPA noted that their member firms promote off-the-job safety by encouraging employees to use PPE while performing personal tasks, when the PPE is suitable for such use and the employer has given permission (Ex. 12: 113). OSHA recognizes the benefit of the policy articulated by VPPPA. If employees utilize PPE consistently at work and at home, its use is likely to become more natural, or ''second nature'' to the employee, and PPE compliance at work may be improved. Another means of improving compliance is for employers to develop clear policies for PPE, i.e., specific procedures for use, maintenance, storage, and so forth. The employer should communicate these policies clearly to employees, ensuring that they are understood and followed. A reasonable approach to conveying this information would be to include training material covering these topics when conducting the mandatory PPE training.

While OSHA anticipates that most PPE will be purchased by and remain the property of the employer, OSHA foresees some employers conveying ownership of the PPE to their employees. Many commenters argued that employees take better care of PPE that they actually own (*See, e.g.*, Exs. 12: 112, 154, Tr. 547, 679). While employers are required to pay for PPE, OSHA does not object to employers transferring ownership of the equipment to employees.

*D. Upgraded and Personalized PPE*

In some workplaces, an employer may allow an employee to ''upgrade'' or personalize their PPE, thereby obtaining PPE beyond what the employer is required to purchase. Issue seven of the proposal addressed this situation, *i.e.*,

an employee who prefers more costly PPE than that provided by the employer. The proposal asked, ''If an employee wants to use more costly PPE because of individual preference, should that employee be responsible for any difference in cost? Is there evidence that such ''individualized'' PPE has caused safety problems in the past?'' (64 FR 15416).

OSHA received many comments on this issue. Several commenters stated that if an employee wants more expensive equipment, they should pay for the difference in costs (*See, e.g.*, Exs. 12: 17, 50, 52, 68, 99, 107, 145, 152, 172, 188, 201, 217, 228, 230). Some commenters argued that if employees want more costly PPE than that which the employer is providing, they should be responsible for the entire cost of the PPE (*See, e.g.*, Exs. 12: 65, 79, 107, 110, 114, 150). Other commenters argued that employers should pay for PPE which the employee prefers, so employees will have PPE that fits better, is more comfortable, and is more likely to be used (*See, e.g.*, Ex. 12: 134, 218). Some thought that the purchase of upgraded or more costly PPE should be at the discretion of the employer (*See, e.g.*, Exs. 12: 3, 114, 183), or alternatively that employees may upgrade their PPE, but the employer need not allow the use of that PPE at the workplace (Ex. 12: 183). Some argued that individual preference does not justify an OSHA rulemaking effort but is better left to employer and employee mutual agreement (*See, e.g.*, Exs. 12: 144, 190). The International Brotherhood of Teamsters (IBT) suggested that:

> A worker's request for more expensive PPE, to replace an ill-fitting PPE or one made of material that a worker may be allergic to, should be judged on safety and health grounds, not on an aesthetic basis. To the extent that an employee's preference is consistent with these OSHA requirements, the employer should accommodate any added cost. Outside this domain, the matter of payment for more costly PPE of employee's choice should rest on union agreements (Ex. 12: 190).

The American Association of Airport Executives recommended that ''[a]n employer should not be responsible for the additional cost resulting from an employee's preference for a costly, but no more effective PPE product. If employees want more expensive PPE, they should either pay for it or obtain it through collective bargaining'' (Ex. 12: 217).

OSHA agrees that it needs to clearly set forth an employer's obligation with respect to upgraded or personalized PPE. First, the language that OSHA has included in the final standard to address PPE owned by employees applies equally to upgraded or personalized PPE purchased by employees. When an employee owns a certain type of upgraded PPE and wishes to use it on the jobsite rather than using the PPE provided by the employer, the employer is not required to reimburse the employee for that PPE, pursuant to the employee-owned exception discussed above.

Second, OSHA clarifies that an employer is not required to pay for upgraded or personalized PPE requested by an employee, provided the employer provides adequate ''basic'' PPE to the employee. Under the current standards, employers must provide PPE that protects against hazards in the workplace. Allowing the use of other PPE that the employee may prefer or that provides features beyond those necessary for employee protection from workplace hazards remains at the discretion of the employer. If an employee requests some specialized PPE in place of the PPE provided by the employer,[5] the employer may allow the employee to acquire and use the PPE, but the employer is not required to pay for it. If the employer allows upgrades or personalized PPE, he or she is still required to evaluate the PPE to make sure that it is adequate to protect the employees from the hazards in the particular workplace, is properly maintained, and is kept in a sanitary condition. As stated by the SGIA:

> Allowing employees to provide their own PPE can be an acceptable practice as long as the employees are provided the PPE assessment for their workplace and the minimum guidelines for the selection of the PPE * * * A potential problem arises when no standards are set and no system is in place accounting for employee vs. employer PPE, in that reimbursement claims for PPE often lead to disputes between employee and employer (Ex. 12: 116).

SGIA's comment raises an important point about setting standards. Employers are encouraged to set specific policies for PPE upgrades and employee-preferred PPE and to communicate these policies clearly to employees, in order to minimize disputes.

Third, if an employer uses an allowance system to provide and pay for PPE, he or she is only required to provide to the employee the amount of money required to purchase ''basic'' PPE that protects against hazards in the workplace. If the employer allows employees to take the allowance and use it toward the purchase of acceptable, but upgraded or personalized PPE, that is permissible under the final rule. In this instance, OSHA stresses that the employer is only responsible for the cost of the ''basic'' PPE.

Another issue related to upgrading and personalizing PPE is allowing employees to choose PPE from an array of equipment. The VPPPA suggested that OSHA require employers to provide an adequate selection of appropriate PPE, so each employee will find equipment that is comfortable, functional, and sized appropriately (Ex. 12: 113). While ORC agreed that the arrangements for paying for more expensive PPE should remain the decision of the employer, they also noted that ''[e]xperienced employers are * * * aware that, where possible, it is desirable to offer employees an opportunity to select from an array of equally-effective PPE types. This not only helps to ensure that an employee is issued PPE that is both effective and comfortable, but encourages acceptance and use of the PPE by that employee'' (Ex. 12: 222). Corrado & Sons, Inc. noted that they have a safety committee which allows the employees to select PPE that is the safest and most comfortable to use (Ex. 12: 48).

OSHA agrees that providing a selection of PPE is a good practice which may improve employee acceptance and use of the equipment. Employers are encouraged to consider offering a selection of PPE to their employees as a ''best practice'' that will help to improve the effectiveness of their safety and health programs. In fact, OSHA's respirator and noise standards require employers to provide a selection of equipment from which employees may choose (See § 1910.95(i)(3) and § 1910.134(d)(1)(iv)). Most of OSHA's standards, however, do not contain this type of requirement. Instead, most OSHA standards generally require that the PPE fit the employee properly (See, *e.g.,* § 1910.132(d)(iii), § 1915.152(b)(3), and § 1926.102(a)(6)(iii)).

OSHA is not requiring employers to provide a selection of PPE from which employees may choose their equipment beyond the existing requirements in the respirator and noise standards, because that action is beyond the scope of this rulemaking. Where an employer is not required to offer a selection of equipment, the PPE provided must nonetheless be properly suited to protect against the hazards of the workplace and must fit the employee.

[5] OSHA does not require employers to keep records of employees' requests to use their own PPE. OSHA believes that if information about such requests is needed by the Agency, its inspectors can gather such information through interviews and other standard investigative procedures.

Ill-fitting PPE may not serve its intended purpose and could put the employee at risk of injury, illness, or death. Accordingly, employers are urged to review the PPE manufacturer's instructions, which often provide additional information regarding appropriate selection and fit of PPE.

Some commenters noted that they were not aware of any problems with substandard PPE or safety problems from individualized PPE (See, *e.g.,* Exs. 12: 9, 17, 52, 68, 233). Other commenters worried that allowing employees to select their own upgraded or personalized PPE could cause problems (See, *e.g.,* Exs. 12: 32, 113, 116; Tr. 593, Tr. 178, Tr. 371). The AAOHN observed that:

> Allowing individual preference for PPE could create safety problems if the minimal requirements for PPE are not clearly stated. One [AAOHN] member reported a situation where a manufacturing facility allowed individual preference for safety eyewear and found that 70 percent of the female employees wore glasses without safety lenses. At a very minimum any PPE to be used must be approved by the employer. More significantly, allowing individual preference for PPE may pose administrative and enforcement problems for employers. Allowing individual preference for PPE may make training and compliance more complicated for employers (Ex. 12: 32).

Similarly, the VPPPA noted that employee-owned equipment can be less protective, noting that ''PPE selection can be a very technical task. Safety and health staff often review extensive data and varieties of equipment options before making their selection. In certain cases, employees may waive functionality in lieu of cost, comfort and style. PPE selection must begin with the hazard assessment and the resulting data used to identify the PPE best designed for worker protection'' (Ex. 12: 113).

It is the Agency's position that upgraded and personalized PPE will not provide less protection as long as employers meet their obligation to perform a hazard assessment and ensure the PPE's adequacy, including proper maintenance, and sanitation of such equipment. To facilitate the selection of appropriate PPE, employers are encouraged to set clear guidelines and policies regarding PPE and to communicate these standards to employees.

## VII. Industries and Employees Affected by the Standard

The final rule incorporates PPE payment provisions into the OSHA standards applicable to general industry (29 CFR part 1910), construction (29 CFR part 1926), shipyards (29 CFR part 1915), longshoring (29 CFR part 1917), and marine terminals (29 CFR part 1918).[6]

OSHA's proposal included specific questions about how to apply the PPE payment standards in these industries (61 FR 15416). Many commenters raised additional questions about how the standard would apply to independent contractors, subcontractors, and employees obtained through temporary help services. Caterpillar Inc. commented that ''Employment relationships are becoming more complex, and OSHA must recognize the variety of relationships which are now common in industry'' (Ex. 12: 66, p. 4). ORC commented:

> ''[e]mployers are more likely to provide protective equipment, including personal protective equipment, for any employee with whom they have a traditional employment relationship. The issue of responsibility for payment becomes more problematic, however, when contract work, temporary employees, and clothing that is subject to both work and personal use are involved (Ex. 12: 222, p. 2).

OSHA agrees with commenters that a number of nontraditional employment relationships exist in today's workplaces. This section will address these relationships and the more common employment scenarios raised by commenters. However, OSHA wishes to emphasize the fundamental application of the final rule: It applies in the industries above to any employer with an employee regardless of whether the employee is full-time, part-time, temporary, short-term, or working under any other type of arrangement that results in an employer-employee relationship under the OSH Act.

### *A. OSH Act Definition of Employee*

Implementing the PPE payment requirements, as with any of OSHA's regulations and standards, begins with the identification of an employer and an employee as defined by the OSH Act.[7] Whether an employer-employee relationship exists under the Act is determined in accordance with established common law principles of agency. It is important to note that the employer-employee relationship for purposes of complying with this final rule is to be analyzed no differently than it is for any other OSHA standard.

The criteria for determining the existence of an employer-employee relationship in common law are discussed in *Nationwide Mutual Insurance Company* v. *Darden*, 503 U.S. 318, 112 S. Ct. 1344, 117 L. Ed. 2d 581 (1992) and *Community for Creative Non-Violence* v. *Reid*, 490 U.S. 730, 109 S. Ct. 2166 (1989). The cases held that the following criteria are to be considered in determining whether there is an employer-employee relationship.

1. The right to control the manner and means by which work is accomplished.
2. The level of skill required to perform effectively.
3. Source of required instruments and tools.
4. Location of work.
5. Duration of relationship between parties.
6. The right of the employer to assign new projects to the individual.
7. The extent of the individual's control over when and how long to work.
8. Method of payment.
9. The individual's role in hiring and paying assistants.
10. Whether work is the regular business of the employer.
11. Whether the employer is in business.
12. The provision of employee benefits.
13. The tax treatment of the individual.

The nature and degree of control asserted by the hiring party over the means and methods of how the work is to be performed remains a principal guidepost. *Clackamas Gastroenterology Assocs. P.C.* v. *Wells*, 123 S. Ct. 1673, 1679 (2003). OSHA instructs its safety and health inspectors ''Whether or not exposed persons are employees of an employer depends on several factors, the most important of which is who controls the manner in which the employees perform their assigned work. The question of who pays these employees may not be the determining factor.'' (OSHA Field Inspection Reference Manual CPL 2.103, Section 7—Chapter III. Inspection Documentation).[8]

[6] Some employees in agriculture are covered by two general industry standards, the logging standard (29 CFR 1910.226) and the cadmium standare (29 CFR 1910.1027), which specifically require employers to pay for required PPE. (the Logging boots specified in § 1910.266(d) (l)(v), are exempted from the requirements of this standard). The PPE requirements in these two standards will continue to apply in agriculture.

[7] The statute defines ''employee'' as ''an employee of an employer who is employed in a business of his employer which affects interstate commerce'' (29 U.S.C. 652(6)). The term ''employer'' means ''a person engaged in a business affecting interstate commerce who has employees'' (29 U.S.C. 652(5)). The term ''person'' includes ''one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons'' (29 U.S.C. 652 (4)).

[8] The preamble to the 29 CFR Part 1904 injury and illness recording and reporting regulation

Continued

Thus, employers must examine whether the employment relationships they have make them ''employers'' of ''employees'' under the Act. If they are, they must ensure that PPE is provided to their employees at no cost, unless specifically excepted in the final rule.

*B. Self-Employed Independent Contractors*

A truly self-employed ''independent contractor,'' is not an ''employee'' under the OSH Act and is not provided the protections of the OSH Act, and is not covered by the OSHA standards. Therefore, an employer who has contracted with that individual for services is not required to pay for that individual's PPE. Other individuals, who are not considered to be employees under the OSH Act are unpaid volunteers, sole proprietors, partners, family members of farm employers, and domestic employees in a residential setting. (See 29 CFR 1975.4(b)(2) and § 1975.6 for a discussion of the latter two categories.) As is the case with independent contractors, no employment relationship exists between these individuals and the hiring party, and consequently, no PPE payment obligation arises.

However, a self-employed independent contractor may become an employee of the hiring party, even if only temporarily. The label assigned to an employee is immaterial if it does not reflect the realities of the relationship. For example, an employment contract that labels a hired employee as an independent contractor will not necessarily control if in fact the hiring employer exercises day-to-day supervision over that employee, including directing the worker as to the manner in which the details of the work are to be performed, when it is to be performed, and so forth. Thus, depending on the nature and degree of control asserted over the means and methods of how the work is to be performed, the hiring employer may be responsible for compliance with OSHA standards, including providing PPE to that individual at no cost.

*C. Temporary Help Services and Subcontractors*

Several commenters asked OSHA to clarify application of the PPE payment requirements to temporary help services (See, *e.g.,* Exs. 12: 66, 104, 145, 164) and subcontractors (See, *e.g.,* Exs. 12: 3, 9, 15, 28, 58, 66, 129, 222).

With respect to temporary help services, some commenters stated that ''using firms'' should not pay for required PPE. Caterpillar, Inc. stated that:

> [T]emporary workers, who are supervised by Caterpillar supervisors, often perform production, maintenance and service operations. The fact that we supervise these temporary employees makes them Caterpillar employees by OSHA definitions and enforcement policy. We expect temporary employees to provide their own common forms of PPE. We may also expect temporary employees to provide specialized equipment unique to an unusual job. Caterpillar may occasionally provide specialized PPE for specific tasks and any specialized PPE we provide would be recovered when the temporary employees move to another job. Complicating this issue is the fact that temporary employees often have employment relationships with two or more entities. Our temporary employees often have a relationship with their employment agency or parent firm which may provide insurance coverage, workers compensation benefits, training, and basic personal protective equipment. * * * OSHA must exclude temporary employees from the coverage of the proposed standard, or require that their current employer only assure that PPE is utilized and allow industry practice to determine who purchases PPE (Ex. 12: 66).

Those entities that provide temporary employees, however, such as the National Association of Temporary and Staffing Services (NATSS), argued that the firm obtaining employees from a temporary help service (the utilizing employer) should pay for PPE, stating that:

> Although temporary staffing firms are employers of the workers that they send on assignment to a customer's worksite, under long-standing OSHA policy the primary responsibility for providing and paying for PPE for such workers falls on the entity that directs and controls the workers on the worksite on a daily basis. In most cases, it is the customer that utilizes the workers and directs and supervises them on a day-to-day basis. Accordingly, in most temporary help arrangements, the responsibility for providing and paying for PPE for the temporary workers should rest with the staffing firm's customer. Requiring the ''utilizing employer'' to pay for PPE for the workers over whom it exercises day-to-day control is both in accordance with long-standing OSHA policy and makes sense from a practical, administrative perspective (Ex. 12: 104).

NATSS also pointed out that the utilizing employer principle is recognized as state law in California and North Carolina, that OSHA's injury and illness recordkeeping regulations require the employer exercising day-to-day supervision over employees to record their injuries and illnesses, and that OSHA issued a letter of interpretation in 1985 that made the utilizing employer generally responsible for PPE. The NATSS further argued that the utilizing employer is in the best position to know what hazards are present at the worksite and what safety equipment is needed (Ex. 12: 104).

The process used to determine which entity is the employer of the employee is similar to the process used to determine if an individual is an employee or an independent contractor. If the utilizing employer (the employer that hires the temporary help service) controls the manner in which the employees perform their assigned work, then he or she will usually be responsible under the standard for providing PPE at no cost. Conversely, if the employer providing the labor controls the work of the employee, independent of the utilizing employer, that entity will likely be the employer responsible for providing PPE at no cost. It may even be possible that both employers will be the ''employers'' of the employees, and that both will have a shared responsibility for providing PPE at no cost. This principle is seen in the context of the OSHA bloodborne pathogens standard with respect to which a host employer and an employer supplying employees to the host employer can have shared responsibilities (See CPL 2–2.69 (Nov. 27, 2001) at X1.B). Even when this is the case, each employer must ensure that employee protection does not ''slip through the cracks''.

The labor-providing firm and the utilizing firm are free to agree how to coordinate the provision of PPE at no cost through private arrangements, for example, by contract. However, employers may not escape their ultimate responsibilities under the Act by requiring another party to perform them. If they do so and those duties are neglected, ultimately the responsibility remains with the employer of the employees. In other words, employers must ensure that their employees are provided PPE at no cost, whether they provide it themselves or have another entity do so. When the employers accomplish this goal and ensure the employees receive the PPE at no cost, there is no violation of the standard.

With respect to subcontractors, many commenters requested OSHA to make clear that host employers/general contractors on multi-employer worksites

issued in 2001 addressed a number of these issues (66 FR 5916 6135). To ensure accurate recording and reporting, OSHA directed, that the employer record on the OSHA 300 Log the recordable injuries and illnesses of all employees on their payroll, whether they are hourly, salary, part-time, seasonal or migrant employees. OSHA also directed the employer to record the recordable injuries and illnesses that occur to employees who are not on their payroll if the employer supervises these employees on a day-to-day basis. Thus if an employer obtains employees from a temporary help service, employee leasing service, or personnel supply service, the employer must record these injuries and illnesses if the employer supervises these employees on a day-to-day basis.

are not responsible for the payment of PPE for the employees of subcontractors. In its submission, the Society of the Plastics Industry recommended that:

> OSHA should clarify that contractors are responsible for the initial purchase and necessary replacement of their own employees' equipment. For example, if the employee of a contractor arrives at the host employer's site without the required PPE or is not using appropriate PPE for the current task, the rule should specify that the host employer is not responsible for providing and paying for the contractor employee's PPE and therefore cannot be cited for failing to do so. The final rule or preamble to the final rule should clarify this allocation of responsibilities (Ex. 12: 58).

The Dow Chemical Company added that ''[t]he issue of who provides and pays for such equipment should remain a contractual issue between the host and contract employer. OSHA should have no role in those negotiations'' (Ex. 12: 129). ORC noted that:

> Host employers have responsibility for ensuring that contractors are informed of hazards present at the worksite and for making a determination that the contractors they hire are aware of the applicable safety and health requirements (including the use of appropriate PPE) for the work they are to perform. A host employer has an obligation not to contract with companies or individuals who clearly do not understand or intend to comply with safety requirements. And a host employer has an obligation to halt a contractor's work if the host employer is aware that it is not being performed in a safe manner (Ex. 12: 222, pp. 3, 4).

OSHA appreciates these comments and is making it clear that, as a general matter, host employers/general contractors are not responsible for payment of PPE for the employees of subcontractors at multi-employer worksites.

OSHA recognizes that under its multi-employer enforcement policy, certain employers on multi-employer worksites have obligations to protect the employees of others (See OSHA Directive No. CPL 2–00.124 (Dec. 10, 1999)). This has been a longstanding OSHA enforcement policy, which flows directly from the OSH Act's requirements that employers are responsible for creating safe and healthful places of employment. Notwithstanding this, OSHA finds here that, a host employer/general contractor is not required to pay for the PPE of a subcontractor's employees. However, when a host employer/general contractor establishes an employment relationship with an employee, the host employer/general contractor must provide the PPE to the employee at no cost. The obligation to pay for PPE is dependent on the employer/employee relationship, as described above.

Finally, OSHA stresses effective communication and coordination between the utilizing, or host firm, and the contractor or temporary help service. Many employers already share information about these matters to help each other with their own respective safety and health responsibilities. Caroline Sherman of Arrow Temporary Services, Inc., testified that training responsibility was often shared—her company would provide general safety and health training (e.g, proper use of safety equipment) and the utilizing employer would provide site specific training (Tr. 558–559).

In this final rule, OSHA is not specifying how employers should coordinate their obligations under the rule. However, the Agency encourages employing entities, including host employers, contractors, and temporary help services to communicate and coordinate their workplace safety and health activities.

*D. Part-Time and Short-Term Employees*

Many commenters raised concerns related to part-time and short-term employees (See, *e.g.,* Exs. 12: 3, 18, 46: 6, 11, 16, 26, 32, 44; 46: 21, 25, 29, 37, 38, 50; 47: 1; Tr. 687–688). Short-term employees were characterized as temporary employees, piece workers, seasonal employees, hiring hall employees, labor pool employees, and transient employees. In a representative comment, SHRM stated that:

> Even in those cases where an ''employer pays'' approach is shown to be appropriate for full-time employees, SHRM does not believe that would be a reasonable mandate to extend to part-time employees, temporary employees and temporary workers provided by a staffing service. * * * HR professionals need greater flexibility to set and administer their PPE payment policies as to part-time employees and temporary workers. Part-time employees are more likely to work at several different worksites in a given week, and temporary employees are more likely to work at several different worksites within a given month or year. The proposed rule would impose an unfair burden upon one employer to pay for PPE that an employee may be using at other employers' worksites at different times within the week or year. SHRM therefore proposes that required PPE, which is personal in nature and used by temporary or otherwise non-permanent employees, should be exempt from the PPE employer pay rule (46: 43).

The Shipyard Council of America (SCA) noted that ''[w]orkers in the shipyard industry are transient and turnover rates are exceptionally high. Often employees fail to return the employer's equipment upon leaving and take the equipment to another worksite, thereby placing an undue economic burden on shipyard employers'' (Ex. 46: 32). In a combined comment, the United States Maritime Alliance Limited (USMX) and the Carriers Container Council, Inc. (CCC) stated that ''In the marine cargo handling industry [marine terminals and longshoring], labor pools are often utilized to assign labor to a certain workplace. It is not uncommon for a single employee to work at a different employer's facility from day to day or even shift to shift. As such, the proposed rule raises significant questions concerning compliance and enforcement within the marine cargo handling industry.'' The NAHB remarked that:

> It is common knowledge that the residential construction industry, and in fact the construction industry as a whole, is facing an increasing shortage of qualified labor. To alleviate such shortages some areas in the country utilize ''piece workers'' to fill the gap. In the areas where piece workers are used, how will this rule be enforced? * * * Such companies typically process 15–50 workers in a single week and many of these quit or are terminated after a short time. It is not uncommon for some workers to be terminated in a matter of hours (Ex. 12: 68).

The PPE payment provisions apply to all employers under the Act, including those with short-term employees, whether referred to as temporary employees, piece workers, seasonal employees, hiring hall employees, labor pool employees, or transient employees.[9] As discussed above, if an employer-employee relationship is established, then the employer must provide PPE to the employee at no cost. As discussed earlier, if the individual is not an employee and is actually a self-employed independent contractor, then the OSH Act does not apply, and the PPE payment rule also does not apply.

An issue relevant to part-time and short-term employment is the issue of employee-owned PPE. The final rule provides that where an employee provides appropriate protective equipment he or she owns, the employer may allow the employee to use it and is not required to reimburse the employee for it. This provision is included in the regulatory text at § 1910.132(h)(6) for general industry, § 1915.152(f)(6) for shipyard employment, § 1917.96(e) for longshoring, § 1918.106(e) for marine

[9] For example, OSHA's injury and illness recordkeeping regulation makes clear that ''All individuals who are 'employees' under the OSH Act are counted in the total; the count includes all full time, part-time, temporary, and seasonal employees'' (66 FR 5938).

terminals, and § 1926.95(d)(6) for construction. The final rule also makes clear that employers shall not require employees to provide or pay for their own PPE, unless specifically exempted. Employers cannot avoid their obligations under the standard by requiring their employees to purchase PPE as a condition of employment or placement. OSHA never intended in the proposed rule to prevent employees from voluntarily using PPE they already own, however, so long as the PPE was adequate to protect them from hazards. Furthermore, OSHA did not intend for employers to have to reimburse employees for equipment that they voluntarily bring to the worksite and wish to use. OSHA believes that allowing employees to use equipment they own, as OSHA has always intended, will alleviate some of the concerns raised by commenters regarding part-time and short-term employment. Employers who employ short-term and part-time employees may also require employees to return employer-owned PPE at the end of the day or when they terminate employment, and may use a deposit system or other mechanism to help ensure that their employees return the PPE.

*E. Longshoring and Marine Terminals*

Longshoring and marine terminal employers and employees are covered by the OSHA standards at 29 CFR Parts 1917 and 1918. These two standards work together to regulate safety and health conditions applying to a single industry—the loading and unloading of ships at the Nation's ports. The marine terminal standards at Part 1917 apply to onshore working conditions and the longshoring standards at Part 1918 apply to working conditions onboard vessels such as container ships or barges.

The proposal noted that the nature of the industry creates employer-employee relationships unique to each port. At some ports, employees are hired for one job through a labor pool. At another port, one employee may work for five different employers in the same week. The specific questions OSHA asked were: ''How do these factors affect the issue of who is required to pay for PPE? Does the employer customarily pay for PPE in the maritime industry? Are there any other issues unique to the maritime industry that OSHA should consider in this rulemaking?'' (64 FR 15416).

A number of longshoring and marine terminal interests commented on the proposed standard (See, *e.g.,* Exs. 12: 14, 17, 172, 173; 13: 7; 45: 35, 40; 46: 4). The most common concern among the marine terminal commenters was that the use of labor pools and union hiring halls in the longshoring industry creates special circumstances that would make the PPE payment standard unworkable (Ex. 12: 14, 172, 173; 13: 7). The Pacific Maritime Association (PMA) noted that marine cargo handling employers hire labor on a daily, as needed, basis, through one or more union locals or dispatch halls operated jointly by PMA and the ILWU (International Longshore and Warehouse Union). As a result, much of an employer's workforce changes from shift to shift. The PMA pointed out that the proposed rule could require an employer to provide and pay for PPE for each employee on its dock. The PMA also noted the administrative difficulties in determining whether an employee or another employer paid for the PPE. The PMA also noted that the role of an employer association in providing PPE was unclear (Ex. 12: 173).

The South Carolina Stevedores Association remarked that ''Employers in the Port of Charleston would be forced to maintain equipment inventories and administer recordkeeping programs on a daily basis to comply with this proposed rule for a workforce of over one thousand employees'' (Ex. 12: 14). The NMSA added:

> A literal reading of the proposed rule would indicate that the current employer must be the one who paid for the PPE. Thus, if on Monday an employee works for employer A, and on Tuesday the employee works for employer B, employer B must have paid for the PPE the employee is using on Tuesday. If the employee shows up at workplace B with PPE paid for by employer A, employer B would be in violation of federal law. This makes absolutely no sense and is simply unenforceable. In other words, it is not feasible (Ex. 12: 172, p. 9).

As an initial matter, OSHA notes that the marine cargo handling industry is not unique in its use of union hiring halls and labor pools, and that other industries also use these methods to hire employees, including construction and shipyards. The fact that employees are obtained from a hiring hall does not change an employer's obligations under the OSH Act.[10] Like many others, commenters in the longshoring industry assumed that the rule would have banned employee-owned PPE. As explained in the section on employee-owned PPE, an employer can allow the use of PPE that the employee provides when he or she arrives at work. Thus, if a port association purchases and provides the PPE to employees, OSHA does not object. Of course, the employer must ensure that the type of and condition of the PPE is adequate to protect the employee against the hazards present in the workplace. The point of this PPE payment standard is to ensure that the PPE used to comply with OSHA standards is provided by the employer at no cost to employees.

As the International Union of Operating Engineers (IOUE) noted:

> Workers in these industries should have no less protection because of the nature of the employer-employee relationship in the ports. It is the IUOE's experience that its members have no desire to collect closets full of safety-toe footwear and dresser drawers full of protective prescription eyewear. Employers may inquire if workers already have suitable steel toe footwear and prescription eyewear. If so, most workers will gladly use it as they change employers. If the worker does not have the PPE, then the employer should pay for it. Over time the cost of paying for PPE should even out for port employers (Ex. 12: 134).

OSHA has included marine terminal and longshore employers and employees in the final PPE payment standard. OSHA is confident that the industry will solve the hiring hall employment problem with this OSHA standard, just as it has for all other OSHA standards that apply to the industry. For example, the employers in the industry may work with their port associations and the hiring halls that provide labor to coordinate the provision of PPE. OSHA notes that it already has standards that require employer payment for certain types of PPE. There is no evidence in the record that employers in the marine cargo handling industry, or other hiring hall industries, have difficulty applying these standards to their employment situation.

USMX and the CCC argued that OSHA should have consulted with the Agency's Maritime Advisory Committee for Occupational Safety and Health (MACOSH) before issuing the proposed rule (Ex. 13: 7). OSHA notes that under section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333, of 1973, commonly known as the Construction Safety Act) and OSHA's own regulations at 29 CFR Part 1912,

[10] For example, OSHA's compliance directive CPL 02–01–028—CPL 2–1.28A—Compliance Assistance for the Powered Industrial Truck Operator Training Standards explains that ''Each employer for whom an employee works is responsible for ensuring that the employee has been trained in accordance with the standard. In hiring hall situations, the training under § 1910.178(l)(3)(i), truck-related topics, may be conducted by a labor union, joint labor/management training organization, an association of employers, or another third-party trainer as long as the person(s) conducting the training have the knowledge, training, and experience to properly conduct the training''.

the Agency is required to consult with the Advisory Committee on Construction Safety and Health (ACCSH) regarding the setting of construction standards. However, unlike ACCSH, there is no requirement for OSHA to consult with MACOSH prior to issuing a proposed regulation or standard affecting the maritime sectors. While the Agency may seek the advice of MACOSH on a rulemaking during the pre-proposal stage, and often does so, there is no requirement to that effect. Furthermore, maritime interests had numerous opportunities to comment on the rule during the extensive rulemaking process used by the Agency.

USMX and CCC also argued that longshore employees are well compensated and can afford their own PPE. The relative pay of longshore employees compared to employees in other sectors is immaterial to the OSHA regulations and standards. Each employee is entitled to the protections afforded under the Act, including by this standard. It is therefore the duty of the employer to provide PPE at no cost to their employees regardless of the employees' pay level or employment benefits.

*F. Shipyards*

Shipyard employers and employees are covered by the OSHA standards at 29 CFR Part 1915. Shipyards engage in several industrial activities, including ship building, ship repair, barge cleaning, and ship breaking. To the extent that the Part 1915 standards do not cover a specific safety or health hazard, the Part 1910 general industry standards apply. (See CPL 02–00–142, Shipyard Employment ''Tool Bag'' Directive for further details.) In the preamble to a 1996 rulemaking revising the Shipyard PPE standards, OSHA reiterated the 1994 policy requiring payment for PPE unless it was personal in nature and used off the job (61 FR26327). The Agency subsequently included the shipyard standards in the 1999 proposal to revise its PPE standards for all industries (64 FR15402). Several shipyard interests commented on the proposed PPE payment standard (See, *e.g.,* Exs. 7; 12: 29, 65, 112, 210; 13: 6, 21; 35).

Despite the 1996 preamble discussion, the PPE payment practices reported by these commenters varied widely. For example, Newport News Shipyard reported that it pays for all PPE required by the final standard, and asked only for clarification of items for which employer payment is not required (Ex. 12: 210). (See Section V for a discussion the PPE for which employer payment is required.). Other shipyards reported a variety of PPE payment practices. Avondale Shipyards Division reported that they pay for most PPE but require employees to pay for certain welding PPE, safety-toe shoes, and safety glasses (Ex. 12: 112). Ingalls Shipbuilding had the same policy, but also required employees to pay for their own hard hats (Ex. 12: 29). The Shipbuilders Council of America (SCA) polled 50 shipyard companies and reported a variety of payment practices for 13 types of PPE. Employer payment practices ranged from 5 percent for safety shoes to 100 percent for fall protection and chemical protective equipment. These employers also reported various policies that required their employees to pay for some equipment and share costs with the employer for other types of PPE (Ex. 12: 65).

Many of these shipyard commenters believed employees should pay for their own welding PPE, and especially welding leathers. This issue is discussed in more detail in section V ''PPE for which employer payment is required''. Others argued the shipyard workforce has frequent employee turnover and that PPE carried from job to job should be exempted. As noted earlier, the Agency sees no reason to provide less protection for short-term employees. The shipyard industry's turnover rates do not appear to be significantly higher than the rates for construction and marine terminals (See the economic analysis for a comparison of turnover rates). Furthermore, the Agency has not received any comments that would warrant an exception for an entire industry. After careful consideration, OSHA has promulgated the same final rule for shipyards that it is issuing for other industries.

*G. Construction*

Construction employers are covered by the OSHA standards at 29 CFR Part 1926. The 1999 proposal covered the construction industry, just as it covered other industries. In fact, OSHA noted in the proposal that:

> OSHA realizes that there is frequent turnover in the construction industry, where employees frequently move from job-site to job-site. This is an important factor because an employer with a high turnover workplace would have to buy PPE for more employees if the PPE was of the type that could only be used by one employee. OSHA requests comment on whether its proposed exceptions for safety-toe footwear and prescription safety eyewear are appropriate in the construction industry. Are there any other approaches to handle the turnover situation that would be protective of construction workers? Are there any other issues unique to the construction industry that should be considered in this rulemaking? (64 FR 15416).

In response to the proposal, OSHA received more comments from the construction industry than any other industry sector. Construction interests accounted for nearly half of the 350 comments received by the Agency.[11] The commenters noted that ''The issue of who pays for PPE has long been a contentious one in the construction industry'' and noted five major reasons for their opposition to the rulemaking, several of which were also articulated by commenters outside of the construction industry. First, these commenters asserted that the proposed rule is beyond OSHA's statutory authority. The Legal Authority section of this preamble explains that OSHA is well within its statutory mandate to issue this rule.

Second, the commenters argued that the proposed rule would limit employers' flexibility in managing safety and health at their workplaces. The standard does not limit employers in implementing and managing their safety and health programs, an activity OSHA encourages. Commenting employers in OSHA's Voluntary Protection Programs (VPP), all of whom have implemented OSHA-approved safety and health management systems, unanimously supported employer payment for PPE, and did not suggest any negative effects on their safety and health management systems (See, *e.g.,* Exs. 12: 113, 210).

Third, the commenters argued that the proposed rule would give employees the freedom to be irresponsible with company-owned PPE, and urged OSHA to specify when an employer can charge an employee for lost PPE. Employers have a number of means available to address circumstances where employees do not follow company rules or are irresponsible with company equipment. Two such means are increased education efforts and disciplinary systems. With respect to the latter, OSHA expects employers to fairly enforce reasonable and appropriate disciplinary systems as part of their

[11] More than 125 companies engaged in residential home building and associated subcontractors submitted nearly identical letters, which will be referenced as ''Form Letter A'' (See, *e.g.,* Exs. 12–22; 23, 24, 25, 26, 27, 30, 33, 34, 35, 36, 37, 39, 40, 41, 46, 47, 54, 56, 57, 59, 60, 61, 62, 63, 64, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 80, 81, 82, 83, 84, 85, 86, 87, 88, 90, 92, 93, 94, 96, 97, 98, 103, 115, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 132, 136, 137, 138, 139, 140, 142, 143, 147, 148, 156, 157, 158, 159, 160, 162, 166, 168, 170, 174, 175, 176, 177, 178, 179, 180, 185, 186, 192, 193, 194, 195, 196, 197, 198, 199, 200, 202, 205, 208, 212, 213, 215, 216, 219, 223, 224, 225, 226, 227, 231, 232, 234, 236, 237, 238, 239, 240, 241, 242).

overall effort to comply with OSHA standards and establish effective workplace safety and health programs. Nothing in this rule prevents employers from implementing these disciplinary systems. The Replacement PPE section of this preamble provides a discussion of this topic.

Fourth, these commenters, along with many others, (See. *e.g.,* Exs. 12: 18, Form letter B [12]) argued that employee payment for PPE will ensure that the PPE is maintained in good working order. Commenters also noted that employers would be inclined to purchase PPE that is less expensive (and perhaps less safe) than that purchased by employees, or that employees would be inclined to purchase less expensive PPE that would not meet the minimum PPE standards established by the American National Standards Institute (ANSI) (Ex. 12: 134, 218). The Agency addresses this issue in Section XIV, Legal Authority.

Fifth, and last, the commenters asserted that employers would need to keep receipts to prove payment to an OSHA inspector or Compliance Safety and Health Officer (CSHO). Employers in all industries, including construction, typically keep receipts and other transaction records as part of their accounting systems to comply with standard accounting practices and various business regulations. For example, such receipts could be needed to prepare the employer's income tax forms. Notwithstanding this usual practice, nothing in the final rule requires employers to keep receipts to prove that they paid for PPE. Generally, PPE payment practices can be determined through management and employee interviews.

Similar to the home builders, a group of about 30 electrical contractors submitted nearly identical comments (Form Letter B). These contractors, which included the National Electrical Contractors Association (NECA), urged the Agency to exempt certain items of electrical PPE from the payment requirements because they viewed them as tools of the electrical trade. After considering the comments provided, OSHA has rejected the ''tools of the trade'' concept and employers will generally be required to provide most of these items at no cost to employees. These comments are discussed in Section V, ''PPE for which payment is required,'' and Section VII, ''Other alternatives considered during the rulemaking process.''

Similar to comments from the maritime and longshoring sectors, a number of construction-related commenters noted the transient nature of construction work and the high turnover rates in the industry. Many of them argued that the short-term employment nature of the industry should influence OSHA's decisions in the final standard (See, *e.g.,* Exs. 12: 102, 153, 207, 229; 45: 28; form letter A; form letter B). The Betco Scaffold Company remarked that:

> The services provided by the scaffolding industry in support of both industry and construction is of short job duration and for the greatest extent provided by temporary employees who travel from job to job. There is a high turnover rate and employees systematically walk off jobs abruptly and without notice, taking with them their tools and any and all PPE. There is seldom a tool room or construction shack on site due to the short duration of the jobs. Equipment losses and non-recovery of employer furnished PPE will amount to an economic burden that cannot be recovered (Ex. 12: 18).

Other commenters argued that the transient nature of the industry should not result in reduced protection (See, *e.g.,* Exs. 12: 234, 218) or that OSHA should make the rule fair for all employees (See, *e.g.,* Exs. 12: 134, 190). In a typical comment, the IUOE remarked that:

> [w]orker turnover should not be a consideration in determining whether a construction employer should be required to pay for PPE. Construction workers should not receive less protection than other industries where turnover may be less. If all construction employers are required to pay for all PPE, contractors may pass on the costs to construction owners in their contract price. This will level the playing field for bidders on construction work (Ex. 12: 234).

There is no logical basis for providing different protections for different classes of employees, as described by these commenters, and any such differentiation is not supported by the OSH Act or case law. Consequently, the Agency does not consider employee turnover as a reasonable basis for excluding the construction industry (or any other industry) from the PPE payment standard.

Several commenters noted that employers may be compelled to incur the cost of purchasing specific brands or styles of PPE due to employee preference, even though such PPE does not provide additional protection (Ex. 12: 21, 79, 99). OSHA emphasizes that employers are not required to purchase all of the PPE requested by their employees but rather are responsible for ensuring that adequate PPE is used to comply with OSHA standards, and that the PPE used to comply with OSHA standards is provided at no cost to their employees. Section VI ''Employee-owned PPE'' addresses employee-upgraded PPE.

Finally, OSHA notes that several construction commenters supported the PPE payment proposal (See, *e.g.,* Exs. 12: 99, 134, 153, 190). For example, Associated Builders and Contractors, Inc., a national association representing 24,000 construction and construction-related firms in 79 chapters across the United States primarily performing work in industrial and commercial construction initially opposed the proposed standard (Ex. 12: 153). However, in an August 23, 2004 comment, the trade association noted that ''ABC, with the guidance of its Safety, Environmental, and Health Committee, has decided to support the requirement that employers pay for PPE with some exceptions'' (Ex. 46: 41). Those exceptions were that safety-toe protective footwear and prescription safety eyewear should be the responsibility of employees, that employers should not have to replace PPE damaged due to employee misconduct, and that employers should be compensated by employees for PPE removed from the jobsite without the employer's permission. These issues are discussed in the preamble section dealing with PPE for which payment is required, and the replacement PPE section.

## VIII. Acceptable Methods of Payment

Under the final rule, an employer may utilize any method of payment, as long as it results in PPE being provided to that employer's employees at no cost. Many methods are available, and employers are free to choose a single payment method for all types of PPE, or different payment methods for different types of PPE. From its review of the comments, OSHA has identified four methods that employers currently use to provide PPE at no cost to their employees: (1) Employer purchase and distribution, (2) allowances, (3) vouchers, and (4) employer reimbursement to employees. As explained below, in general these methods are acceptable, and employers may choose these options or develop other methods. At bottom, however, OSHA believes that PPE use and effectiveness improves when employers exercise greater control over the purchasing process.

### *A. Employer Purchase and Distribution*

On this record, the method that appears to be the most effective way for

[12] Approximately 30 electrical contractors submitted identical comments, which will be referenced as ''Form Letter B'' (See, *e.g.,* Exs. 45: 6 7, 8, 9, 10, 11, 12, 14, 15, 16, 19, 20, 22, 23, 24, 29, 31, 38, 41, 44, 45, 46, 47; 46: 21, 22, 23, 24, 25, 29, 38; 47: 1).

employers to provide PPE to their employees is for employers to purchase the PPE themselves, keep a ready supply of PPE, and distribute the PPE directly to their employees. This method ensures that the PPE meets the specifications the employer has set through the hazard assessment/PPE selection process. It also provides the simplest means of ensuring the quality of the equipment and minimizes the need to individually assess each employee's choice of PPE.

There are many additional advantages to be gained through this approach. By maintaining a PPE inventory, the employer can provide immediate replacements for PPE that may become deficient due to wear and tear or accidental damage. OSHA's standards require the employee to be protected when exposed to a hazard. If replacement PPE is not readily available to replace deficient PPE, the employee may not be able to complete his or her shift, resulting in lost productivity for the employer. The employer may also purchase the equipment in bulk. This would produce a cost savings to the employer through bulk purchase discounts as well as standardized equipment that would be easier to repair and maintain.

*B. Allowances*

A number of commenters raised the issue of using employee allowances to procure PPE (See, *e.g.,* Exs. 12: 153, 188; 46: 43). In an allowance system, an employer gives an employee a certain amount of money to use to purchase specific PPE. OSHA does not object to allowances as a means of paying for PPE, as long as the allowance policy ensures that employees receive appropriate PPE at no cost.

As several commenters noted, an allowance system is a common practice and it appears that in many cases it is an effective and convenient method for providing PPE to employees at no cost. On the other hand, an allowance system may create the need for the employer to put in place a more rigorous method to ensure that the PPE is adequate for the job. While the employer can take several steps to guide employees in their purchase, such as giving employees a list of approved vendors or PPE specifications, the employer may need to follow up with employees and inspect the PPE.

*C. Vouchers*

Another system employers currently use to purchase PPE is a voucher system. In this system, an employer typically has an arrangement with a local retailer or distributor of PPE whereby the retailer or distributor will accept a voucher from the employer for a particular type of PPE in lieu of direct payment. The retailer or distributor then directly bills the employer for the PPE after processing the voucher. Some employers find this system administratively convenient; it also avoids having to pay money to an employee before the purchase is made in the form of an allowance.

*D. Employee Purchase With Employer Reimbursement*

Some employers may decide to use an employee reimbursement method for providing PPE. Under this type of system, the employer requires the employee to purchase the PPE and then reimburses the employee for the cost of the purchase. This method has most of the same advantages and disadvantages as allowances and vouchers. The difference is that the employee is provided the funds after the PPE is purchased, instead of before.

Some commenters raised an issue that applies to allowances, vouchers, and reimbursement. These commenters asked whether or not an employer would be required to reimburse an employee for time and travel expenses to shop for PPE to ensure that PPE was provided at no cost. The SHRM remarked:

> SHRM's understanding is that OSHA never contemplated that the employer payment obligation would extend beyond the purchase price of the PPE to include the time the employee would spend acquiring the PPE. * * * For example, it would be fairly common for an employee to travel to an employer-designated shoe store where the employer has an account. The employee would have the ability to review available shoe models, select the model and size that best meets the employee's needs (up to a specified allowance with the employee paying for any amount in excess of the allowance), and possibly get some personalized fitting. * * * Payment of compensation for the time spent shoe shopping would be an unreasonable burden, would likely exceed the cost of the PPE, and would be fraught with the potential for abuse and make it difficult to administer (Ex. 46: 43).

OSHA does not intend the rule to cover time and travel expenses an employee might incur while shopping for PPE during non-work hours. OSHA recognizes that this position differs from the position the Agency has consistently taken with respect to employee time and travel expenses for medical services in several other standards (See, *e.g.,* lead standard at § 1910.1025(j)(1)(iii) and bloodborne pathogens standard at § 1910.1030(f)(1)(ii)). These standards also use the terms ''at no cost'' and OSHA has interpreted them as requiring employer payment for the time and travel costs an employee incurs for receiving required medical services during non-work hours. See *Phelps Dodge Corp.* v. *Occupational Safety and Health Review Comm.,* 725 F.2d 1237 (9th Cir. 1984). The underlying reason for OSHA's position was that the time and travel needed to obtain the required medical services could be so great that if employees were not compensated for it, they would delay visiting a health care provider (HCP), resulting in delayed diagnosis and treatment. Even worse, they might opt not to participate in the employer's medical surveillance program at all. As described below, OSHA believes that time and travel required to purchase PPE is much less than that required for medical services. Because of this, OSHA does not believe that requiring employees to shop for PPE on their own outside of work would serve as a disincentive to acquiring the PPE.

First, the amount of time required to visit an HCP, wait to see the HCP, get any required tests taken, and consult the HCP about the results is much longer than the time needed to purchase PPE. OSHA has found with respect to medical screening and surveillance that the amount of time required to obtain services is quite long in certain circumstances and if employers did not pay for the time and travel involved, employees might forego the examinations. See *e.g., Phelps Dodge,* 725 F.2d at 1238 (actual time required for medical examinations, including transportation and waiting was ''an hour or more''). Furthermore, employees on occasion need to make multiple trips to an HCP. While employers are often required to offer medical surveillance to employees, employee participation in medical surveillance programs is sometimes not required by OSHA standards, and employees may decline to participate. As such, the time spent to participate may act as a disincentive to employees if they were not compensated for time and travel. These considerations do not apply to shopping for PPE.

Second, unlike medical services where the employee would almost certainly have to travel in person to the HCP, there are many options available for employees to acquire PPE on their own and some of these involve no travel. There are many retail locations that sell PPE, and in many cases the employee may already be going to the retail location for personal shopping. In addition, there are numerous catalogue and internet retailers available for employees to shop for equipment.

OSHA does not believe that the extra time needed to acquire PPE outside of work hours would serve as a significant disincentive to employees getting the PPE.

For these reasons, employers are not required to reimburse employees for time spent shopping for PPE or for travel expenses related to PPE shopping.

## IX. Effective Dates

Each of the PPE payment standards includes an effective date paragraph to establish the dates when employers will be fully responsible for meeting the PPE payment requirements. (See § 1910.132(h)(7), § 1915.152(f)(7), § 1917.96(f), § 1918.106(f), and § 1926.95(d)(7)) Each affected standard will become effective on February 13, 2008. This date is 90 days from the date of publication in the **Federal Register**. The Agency sets the effective date to allow sufficient time for employers to obtain the standard, read and understand its requirements, and undertake the necessary planning and preparation for compliance. The 90-day effective date has been established to comply with section 6(b)(4) of the OSH Act, which provides that the effective date for a standard may be delayed for up to 90 days from the date of publication in the **Federal Register**.

Despite the 90-day effective date, OSHA is extending the compliance deadlines for the final standard so employers will be given six months to fully comply with the new requirements. By extending the deadline to comply with the PPE payment provisions, OSHA will minimize the impact of the rule on existing collective bargaining agreements, and give businesses (including small businesses) needed time to implement the requirements.

A number of commenters remarked that existing collective bargaining agreements containing PPE provisions would be affected by the final standard (See, *e.g.,* Exs. 12: 14, 16, 17, 21, 43, 65, 66, 79, 117, 172, 173, 183, 188, 189). Several argued that the final rule would have a negative effect on employers that have existing collective bargaining agreements (See, *e.g.,* Exs. 12: 14, 16, 17, 65, 79, 173, 183, 188, 189). The Association of Electric Cooperatives noted that,

> OSHA should keep in mind that payment arrangements for PPE are frequently part of the employers' negotiations with the labor union. As such, when stating the effective date of the rule, consideration should be made to current union contracts. The Association recommends that the effective date of the rule allow for current labor contracts to run their course. Employer's payment of PPE, in most cases, will take effect at the signing of the next contract (Ex. 12: 183).

OSHA has not implemented a compliance deadline that would allow all collective bargaining agreements to expire and be renegotiated before the rule takes effect. This would take several years and would result in undue delay of the safety and health benefits that the Agency expects will result from the rule. The six-month compliance deadline will allow sufficient time for some collective bargaining agreements to expire and will provide a reasonable interval for employers and unions to work out the specific methods by which PPE will be provided to employees at no cost.

The six-month compliance date will also give businesses time to establish systems for effectuating employer payment. As discussed above, employers may utilize a number of different methods to ensure that PPE is provided at no cost to employees. Allowing a six-month compliance deadline will give employers time to determine what method is best for their business and implement the method before the rule takes effect.

The six-month compliance deadline will also help minimize the burden on small businesses. Some commenters urged OSHA to consider the special needs of small business entities when considering the effective date of the standard (See, *e.g.,* Exs. 12: 3, 68, 145). Douglas Battery suggested the ''[e]stablishment of a size threshold (or other measure) at which the cost of providing PPE becomes a shared responsibility between employers and employees for some specified period'' (Ex. 12: 3).

OSHA has not implemented a phased-in approach as recommended by Douglas Battery because doing so would be overly complex, cumbersome, and delay the benefits of the final rule. However, the Agency believes that the six-month compliance deadline will give the large number of small businesses covered by the standard sufficient time to work with PPE suppliers to obtain needed equipment and negotiate bulk discount prices. In some cases, very small employers may choose to join together and coordinate their PPE acquisition efforts through a local trade association or co-op to obtain bulk discounts on equipment. The extended compliance deadline will provide time to set up such arrangements.

## X. Effect on Existing Union Contracts

Many collective bargaining agreements contain language specifying that employers will provide certain PPE to employees at no cost and some specify certain PPE that employees will be responsible for providing (and paying for) themselves. The final standard could have an impact on these agreements. OSHA has carefully considered the impact of the final rule on collective bargaining agreements and has determined that workplaces with collective bargaining agreements should be treated no differently in the final rule than workplaces without collective bargaining agreements. However, to reduce impacts on existing collective bargaining agreements, OSHA is establishing a six-month compliance deadline for the final rule. This will allow some existing collective bargaining agreements to expire or provide employers and employees time to renegotiate agreements to conform to the final rule.

Many stakeholders commented on the extent to which an employer payment for PPE rule would impact existing collective bargaining agreements. Some union commenters stated that an employer payment rule would affect collective bargaining agreements in the same way as other OSHA safety and health standards and that OSHA should not make any exceptions from the rule for workplaces governed by collective bargaining agreements (See, *e.g.,* Exs. 12: 14, 16, 17, 21, 65, 79, 99, 167, 173, 183, 188, 189).

One commenter noted that most collective bargaining agreements contain language requiring employers to pay for all required PPE (Ex. 12: 105). Some commenters supported the rule on the basis that it would create a level playing field for union and non-union employees (Ex. 12: 110) by ensuring that in both cases employees are provided PPE ''at no cost'' and ensure that more employees, including non-union employees, would be afforded the same protections (Ex. 12: 113).

Some commenters, on the other hand, asserted that the rule inappropriately interferes with existing collective bargaining agreements because PPE payment is a traditional and mandatory subject of collective bargaining under federal law, and thus violates the policies of federal labor legislation governing employer and employee negotiation over workplace conditions (See *e.g.,* 12: 43, 173, 189). Caterpillar, Inc., remarked that ''Payment sharing procedures that have been developed through years of collective bargaining will be unjustly modified by this proposal'' (12: 66).

OSHA finds that the final rule does not inappropriately interfere with collective bargaining agreements. The

impact of OSHA standards on collective bargaining has been discussed by OSHA in past rules. OSHA has consistently stated that the duty to bargain with unions over safety and health matters does not excuse employers from complying with OSHA standards. This principle has been upheld by the courts (See, *e.g.,* Forging Industries at 1451–1452). In *United Steelworkers of America* v. *Marshall*, 647 F.2d 1189, 1236 (D.C.Cir.1980) the court observed:

> In passing a massive worker health and safety statute, Congress certainly knew it was laying a basis for agency regulations that would replace or obviate worker safety provisions of many collective bargaining agreements. Congress may well have viewed collective bargaining agreements along with state worker's compensation laws as part of the status quo that had failed to provide workers sufficient protection (Id. at 1236).

OSHA sees no distinction between this rule and other OSHA standards placing obligations on employers. In fact, in numerous past rulemakings OSHA has required employers to provide PPE ''at no cost''; none of these rules has been overturned because they inappropriately interfered with collective bargaining. Compliance with the rule does not conflict with employers'' obligations to bargain over mandatory subjects of bargaining under the National Labor Relations Act (NLRA).

Additionally, the rule does not foreclose bargaining about discretionary aspects of the standard such as the means by which the employer will provide the PPE to employees so that it results in no cost to the employees, payment arrangements for equipment that is not covered by the final rule, and so forth. As courts have found, to the extent the employer has discretion in the means by which it achieves compliance, and the means involve a mandatory subject of bargaining, the employer is not only free to bargain but would be required to bargain with the union regarding the means of compliance. *United Steelworkers,* 647 F.2d at 1236 (''[w]hen an issue related to earnings protection not wholly covered by OSHA regulation arises between labor and management, it will remain a mandatory subject of collective bargaining''); see *Watsonville Newspapers,* LLC, 327 N.L.R.B. No. 160, slip op. 2–3 (Mar. 24, 1999); Dickerson-Chapman, Inc., 313 N.L.R.B. 907, 942 (1994) (although employer must comply with OSH Act standard requiring daily inspections of open excavations by a ''competent person,'' employer must bargain with union about who would be so designated); *Hanes Corp.,* 260 N.L.R.B. 557, 561–562 & n.12 (1982) (where OSHA standard required use of respirators but gave employer discretion with respect to choice of respirator, employer could require use of respirator without bargaining, but could not unilaterally determine which approved respirator would be used).

OSHA has repeatedly emphasized the importance of involving employee representatives in all aspects of workplace safety and health. The Agency believes that employers and unions have been able to meet both their responsibilities under OSHA's standards and their duty to bargain under the NLRA. This has been the case with other OSHA rules, and the Agency believes that employers and employees will be able to do the same under the PPE payment standards.

One commenter remarked that ''[t]here is no evidence that the collective bargaining process is broken'' (12: 189) while another observed that relying on collective bargaining for the payment of PPE is an ''inadequate solution'' (Ex. 12: 100). OSHA notes that many employees are not represented by unions, so relying on collective bargaining as an alternative to the final rule would not be effective. It also would be impractical to create an exception for workplaces covered by collective bargaining agreements, because doing so would result in unequal protection for employees depending on whether a collective bargaining agreement is in place or not. An exception would also be a cumbersome and unduly complex provision to enforce.

While OSHA does not believe there is a need or sound rationale for providing an exception to employers whose employees are represented under a collective bargaining agreement, the Agency does not want to cause undue disruption to existing collective bargaining agreements. Therefore, as explained in the Effective Dates section of this preamble, the Agency has extended the compliance deadline for the standard by six months. This will allow some collective bargaining agreements to expire. In these cases employers and unions can renegotiate the contract to reflect the new realities imposed by the rule. In other cases, the six-month compliance deadline allows employers, employees, and employee representatives to either conduct mid-term bargaining or otherwise come to an agreement concerning their methods for implementing the final rule.

## XI. Effect on Other OSHA Standards

As noted above, many of OSHA's existing standards specify whether or not the employer is required to provide required PPE at no cost to employees. Other standards are silent on the issue of payment. OSHA is setting forth clearly in a note to the final rule that when an employer payment provision in another OSHA standard specifies whether or not the employer must pay for specific equipment, the payment provision of the other standard shall prevail over the provision in this final rule.

This rule is meant to apply to all OSHA standards requiring PPE. This includes the general employer payment requirement included in the final rule, in addition to the exceptions given. For other standards that already require employers to provide a certain type of PPE at no cost, this final rule ''amends'' those standards to include the exceptions for employee-owned PPE, replacement PPE, etc. Thus, this final rule must be read in concert with the other standards that require employer payment for PPE. It is only in those instances where another standard specifically addresses an aspect of PPE payment that is also specifically addressed in this final rule, that the provisions of the other standard govern.

For example, if an OSHA health standard states only that employers must provide PPE ''at no cost'' to employees, and includes no exceptions to that requirement, the exceptions in this final rule would apply to employers and employees performing work covered by that standard. Conversely, if another OSHA standard includes ''at no cost'' language and specifically requires employers to pay for all replacement PPE—regardless of whether the PPE was lost or intentionally damaged—that other OSHA standard would govern an employer's obligation with respect to replacement PPE, as opposed to this final rule.

A question naturally arises regarding future rulemakings and how PPE payment will be addressed when a rulemaking has PPE requirements. Generally, OSHA intends that future rules with PPE requirements will require employers to provide the PPE at no cost to employees (with exceptions) in accord with its findings in this rule. However, it is difficult, if not impossible, to predict all the PPE issues and arguments that may arise in future rulemakings, and the specific PPE payment requirements that may be appropriate for those rules. It is entirely possible that some item for which payment is required under § 1910.132(h) would be determined as exempted from payment, and similarly, an item exempted from payment under § 1910.132(h) could be subject to

employer payment under some future standard.

By adding a note in the regulatory text of the various standards, however, if OSHA decides to take a different position on PPE payment in a future rulemaking, it will not need to make a parallel change to the regulatory language of the relevant PPE payment standard (general industry, construction, shipyard, marine terminals, or longshore) set forth in this final rule. OSHA believes that this approach is more flexible and will be clearer to the regulated public.

In the preamble to the proposed rule, OSHA listed many of the OSHA standards that include provisions requiring the use of PPE. For ease, OSHA is providing a similar list below. Some of these standards specifically include ''at no cost'' language and some do not. Employers need to carefully review their obligations under the standards that apply to them.

TABLE XI–1.—OSHA STANDARDS THAT REQUIRE PPE

| 29 CFR 1910, General Industry | |
|---|---|
| 1910.28 | Safety requirements for scaffolds. |
| 1910.66 | Powered platforms for building maintenance. |
| 1910.67 | Vehicle-mounted elevating and rotating work platforms. |
| 1910.94 | Ventilation. |
| 1910.95 | Occupational noise exposure. |
| 1910.119 | Process safety management of highly hazardous chemicals. |
| 1910.120 | Hazardous waste operations and emergency response. |
| 1910.132 | General requirements (personal protective equipment). |
| 1910.133 | Eye and face protection. |
| 1910.134 | Respiratory protection. |
| 1910.135 | Occupational Head protection. |
| 1910.136 | Occupational foot protection. |
| 1910.137 | Electrical protective equipment. |
| 1910.138 | Hand protection. |
| 1910.146 | Permit-required confined spaces. |
| 1910.156 | Fire brigades. |
| 1910.157 | Portable fire extinguishers. |
| 1910.160 | Fixed extinguishing systems, general. |
| 1910.183 | Helicopters. |
| 1910.218 | Forging machines. |
| 1910.242 | Hand and portable powered tools and equipment, general. |
| 1910.243 | Guarding of portable power tools. |
| 1910.252 | General requirements (welding, cutting and brazing). |
| 1910.261 | Pulp, paper, and paperboard mills. |
| 1910.262 | Textiles. |
| 1910.265 | Sawmills. |
| 1910.266 | Logging operations. |
| 1910.268 | Telecommunications. |
| 1910.269 | Electric power generation, transmission and distribution. |
| 1910.272 | Grain handling facilities. |
| 1910.333 | Selection and use of work practices. |
| 1910.335 | Safeguards for personnel protection. |
| 1910.1000 | Air contaminants. |
| 1910.1001 | Asbestos. |
| 1910.1003 | 13 carcinogens, etc. |
| 1910.1017 | Vinyl chloride. |
| 1910.1018 | Inorganic Arsenic. |
| 1910.1025 | Lead. |
| 1910.1026 | Chromium (VI). |
| 1910.1027 | Cadmium. |
| 1910.1028 | Benzene. |
| 1910.1029 | Coke oven emissions. |
| 1910.1030 | Bloodborne pathogens. |
| 1910.1043 | Cotton dust. |
| 1910.1044 | 1,2-dibromo-3-chloropropane. |
| 1910.1045 | Acrylonitrile. |
| 1910.1047 | Ethylene oxide. |
| 1910.1048 | Formaldehyde. |
| 1910.1050 | Methylenedianiline. |
| 1910.1051 | 1,3-Butadiene. |
| 1910.1052 | Methylene chloride. |
| 1910.1096 | Ionizing radiation. |
| 1910.1450 | Occupational exposure to chemicals in laboratories. |
| **29 CFR 1915, Shipyards** | |
| 1915.12 | Precautions and the order of testing before entering confined and enclosed spaces and other dangerous atmospheres. |
| 1915.13 | Cleaning and other cold work. |
| 1915.32 | Toxic cleaning solvents. |
| 1915.33 | Chemical paint and preservative removers. |
| 1915.34 | Mechanical paint removers. |

TABLE XI–1.—OSHA STANDARDS THAT REQUIRE PPE—Continued

| | |
|---|---|
| 1915.35 | Painting. |
| 1915.51 | Ventilation and protection in welding, cutting and heating. |
| 1915.53 | Welding, cutting and heating in way of preservative coatings. |
| 1915.73 | Guarding of deck openings and edges. |
| 1915.77 | Working surfaces. |
| 1915.135 | Powder actuated fastening tools. |
| 1915.153 | Eye and face protection. |
| 1915.152 | General requirements. |
| 1915.154 | Respiratory Protection. |
| 1915.155 | Head protection. |
| 1915.156 | Foot protection. |
| 1915.157 | Hand and body protection. |
| 1915.158 | Lifesaving equipment. |
| 1915.159 | Personal fall arrest systems (PFAS). |
| 1915.160 | Positioning device systems. |
| 1915.504 | Fire watches. |
| 1915.505 | Fire response. |
| 1915.1001 | Asbestos. |
| 1915.1026 | Chromium (VI). |
| **29 CFR 1917, Marine Terminals** | |
| 1917.22 | Hazardous cargo. |
| 1917.23 | Hazardous atmospheres and substances. |
| 1917.25 | Fumigants, pesticides, insecticides and hazardous waste. |
| 1917.26 | First aid and lifesaving facilities. |
| 1917.49 | Spouts, chutes, hoppers, bins, and associated equipment. |
| 1917.73 | Terminal facilities handling menhaden and similar species of fish. |
| 1917.91 | Eye and face protection. |
| 1917.92 | Respiratory protection. |
| 1917.93 | Head protection. |
| 1917.94 | Foot protection. |
| 1917.95 | Other protective measures. |
| 1917.118 | Fixed ladders. |
| 1917.126 | River banks. |
| 1917.152 | Welding, cutting and heating (hot work). |
| 1917.154 | Compressed air. |
| **29 CFR 1918, Safety and Health Regulations for Longshoring** | |
| 1918.85 | Containerized cargo operations. |
| 1918.88 | Log operations. |
| 1918.93 | Hazardous atmospheres and substances. |
| 1918.94 | Ventilation and atmospheric conditions. |
| 1918.101 | Eye and face protection. |
| 1918.102 | Respiratory protection. |
| 1918.103 | Head protection. |
| 1918.104 | Foot protection. |
| 1918.105 | Other protective measures. |
| **29 CFR 1926, Safety and Health Regulations for Construction** | |
| 1926.28 | Personal protective equipment. |
| 1926.52 | Occupational noise exposure. |
| 1926.55 | Gases, vapors, fumes, dusts, and mists. |
| 1926.57 | Ventilation. |
| 1926.60 | Methylenedianiline. |
| 1926.62 | Lead. |
| 1926.64 | Process safety management of highly hazardous chemicals. |
| 1926.65 | Hazardous waste operations and emergency response. |
| 1926.95 | Criteria for personal protective equipment. |
| 1926.96 | Occupational foot protection. |
| 1926.100 | Head protection. |
| 1926.101 | Hearing protection. |
| 1926.102 | Eye and face protection. |
| 1926.103 | Respiratory protection. |
| 1926.104 | Safety belts, lifelines and lanyards. |
| 1926.105 | Safety nets. |
| 1926.106 | Working over or near water. |
| 1926.250 | General requirements for storage. |
| 1926.300 | General requirements (Hand and power tools). |
| 1926.302 | Power-operated hand tools. |
| 1926.304 | Woodworking tools. |
| 1926.353 | Ventilation and protection in welding, cutting and heating. |
| 1926.354 | Welding, cutting and heating in way of preservative coatings. |

TABLE XI–1.—OSHA STANDARDS THAT REQUIRE PPE—Continued

| | |
|---|---|
| 1926.416 | General requirements (Electrical). |
| 1926.451 | General requirements (Scaffolds). |
| 1926.453 | Aerial lifts. |
| 1926.501 | Duty to have fall protection. |
| 1926.502 | Fall protection systems criteria and practices. |
| 1926.550 | Cranes and derricks. |
| 1926.551 | Helicopters. |
| 1926.605 | Marine operations and equipment. |
| 1926.701 | General requirements (Concrete and masonry construction). |
| 1926.760 | Fall protection (Steel erection). |
| 1926.800 | Underground construction. |
| 1926.951 | Tools and protective equipment. |
| 1926.955 | Overhead lines. |
| 1926.959 | Lineman's body belts, safety straps, and lanyards. |
| 1926.1053 | Ladders. |
| 1926.1101 | Asbestos. |
| 1926.1126 | Chrome (IV). |
| 1926.1127 | Cadmium. |

## XII. Miscellaneous Issues

The vast majority of the comments received from various parties during the rulemaking process have been answered in other sections of the preamble relating to the specific PPE payment issues raised. However, some commenters raised a number of issues that do not deal directly with PPE payment, but rather with aspects of rulemaking procedure, OSHA's underlying analysis supporting the rulemaking, or other issues related to PPE use. OSHA addresses those comments below.

### *A. Procedural Issues*

In developing this final rule, OSHA compiled an extensive rulemaking record. It received hundreds of comments on the proposal published in 1999, conducted four days of hearings, and gave interested parties four months to file post-hearing comments and briefs. Subsequently, on July 8, 2004, OSHA published a notice to re-open the record. The Agency solicited comment on how the final rule should address PPE that is customarily provided by employees (69 FR 41221). OSHA received over 100 comments on this issue. OSHA carefully reviewed and analyzed the comments and information provided in developing the final rule.

Despite this, some commenters questioned a few aspects of the procedures OSHA used in developing the proposed rule, as well as the quality of the information and data relied on by the Agency. OSHA addresses these comments below.

#### 1. Expert Panel

In 1998, OSHA sponsored an expert panel of representatives from industry, labor, insurance companies, and safety equipment manufacturers and distributors to gather information about patterns of PPE use and payment. Based on the information provided by the panel and OSHA's enforcement experience, the Agency provided quantitative estimates of the difference in PPE usage when employers purchase the PPE versus when employees purchase.

A few commenters raised concerns about OSHA's reliance on the information provided by the panel of experts (See Exs. 12: 173, 188, 189). The Pacific Maritime Association (PMA) and United Parcel Service (UPS) both argued that the panel's activities were conducted in violation of the Federal Advisory Committee Act (''FACA''), 5 U.S.C. app. section 1 *et seq.* (Ex. 12: 173, 189). These comments stated that the panel ''[p]rovided information and discussed employer payment of personal-PE, which * * * falls within FACA's coverage of a '[p]anel * * * established or utilized by one or more agencies, in the interest of obtaining advice or recommendations * * *' ,, (Ex. 12: 173, 189). Pursuant to FACA, notice of advisory committee meetings is to be published in the **Federal Register**, and such meetings are to be made open to the public (5 U.S.C. app. section 10(a)).

These commenters misunderstand the scope of FACA's coverage and the role played by the expert panel in the rulemaking process. FACA does not apply to the expert panel described above. As explained in the regulations issued by the General Services Administration (GSA) to administer FACA, the statute does not apply to ''[a]ny group that meets with a Federal official(s) where advice is sought from the attendees on an individual basis and not from the group as a whole'' (41 CFR 102–3.40(e). Also excluded from FACA is ''[a]ny group that meets with a Federal official(s) for the purpose of exchanging facts or information'' (41 CFR 102.3.40(f)).

In *Public Citizen* v. *U.S. Dept. of Justice*, the Supreme Court examined the reach of FACA and concluded that the statute's definition of ''advisory committee'' ''[a]ppears too sweeping to be read without qualification'' (*Public Citizen* v. *U.S. Dept. of Justice,* 491 U.S. 440, 465 (1989). The Court further emphasized that ''[w]here the literal reading of a statutory term would 'compel an odd result,' * * *we must search for other evidence * * * to lend the term its proper scope'' (*Public Citizen,* 491 U.S. at 454). The Court of Appeals for the DC Circuit provided additional guidance for determining whether a panel constitutes a FACA advisory committee.

> The point, it seems to us, is that a group is a FACA advisory committee when it is asked to render advice or recommendations, as a group, and not as a collection of individuals * * * [C]ommittees bestow * * *various benefits only insofar as their members act as a group. The whole, in other words, must be greater than the sum of the parts. Thus, an important factor in determining the presence of an advisory committee becomes the formality and structure of the group (*Ass'n of Am. Physicians and Surgeons, Inc.* v. *Clinton,* 997 F.2d 898, 913–14 (DC Cir. 1993).

OSHA assembled the expert panel for the purpose of gathering data, anecdotal evidence, and other information from each expert, which the Agency considered in drafting this rule. The panel was comprised of representatives from labor unions, employer associations, safety equipment distributors and manufacturers, and insurance companies. OSHA provided a questionnaire to the panel members so the Agency could learn each expert's opinions on various issues related to

PPE usage.[13] OSHA did not seek a consensus answer to each question but rather assessed each expert's individual response to the questions. The Agency was interested in the range of experiences the different sectors had had with PPE. Furthermore, OSHA did not seek policy advice or recommendations from the panel but simply information to be used in developing the PPE payment rule.

As indicated by the Court of Appeals for the DC Circuit, it is also important to consider the formality and structure of the panel when determining whether or not the panel is a FACA advisory committee (*Ass'n of Am. Physicians and Surgeons, Inc.,* 997 F.2d at 913–14). Here, the members of the expert panel did not meet. To supplement the individual responses of the panel members, six of the eight members participated in one conference call with OSHA officials to discuss issues related to PPE usage, including the different estimates regarding levels of PPE provision by employers. No other meetings were held. Had OSHA sought advice or recommendations from the group as a whole, the Agency would have arranged for longer and more frequent discussions among panel members, enabling the panel to reach agreement and provide consensus-based advice. OSHA, instead, was seeking data and general information about PPE from the representatives of the different sectors, which the Agency weighed in drafting this rule.

The same commenters raised an additional issue related to the transparency of the rulemaking process. The commenters stated that OSHA relied on information and estimates provided by one member of the expert panel who was not identified by name in the report on patterns of PPE usage (Ex. 12: 189). OSHA disagrees that it did not provide the public sufficient information to comment on the benefits estimates in the proposed rule.

Pursuant to the request in the questionnaire submitted to the panelists, Dr. Jeffrey Stull provided estimates of the incidence of non-use or misuse of PPE under different payment schemes (See Patterns of PPE Provision Final Report). He estimated a 40 percent incidence rate of non-use or misuse of employee-purchased PPE and a 15 to 20 percent incidence rate of non-use or misuse of employer-purchased PPE. As explained in the proposal, OSHA adopted these estimates because they were consistent with information provided by the other panelists as well as the Agency's own enforcement experience.

During the public hearing held on August 10, 1999, OSHA's opening statement set forth the Agency's belief that the PPE Payment rule would prevent thousands of injuries each year that result from misuse or nonuse of PPE when employees must purchase the PPE for themselves (Tr. 15). Additionally, in the statement, OSHA specifically requested comments on the safety advantages associated with employer-purchased PPE.

> We would also very much like your comments on the results of the PPE survey, which are in the Docket, and we would like to know whether you have evidence, either in qualitative or quantitative terms, showing that employee-owned PPE is less protective than employer-provided PPE. Are there, for example, particular instances where employees have jeopardized their safety and health to avoid the financial loss they would experience if they had to pay for their own PPE? Is there evidence to suggest that employees take better care of PPE that they themselves must purchase? Alternatively, is there evidence that employees neglect to take care of PPE paid for by their employers? (Tr. 23).

Following this statement, OSHA took questions from the public. During this questioning period, none of the attendees posed questions or expressed concerns about OSHA's estimates of the safety advantages of employer-purchased PPE.

During this same hearing, Dr. Stull testified as OSHA's designated PPE expert. In accordance with the hearing procedures published in the **Federal Register**, Rescheduling of Informal Public Hearing, 64 FR 27941 (May 24, 1999), on July 15, 1999, OSHA provided notice to the Docket Office of Dr. Stull's intent to appear as OSHA's expert witness along with his curriculum vitae (Ex. 13: 16). On July 23, 1999, the full text of Dr. Stull's testimony was submitted to the Docket Office for review by the public (Ex. 13: 16–1).

After his prepared testimony, Dr. Stull also took questions. A representative of the AFL–CIO asked for specific data regarding the frequency of use of PPE off of the jobsite (Tr. 73). Subsequently, an attorney from the Office of the Solicitor asked Dr. Stull about the safety advantage of requiring the employer to pay for PPE (Tr. 80). Even though Dr. Stull was asked specifically to discuss data on PPE use and then to address the benefits of employer-purchased PPE, none of the attendees—including those commenters above that questioned OSHA's benefits estimate—took the opportunity to ask the witness about data related to the safety benefit of employer-purchased PPE.

In short, OSHA provided ample opportunity for the public to pose questions to the Agency's representatives as well as the Agency's designated PPE expert about the specific figures used in its benefits analysis, but none did so. Furthermore, no commenters offered alternative point estimates of the safety benefits of employer payment for PPE. The rulemaking process and OSHA's analyses were transparent. The public was not deprived of the opportunity to comment or question the Agency's benefits analysis.

2. Data Quality

The Society for Human Resource Management (SHRM) expressed concern about the quality of the data that OSHA relied on in performing the benefits estimate in the proposal, stating ''SHRM questions whether the proposed * * * rule will significantly advance workplace safety since it is not shown to be based upon sound scientific studies nor is it established that the data was gathered pursuant to the Data Quality Act requirements'' (46: 43).

The Department of Labor's ''Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Department of Labor'' (Guidelines) (Available at *DOL.gov* at *http://www.dol.gov/cio/programs/InfoGuidelines/InfoQualityGuidelines.pdf*) establish Departmental guidance for ensuring that the quality of information disseminated by the Department meets the standards of quality, including objectivity, utility, and integrity. The Guidelines also contain specific principles for agencies to follow when analyzing safety and health risks. While much of the information used in the final rule was developed prior to publication of the guidelines, the information was gathered using techniques that meet the guidelines.

Contrary to the suggestion of SHRM, the information presented to support the safety benefits of the final rule fully complies with the Guidelines. The benefits analysis in the final rule is based on the best available evidence. In addition to the expert panel described above, in 1999, OSHA engaged Eastern Research Group (ERG) to perform a large-scale telephone survey to collect industry-specific data describing PPE usage patterns and the extent to which employers pay for OSHA-required PPE. The results were published in the PPE Cost Survey report on June 23, 1999 and made available in the Docket Office (Ex.

[13] The responses are summarized in the main text of the Patterns of PPE Provision Final Report, and the complete set of responses from each expert is provided in Appendix A of the Report (Ex. 1).

14). OSHA subsequently published a **Federal Register** notice asking the public to comment on the survey results (64 FR 33810–33813, June 24, 1999).

ERG obtained complete responses from 3,722 respondents. Three basic types of information were collected about eight categories of PPE: (1) If the PPE is used at the respondent's establishment; (2) how many employees use the PPE; and (3) who pays for the PPE (Ex. 12: 14). The survey data provide industry-specific estimates of the numbers of employees and establishments currently using each PPE type. The data also provide industry-specific estimates of the numbers of employees and establishments at which employers pay the full cost of the equipment, the numbers at which employees pay for the equipment, and the numbers at which employers and employees share the costs of PPE.

OSHA relied heavily on this data, as well as the extensive record that was compiled during the rulemaking and updated Bureau of Labor Statistics data, to develop the final rule and to determine the costs, benefits, and economic impacts of the rule. This is precisely the type of information the Guidelines require agencies to utilize when evaluating risks. The Guidelines specifically require agencies to use ''[d]ata collected by accepted methods or best available methods'' when analyzing safety and health risks. Accepted methods include the ''[t]estimony of experts'' and ''relevant analyses'' of pertinent information or data (Guidelines, p. 16). OSHA is confident that it has relied on the best available information in developing this rule and that the information presented complies with the Guidelines.

*B. Turning in Old Equipment*

A few commenters raised the issue of ''exchange systems,'' where an employee is required to turn in PPE that is no longer functional when the employer provides replacement PPE (See, *e.g.,* Exs. 12: 65, 167, 183). The SCA commented that:

> Many shipyards require employees to turn in their non-serviceable PPE upon receiving new equipment. Employer review of used PPE has proven to reduce injury at shipyards by providing employers insight into how equipment is used by examining what parts of the equipment are worn. This practice allows employers to identify poor technique and institute engineering controls that can reduce the incidence of injury. SCA recommends that the rule protect the employer's right to continue this practice (Ex. 12: 65).

OSHA does not prohibit SCA's practice and OSHA does not object to employers requiring employees to turn in employer-owned, worn-out PPE when issuing replacement PPE. Analyzing the PPE to look for wear patterns or other characteristics that can help implement improved engineering controls or obtain more suitable PPE would be a useful method for improving an employer's safety and health program. However, the Agency notes that these types of exchange programs need to be set up so that employees are not denied needed replacement PPE. For example, if an employee's PPE is damaged due to events occurring at work, the employer cannot deny replacement by establishing a work rule that turned-in equipment must be in serviceable condition. Such a policy would subvert the final employer payment rule and the underlying PPE requirements.

*C. Guidance To Assist Employers With PPE Issues*

The SGIA raised the issue of employers who have questions about OSHA's PPE requirements, suggesting that:

> OSHA needs to provide guidance and other training aids to assist employers in the proper selection, care and use of PPE. The vast majority of printers are very small businesses. In fact 80% having less than 20 employees, and do not possess the resources to undertake a proper evaluation themselves or hire an outside consultant to do it for them. OSHA needs to provide basic and useful information on this subject (Ex. 12: 116).

OSHA agrees that training aids are needed to help employers, and most especially smaller employers, with a variety of PPE issues, and the Agency has various resources and materials available to help provide PPE information. OSHA has two Internet topics pages devoted to PPE, one for construction and another for general industry employers (look for ''personal protective equipment'' under the alphabetic index at *http://www.osha.gov*). These include several resources, including the OSHA PPE standards, electronic aids called e-tools that will help employers with selection and other PPE issues, and links to other PPE resources on the Internet. OSHA also provides Publication 3151—Personal Protective Equipment to employers and employees free of charge. The publication discusses PPE hazard assessment and selection, employee training, and various types of PPE that may be needed to protect employees. Additionally, PPE is mentioned in many of OSHA's hazard specific publications, such as those dealing with bloodborne pathogens and chemical hazards.

While OSHA has provided the public with a variety of resources to help them with PPE selection, training, and use, the Agency will continue to look for ways to assist employers and employees with PPE issues. The Agency will continue to provide information on the Internet, and welcomes any specific suggestions on products or training aids that would assist employers and employees with PPE issues. However, the ultimate responsibility for ensuring the PPE is adequate rests with the employer.

*D. Transmission of Disease Through Shared Equipment*

The Framing Contractors Association expressed a concern about PPE that is shared among various employees and the potential for contaminants or infectious disease to be passed from one employee to the next. Their specific comment was ''We are also concerned that if equipment is shared or reused by another person, there could be a potential for the transfer of some diseases or possible contagious infections caused by the poor hygienic conditions of sweat bands in the hard hats or contaminates on eye glasses'' (Ex. 12: 207).

This is a long standing concern that occurs when PPE is used by more than one employee. That is why OSHA's standards require PPE to be kept in a sanitary condition. The standards do not prohibit the use of shared PPE; therefore it is critical that employers ensure that PPE is sanitized before it is provided to another employee.

*E. Taking Home Contaminants on Clothing*

The Building and Construction Trades Department noted that an employee's family can be exposed to dangerous materials when an employee takes them home on his or her PPE, noting:

> [b]ecause employers, employees, and OSHA do not always recognize the inherent hazards present in construction work, construction workers routinely expose their families unknowingly to contaminants from the job. Sometimes, these contaminants cause adverse health effects to their families * * * If employers provide and control the use of PPE effectively, these hazards could be significantly reduced or eliminated (Ex. 12: 218).

OSHA agrees that employees and their families can be exposed to hazardous substances inadvertently removed from the worksite on an employee's PPE and many of OSHA's substance specific standards require employers to prevent such contamination by controlling workplace clothing, providing showers, and

separate dressing areas. However, there is not a comprehensive requirement for employers to control all hazardous substances in this manner. The Agency recommends that employers take every effort to limit the spread of chemical contaminants through these and other mechanisms.

## XIII. Other Alternatives Considered During the Rulemaking Process

During the development of the final standard, OSHA considered four alternatives: (1) An exception for PPE that is personal in nature and customarily worn off the job; (2) an exception for PPE used as a tool of the trade; (3) requiring payment for all PPE without exception; and (4) exempting high-turnover industries. For the reasons discussed below, OSHA rejected these alternative approaches.

### *A. Requiring Employers To Pay for All PPE Except PPE the Employer Demonstrated Was Personal in Nature and Customarily Worn Off the Job*

The proposed rule specifically requested comment on alternative regulatory text that would have required employers to pay for all PPE except equipment that the employer demonstrated was personal in nature and customarily used off the job (64 FR 15416). A few commenters reacted favorably to this performance language alternative[14]. The National Rural Electric Cooperative Association supported the alternative approach, stating that ''[c]learly, any attempt to list all PPE available for exception on a personalized, off-the-job rationale is doomed to failure * * * [A]ny clarification of the general rule should be by way of restating clearly the general rule and the traditional exception available for all PPE that is personal and able to be used off the job'' (Ex. 12: 221). Another commenter echoed this opinion, stating that ''OSHA may be starting down a slippery slope by excluding certain items considered personal in nature and not others. There are numerous types of PPE including gloves, clothing, hearing protection devices, footwear other than safety-toe footwear, which can be considered personal in nature'' (Ex. 12: 134). Finally, the ASSE stated that ''[i]f the Agency becomes involved in trying to prescribe individual rules for PPE such as [for] welders, lumber industry workers, etc. * * * [we] foresee the agency eventually being in the quagmire of PPE deviations, exceptions, and directives'' (Ex. 12: 110).

A representative of the UAW testified in opposition to the performance oriented approach:

> The notion that certain PPE items are personal in nature and customarily used off the job is vague, overbroad, ambiguous, hard to define, and will generate major difficulties in compliance and enforcement. Molded earplugs, for example, are more personal than shoes and may also be worn to the employee's benefit off the job. * * * The UAW believes the alternative regulatory text on exceptions is worse than the proposed text. * * * However, if the agency insists on exceptions in the final rule, we would prefer the proposed language which would very specifically identify the excepted PPE rather than the alternative text (Tr. 242–244).

This view was shared by others as well (See, *e.g.,* Exs. 12: 230, 24A, 24B; Tr. 281–282, Tr. 344). In its written comments, ISEA stated that the proposed alternative would be ''difficult to define and interpret,'' and that exempting PPE that is personal in nature is ''oxymoronic'' given that PPE must fit the individual employee in order to be effective against hazards (Ex. 12: 230).

OSHA agrees with these commenters that the proposed alternative performance language is too vague. It provides insufficient guidance to employers and employees as to what PPE the employer should pay for in a particular circumstance. Furthermore, it would be difficult for compliance officers attempting to enforce the rule, since they would have no clear basis for evaluating the employer's determination that the exception was met in a given case. OSHA is concerned that the vagueness of the alternative text would result in less protection for employees. Without clearly specifying the parties'' responsibilities, safety precautions may not be taken.

In contrast, the final rule sets forth clearly the PPE for which the employer is not required to pay. These exceptions are supported by the rulemaking record. Employers and employees will clearly understand the PPE that must be paid for by employers and the PPE for which employers and employees may negotiate payment. As discussed above, OSHA believes this clarity will result in even greater benefits for employers and employees.

### *B. Adding an Exception for PPE Meeting Criteria Reflecting Its Use as a Tool of the Trade*

OSHA also considered adding a specific exemption from the employer payment rule for PPE considered ''tools of the trade,'' where the employer could demonstrate that (1) the PPE could only be used by one employee for reasons of customized fit or hygiene, and (2) it is customary in the industry for employees to select and pay for the PPE. In response to OSHA's 1999 proposal, several commenters argued that employers should not be required to pay for PPE items that employees now customarily purchase themselves and take with them from job to job.

After reviewing these comments, OSHA determined that more information was needed on the nature and extent of such customary practices to fully evaluate the impact of a final rule on various industries. OSHA reopened the rulemaking record on July 8, 2004 and solicited comment on whether and how a final rule should address situations where PPE has been customarily provided by employees (69 FR 41221). The Agency received nearly 100 written comments in response to the notice to reopen the record. OSHA received a variety of opinions on tools of the trade, however most stakeholders considered the idea of exempting certain tools of the trade from an employer payment requirement as problematic.

Commenters representing labor interests generally opposed providing an exception from the employer payment requirement for tools of the trade. To the extent that any particular tool of the trade is PPE, these commenters stated that employers should be responsible for providing and paying for such equipment. They also cautioned that any effort to classify PPE as tools of the trade was inappropriate and would lead to confusion (Exs. 45: 1, 18, 21, 25, 32, 53). James August of AFSCME wrote:

> Further discussion on the issue of tools of the trade will cloud rather than clarify the issues of what constitutes PPE and employers' duty to provide safe working conditions. The term tools of the trade is inappropriate for OSHA to use in the context of a rule requiring employers to pay for most PPE. Tools of the trade means equipment that is used to perform a specific job or task. Personal protective equipment, by contrast, is not used to accomplish a task, but rather to protect the worker from the hazards that are associated with the job (Ex. 45: 1).

ISEA expressed a similar view, stating that ''[a] tool enables a worker to perform a task. PPE protects the worker by using the tool'' (Ex. 46: 31).

[14] With a performance-oriented approach, the Agency identifies a goal to be achieved but does not specify the means by which it must be achieved, in order to provide employers flexibility. See, *e.g., Secretary of Labor* v. *Pike Elec.,* No. O.S.H.R.C. 06–0166, 2007 WL 962965, at *10 (O.S.H.R.C. Feb. 5, 2007) (''The Secretary promulgated § 1910.269(n)(3) as a performance standard, in which she specifies the hazard to be protected against while giving the employer some leeway in achieving the desired result.'')

Some employer representatives commented with similar views. These representatives stated that what is considered a tool of the trade varies greatly by industry and even within an industry. Therefore, OSHA would have a difficult time specifically identifying, in a single rule, all of the different types of PPE that fall into this category (Exs. 45: 3, 17; 46: 1, 3, 9, 13). Many employer representatives, however, believed that some PPE should be excluded from an employer payment requirement if the PPE meets certain criteria, including some criteria that are typically used to describe tools of the trade. For example, ORC stated:

> ORC views the criteria that ''the PPE is expected to be used by only one employee for reasons of hygiene or personal fit'' as reasonable. ORC also views the concept of working for multiple employers as reasonable. Equipment that must be fitted to an individual worker or which becomes, through use, unsuitable for use by another worker for hygienic reasons, coupled with a worker's employment by, and frequent movement between, several different employers, are criteria which argue against the general requirement that each employer has an absolute responsibility to provide and pay for all PPE (Ex. 46: 47).

ORC recommended that OSHA include a general exemption for PPE meeting these criteria, but that OSHA not include an exemption based on customary industry practice, as that would compromise the clarity of the rule.

Two other representatives described common practices in their industries with respect to payment for PPE. The International Association of Drilling Contractors stated that employees in the oil and gas well industry provide their own hard hats, safety boots, gloves, coveralls (work clothes), general-use work gloves, winter protection for cold weather and rain gear, including rubber boots, for wet weather (Ex. 46: 30). A written submission from the Tree Care Industry Association stated that ''[i]t is a longstanding practice for the employee to show up for work in boots and other work attire that he or she has paid for'' (Ex. 46: 44). The commenters also explained that employees frequently move to perform work for multiple employers.

Two representatives of electric utilities stated that it was common practice for employers to require employees to provide climbing equipment including lineman's belts, leather work gloves, gaffs, hooks, and boots (Exs. 45: 37, 42). Several other general industry employers stated that it was customary for employees to provide certain types of PPE and supported an exemption from employer payment for those items (Exs. 45: 28, 30, 52; 46: 5, 12). A submission from a large telecommunications company argued that while ''personal'' items such as gloves, work clothes, and footwear should be exempt from a payment requirement, all other PPE, including climbing equipment, should be paid for by the employer (Ex. 45: 13).

OSHA also received many comments from representatives of the construction industry who supported an exemption for PPE considered to be tools of the trade. However, these comments indicate that the kinds of PPE regarded as tools of the trade vary considerably among different segments of the construction industry. One contractor who builds concrete shells for high-rise structures stated that employees hired as carpenters are required to have their own 4-point harness system, 2-legged lanyards, and positioning chains or devices (Ex. 45: 5). A representative from the NAHB wrote:

> There are several articles of PPE that are considered ''tools of the trade'' in residential construction. These include: hard hats, safety glasses, work boots/shoes, and general duty gloves. There are several reasons why these articles of PPE are thought to be tools of the trade and should be excluded. First, it is customary for workers to bring these items to the job-they are normally supplied (and paid for) by workers and are carried with them from job to job or from employer to employer. Workers are typically required to supply their own tools and equipment for the job they are performing and PPE is considered just another tool in their toolbox (Ex. 45: 26).

According to a representative of the Independent Electrical Contractors, Inc., practices vary among establishments engaged in electrical construction, with some employers paying for PPE while others require employees to provide hard hats, safety glasses, gloves, boots, and appropriate clothing (Ex. 45: 36).

Several representatives of the maritime industry supported an exemption for welders'' PPE, indicating that it is customary in the industry for welders to provide their own PPE. A representative from the SCA stated:

> SCA believes that safety equipment considered to be tools of the trade should be excluded from the employer requirement for payment. SCA members consider Personal Protective Equipment (PPE) and tools of the trade to be two separate categories of equipment. PPE is safety equipment provided by the employer that generally can be sanitized and reissued. A tool of the trade is viewed as a piece of safety equipment that is highly personal in nature and generally can not be used by another employee * * * Tools of the trade for welding operations, such as face shields/goggles, fire resistant shirts/jackets, sleeves and leather gloves have predominantly been provided by the employee because of the equipment's personal nature. The industry considers these to be tools of the trade because it is neither feasible for a different employee to wear the welders'' gloves and leathers each day for hygienic reasons, nor is it feasible that upon resigning from the position that an employee will leave the leathers behind to be worn by another individual. (Ex. 46: 32).

A submission from Northrop Grumman Ship Systems (NGSS) reflected a similar view. With respect to welding leathers, welding jackets, welding sleeves and gloves and welding shields, NGSS stated:

> [t]his equipment presents classic examples of ''tools of the trade,'' which employees traditionally bring with them to the job and take with them when they leave it. There is good reason for this as these items absorb perspiration and come into direct contact with the employee's skin. As such, this equipment would be unsuitable for reissue to another employee.
>
> Similarly, other items such as hardhats and safety glasses are individual and personal in nature since they must be adjusted to conform to the employee's physical dimensions. They, too, must be sanitized and repaired prior to reissue. With approximately 20,000 employees, NGSS would incur exorbitant expenses. Moreover, the traditionally high turnover rate intrinsic to shipbuilding aggravates this problem (Ex. 46–39).

OSHA believes that a PPE payment rule exempting equipment meeting the criteria described above would fail to clearly indicate to employers and employees when PPE had to be paid for by employers, and would likely result in the Agency having to render numerous interpretations of the rule as it applied to specific situations. For example, while there was some agreement in the record that certain climbing gear and welding equipment were considered tools of the trade in some industries, the record reflects considerable disagreement as to the other types of PPE that are considered tools of the trade.

The record also shows that PPE considered tools of the trade in one industry may not be considered tools of the trade in another industry. Therefore, while welding equipment may be considered tools of the trade in parts of the maritime industry, they may not be considered tools of the trade in general industry (*e.g.,* manufacturing plants). There is also evidence in the record that even within the same industry, there is disagreement as to what is considered a tool of the trade. Employers would have great difficulty determining whether a particular type of PPE is considered a tool of the trade and whether they would be responsible for paying for it.

It would also be difficult for OSHA to verify the types of PPE that are customarily provided and paid for by employees in a given industry. These differences in the way that certain PPE is treated in specific industries makes this alternative impractical. Accordingly, OSHA believes that this alternative is too vague and would create confusion among employers and employees.

*C. Requiring Payment for All PPE Without Exception*

OSHA considered requiring employers to pay for all PPE, without any exceptions. Many commenters supported this alternative (See, *e.g.*, Exs. 12: 100, 19, 22A, 25, 26A, 37; Tr. 173–174, Tr. 241, Tr. 320, Tr. 366, Tr. 463–464). They argued that PPE is part of the hierarchy of controls. Therefore, just as OSHA would not ask an employee to pay for engineering or administrative controls, the Agency should not expect employees to pay for any PPE. For example, the AFSCME strongly objected to any exceptions, stating:

> According to OSHA's own reasoning, there is no rational basis for distinguishing the use of PPE from other types of controls, and the responsibility of paying for the protection should, in each case, rest with the employer. Safety-toe protective footwear and safety eyewear are clearly forms of PPE. Therefore, employers should be required to pay for safety-toe footwear and safety eyewear. Employers should be required to pay for such protective foot and eyewear regardless of whether such footwear is worn off the job-site (Ex. 12: 100).

During the public hearing, Jackie Nowell, Director of the Occupational Safety and Health Department of the UFCW testified:

> OSHA standards are not ambiguous about who pays for engineering or administrative controls, and we don't believe they are ambiguous about the payment for PPE. The OSH Act requires employers to provide a safe and healthy workplace for American workers.
>
> Again, employers are mandated to control hazards through a hierarchy of controls, preferably engineering and administrative. And when those fail to abate or reduce the hazard, then the employer is allowed to utilize PPE, but also to pay for it (Tr. 173–174).

In their post-hearing comments, the United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) also urged OSHA to eliminate the proposed exemptions. They argued:

> The UAW believes that the employer's responsibility to pay for necessary and required PPE is consistent with both OSHA law, logic and good safety practice * * * [M]any states already interpret their standards to require employers to pay for PPE * * * Treating PPE differently from other controls is illogical and violates the hierarchy of controls * * * OSHA's proposal to continue the exemption for shoes and glasses is a lost opportunity to correct a previous error, and restore a logical scheme for allocating costs of protection against hazards (Ex. 23).

A representative of the Teamsters stated, ''[w]e believe that all PPE required to protect employee health and safety should be paid for by the employer regardless of whether they are personal in nature and/or customarily used off the job'' (Tr. 342).

OSHA rejected this alternative for three main reasons. First, as explained in the Legal Authorities section, OSHA does not agree that the OSH Act can be read to require employers to pay for all PPE without exception. The Agency does not believe that Congress intended for employers to pay for the types of PPE exempted in the standard, such as everyday work clothing and weather-related equipment. Second, requiring employer payment for all PPE without exception would not be a cost effective means of protecting employees. The cost of requiring employers to pay for safety shoes, certain everyday clothing, weather-related protective gear, sunscreen, etc. would be quite high and OSHA believes unnecessary given existing practices in most industries. The Agency estimates that requiring employers to pay for protective safety-toe footwear would have added $220 million to the cost of the final rule. Finally, the PPE exempted in the final rule is the type of PPE OSHA has historically exempted from employer payment. OSHA sees no reason based on the rulemaking record here, to deviate from its longstanding position that certain PPE should be excluded from employer payment.

*D. Exempting High-Turnover Industries From an Employer Payment Requirement*

Finally, OSHA considered exempting high-turnover industries from the PPE payment requirement. The record shows that one common reason that employers do not pay for PPE is high turnover, such as in situations involving day labor, or job- or situation-contingent hiring. OSHA received many comments expressing concern about the costs to employers in high-turnover industries of the payment requirement.

According to the National Maritime Safety Association (NMSA) and the Pacific Maritime Association (PMA), an employer-payment requirement is impractical in a hiring hall industry because each employer's work force changes from day to day depending upon its manpower needs and the seniority, skills and personal preferences of available employees (Exs. 12–172, 12–173). The NMSA stated further that it was not possible to devise a system in which employer-purchased PPE could be distributed to employees at the beginning of a work-shift, collected at the end of a work-shift, and sanitized and redistributed to different employees at the beginning of the next shift (Ex. 12: 172). The NMSA asserted that employers would have no choice but to issue new PPE to employees every day at substantial expense and with no additional safety benefit (Id.).

The United States Maritime Alliance Limited (USMX) argued that a generic PPE payment requirement would be difficult for the maritime industry given many employees work for multiple employers:

> [I]n the marine cargo handling industry, labor pools are often utilized to assign labor to a certain workplace. It is not uncommon for a single employee to work at a different employer's facility from day to day or even shift to shift. As such, any standard that requires action, such as payment for PPE on an ''employer'' creates significant confusion in an industry where a single employee may have several employers. That is one reason why local port management associations are often involved in providing such equipment (Ex. 45: 40).

The NAHB made a similar argument on behalf of its members. The NAHB stated that some firms process 15 to 50 employees a week and that many of them quit or are terminated in a matter of hours. Providing new PPE to each new employee at a cost of $15 per person would be burdensome, the NAHB argued, and would not lead to greater use of the equipment (Ex. 12: 68). A representative of the oil and gas drilling industry reported that the industry traditionally has a high turnover rate, with one firm reporting an average turnover of almost 50 percent (Ex. 12: 9). A firm in this industry maintained that the cost of providing three to four pairs of cotton gloves per week to its 4,300 well-servicing employees would cost $804,960 annually and would have a significant economic impact (Ex. 12: 19).

OSHA analyzed this alternative and determined that it was not appropriate to deny the benefits of the final rule to certain employees simply because they worked in industries with ''high turnover.'' The OSH Act does not contemplate exempting employers from their obligations to protect employees for that reason alone. This is particularly true when there is no evidence that the final rule will create

feasibility problems in any of the industries affected.

Furthermore, such an exemption would be impractical. The rulemaking record did not provide enough information for OSHA to specifically identify high turnover industries for purposes of the exemption. In particular, turnover depends greatly on size of employer, occupation, and geographic area. Thus, for some large employers in a particular industry, turnover may be low; however, for smaller employers in the same industry there may be extremely high turnover. Furthermore, in the same industry, there might be significant differences in turnover depending upon particular jobs. So, welders in the construction industry may experience great turnover, but crane operators may not. Finally, in some areas of the country, there is high turnover in a particular industry, but only moderate turnover in the same industry in another area of the country. These real differences in turnover rates make it difficult for OSHA to specifically exempt certain industries from an employer payment requirement.

OSHA was also unable to identify a rate that it could consider ''high turnover'' for purposes of the exemption. Turnover rates vary greatly; they can be as low as 5–10 percent or as high as 200 percent a year. The Agency was not able to identify an appropriate cut-off point for high turnover that could be used as a basis for exempting industries from an employer payment requirement. Furthermore, turnover rates fluctuate yearly. Thus, in one year an industry might have a 50 percent turnover rate, but a 25 percent rate in the following year. The Agency was unable to devise alternative language that could account for these fluctuations while providing employers with sufficient notice of their compliance obligations. For all of these reasons, OSHA rejected this alternative.

## XIV. Legal Authority

### *A. Introduction*

This rule is limited to addressing who must pay for the PPE that is already required by existing PPE standards. The rule does not require any new type of PPE to be purchased. Nor does the rule impose any new requirements for PPE use.

The final rule is justified on two different bases. First, the rule is interpretive in that it clarifies and implements a pre-existing employer payment requirement implicit in the statutory scheme and the language of OSHA's PPE standards. Part B of this section discusses these implicit statutory and regulatory payment schemes. Second, the rule is an ancillary provision further reducing the risks addressed by the existing PPE standards. To be justified as an ancillary provision, the rule need only be reasonably related to the PPE standards' remedial purpose. Part C of this section discusses the final rule's health and safety benefits.

### *B. The Final Rule Codifies an Employer Payment Requirement Implicit in the OSH Act and the Wording of the Existing PPE Standards*

#### 1. An Employer Payment Requirement Is Derived From the Statutory Framework

In the Agency's view, the final rule does no more than clarify a requirement legally implicit under the Act. The Act makes employers solely responsible for the means necessary to achieve safe and healthful workplaces. This includes financial responsibility. Employers are therefore responsible for providing at no cost to their employees the personal protective equipment that is required because of workplace hazards.

The language of the Act and its framework are indicia of this requirement. At section 2(b) (29 U.S.C. 651(b)), Congress declared its purpose and policy to ''[a]ssure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources.'' To that end, Congress authorized the Agency to issue safety and health standards and required each employer to comply with the standards (29 U.S.C. 654(a)(2)).

The Act defines an occupational safety and health standard as one which ''[r]equires * * * the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful places of employment'' (29 U.S.C. 652(8)). Congress gave to OSHA broad discretion to set standards to prevent occupational injury and illness and to charge to employers the cost of reasonably necessary requirements. *United Steelworkers* v. *Marshall*, 647 F.2d 1189, 1230–31 (DC Cir. 1980), cert. denied, 453 U.S. 913(1981) (Lead).

In addition to the statute's requirement that employers comply with standards, sections 9, 10 and 17 of the Act (29 U.S.C. 658, 659, 666) set out a detailed scheme of enforcement solely against employers. *Atlantic and Gulf Stevedores, Inc.* v. *OSHRC*, 534 F.2d 541, 553 (3d. Cir. 1976). Sections 9(a) and 10(a) (29 U.S.C. 658(a), 659(a)) provide for the issuance of citations and notifications of proposed penalties only to employers. Section 10(a) (29 U.S.C. 659(a)) refers only to an employer's opportunity to contest a citation and notification of a proposed penalty. Section 17 (29 U.S.C. 666) provides for the assessment of civil monetary penalties only against employers. OSHA's enforcement authority against employers—not employees—underscores Congress's intent to hold employers responsible for creating safe and healthful working conditions.

This statutory scheme is further supported by the OSH Act's variance provisions, which provide that employers—but not employees—may apply to OSHA for a temporary or permanent variance from compliance with OSHA standards. Temporary variances allow employers additional time to come into compliance with a standard when the employer demonstrates that it cannot do so by the effective date due to the unavailability of professional or technical personnel or materials or because of necessary construction or alteration of facilities (29 U.S.C. 655(b)(6)). Permanent variances provide employers with alternative means to protect their employees in lieu of specific OSHA standards, provided these alternative measures are as protective as the measures set forth in the relevant standards (29 U.S.C. 655(d)). These provisions recognize that employers are responsible for complying with, and paying for compliance with, OSHA standards and provide them flexibility in achieving this compliance.

The Supreme Court confirmed that Congress intended employers to pay for compliance with safety and health standards. In reviewing OSHA's cotton dust standard, the Court interpreted the legislative history as showing that Congress was aware of the Act's potential to impose substantial costs on employers but believed such costs to be appropriate when necessary to create a safe and healthful working environment (*American Textile Mfrs. Inst., Inc.* v. *Donovan*, 452 U.S. 490, 519–522, 101 S. Ct. 2478, 2495–96, 69 L.Ed.2d 185 (1981) (*Cotton Dust*). See also *Forging Industry Ass'n.* v. *Secretary of Labor*, 773 F.2d 1436, 1451 (4th Cir. 1985) (Noise); Lead 647 F.2d at 1230–31).

Several statements by members of Congress demonstrate that employers would be expected to bear the costs of compliance with OSHA standards. Senator Yarborough stated that ''[w]e know the costs [of complying with the Act] would be put into consumer goods but that is the price we should pay for the 80 million workers in America.'' (S. Rep. No. 91–1282, 91st Cong., 2d Sess. (1970); H.R. Rep. No. 91–1291, 91st

Cong., 2d Sess. (1970), reprinted in Senate Committee on Labor and Public Welfare, Legislative History of the Occupational Safety and Health Act of 1970, (Committee Print 1971) at 444. Senator Cranston stated:

> (T)he vitality of the Nation's economy will be enhanced by the greater productivity realized through saved lives and useful years of labor. When one man is injured or disabled by an industrial accident or disease, it is he and his family who suffer the most immediate and personal loss. However, that tragic loss also affects each of us. As a result of occupational accidents and disease, over $1.5 billion in wages is lost each year (1970 dollars), and the annual loss to the gross national product is estimated to be over $8 billion. Vast resources that could be available for productive use are siphoned off to pay workmen's compensation and medical expenses * * *. Only through a comprehensive approach can we hope to effect a significant reduction in these job death and casualty figures (Id. at 518–19).

Senator Eagleton stated it even more clearly: ''The costs that will be incurred by employers in meeting the standards of health and safety to be established under this bill are, in my view, reasonable and necessary costs of doing business'' (116 Cong. Rec., at 41764, Leg. Hist. 1150–1151).

Furthermore, Congress considered uniform enforcement against employers crucial because it would reduce or eliminate the disadvantage that a conscientious employer might experience where inter-industry or intra-industry competition is present. ''[M]any employers—particularly smaller ones—simply cannot make the necessary investment in health and safety, and survive competitively, unless all are compelled to do so'' (Leg. Hist. at 144, 854, 1188, 1201).

Nothing in the legislative history suggests that Congress intended that compliance costs should be borne by employees. Congress sought to maintain the standard of living of working men and women and did not contemplate that employees' pay and benefits would be sacrificed to achieve safe and healthful workplaces. For example, the Senate report notes that employers are bound by the ''general and common duty to bring no adverse effects to the life and health of their employees throughout the course of their employment. Employers have primary control of the work environment and should ensure that it is safe and healthful'' (Leg. Hist. at 149).

Therefore, as seen in the statutory text and legislative history, Congress conclusively determined that OSHA regulation is necessary to protect employees from occupational hazards and that employers should be required to reduce or eliminate significant workplace health and safety threats. This includes a concomitant financial responsibility to pay for the measures necessary to that end. Congress plainly viewed the costs of compliance with the Act as a type of ordinary business expense that employers would be expected to bear in order to reduce employee exposure to safety and health hazards (*Cotton Dust*, 452 U.S. 490, 519–521 (1980)).

PPE is a means to ensure the safety and health of employees, just as engineering, administrative, and work practice controls are. There is no principled distinction between these other control methods and PPE for purposes of cost allocation (See *UAW* v. *Pendergrass*, 878 F.2d 389, 400 (D.C. Cir. 1989)). For example, in the Cancer Policy rulemaking in 1980, OSHA found no distinction, for payment purposes, between engineering controls and personal protective equipment necessary to protect employees from exposure to carcinogenic substances:

> The requirement that employers pay for protective equipment is a logical corollary of the accepted proposition that the employer must pay for engineering and work practice controls. There is no rational basis for distinguishing the use of personal protective equipment [from other controls]. The goal in each case is employee protection; consequently the responsibility of paying for the protection should, in each case, rest on the employee (45 FR 5261, Jan. 22, 1980).

Many commenters to the rulemaking agreed that the OSH Act requires employer payment for PPE. The ASSE agreed that the OSH Act's mandate requiring employers to provide a safe and healthful workplace for their employees ''[i]ncludes the financial obligation of employers to provide controls to address hazards that could cause injury or physical harm to their employees. The majority of ASSE members reviewing this proposal generally agreed that most PPE is covered under the Act'' (Ex. 12: 110).

AFSCME stated that it ''wholeheartedly concurs'' with OSHA's rationale that ''[t]he requirement that employers pay for PPE is a logical corollary of the accepted proposition that the employer must pay for engineering and work practice controls'' (Ex. 12: 100).

The International Brotherhood of Teamsters stated that ''[r]equiring employers to provide personal protective equipment at no cost to employees will only clarify the OSH Act's implicit legal requirements and its legislative history, as discussed in the preamble. The OSH Act clearly charges employers with the responsibility for achieving safe and healthful workplaces'' (Ex. 12: 190).

The AFL–CIO commented that ''[t]he language, intent and legislative history of the Act all support the principle that employers are required to provide and pay for the measures necessary to protect workers by controlling hazards which pose a risk of injury, illness, or death to their employees'' (Ex. 12: 19–1). Therefore, the AFL–CIO supports a rule that ''codifies an employer's responsibility to pay for personal protective equipment'' (Id.).

Some commenters, however, disagreed that the OSH Act sets forth requirements on cost allocation. As a matter of statutory construction, some commenters suggested that the only place Congress set forth requirements related to costs was in section 6(b)(7) for medical examinations. Section 6(b)(7) provides that ''[a]ny such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost'' (29 U.S.C. 655(b)(7)). OSHA disagrees with these commenters.

These comments, taken to their logical extreme, suggest that employers would pay for nothing under the Act except medical examinations or other tests. That means that employees could be asked to pay for everything else—their own training, engineering controls, air sampling, the setting up of regulated areas, housekeeping measures, recordkeeping, and all other protective measures—required under the Act and OSHA standards. Such a reading of the Act would be contrary to the purpose and legislative history of the Act placing responsibility for compliance with employers, as discussed above. The argument was in fact rejected in *Lead*, 647 F.2d at 1232:

> Th[e] maxim (expressio unius est exclusio alterius) [ ''the expression of one is the exclusion of another''] is increasingly considered unreliable * * * for it stands on the faulty premise that all possible alternative or supplemental provisions were necessarily considered and rejected by the legislative draftsmen. Thus it is incorrect to say that because Congress expressly required that standards prescribing the type and frequency of medical examinations or other tests shall be made available, by the employer or at his cost, that Congress prohibited OSHA from using its broad rulemaking authority to require employer payment for other employee rights, where it determines, after rulemaking, that such rights are necessary to enable the agency effectively to carry out its responsibilities.

Some commenters claimed that there are fundamental distinctions between engineering controls and PPE that warrant different cost treatment under

the Act. UPS argued that the primary difference between engineering changes and PPE is ''[c]lear and simple: employers own the equipment they make engineering changes to—it is part of their facility—but by definition [PPE] typically is owned by employees: that is why it is personal'' (Ex. 12: 189, p. 19). The SHRM stated that PPE, unlike engineering or work practice controls, ''[i]s in the personal care of the employee, and the employee plays a direct role in the selection, use, sizing, adjusting, care, storage, and control of [the] PPE.'' SHRM also stated that ''[t]he employee is generally in a far better position than the employer to ensure that personally-assigned PPE is properly maintained, used, and stored'' (Ex. 46: 43, p. 19–20).

OSHA is not convinced by these arguments. As an initial matter, OSHA disagrees that by definition PPE is typically ''owned'' by the employee. In fact, the record in this rulemaking suggests the opposite. With a few exceptions—safety-toe shoes and everyday clothing—employers typically provide the PPE to their employees and expect the employees to return the PPE at the end of the day or at the completion of their work for the employer. The record does not support UPS's position that employees typically ''own'' such PPE as protective eye wear, chemical protective gloves, harnesses, lanyards, ladder safety device belts, rubber gloves and sleeves, logging chaps, supplied air respirators, encapsulating chemical protective suits, life preservers and life jackets, retrieval systems, and the like. OSHA is also not swayed by SHRM's arguments that employees are in a better position to maintain, use, and store PPE. In fact, the existing PPE standards place on employers the responsibility for ensuring proper fit, use, and maintenance of PPE.

The crux of OSHA's position is that PPE is an important control measure required by OSHA standards. While PPE is considered the last line of defense and OSHA has stated a preference for engineering, work practice, and administrative controls, it is still an important type of protection utilized by millions of employees every day. Simply because PPE is not a part of or attached to an employer's facility does not mean that it provides a different protective function. Like other control measures, it protects employees from safety and health hazards in the worksite and should not be treated categorically differently for payment purposes than other control measures.

Other commenters contended that OSHA's interpretation of the Act ignores the many references to employee responsibilities in the statute (Exs. 12: 189; 46: 43) In particular, these commenters cited the language of section 5(b) of the Act, which requires that each ''[e]mployee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Act which are applicable to his own actions and conduct'' (29 U.S.C. 654(b)).

There is no doubt that Congress expected employees to comply with safety and health standards. It is also true that Congress believed that employee cooperation in safety and health was critical to ensuring safe and healthful workplaces. What Congress did not intend, however, was for employees to bear the cost of ensuring that their workplaces were safe and healthy. That is why section 5(b) of the Act focuses on an employee's ''own actions and conduct.'' It is also why Congress made it clear that the ''[e]mployee-duty provided in section 5(b) [does not] diminish in any way the employer's compliance responsibilities or his responsibility to assure compliance by his own employees. 'Final responsibility for compliance with the requirements of this act remains with the employer' '' (S. Rep. No. 91–1282, U.S. Cod Cong. & Admin. News 1970, p. 5187).

The role of employers and employees under the OSH Act was specifically addressed by the Third Circuit in *Atlantic & Gulf Stevedores, Inc.* v. *OSHRC*, 534 F.2d 541 (3d. Cir. 1976). In holding that Congress did not confer power on OSHA to sanction employees for violations of the Act, the court set forth clearly that employers are ultimately responsible for ensuring that their workplaces are safe and healthy. Employers thus cannot shift financial responsibility for ensuring safe and healthful workplaces to their employees.

Finally, and more fundamentally, some commenters suggested that this rule was purely an economic rule and that the OSH Act does not give OSHA authority to resolve economic issues. UPS and PMA both asserted that ''OSHA's health and safety mandate does not permit it to invade collective bargaining with this purely economic rule'' (Exs. 12: 173, 189). The SCA had concerns about OSHA's ''[a]ttempt to regulate wages * * * which is not part of OSHA's mandate and accordingly, should not be subject to OSHA regulation'' (Ex. 12: 65). The NMSA stated that ''OSHA simply has no jurisdiction over employee compensation'' (Ex. 12: 172).

These commenters misunderstand this rule and the requirements of the OSH Act. The issue is not whether a particular requirement deals with economics in some way, the proper test is whether the requirement will help reduce significant risk of injury and death, thereby protecting the safety and health of employees. In fact, Congress confirmed this by specifying that employers must bear the costs of complying with OSHA standards. As explained more fully below, this rule is directly related to protecting the safety and health of employees and will result in substantial safety benefits.

These comments also do not consider the approximately 20 general industry safety and health standards OSHA has issued requiring employers to pay for PPE. Many of these standards have been challenged and upheld by the courts. For example, in *Noise*, 773 F.2d at 1451–1452, the court upheld the requirement in the hearing conservation standard that employers must pay for hearing protectors, finding that the requirement was reasonably related to the standard's purpose of reducing the risk associated with occupational noise exposure. No court has struck down OSHA's standards requiring employers to pay for PPE because they were outside of the Agency's statutory mandate.

a. Exceptions

As set forth in more detail in section V, the final rule contains certain exceptions to the general rule that employers must pay for required PPE. These exceptions include certain safety-toe protective footwear and prescription safety eyewear, logging boots, and everyday clothing such as long pants, long sleeve shirts, and normal work boots. Including these exceptions to the final rule is consistent with the OSH Act and its cost allocation scheme.

As stated above, the Agency agrees with the general principle that employers' legal responsibility for compliance with OSHA standards implies a concomitant financial responsibility to pay for the measures necessary to that end. OSHA also concludes that this requirement applies to most types of PPE. PPE cannot be categorically segregated from other types of control measures for payment purposes. This is one of the fundamental underpinnings of the final rule. OSHA has concluded that a general employer payment requirement will effectuate the OSH Act's implicit cost-allocation scheme and reduce the risk of injuries, illnesses, and fatalities.

However, acceptance of these principles does not mean that the OSH

Act prohibits exceptions to the employer-payment rule. There are certain narrow circumstances where OSHA believes that Congress did not intend for employers to have to pay for PPE. And Congress expected OSHA to make reasonable judgments as to the types of PPE that fit in this category. OSHA has recognized these situations in the past and the record in this rulemaking supports these determinations.

In its earliest interpretation of the issue in the *Budd* case, the Agency stressed that safety-toe shoes have certain special characteristics that separate it from most PPE for purposes of cost allocation. In her brief in Budd, the Secretary stated that:

> [b]y tradition, in this country shoes are considered unique items of a personal nature. Safety shoes are purchased by size, are available in a variety of styles, and are frequently worn off the job, both for formal and casual wear. Furthermore, it is neither feasible for a different employee to wear the shoes each day nor feasible that upon resigning from the position an employee will leave the shoes behind to be worn by another individual.

In the safety standard on logging operations, OSHA determined that logging employers should pay for protective equipment for the head, eyes, face, hands, and legs, but should not be required to pay for logging boots. OSHA excepted logging boots from among the types of equipment that employers must purchase for several reasons. The Agency found that logging boots, unlike other types of personal protective equipment, are not reusable. OSHA also noted that logging boots are readily portable, and unlike head and leg protection, are sized to fit a particular employee. Finally, the Agency noted that there was evidence in the record that employees use their logging boots away from work.

In the 1994 memorandum ''Employer Obligation To Pay for Personal Protective Equipment'' OSHA also stated its policy that ''[w]here equipment is very personal in nature and is usable by workers off the job, the matter of payment may be left to labor-management negotiations.'' The memorandum also gave examples of this type of equipment, including safety shoes, non-specialty safety glasses, and cold-weather outerwear.

OSHA does not believe that Congress intended for employers to have to pay for the types of PPE excepted in the final rule. This list includes non-specialty safety-toe shoes and boots, everyday clothing, cold weather gear, and normal work boots. While serving a protective function in certain circumstances, this equipment has either been historically exempted by OSHA from employer payment (*e.g.,* safety-toe shoes), the item is often used off the job, or is equipment that employees must wear to work regardless of the hazards found. For example, an employee who works at a computer terminal may have to wear a pair of long pants to work (due to a company policy), even though wearing long pants is not required for safety reasons. But, a tree trimmer may have to wear long pants to work to provide protection from tree branches and limbs, etc. In both instances, the employee has to wear long pants to work. However, with respect to the tree trimmer, the long pants also serve a protective function. In the Agency's view, Congress simply did not intend for employers to have to pay for this type of equipment, even though it admittedly serves a protective function in certain circumstances. Congress intended the Agency through its rulemaking function and in its standard-setting discretion to identify those narrow circumstances where payment can be left to negotiation between the employer and employee. These circumstances include such considerations as whether the items are normally used off the job or are items employees must wear to work regardless of the hazards found.

OSHA's position in this final rule is also consistent with its past interpretations of the issue, as detailed above. Since OSHA's earliest interpretations on employer payment for PPE, it has made clear that there are some exceptions to the employer payment rule. The principle of employer payment cannot be stretched so far that it applies to all protective equipment, in all circumstances, at all times.

2. An Employer Payment Requirement Is Implicit in the Wording of Existing Standards

The requirement that employers pay for the means necessary to achieve compliance is implicit in the statute itself, and therefore, is properly an implied term of every occupational safety or health standard. Properly viewed, this final rule clarifies an employer payment requirement that had previously been implicit in those standards.

In the proposed rule, the Agency set forth in detail its interpretive history on the issue of employer payment for PPE. It also discussed the holding in the *Budd* decision and why, in OSHA's view *Secretary of Labor* v. *Union Tank Car Co.* (18 O.S.H. Cas. (BNA) 1067 (Rev. Comm.) 1997) was wrongly decided. OSHA received only a few comments on this discussion; these comments asserted that the *Union Tank* decision was correct in not reading the term ''provide'' as requiring employer payment. OSHA continues to agree with the discussion in the proposal and incorporates it in this final rule. Nevertheless, OSHA reiterates here the main parts of the discussion because it further supports OSHA's interpretation of the OSH Act as requiring employers to pay for virtually all PPE.

From 1974 through October 1994, OSHA made a variety of statements on the question of employer payment for PPE. The most authoritative statements of the Agency's position are contained in OSHA's safety and health standards promulgated through notice and comment. Since 1978, OSHA has promulgated many safety and health standards explicitly requiring employers to furnish PPE at no cost.[15] In these rulemakings, OSHA concluded that this explicit requirement effectuates the cost allocation scheme of the OSH Act.

In 1978, OSHA promulgated a standard to protect employees from cotton dust. That rule required employers to pay for respirators when necessary to protect employees from exposure to this hazardous substance (43 FR 27350, 27387 (June 23, 1978)). The Agency noted that the language requiring employers to provide respirators ''[a]t no cost to the employee * * * makes explicit the position which has long been implicit in all OSHA health standard proceedings under section 6(b) of the Act'' (Id). (internal quotations omitted) The Agency expressed a similar view in the preambles for the 1,2-Dibromo-3-chloropropane (DBCP) standard (43 FR 11514, 11523 (March 17, 1978)), the lead standard (43 FR 52952, 52994 (Nov. 14, 1978)), the inorganic arsenic standard (43 FR 19584, 19619 (May 5, 1978)), the benzene standard, (43 FR

[15] See 29 CFR 1910.95(i)(1), (i)(3) (hearing conservation); 29 CFR 1910.1001(g)(1), (g)(2)(i), (h)(1) (asbestos); 29 CFR 1910.1018(h)(1), (h)(2)(i), (j)(1) (inorganic arsenic); 29 CFR 1910.1025(f)(1), (g)(1) (lead); 29 CFR 1910.1027(g)(1), (i)(1) (cadmium); 29 CFR 1910.1028(g)(1), (g)(2)(i), (h) (benzene); 29 CFR 1910.1030(d)(3)(i), (d)(3)(ii) (bloodborne pathogens); 29 CFR 1910.1043(f)(1), (f)(3) (cotton dust); 29 CFR 1910.1044(h)(1), (h)(2), (h)(3)(i), (j)(1) (1,2-dibromo-3-chloropropane); 29 CFR 1910.1045(h)(2)(i), (j)(1) (acrylonitrile); 29 CFR 1910.1047(g)(2)(i), (g)(4) (ethylene oxide); 29 CFR 1910.1048(g)(1), (h) (formaldehyde); 29 CFR 1910.1050(h)(2)(i), (i)(1) (4,4, methylenedianiline); 29 CFR 1910.1051(h)(1), (i) (1,3-butadiene); 29 CFR 1910.1052 (g)(1), (h)(1) (methylene chloride); 29 CFR 1910.146(d)(4)(iv) (confined spaces); 29 CFR 1910.156(e)(1)(i) (fire brigades); 29 CFR 1910.266(d)(1)(iii), (d)(1)(iv), (d)(1)(vi), (d)(1)(vii) (logging); 29 CFR 1910.134(c)(4) (respiratory protection standard); 71 FR 10100 (Feb. 24, 2006) (hexavalent chromium).

5918, 5953 (Feb. 10, 1978)), the ethylene oxide standard, (49 FR 25734, 25782 (June 22, 1984)), and the asbestos standard, (51 FR 22612, 22697 (June 20, 1986)).

In other official agency actions during this same period, OSHA interpreted and enforced its standards to require employers to pay for personal protective equipment, carving out an exception limited to uniquely personal items like safety shoes. In 1979, OSHA issued an Interpretive Instruction clarifying that 29 CFR 1910.1029(h)(1), which used the language ''shall provide,'' required employers to furnish personal protective equipment for coke oven employees at no charge. OSHA Instruction STD 1–6.4 (March 12, 1979). See also *Erie Coke Corp.,* 15 O.S.H. Cas. (BNA) at 1563 (citing this provision). A July 17, 1990, Agency memorandum stated that although section 1910.132(a) does not specifically allocate the costs of personal protective equipment to employers, ''[i]t is our position that the employer is obligated to pay for PPE which is not worn off the worksite. This includes welding gloves, but not safety shoes * * *'' In September 1990, OSHA issued a citation to a meatpacking firm alleging that it violated section 1910.132(a) by charging its employees for repair or replacement of steel mesh gloves and plastic wrist bands used for protection against knife cuts. The citation was not contested, and thus became a final order of the Commission by operation of law (29 U.S.C. 659(a)).

On October 18, 1994, OSHA issued a memorandum to its regional administrators and heads of directorates setting forth a national policy with respect to PPE payment. The interpretation outlined in this memorandum required employers to pay for all personal protective equipment that is necessary for the employee to do his or her job safely and in compliance with OSHA standards, except for equipment that is personal in nature and normally used away from the worksite such as steel-toe safety shoes. Before the 1994 memorandum was issued, OSHA concedes that some Agency officials had provided responses to written requests for information on 29 CFR 1910.132(a) suggesting among other things that the provision was ambiguous on the subject of employer payment and best resolved through collective bargaining, or that the Review Commission's decision in *Budd* foreclosed an interpretation requiring employer payment. The 1994 memorandum, however, was a definitive statement on the issue of employer payment for PPE and reflected the Agency's position on the issue as seen in its most authoritative statements made since 1974. OSHA subsequently issued a national compliance directive, STD 1–6.6, incorporating this interpretation and stating that violations of the policy would be cited.

Despite this history, the Review Commission in *Union Tank* rejected the claim that 29 CFR 1910.132(a) could require employer payment for PPE. In March 1996, OSHA issued a citation alleging that the Union Tank Car Company violated 29 CFR 1910.132(a) by requiring employees to pay for metatarsal safety shoes and welding gloves. Upon review, the Review Commission issued a decision vacating the citation (18 O.S.H. Cas. (BNA) at 1067–8). Citing its earlier decision in *Budd,* the Review Commission concluded that 1910.132(a) could not be interpreted to require employers to pay for personal protective equipment (Id. at 1068). The Review Commission believed that the Secretary's position on the issue was contrary to previous statements on employer payment for PPE and thus, was a departure that was not thoroughly explained.

The Review Commission's holding in *Union Tank* and its interpretation of 29 CFR 1910.132(a) misstates OSHA's historic position on payment for personal protective equipment. Moreover, while two commenters to the rulemaking record argued that *Union Tank* was correctly decided (Exs. 12: 173, 189), OSHA believes the case was wrongly decided. As described above, OSHA's official interpretations from 1974 onward consistently favored employer payment for PPE. This view was expressed in a variety of official agency actions, including rulemaking proceedings under the Act, agency memorandums and directives, and citations. This historic position belies the Review Commission's finding that the 1994 memorandum and STD 1–6.6 announced a wholly new national policy.

The Review Commission's mischaracterization of OSHA's historic view also stems in part from its erroneous reading of *Budd* and the Secretary's position in that case. In *Budd,* the respondent's employees were working without safety-toe shoes (1 O.S.H. Cas. (BNA) at 1549). The Secretary issued a citation alleging a violation of 29 CFR 1910.132(a) for the employer's failure to provide such shoes (Id). Prior to the hearing, the employer moved to withdraw its notice of contest on the understanding that its obligation to provide safety shoes did not include the requirement to pay for them (Id). The Secretary agreed that the employer was not required to pay for the shoes because of their special characteristics as uniquely personal; however, the union representing the employees objected on the ground that the standard required employer payment (Id). Reviewing this motion to withdraw the citation, the Review Commission held that § 1910.132(a) did not require the employer to pay for such shoes, with each Commissioner expressing a distinct reason for such. In *Union Tank,* the Review Commission erroneously characterized this holding as interpreting ''provide'' as used in § 1910.132(a) as foreclosing employer payment (18 O.S.H. Cas. (BNA) at 1067–8). The Commission also described the Secretary as having acquiesced to this holding, rendering its later position in the 1994 memorandum historically ''unsupported'' ''[a]fter twenty years of uninterrupted acquiescence in the interpretation the Review Commission announced in *Budd*'' (Id. at 1069).

OSHA believes that the Review Commission in *Union Tank* was, however, incorrect on both points. First, *Budd* did not broadly hold that ''provide'' in § 1910.132(a) can never be interpreted to mean ''pay for.'' Although the Review Commission in *Budd* did agree that § 1910.132(a) did not require the employer to pay for safety shoes, the Review Commission did not announce a majority opinion extending this conclusion beyond safety shoes. Only one Commissioner, Van Namee, opined that § 1910.132(a) broadly foreclosed employer payment for all protective equipment (1 O.S.H. Cas. (BNA) at 1549–50). The remaining Commissioners wrote separate opinions, one limiting his holding to the particular facts of the case and the particular context of safety shoes (Commissioner Cleary Id. at 1552–3) and one concurring without stating a rationale (Commissioner Moran, Id. at 1553–4). Because these two other Commissioners filed separate opinions announcing distinct rationales, Van Namee's view of ''provide'' as universally foreclosing employer payment is not the Commission's official holding (See *Atlantic Gulf & Stevedores* v. *OSHRC,* 534 F.2d at 546). Claims to the contrary, made by both the UPS and the PMA in comments to the proposed rule (Exs. 12: 189, 179), ignore the limitations of the Review Commission's decision.

The Secretary's position in *Budd* was similarly limited to the particulars of safety shoes and did not, as the Review Commission in *Union Tank* suggested, adopt a broader interpretation foreclosing all employer payment for protective equipment. In her Brief in *Budd,* the Secretary conceded that

employers should not be required to pay for safety shoes. The Secretary, however, stressed the special characteristics of safety shoes, including their uniquely personal nature and their potential use outside the employment site (Brief of the Secretary, served January 10, 1973, at 8). The Secretary did not, however, extend this rationale beyond safety shoes to foreclose all employer payment for protective equipment. Rather, the Secretary emphasized that an interpretation requiring employers generally to provide personal protective equipment free of charge would be consistent with the statutory scheme. She also noted that the Act's legislative history demonstrated Congress's intent to place the costs of achieving safe and healthful workplaces upon employers (Id. at 10). The Secretary concluded: ''Personal protective equipment cannot be segregated from equipment necessary to provide proper working conditions and therefore the purchase of such equipment by the employer was contemplated by the Act in cases where a standard might require it'' (Id. at 10–11).

Thus contrary to the Review Commission's suggestion in *Union Tank,* the Secretary has never, in *Budd* or elsewhere, characterized ''provide'' as used in 29 CFR § 1910.132(a) as foreclosing employer payment. If anything, the Secretary's position in *Budd* recognized a general rule of employer payment limited only where equipment, like safety shoes, are uniquely personal. This position, like the position taken in *Union Tank* and articulated in this final rule, is consistent with OSHA's historic approach to 29 CFR § 1910.132(a) and employer payment for PPE generally. It is further evidence of the Agency's longstanding position that the OSH Act requires employers to pay for PPE.

*C. The Final Rule Is an Ancillary Provision Reasonably Related to the Purposes of the Underlying PPE Standards*

Separate from making the basic cost allocation scheme of the OSH Act explicit in the PPE standards, the final rule is justified as a legitimate exercise of OSHA's rulemaking authority to promulgate provisions in its standards to help reduce significant risk. The existing PPE standards reflect a determination that the use of PPE is necessary to reduce a significant risk of injury and death. Once OSHA has determined that a significant risk of material impairment of health or well being is present, and will be reduced by a standard, the Agency is free to develop specific requirements that are reasonably related to the Act's and the standard's remedial purpose. This final rule is placing ancillary provisions in the existing standards requiring PPE use. Thus, OSHA must demonstrate only that requiring employees to pay for PPE is reasonably related to the remedial purpose of the PPE standards and will help reduce significant risk. OSHA finds that the final rule meets this test.

Requiring employers to pay for PPE used to comply with OSHA's standards is a classic ancillary requirement. It helps to ensure that the PPE is used properly by employees to protect them from injury and death. OSHA has included employer payment provisions as ancillary provisions in numerous past rules, as described above. In those rulemakings, the requirement was promulgated at the same time as the other provisions of the standard to help reduce significant risk. In this rule, of course, OSHA is adding the explicit employer payment requirement in a separate rulemaking action. However, by doing so, OSHA does not change the fundamental nature of the requirement. At bottom, this final rule adds an ancillary provision to certain PPE standards to help reduce a significant risk of injury.

After a thorough review of the rulemaking record, OSHA concludes that requiring employer payment for most types of PPE increases the effectiveness of the existing PPE standards in several ways: (1) The requirement encourages a greater degree of usage of PPE by eliminating a financial disincentive to such use; (2) it increases the degree of employer control over PPE selection and maintenance, thereby increasing the effectiveness of the employer's safety program; and (3) the requirement indirectly fosters a greater degree of employee cooperation in employer safety programs by demonstrating the employer's financial commitment to safety.

First, the reason employer payment will result in improved safety is primarily a matter of economics, and how employees' and employers' behavior regarding PPE is affected by their financial situations. In the proposed rule, OSHA cited enforcement cases that documented instances where financial considerations played an important role in employee use of damaged and unsafe PPE (Id. at 15407). For example, in *Ormet Primary Aluminum Corp.,* OSHRC Docket No. 96–0470, an employee testified that he continued to wear safety boots, even though the protective steel toes were exposed and posed an electrocution hazard, because he could not afford a new pair. The employee also testified that some employees put a cement-like substance over the steel toes of their boots when the leather covering wore away, but that this practice was hazardous because the substance was flammable (Id). OSHA also referred to the *Union Tank* case, in which the employee representative presented an affidavit that some employees taped or wrapped wire around their damaged metatarsal safety boots in order to avoid having to pay up to $130 per pair to replace them (Id).

The rulemaking record also strongly supports OSHA's position. As several commenters noted, when lower-wage employees are required to provide their own PPE, they are likely to avoid PPE costs and thus fail to provide themselves with adequate protection. David Daniels of the United Steelworkers of America noted that ''The welders have to purchase their leathers, gloves and metatarsal boots. The welders will take their leathers when the top of the sleeves are burnt with holes in them and turn the leathers over which exposes the bottom of the employee's arm to heat, hot metal or open flame'' (Tr. 375). Similarly, John Molovich, also with the United Steelworkers of America stated that:

> Workers in some cases do not earn sufficient wages to pay for all the things that are necessary to support themselves and their families. As a result, some things are either overlooked or eliminated, and in many cases it would be the PPE they use at work. Even if they do purchase the PPE, it is usually the cheapest and in most cases the most ineffective. This is merely human nature (Tr. 370).

In response to OSHA's reopening of the record on tools of the trade, AFSCME stated:

> Failure to require employers to pay for PPE would also cause an unreasonable burden on lower paid workers. Workers at risk would be asked to choose between paying for their PPE and providing basic needs for their families * * *. The likelihood that worker protection would be diminished would be even greater for employees whose language and literacy levels may present barriers to the appropriate selection and use of PPE (Ex. 45: 1).

Some commenters provided specific examples of instances where having employees pay for PPE could contribute to an increased risk of injury. Jackie Nowell of the UFCW testified that:

> [W]hen workers are given the choice between a full week's pay and a new metal glove [to reduce risk of injury from sharp cutting tools] they'll choose the paycheck. The gloves get holes in them and the workers sew them together rather than spend $65 for a new one (Tr. 184–185).

The evidence suggests that lower wage employees are less likely to purchase adequate PPE and replace it when necessary, and are more likely to make cosmetic repairs, hide defects, purchase used PPE aged beyond its service life, or fail to keep the PPE in proper working order. After carefully reviewing the rulemaking record, OSHA is convinced that allowing employers to charge employees for PPE will result in greater use of unsafe PPE.

OSHA also believes that employees will be more inclined to use PPE if it is provided to them at no cost. As with any product, when PPE is available at lower cost, the employee will be inclined to use it more readily. One could argue that since it is the employee's safety that is at stake, the employee will be more inclined to purchase the best PPE available on the market. Unfortunately, as evidence in the record suggests, when employees pay for their own PPE, some number of them will not take this course, and as a result their safety will be compromised (Tr. 104–105, 178, 184–185, 323, 370, 375; Ex. 19, 22A, 23, 23A, 25, 30, 43, 45; 13, 21, 36, 46: 1, 13, 45).

Employers'' natural economic behavior of reducing costs could also result in some safety and health disincentives. The BCTD and the AFL–CIO suggested that allowing employees to pay for PPE provides an economic disincentive for employers to invest in engineering controls, thus increasing risk to employees (Ex. 45: 21; Tr. 322–323). If employers ignore the hierarchy of controls because they can shift the cost of workplace safety to their employees, they may be choosing less effective methods of mitigating hazards. By eliminating this incentive, employers may be more inclined to implement more effective engineering, administrative, and work practice controls, leading to improved safety and fewer injuries and illnesses. This final rule eliminates any economic incentives that employers may have to avoid more protective control measures.

Second, OSHA believes that safety benefits will be realized by the final rule because it will clearly shift overall responsibility for PPE to employers. In past rulemakings, OSHA has concluded that requiring employers to pay for PPE will result in benefits because it will clearly make employers responsible for the control of the PPE (See 43 FR 19619 (May 5, 1978) (inorganic arsenic preamble); 46 FR 4153 (hearing conservation preamble)). Recently, OSHA promulgated a standard to protect employees against exposures to hexavalent chromium (71 FR 10100 (Feb. 28, 2006)). In the final rule, OSHA required employers to pay for needed protective equipment. The Agency stated that employer payment was necessary because ''[t]he employer is generally in the best position to select and obtain the proper type of protective clothing and equipment for protection from Cr(VI)'' (71 FR 10355). In addition, OSHA concluded that ''[b]y providing and owning this protective clothing and equipment, the employer will maintain control over the inventory of these items, conduct periodic inspections, and, when necessary, repair or replace it to maintain its effectiveness'' (Id).

From the comments in this rulemaking, it is apparent that some employers have shifted some PPE responsibility to their employees along with the responsibility to pay for the equipment. Some went so far as to suggest that employees have a better idea of the PPE required for the work and should rightfully be selecting their own PPE. SHRM stated that the employee ''[p]lays a direct role in the selection, use, sizing, adjusting, care, storage, and control of [the] PPE'' and that ''[t]he employee is generally in a far better position than the employer to ensure that personally-assigned PPE is properly maintained, used, and stored'' (Ex. 46: 43, pp. 19–20).

OSHA believes that employees can provide any number of useful suggestions about employers' PPE programs, including selection, use, and care of PPE. However, outside of a few specialized fields, a newly hired employee is not in a position to know the types of hazards they will face, and the types of PPE they will need for protection from those hazards. The employer who controls the workplace is much more aware of the hazards encountered in that workplace and the protective measures that are needed (Exs. 23, 46–13, 46–33; Tr. 104–105). This is the rationale underlying the OSHA standards that require employers to perform a hazard assessment to determine the types of PPE that are needed (See, *e.g.,* § 1910.132(d) and § 1915.152(b)).

When employers take full responsibility for providing PPE to their employees and paying for it, they are more likely to make sure that the PPE is correct for the job, that it is in good condition, and that the employee is protected. As ASSE stated:

> Employers correctly understand that their investment in proper PPE is an economic investment in productivity as well as a means of ensuring that workers go home safe and healthy each day. And to drive home that investment, they have recognized that their own involvement in PPE provides the best opportunity to ensure proper and effective use of PPE on their job sites. Recognizing their responsibility for identifying hazards, they provide the follow-through necessary to address those hazards (Ex. 46–33).

UPS argued that employer payment would have no effect on PPE selection because employers could select the correct PPE, purchase it, and then charge employees for the items. It also argued that employers could instruct employees to purchase a particular make, model, or design of equipment from a particular location and require them to present the equipment for verification before beginning work (See, *e.g.,* Ex. 189, p. 17).

OSHA agrees that employers could take these actions and some employers use one or both of these practices now. However, OSHA does not believe this practice is the norm; there are not likely to be very many employers that use complex administrative systems to assure that the PPE is appropriate when employees pay for the items. Additionally, under these systems, employees continue to have an incentive to underreport deficient or worn out PPE that needs to be replaced to perform its protective function. OSHA believes that these types of systems do not improve safety culture at the worksite, or encourage employees to participate whole-heartedly in an employer's safety and health program.

Therefore, OSHA believes that the scenario described by UPS is administratively cumbersome for employers, is not widely practiced, and does not provide a workable solution to the overall policy problem of PPE non-use or misuse. Systems of this type, sometimes called ''company stores'' are also likely to be criticized by those who believe the employer is making money from administration of the system. As the ISEA inquired, ''Should OSHA decide that employers can require that employees pay for their PPE, ISEA asks OSHA to explain the mechanism it would establish to ensure that employers do not overcharge employees'' (Ex. 46:31). Therefore, these commenters advance no sufficient alternative and their reasoning is not sufficient to convince the Agency that the PPE payment rule is not needed.

Third, employees may be less likely −++''+−++to participate whole-heartedly in an employer's safety and health program when they must pay for their own PPE, and employer payment for PPE may improve safety culture at the worksite. In past rulemakings, this finding has been key to OSHA's conclusions that employer payment will result in safety benefits. In requiring employers to pay for hearing protectors

as part of the hearing conservation standard, for example, OSHA relied upon the testimony of the director of the Safety and Health Department of the International Brotherhood of Teamsters:

> [an] employer's attempt to require its employees to purchase their own personal ear protective devices would cause resentment among the workers and clearly demonstrate to them the lack of commitment on the part of their employer in preventing hearing loss. Such a requirement would discourage the use of ear protective devices and would create an adversarial atmosphere in regard to the hearing conservation program (46 FR 4153).

OSHA found that the need to ensure voluntary cooperation by employees was also an important reason to require employers to pay for other protections in standards, including medical examinations and medical removal protection (MRP). In promulgating the lead standard, OSHA relied upon extensive evidence that employees' fears of adverse economic consequences from participation in a medical surveillance program could seriously undermine efforts to improve employee health (43 FR 54442–54449 (Nov. 21, 1978)). OSHA cited data from numerous sources to show that employees' concerns about the possible loss of income would make them reluctant to participate meaningfully in any program that could lead to job transfer or removal (Id). OSHA promulgated the lead standard's MRP provision ''[s]pecifically to minimize the adverse impact of this factor on the level and quality of worker participation in the medical surveillance program'' (Id. at 54449).

The record in this rulemaking also supports this position. The ISEA summed up the views of many commenters when it remarked:

> A systematic PPE program, driven by management through the organization, is an important factor in creating a positive safety culture. Employers who provide and pay for PPE recognize that they are not simply incurring a cost for equipment, but rather making an investment by valuing their employees and avoiding the high direct and indirect costs of injury, illness and death (Ex. 12:30).

Finally, OSHA is persuaded by the overwhelming consensus of prominent occupational safety and health organizations that employer payment for PPE will result in safer working conditions. OSHA carefully examined the hundreds of comments to the rulemaking record that weighed in on whether an employer payment requirement would result in safety benefits. In doing so, OSHA identified the independent safety and health organizations that commented in the record. Unlike the majority of commenters, these organizations do not have a financial stake in the outcome of the rulemaking, and they do not stand to gain or lose economically whether employers or employees pay for PPE. Their sole interest in the rulemaking lies in whether or not it will advance the interests of occupational safety and health, and protect employees from workplace injury, illness and death. It is thus appropriate for OSHA to put particular weight on the comments of these organizations.

The National Institute for Occupational Safety and Health (NIOSH) remarked that it has consistently recommended that employers pay for all PPE required for the work setting, and shared OSHA's views that:

- ''[e]mployees may compromise their safety and health by avoiding or delaying the purchase, maintenance, or replacement of PPE if that must be done at the employee's expense'';
- ''when employers do not pay for and provide PPE, it may not be worn or may be worn improperly, and it may not be cared for and replaced appropriately''; and
- ''when employers do not pay for and provide PPE, incorrect or poor quality PPE may be selected and worn by the employee'' (Ex. 12: 130).

The American College of Occupational and Environmental Medicine (ACOEM), representing 7,000 occupational physicians, supported employer payment for PPE, stating that: ''It is important that employers be responsible for ensuring that the personal protective equipment selected for use at their facilities is appropriate and maintained in proper working order. We do not believe that this can be achieved if employers are not directly involved in the purchase and maintenance of that equipment'' (Ex. 12: 248).

The comments of the Mount Sinai Irving J. Selikoff Center for Occupational and Environmental Medicine were based on experience with the 7,000 employees per year they treat for occupationally related disease and illness. They argued that employees cannot know the site-specific safety and health issues before they start employment, which could lead employees to have equipment that is incompatible with the job site; that if employees purchase their own PPE, employer supervision of PPE maintenance becomes more complex, which can lead to less safety; that employees who pay for their own PPE are less likely to bring up exposure concerns [with their employers]; and that employer safety education is more complicated when employees pay for their own PPE. They also argued that:

> Lower income, non-English speaking, and immigrant workers are most likely to be vulnerable to a shift in responsibility of purchase. We know, from advising our patients about PPE, that money is an issue for procurement and appropriate use. The purchase of a pair of prescription safety glasses or shoes can represent a notable burden to workers, whereas it represents operating costs for employers. In an attempt to economize, lower quality equipment is purchased, and equipment is not updated as it should be (Ex. 46: 35).

The American Association of Occupational Health Nurses (AAOHN), representing 12,000 occupational health nurses in a wide variety of industrial sectors supported the rule, noting that allowing employees to choose their own PPE may pose administrative and enforcement problems for employers. AAOHN also reported a situation where a manufacturing facility allowed individual preference and selection for safety eyewear and found that 70 percent of the female employees were using glasses without safety lenses (Ex. 12: 32).

In its 1999 comments, the American Society of Safety Engineers (ASSE), representing about 30,000 safety and health professionals, noted that most employers already pay for PPE during the course of their normal business operations, and that:

> [m]any organizations benefit from the policy of paying for personal protective equipment. The alternative for these organizations could be the use of substandard equipment by employees, inconsistent levels of employee protection, increased numbers of injuries, illnesses and fatalities, and employers having to expend resources on litigation to defend themselves.

ASSE also related several instances where employees were providing their own eye protection, and failed to select eyewear meeting the OSHA standards, resulting in OSHA citations. The employers had mistakenly assumed that the employees were selecting the right equipment (Ex. 12: 110).

In its 2004 comments on tools of the trade, ASSE reaffirmed its 1999 arguments supporting PPE payment by employers and provided a list of quotes from several of their member safety engineers that supplement the views of OSHA's expert panel. Some of those comments are:

- It is just good business to provide [and pay for] equipment so that we control quality and type so that injuries are prevented. I'm sure we save far more in the long run by preventing injuries than we spend on PPE;

- I have found that the PPE purchased by the employee to be old and worn out;
- Employees generally should not be allowed to bring safety equipment on the jobsite * * * this insures that the equipment is in good condition and can be utilized; and
- Where people provide their own tools, let alone PPE, there has been a resistance to keeping current with the best equipment and practices. As an example, I have seen people with sentimental value assigned to their hard hats that no longer meet manufacturers' specifications (Ex. 46: 33).

There are also large numbers of comments from employers who recognize the value of PPE payment, and supported some form of PPE payment requirement (See, *e.g.,* Exs. 12: 2, 4, 6, 9, 10, 12, 21, 58, 101, 105, 113, 117, 134, 149, 184, 190, 210, 218, 230, 247). Of particular interest are the comments of the Voluntary Protection Programs Participants' Association (VPPPA), whose members have all implemented OSHA approved safety and health management systems. More than 1,500 workplaces have successfully completed OSHA's Voluntary Protection Program (VPP) evaluation and audits, and have workplace injury and illness rates that are below the average for their industry. VPPPA, as well as VPP companies that commented on the proposed rule, supported employer payment for PPE (See, *e.g.,* Ex. 12: 113). VPPPA remarked that:

> We commend OSHA for promptly moving forward in clarifying the law regarding employer payment for PPE. The Secretary of Labor v. Union Tank Car decision had little effect on our association's members, who continue to believe that paying for their employees' PPE is the most sound strategy for promoting a safe and healthy workplace. We expect that with promulgation of this rule, more workplaces will reach this conclusion and maximize protection for their employees (Ex. 12: 113).

For these reasons, OSHA rejects the comments of some who argued that the proposed rule would have no direct impact on safety and health (see, *e.g.,* Exs. 12: 14, 17, 22, 29, 31, 36, 41, 47, 55, 65, 73, 82, 90, 91, 120, 121, 140, 172, 194, 216, 225, 241) and that there was no proof of safety and health benefits (see, *e.g.,* Ex. 12: 173, 189). The rulemaking record, examined as a whole, leads OSHA to the opposite conclusion. There are significant safety and health benefits of employer payment for PPE.

Some commenters argued that OSHA's estimate of the quantitative benefits was unreliable because it did not factor in the different types of jobs and PPE involved with the rule. The American Iron and Steel Institute (AISI) found to be problematic the Agency's quantitative estimate of the incidence of PPE non-use or misuse when employees must pay for PPE as compared to employers paying for PPE. AISI argued that the estimate assumes that the training and behavior of employers and employees across all industries is the same, regardless of the nature of the hazard, the level at which employees are compensated, or whether there is a collective bargaining agreement which addresses the purchase of PPE (Ex. 12: 188). OSHA agrees with AISI that different employers and employees have different behaviors regarding PPE. Therefore, the final rule may result in more safety and health benefits (and more costs) for some employers, while it impacts other employers less. However, as described above, the Agency believes that the overall impact of the rule will result in fewer occupational injuries and illnesses because it will improve the use of PPE in the workplace.

Further, OSHA wants to emphasize that the quantitative benefits estimate in the final rule is not based solely on the opinion of one expert. OSHA has estimated the benefits of the final rule based on three different assumptions. Even under the most conservative assumption—that employer payment for PPE will result in a 2.25 percent decrease in the misuse or nonuse of PPE—the final rule will prevent approximately 2,700 injuries per year across all industries affected, a substantial number of injuries avoided. (For a complete discussion of OSHA's benefits analysis, see section XV below.)

Finally, some commenters argued that there was contrary evidence to OSHA's conclusion that employer payment for PPE would result in benefits—namely state injury data in states with employer payment for PPE requirements. Two commenters raised the concept that, if PPE payment was effective at reducing workplace injuries and illnesses, an analysis of individual state occupational injury and illness rates should indicate a lower rate for those states that require PPE payment. They argued that the State of Minnesota, which has had a state law requiring employers to pay for all PPE, has injury and illness rates that are above those for the United States as a whole, and that if PPE reduced workplace injuries and illnesses, Minnesota should show a lower rate (Exs. 12: 173, 189).

OSHA rejects this analysis for three reasons. First, the effect of PPE payment on the injury and illness rates may not be large enough to affect the rates, given that they are only reported at a general level. The Bureau of Labor Statistics (BLS) reported over 4,200,000 workplace injuries and illnesses for 2005, with a rate of 4.6 cases per 100 full-time employees. Using these statistics, it would require a change of over 91,000 injuries and illnesses to move the U.S. rates by one tenth of a point, the most detailed estimate published by the BLS. If the entire estimated benefit of 21,789 averted injuries and illnesses occurred within one year, it would not be sufficient to change the U.S. rate by even one tenth of an injury or illness per 100 full-time employees. Therefore, while the effect of the rule on occupational safety and health is expected to be substantial, it is unlikely to dramatically affect the national statistics. The effect on state-specific statistics is similar, so it is not surprising that a pattern of lower rates is not readily apparent in the states that require PPE payment.

Second, the states that require payment typically do so because the requirement is set forth in their enabling legislation. Because injury rates are not available for this time period it is not possible to perform a meaningful before and after analysis to determine observable effects due to PPE payment. Third, occupational injury and illness rates are affected by a large number of factors, many of which may not yet be identified, and there is considerable uncertainty concerning how they work in combination to affect overall rates. For example, the BLS rates are affected by the mix of industries within a state, weather conditions, large scale events (e.g. natural disasters), technology advances, work-practice customs, workers' compensation insurance programs, workforce characteristics, and economic factors, such as changes in employment and productivity. Of course, OSHA recognizes that its policies also affect those rates, that changes in standards, new enforcement policies, and publicized OSHA enforcement cases have influence over workplace safety and health. Given the complex nature of state-specific injury and illness rates, it is difficult, if not impossible, to discern the effect of PPE payment policies on state-specific rates. Therefore, OSHA does not find the state plan argument to be persuasive. As noted in the benefits section below, the agency considered a wide range of injury reductions when assessing the effects of the standard. The Agency is confident, for all the reasons outlined, that this rulemaking will result in an overall reduction in injury rates and net benefits to society.

For all of the reasons discussed above, and after careful review of all comments, the Agency concludes that the final rule will help reduce the risk

associated with the underlying PPE standards.

1. Significant Risk

Some commenters argued that OSHA must find a significant risk from employers not paying for PPE and find that this rule would substantially reduce that risk (See, *e.g.,* Exs. 12: 173, 188, 189). AISI challenged OSHA's arguments for requiring payment, asserting that the Agency had not clearly identified a significant risk of harm, that the Agency did not establish the ability of the PPE payment standard to reduce the risk, and did not establish that the requirements are cost effective (Ex. 12: 188, pp. 7, 8). UPS made the same arguments, adding that ''OSHA has failed to even identify the existence of a significant risk of material impairment resulting from an employee paying for his own PPE'' (Ex. 12: 189, p. 5).[16] The PMA added that OSHA is required to make a threshold finding:

> [t]hat significant risks are present and can be eliminated or lessened by a change in practices before it can promulgate a standard under 29 U.S.C. 651(b). Specifically, OSHA must determine that significant risks of material impairment are present and can be eliminated or meaningfully lessened by a change in practices or equipment. For a health standard, this requires a significant risk of material impairment of health or functional capacity and a probability of significant benefit from a rule which would guard against such risk (Ex. 12: 173, pp. 13, 14).

These commenters' misunderstand the legal underpinnings of this rule. In promulgating the underlying standards that require PPE, the Agency met its significant risk burden. As explained above, this is an ancillary provision that will help effectuate the use of PPE. And OSHA finds that it has clearly met the test that the proposed revisions to the existing PPE standards are reasonably related to their purpose of preventing injury by requiring the provision and use of adequate personal protective equipment.

If employees are exposed to hazards not addressed by engineering, work practice, or administrative controls, and they are not provided with appropriate PPE, they may be injured, killed, or overexposed to dangerous chemicals, noise, or radiation. The risk is caused by failure of employers to provide their employees with appropriate PPE to guard against the workplace hazard, and the failure of both employers and employees to properly and consistently use appropriate PPE. The PPE payment provisions use payment practices to help reduce that risk.

Employee injuries related to lack of appropriate PPE are common. OSHA has investigated hundreds, if not thousands, of accidents where lack of PPE contributed to workplace injury, overexposure to chemicals, and death. The following summaries from OSHA's publicly available Integrated Management Information System (IMIS) accident investigations database provide just a few examples of the type of accidents where properly worn PPE may have allowed an employee to survive an accident, avoid injury or chemical exposure, or lessen the extent of injuries resulting from an accident.

- In 2000, an employee dipping metal parts into a molten salt mixture was splashed with molten salt, resulting in second degree burns on both his arms and face. The employee was not wearing appropriate PPE to protect his arms, nor a face shield, even though the supervisor working next to him was properly equipped with PPE.
- In 2000, a construction employee was using a hammer to break up tile during a dismantling operation. A piece of the tile flew back and struck his left eye, resulting in permanent blindness.
- In 1999, an employee was working in the pouring area of a foundry without PPE, skimming hot molten metal into a sand mold. The mold broke and splashed molten metal onto the floor, where it ran into his boot. He received third degree burns to half of his foot and was hospitalized.
- In 1999, a warehouse employee was struck on the head by a supporting bar that fell from above, receiving a head laceration that required hospitalization. The employee was not wearing any form of head protection.
- In 1999, an employee building a cinder block wall was making a masonry line with a thread when the thread broke and struck him in the face, resulting in hospitalization to treat the complete loss of one eye and multiple fractures to his nose and face. The employee was not wearing any eye or face protection.
- In 1998, an employee trimming trees was removing tree limbs from the ground, when a limb fell 30 feet and struck him in the head, resulting in his death. The employee was not wearing a hard hat.
- In 1997, an employee was installing television cable from an aerial lift, wearing a baseball cap but not an insulating hard hat. The employee contacted an overhead power line with his head and was electrocuted.
- In 1996, an employee's foot was run over by a cart, resulting in a compound fracture of the foot. He was wearing tennis shoes instead of safety toe shoes.
- In 1996, an employee was transferring a corrosive substance between storage tanks without eye protection. A small splash of the liquid struck him in the face and eyes, resulting in hospitalization.
- In 1995, an employee working for a building maintenance service was cleaning a glass window without fall protection when he fell 70 feet and died.
- In 1995, an employee was using a gas cutting torch to cut the metal shell of a rail tank car without welding PPE. The heat and flame of the torch set his work uniform on fire, resulting in burn injures that required six days of hospital treatment.
- In 1995, a shipyard employee was attaching a 300 pound steel plate to a flange while not wearing protective footwear. The plate fell and struck his feet, resulting in partial amputation of his toes.

Further, OSHA commonly finds PPE problems during its inspections. In 2006 the Agency issued over 13,000 PPE violations, nearly 8,000 of them serious in nature.

Finally, even if OSHA needed to find in this rule that employee payment for PPE is a significant risk and requiring employers to pay for PPE would substantially reduce that risk—which OSHA does not need to demonstrate—OSHA's estimate of injuries avoided meets that test. As set forth in detail in the benefits analysis, a conservative estimate of the beneficial impacts of the rule show that once promulgated, it will prevent approximately 2,700 injuries per year. This is a significant reduction in injuries by any measure and is based on the most conservative assumption with respect to the benefits of the final rule. (The highest estimate of the benefits of the final rule is that it will prevent 21,798 injuries per year.)

One commenter disagreed with OSHA's position taken in the proposal—and in the final rule—that the Agency need not make a significant risk finding for each provision in a standard. The AISI stated that OSHA's position is ''[i]nconsistent with the Constitutional principles under which Congress delegated rule making authority to the agency, and contrary to the requirements of Sections 6(b) and 3(8) of the OSH Act as defined by the United

[16] UPS also argued that the rule must meet the test for a safety standard and therefore, that OSHA must demonstrate a cost-benefit rationale for the rule. UPS misstates the legal test for safety standards. In *UAW* v. *OSHA*, 37 F.3d 665, 668 (D.C. Cir. 1994) (Lockout/Tagout II), OSHA declined to adopt a cost-benefit test for safety standards and the court accepted OSHA's position. Nevertheless, OSHA has analyzed the costs and benefits of the rule. This analysis is contained in Section XV, Final Economic Analysis.

States Supreme Court in the *Benzene* and *Cotton Dust* decisions'' (Ex. 12: 188, p. 10).

AISI's interpretation of the OSH Act's requirements for promulgating standards is incorrect. As the Supreme Court has stated and as discussed above, before promulgating a standard, OSHA must demonstrate that significant risk exists and that the standard will substantially reduce that risk. This requirement applies to the standard as a whole. OSHA is not required to make a provision-by-provision significant risk finding, which would be an impossible burden to meet. There are sometimes over a hundred different provisions in OSHA standards that operate together to reduce the significant risk faced by employees at the worksite. These provisions include exposure monitoring, medical surveillance, respiratory protection, protective clothing, training, hazard communication, information sharing, and so on. OSHA has never in the past, nor is it required to, make a significant risk finding for each of these provisions. In fact, this issue was squarely addressed in the review of OSHA's hearing conservation standard, where the Fourth Circuit stated that the appropriate test was whether the individual requirements of the standard were reasonably related to the purposes of the enabling legislation (*Noise,* 773 F.2d at 1447).

2. Cost Effectiveness

OSHA concludes that the final standard is also cost effective. A standard is cost effective if the protective measures it requires are the least costly of the available alternatives that achieve the same level of protection (*Cotton Dust,* 452 U.S. at 514 n.32). Cost effectiveness is one of the criteria that all OSHA standards must meet. The OSH Act does not support a requirement that imposes greater costs than available alternatives without any safety benefit. For employer payment to be more cost-effective, it must provide the same or better level of safety at a lower cost than permitting employers and employees to determine who pays for PPE. After carefully reviewing the rulemaking record, OSHA has concluded that this final rule is the most cost-effective of the available alternatives.

OSHA considered the effect on safety of permitting employees to pay for PPE in comparison to imposing an employer payment requirement, with limited exceptions. (OSHA considered four specific alternatives to the final rule, which are discussed in more detail in the Alternatives Section above.) While there are many reasons why employer payment for PPE will increase safety and OSHA finds these reasons compelling, some commenters suggested reasons why employee payment may have some safety advantages in certain circumstances.

A few commenters argued that safety would be enhanced when employees pay for PPE because they would be able to select PPE that is comfortable for them and they would take better care of its condition (see, *e.g.,* Exs. 12: 31, 48, 68, 140, 165, 203; 45: 5, 6; 46: 4, 17, 32, 42). For example, a representative of HBC Barge stated in a written comment that: ''By having the employee pay for PPE that is classified as 'tools of the trade' the effect on workplace safety and health can only be positive. Ownership of equipment on the average will bring a pride in maintaining their equipment in proper working order'' (Ex. 46: 4). A representative of the National Rural Electric Cooperative Association commented that:

> If employees pay for their own tools-of-the-trade PPE there is a greater likelihood of accurate fitting to the individual and a greater likelihood that individual preferences will be met. As a result, employees are more likely to wear PPE that they provide themselves. The more that workers wear appropriate PPE, the safer is the workplace (Ex. 46: 42).

The National Electrical Contractors Association (NECA) stated that employees who work on construction sites were in the best position to provide certain personal protective equipment and tools, and suggested that safety could be compromised in some situations where employers provide the equipment to be shared by employees:

> Certain Lineman's tools have long been considered 'tools of the trade.' Lineman's belts must be measured and sized to fit the individual employee. Exchanging such belts with other employees would cause belts to have wider or smaller loops, which could lead to dropped tools. For fall protection, Lineman's hook gaffs are sharpened to the 'taste' of the lineman, hooks are individually adjusted to the lineman's calf length and preference, and hook pads are broken in to fit the individual for fatigue and stress reduction. Constantly transferring hooks, belts, and safeties would cause a disconcerting concern for linemen (Ex. 12: 16).

NECA also commented that flame-resistant clothing is best purchased by the employee, in part because the employee can better ensure daily care, proper fit, and adequate laundering of the clothing, which ''[i]s vital to the longevity of the clothing and health of employees * * * '' (Ex. 12: 16).

These and other commenters stated that employees who regularly carry the same PPE from job to job may have greater familiarity with their PPE than employees who are provided new PPE each time they work for a new employer. This consistency may also assure employees that the PPE they will be using is best fitted and suited to their own needs. Given this, these commenters suggest that it may be more cost-effective for employees in some industries with high turnover rates to supply basic PPE such as hardhats, safety glasses, and gloves that can be carried easily from establishment to establishment.

OSHA does not agree with commenters that employee payment will result in greater safety benefits than the final rule. As discussed in detail above, OSHA finds that the final rule will result in significant benefits for employees and will reduce the risk underlying the existing PPE standards. Employers are in the best position to know and address the hazards in their workplaces, and payment for PPE will provide an incentive to better understand those hazards and take appropriate measures to ensure PPE is used by their employees. The rulemaking record strongly supports OSHA's finding of safety benefits from the final rule.

The commenters who suggested greater safety benefits under an employee payment scenario seem to base their suggestion on the fact that since PPE is ''personal,'' if employees select and purchase it, it will be more suited to their tastes and they will wear it more often. While it is true that PPE is more effective when it is suited to the size and fit of the employee, OSHA does not believe that this is relevant to the question of whether employers or employees should pay for the PPE. The employer is responsible under existing OSHA standards to ensure that the right PPE is used in the workplace and that it fits the employee; OSHA has found, on the basis of this rulemaking record, that an employer payment requirement will help ensure that employers carry out this responsibility. OSHA does not believe that having employees pay for the PPE will result in improved employee use of the equipment.

In addition, OSHA has crafted the final rule in a cost effective manner. It recognizes the safety benefits of employer payment for most types of PPE, but exempts certain PPE from the general payment requirement. Much of the exempted PPE can be used off of the job and is the kind of PPE that employees may take with them from job to job or employer to employer. The final rule also specifically recognizes that OSHA standards allow for

employees to bring on the worksite and use PPE that they already own. Thus, the final rule addresses much of the cost-effectiveness concerns raised by commenters for certain PPE in high-turnover industries.

OSHA also believes that employer payment for PPE will result in PPE purchases that are on the whole less costly than if employees paid for the PPE. Employers can frequently utilize bulk purchase discounts, which means that the same amount of PPE will be provided at a lower cost, or more PPE will be provided for the same cost. Requiring individual employees to purchase individual pieces of equipment is not an efficient way to provide this critical protection.

Finally, according to OSHA's survey data, the vast majority of employers, found in all industries, are already paying for all of their employees' PPE. OSHA does not believe this would be the case if employer payment was not cost effective. This demonstrates that most employers have made a business decision that paying for PPE is a cost effective method of providing protection for their employees.

## XV. Final Economic and Regulatory Flexibility Analysis

### *A. Introduction*

OSHA has prepared this Final Economic Analysis to examine the feasibility of the rule on Employer Payment for Personal Protective Equipment and to meet the requirements of Executive Order 12866 and the Regulatory Flexibility Act (as amended). The rule will clarify that, with certain exceptions, employers are required to pay for protective equipment, including personal protective equipment (PPE), whenever OSHA standards mandate that employers provide such equipment to their employees. The employer is not required to pay for non-specialty safety-toe protective footwear (including steel-toe shoes or steel-toe boots) and non-specialty prescription safety eyewear, provided that the employer permits such items to be worn off the job-site. The employer is also not required to pay for the logging boots required by 29 CFR 1910.266(d)(1)(v); everyday clothing, such as long-sleeve shirts, long pants, street shoes, and normal work boots; or ordinary clothing, skin creams, or other items, used solely for protection from weather, such as winter coats, jackets, gloves, parkas, rubber boots, hats, raincoats, ordinary sunglasses, and sunscreen.

OSHA's requirements for PPE appear in many health, safety, shipyard employment, marine terminal, longshoring (referred to as maritime standards), and construction standards. In some cases, the standard is explicit in stating that employers are to provide the PPE at no cost to the employee (see, for example, OSHA's substance-specific health standards, which are codified in Subpart Z of 29 CFR 1910.1000). In other cases, however, such as in paragraph (a) of 29 CFR 1910.132 and paragraph (a) of 29 CFR 1926.28, who is required to pay for the PPE is not expressly specified. (For a complete list of OSHA's PPE requirements, see the Summary and Explanation section, above.)

This rule will apply to general industry, construction, and maritime workplaces covered by the PPE provisions in existing OSHA standards. The rule will clarify OSHA's position that, with the exceptions noted, employers must provide required PPE to their employees at no cost to those employees. The kinds of PPE addressed by this rule include nonprescription eye and face protection; hard hats; metatarsal protection; gloves and protective clothing; fall protection and welding equipment; and hearing protection. (A more detailed list of the kinds of PPE covered appears in the Summary and Explanation section, above.)

### *B. Need for the Rule and Market Failure*

The justification for imposing appropriate occupational safety and health standards generally, and for adopting this change to the PPE standards in particular, is that without these requirements, fatality and injury risks to employees would remain unacceptably high. OSHA has determined that this rule meets the standards for regulation established by Congress through the passage of the Occupational Safety and Health Act. In addition, risks would be too high in terms of imposing large net costs (both pecuniary and non-pecuniary) on society, producing an inefficient allocation of resources, and reducing overall social welfare.

OSHA has found that in this case, market incentives alone are unable to allocate sufficient resources to provide for social welfare enhancing improvements in safety and health. By itself, however, the existence of constraints which prevent optimal efficiency would not necessarily justify regulatory intervention because regulations themselves may introduce costs, rigidities, and distortions. However, in this case the negative consequences of not regulating are outweighed by the net benefits of regulation. The sources of market failure could include the existence of externalities, the high cost of or lack of necessary information, including large uncertainties that are costly to remedy.

Measures for improving occupational safety and health involve significant externalities. The consequences of an injury or fatality usually extend beyond the affected employee and employer. A substantial part of the emotional and financial costs associated with an injury or fatality is often borne by third parties that are not compensated for their costs, including other workers, families and friends. Thus, a substantial part of the benefits associated with improvements in safety and health is externalized. As a result, even a mutually agreeable arrangement between employers and employees could represent a socially undesirable outcome.

A second market failure concerns the cost of and lack of necessary and sufficient information. The risks of injuries or fatalities specific to a particular job at a particular firm for a future time period are difficult to know or predict. The compilation of more detailed and current information on employer- and job-specific risks could provide improvement, but at immense cost, difficulty, and controversy. For example, such risk estimates would have to take into account the presence or absence of any number of combinations of controls or procedures in the context of innumerable different circumstances. Without adequate information regarding occupational risks and how they may be affected by innumerable diverse factors, employer and employee negotiations regarding pay and working conditions may not adequately reflect the nature of such risks. Typically, the employee will be at a disadvantage in assessing and controlling these risks, especially with regard to employer- and worksite-specific considerations; in addition, employers are not always fully aware of the nature of risks, the full costs associated with an injury incident, the extent to which they can be reduced, and the methods and resources that can achieve reductions in risk.

A third source of market failure involves the high costs and uncertainties associated with attempts at restitution. The costly nature of the legal system, together with the uncertainties associated with the outcome of cases, limits the prospect for tort liability to create the proper incentives. Problems with tort liability laws have been recognized for decades and were partially addressed through the establishment of no-fault workers' compensation programs in every state.

However, even the workers' compensation systems do not adequately correct the market failures because insurance rates are frequently not employer-specific, coverage and compensation are only partial, and the outcome still leaves injury and fatality rates above levels achievable through cost-effective regulatory requirements.

This rule is a response to these market failures. When it promulgated the OSH Act, Congress noted the failure of the market to prevent a significant number of occupational injuries and fatalities. Congress concluded that promulgation of the OSH Act was necessary to create a safe and healthful working environment. As stated by Senator Cranston:

> [T]he vitality of the Nation's economy will be enhanced by the greater productivity realized through saved lives and useful years of labor. When one man is injured or disabled by an industrial accident or disease, it is he and his family who suffer the most immediate and personal loss. However, that tragic loss also affects each of us. As a result of occupational accidents and disease, over $1.5 billion in wages is lost each year (1970 dollars), and the annual loss to the gross national product is estimated to be over $8 billion. Vast resources that could be available for productive use are siphoned off to pay workmen's compensation and medical expenses * * *. Only through a comprehensive approach can we hope to effect a significant reduction in these job death and casualty figures (Id. at 518–19).

As explained in detail above, Congress established that employers should bear the cost of creating a safe and healthful workplace, and thus directed them to comply with health and safety standards promulgated by OSHA. This rule is consistent with the OSH Act to the extent this rule simply clarifies Congress's determinations that employers must bear the cost of compliance with OSHA standards.

OSHA has also determined that the rule is necessary to further reduce the significant risk associated with OSHA's standards requiring the use of PPE. It has become clear that employees frequently fail to perceive the risk of having worn out PPE. Furthermore, the workers' compensation system, aside from raising the cost of restitution, has introduced distortions into the market. Workers' compensation premiums are frequently not experience-rated; many employers are thus given limited incentive to reduce injuries—they end up paying the same amount into the system regardless of the level of safety at the workplace.

In most OSHA rulemakings, the cost of providing safety falls squarely on the shoulders of the employer, although in efficient markets, the cost of rulemaking may be passed on, to an extent, to other market participants such as employees and consumers. Regardless, our research has shown that often employers pay for PPE. However, OSHA has also found in this analysis that requiring all employers to pay for all PPE, with few exceptions, leads to a better regulatory outcome. For example, with workers' compensation benefits paid to the employee remaining fixed under state law, the employee's incentive to acquire proper PPE or replace it in a timely manner may be less than the total costs associated with a possible accident as a result of the assurances provided by the workers' compensation system. The risky and tragic results of this market distortion are written about extensively in the Legal Authority section of the preamble. One way to correct this is to require that employers pay for PPE.

The PPE payment rule will improve efficiency and social welfare by producing net benefits in conjunction with correcting the deleterious outcomes resulting from the market failures associated with the protection of occupational safety and health.

*C. Nonregulatory Alternatives*

Market failures in general can often be addressed through approaches other than regulation, and OSHA considered the potential for such approaches for the market failures in the market for occupational safety and health. For example, additional and more readily available information regarding occupational risks and practical solutions relevant for particular workplaces could help raise awareness. Efforts to provide direct assistance for reducing risks could be expanded.

As a practical matter, however, frequently regulation is required to facilitate the transmission of information. As outlined in the Legal Authority section, one goal of the rule is to clarify the responsibility for providing PPE. In the absence of clear lines of responsibility stretching back to the employer, there is often a failure to provide the information. On another level, the failure of the employer to pay for the PPE is interpreted by the employee as a sign the employer is not serious about the importance of safety and health.

OSHA intends to continue to strive to address occupational hazards through these alternatives to regulation where appropriate. However, due to the nature of the market failures as described above, these measures by themselves would not sufficiently reduce risks. As outlined in the Legal Authority section, not only is there a significant risk existing to employees from the lack of adequate PPE, but the OSH Act implicitly requires employers to pay for it. OSHA concludes that for the hazards requiring PPE, a mandatory standard clearly setting forth an employer's obligation to pay for PPE is necessary, just as it is for engineering and work practice controls.

*D. Industry Profile*

The rule is concerned only with who pays for OSHA-required PPE; that is, it will not require employers to provide PPE where none has been required before. Instead, the rule merely stipulates that required PPE be paid for by the employer. If all employers are in full compliance with requirements that PPE be provided, then PPE is already being paid for by either the employer or the employee, and the rule will shift the cost of that portion of the PPE currently being paid for by the employee to the employer. (See the Legal Authority section of the preamble, above, for details of OSHA's interpretation of this issue.) Such a shift in who pays the costs will represent a transfer within the economy and not a net cost to the economy. However, to the extent that a change in payment results in more or better PPE being used, then this rule will lead to costs and benefits to the economy. OSHA believes that this rule will result in improved PPE use and, thus, will lead to both social costs and benefits. This issue is discussed in more detail below.

To determine the extent of current PPE usage, the potential magnitude of any shift in costs, and possible social costs, OSHA has developed a profile of industry PPE use and payment patterns.[17] Most employers are already paying for the PPE they provide to their employees to comply with OSHA standards. The most recent study of collective bargaining agreements showed that 55 percent of contracts mentioning safety equipment stipulate that employers are to pay for PPE, while only 11 percent of such agreements require the employee to pay for any PPE[18] (BNA, 1995). Employers currently pay for PPE for a variety of reasons: Because of labor-management agreements; for workers' compensation purposes; because if employers pay for the PPE, they know what kinds of PPE their employees are using and they can

[17] This rulemaking primarily affects non-State Plan States, as the majority of employees in State Plan States are already covered by requirements equal to or greater than this final rule. Approximately 59 percent of U.S. private sector workers work in states not covered by OSHA State Plans for the private sector [BLS, 2004], and are thus affected by this rule.

[18] This figure includes payment for all types of safety shoes.

ensure that it is replaced when needed; and because they can require standardized procedures for cleaning, storing, and maintaining it. Employers can control what PPE is used and how it is used, and thus can have greater assurance that they are in fact in compliance with OSHA's standards, and can ensure they will minimize any liabilities associated with accidents preventable by proper PPE use. Other reasons why employers prefer to pay for PPE, according to the expert panel convened by OSHA to obtain information on PPE patterns of use and payment for the proposed rule, are:

- The employer has experience with injuries that could have been prevented by PPE use;
- The employer has received input from his/her insurance carrier;
- The employer is concerned about the likelihood of an OSHA inspection (Ex. 1).

*E. Data on PPE Usage Patterns*

The data relied on to develop this industry profile come from a large-scale nationwide telephone survey of 3,722 employers conducted for OSHA by Eastern Research Group (ERG) in 1999 (Ex. 14). The survey collected information on the extent to which employers currently pay for their employees' PPE in the general industry, construction, and maritime sectors. Three basic types of information were collected about eight categories of PPE: (1) Is the PPE used at the respondent's establishment?; (2) How many employees use the PPE?; and (3) Who pays for the PPE? The survey report describes the sample design, disposition, and weighting of the responses. This survey constitutes the best available evidence regarding PPE usage patterns.

OSHA did not rely on this survey in formulating its industry profile for the proposed rule because the survey was completed after the proposed rule was published. However, OSHA made the survey available in its public docket when it was completed in June 1999, and provided the public an opportunity to comment on its design and methodology (64 FR 33810). Some stakeholders commented on the survey and OSHA has carefully considered those comments. OSHA also thoroughly reviewed the results and the methodology of the survey in preparing this final rule and made some adjustments to it.

In particular, OSHA made two adjustments to the results of the survey to better reflect PPE usage patterns. First, the Agency realized that retaining the weights for numbers of employees assigned from the original Dun's database identifiers was resulting in misleading information in some cases. OSHA has therefore reweighted the survey responses for numbers of employees based on actual information from the survey (ERG, 2007). Second, in order to benchmark the data to recent Census figures, ERG converted the original Standard Industrial Classification (SIC)-based results to a North American Industrial Classification System (NAICS)-based industry profile. In most industries, the two-digit SICs mapped directly into their three-digit NAICS counterpart. Some industries (*e.g.,* maritime) mapped directly at a greater level of detail. In other industries, it was necessary to consolidate a few two-digit SICs into a single three-digit NAICS code.[19]

Table XV–1 shows OSHA's estimate, based on the survey, of the extent of PPE use in the non-State Plan State workplaces covered by the rule. A total of 24.9 million employees are estimated to wear one or more kinds of PPE in workplaces within OSHA non-State Plan States. Non-prescription safety glasses are worn by approximately 11.3 million employees, while 9.2 million employees wear gloves for abrasion protection, 6.5 million wear safety goggles, 5.8 million wear gloves for chemical protection, and 5.7 million wear hardhats. Industries with the largest number of PPE-wearing employees include administrative and support services (NAICS 561), with 1.9 million such employees; specialty trade contractors (NAICS 238), with 1.8 million such employees; and professional, scientific and technical services (NAICS 541), with 1.7 million employees. There are also four other industries with more than one million PPE-wearing employees each: wholesale merchants—durable goods (NAICS 423), ambulatory health care services (NAICS 621), hospitals (NAICS 622), and food services and drinking places (NAICS 722). In many cases, much of the PPE needed is concentrated in particular items, such as gloves.

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[19] For example, SICs 75 (Auto Repair) and 76 (Miscellaneous Repair Services) were consolidated into NAICS 811, Repair and Maintenance.

Table XV-1A

PPE Use Profile - Non State Plan States

| NAICS | Industry | Total Establishments - Non State Plan States | Establishments with PPE - Non State Plan States | Total Number of Employees | Employees using PPE (any type) [a] | Number of Employees Using Personal Protective Equipment: Non-Prescription Safety Glasses | Safety Goggles | Chemical Splash Goggles | Face Shields | Hard Hats | Metatarsal Protection | Chemical Protective Footwear |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 113 | Forestry and Logging | 6,413 | 5,868 | 38,900 | 32,743 | 26,261 | 9,257 | 4,283 | 1,750 | 13,716 | 4,468 | 775 |
| 211 | Oil and Gas Extraction | 6,286 | 4,054 | 69,039 | 50,036 | 28,202 | 13,526 | 9,763 | 7,163 | 31,978 | 2,766 | 6,538 |
| 221 | Utilities | 10,840 | 6,602 | 402,740 | 163,495 | 98,004 | 56,851 | 28,682 | 15,786 | 108,326 | 23,861 | 9,498 |
| 236 | Construction of Buildings | 106,437 | 91,962 | 875,585 | 679,563 | 407,649 | 372,859 | 199,075 | 43,029 | 536,870 | 42,212 | 53,779 |
| 237 | Heavy and Civil Engineering Construction | 25,477 | 23,388 | 543,974 | 431,421 | 289,948 | 228,037 | 119,584 | 113,122 | 380,524 | 54,859 | 6,502 |
| 238 | Specialty Trade Contractors | 229,061 | 211,881 | 2,277,779 | 1,841,388 | 1,223,427 | 884,056 | 438,219 | 205,131 | 1,416,431 | 127,961 | 89,991 |
| 311 | Food Manufacturing | 12,554 | 10,206 | 886,609 | 501,827 | 356,018 | 186,055 | 40,548 | 22,955 | 70,424 | 25,689 | 8,172 |
| 312 | Beverage and Tobacco Product Manufacturing | 1,171 | 975 | 76,090 | 43,067 | 33,020 | 21,004 | 4,511 | 2,330 | 5,286 | 2,006 | 820 |
| 313 | Textile Mills | 1,312 | 1,076 | 95,130 | 53,844 | 40,819 | 22,549 | 4,806 | 2,649 | 6,862 | 2,617 | 804 |
| 314 | Textile Product Mills | 3,447 | 2,827 | 106,847 | 60,476 | 45,847 | 25,326 | 5,398 | 2,975 | 7,707 | 2,939 | 903 |
| 315 | Apparel Manufacturing | 3,044 | 2,426 | 127,809 | 72,341 | 52,668 | 28,178 | 6,876 | 3,368 | 9,544 | 3,647 | 1,443 |
| 316 | Leather and Allied Product Manufacturing | 706 | 565 | 29,458 | 16,673 | 11,536 | 5,741 | 1,305 | 724 | 2,452 | 883 | 280 |
| 321 | Wood Product Manufacturing | 8,513 | 6,657 | 280,928 | 159,007 | 112,467 | 63,680 | 18,860 | 7,405 | 20,569 | 8,080 | 4,887 |
| 322 | Paper Manufacturing | 2,699 | 2,275 | 290,958 | 174,283 | 126,956 | 65,800 | 20,722 | 28,585 | 54,512 | 10,382 | 15,026 |
| 323 | Printing and Related Support Activities | 17,018 | 13,325 | 406,489 | 230,076 | 156,313 | 85,643 | 23,865 | 10,339 | 32,178 | 12,028 | 6,475 |
| 324 | Petroleum and Coal Products Manufacturing | 1,354 | 991 | 73,738 | 49,458 | 37,092 | 19,933 | 10,697 | 16,809 | 29,244 | 4,013 | 11,234 |
| 325 | Chemical Manufacturing | 6,824 | 5,227 | 516,469 | 346,408 | 263,221 | 142,480 | 75,640 | 121,977 | 211,641 | 28,336 | 80,536 |
| 326 | Plastics and Rubber Products Manufacturing | 7,365 | 6,047 | 508,788 | 287,978 | 210,908 | 107,935 | 23,556 | 13,197 | 38,932 | 14,603 | 4,175 |
| 327 | Nonmetallic Mineral Product Manufacturing | 8,747 | 8,747 | 279,006 | 233,306 | 168,755 | 52,155 | 48,270 | 18,360 | 126,769 | 82,451 | 4,315 |
| 331 | Primary Metal Manufacturing | 2,833 | 2,833 | 268,857 | 224,820 | 158,789 | 44,170 | 37,159 | 17,157 | 111,401 | 83,941 | 4,612 |
| 332 | Fabricated Metal Product Manufacturing | 29,510 | 27,474 | 922,242 | 531,202 | 435,533 | 80,555 | 82,577 | 12,310 | 17,280 | 16,437 | 2,237 |
| 333 | Machinery Manufacturing | 13,453 | 12,377 | 656,137 | 377,928 | 299,952 | 54,952 | 54,185 | 7,544 | 13,188 | 12,964 | 1,789 |
| 334 | Computer and Electronic Product Manufacturing | 12,524 | 5,836 | 554,700 | 319,501 | 244,583 | 32,780 | 33,501 | 5,901 | 9,522 | 11,064 | 1,548 |
| 335 | Electrical Equipment, Appliance, and Component Manufacturing | 3,040 | 2,845 | 273,444 | 157,501 | 120,829 | 15,849 | 16,423 | 2,942 | 4,577 | 5,391 | 750 |
| 336 | Transportation Equipment Manufacturing, Except Shipbuilding | 6,356 | 5,968 | 836,015 | 489,094 | 363,644 | 43,558 | 40,970 | 9,973 | 14,914 | 17,929 | 2,830 |
| 336611 | Ship Building and Repairing | 334 | 334 | 52,456 | 39,851 | 36,157 | 7,387 | 8,171 | 2,180 | 37,015 | 7,537 | 253 |
| 337 | Furniture and Related Product Manufacturing | 9,835 | 7,838 | 272,552 | 154,266 | 115,460 | 64,812 | 15,668 | 7,530 | 19,468 | 7,554 | 3,117 |
| 339 | Miscellaneous Manufacturing | 28,842 | 13,267 | 416,899 | 240,130 | 189,121 | 33,891 | 32,829 | 4,773 | 8,476 | 8,327 | 1,175 |
| 423 | Merchant Wholesalers, Durable Goods | 120,222 | 68,286 | 1,960,281 | 1,048,486 | 438,679 | 200,609 | 240,329 | 98,101 | 305,607 | 71,158 | 64,476 |
| 424 | Merchant Wholesalers, Nondurable Goods | 60,488 | 34,720 | 1,419,695 | 759,345 | 331,603 | 130,282 | 169,349 | 71,849 | 206,906 | 50,444 | 50,327 |
| 441 | Motor Vehicle and Parts Dealers | 66,173 | 52,674 | 1,139,898 | 559,236 | 286,542 | 162,699 | 107,956 | 44,093 | 58,158 | 13,791 | 14,327 |
| 442 | Furniture and Home Furnishings Stores | 31,554 | 14,136 | 337,149 | 100,651 | 18,002 | 22,059 | 5,128 | 831 | 8,236 | 64 | 1,561 |
| 443 | Electronics and Appliance Stores | 23,498 | 10,527 | 256,737 | 76,645 | 13,708 | 16,798 | 3,905 | 633 | 6,272 | 48 | 1,189 |
| 444 | Building Material and Garden Equipment and Supplies Dealers | 43,865 | 20,529 | 714,172 | 213,205 | 37,251 | 37,885 | 10,898 | 2,388 | 18,536 | 199 | 3,018 |
| 445 | Food and Beverage Stores | 69,458 | 33,896 | 1,752,844 | 523,284 | 87,311 | 68,014 | 26,385 | 7,493 | 47,662 | 665 | 6,483 |
| 446 | Health and Personal Care Stores | 41,191 | 18,454 | 652,560 | 194,812 | 34,560 | 41,582 | 9,945 | 1,574 | 15,915 | 120 | 3,014 |
| 447 | Gasoline Stations | 62,961 | 50,117 | 549,719 | 269,693 | 138,186 | 78,462 | 52,062 | 21,264 | 28,047 | 6,651 | 6,909 |
| 448 | Clothing and Clothing Accessories Stores | 70,868 | 31,891 | 934,102 | 278,862 | 50,354 | 61,439 | 14,519 | 2,186 | 23,058 | 164 | 4,441 |
| 451 | Sporting Goods, Hobby, Book, and Music Stores | 29,097 | 13,035 | 353,592 | 105,559 | 18,727 | 22,531 | 5,389 | 853 | 8,623 | 65 | 1,633 |
| 452 | General Merchandise Stores | 23,529 | 13,294 | 1,549,261 | 462,508 | 73,151 | 42,379 | 22,466 | 7,675 | 42,698 | 700 | 4,941 |
| 453 | Miscellaneous Store Retailers | 62,142 | 27,840 | 472,909 | 141,180 | 25,046 | 30,134 | 7,207 | 1,141 | 11,533 | 87 | 2,184 |
| 454 | Nonstore Retailers | 24,523 | 10,986 | 327,217 | 97,686 | 17,330 | 20,851 | 4,987 | 789 | 7,980 | 60 | 1,511 |
| 481 | Air Transportation | 2,823 | 1,680 | 297,133 | 118,853 | 36,339 | 31,773 | 17,656 | 7,540 | 13,060 | 10,264 | 4,429 |
| 482 | Rail Transportation | NA | NA | 182,182 | 23,161 | 17,108 | 14,890 | 10,588 | 6,083 | 11,264 | 5,629 | 4,960 |
| 483 | Water Transportation | 1,019 | 570 | 49,022 | 19,609 | 5,035 | 5,476 | 2,704 | 788 | 4,830 | 2,909 | 502 |
| 484 | Truck Transportation | 60,431 | 34,083 | 846,906 | 338,762 | 82,608 | 88,324 | 42,346 | 12,858 | 73,305 | 49,119 | 7,874 |
| 485 | Transit and Ground Passenger Transportation | 7,405 | 4,354 | 271,870 | 108,748 | 22,702 | 22,899 | 11,148 | 3,208 | 23,386 | 17,558 | 1,950 |
| 486 | Pipeline Transportation | 1,862 | 1,117 | 32,255 | 13,094 | 6,882 | 5,437 | 2,475 | 1,341 | 8,645 | 1,193 | 878 |
| 487 | Scenic and Sightseeing Transportation | 1,134 | 667 | 8,811 | 3,525 | 736 | 742 | 361 | 104 | 758 | 569 | 63 |

Table XV-1A

PPE Use Profile - Non State Plan States

| NAICS | Industry | Total Establistments - Non State Plan States | Establishments with PPE - Non State Plan States | Total Number of Employees | Employees using PPE (any type) [a] | Number of Employees Using Personal Protective Equipment | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | Non-Prescription Safety Glasses | Safety Goggles | Chemical Splash Goggles | Face Shields | Hard Hats | Metatarsal Protection | Chemical Protective Footwear |
| 488 | Support Activities for Transportation, Except Longshoring | 17,209 | 9,482 | 287,429 | 114,971 | 27,327 | 36,809 | 15,713 | 2,856 | 37,282 | 19,821 | 1,971 |
| 488320 | Marine Cargo Handling (Longshoring) | 304 | 255 | 29,182 | 23,082 | 19,257 | 13,390 | 7,962 | 2,838 | 22,624 | 535 | 8,433 |
| 491 | Postal Service | NA | NA | 796,199 | 163,630 | 126,668 | 106,017 | 77,765 | 48,896 | 74,195 | 37,390 | 39,458 |
| 492 | Couriers and Messengers | 6,626 | 3,737 | 341,952 | 136,780 | 33,354 | 35,662 | 17,098 | 5,192 | 29,598 | 19,833 | 3,179 |
| 493 | Warehousing and Storage | 6,465 | 3,646 | 334,770 | 133,908 | 32,654 | 34,913 | 16,739 | 5,083 | 28,976 | 19,416 | 3,112 |
| 511 | Publishing Industries (except Internet) | 14,617 | 11,445 | 606,838 | 343,475 | 233,357 | 127,854 | 35,628 | 15,435 | 48,037 | 17,956 | 9,666 |
| 515 | Broadcasting (except Internet) | 5,133 | 3,111 | 180,355 | 73,216 | 40,771 | 25,796 | 12,323 | 6,955 | 47,187 | 9,524 | 4,138 |
| 517 | Telecommunications | 25,019 | 15,162 | 851,856 | 345,816 | 192,572 | 121,841 | 58,206 | 32,850 | 222,873 | 44,982 | 19,545 |
| 541 | Professional, Scientific, and Technical Services | 382,430 | 136,528 | 4,266,085 | 1,745,844 | 419,799 | 254,920 | 125,159 | 222,827 | 362,621 | 112,951 | 33,023 |
| 561 | Administrative and Support Services | 162,938 | 93,344 | 5,221,213 | 1,912,340 | 469,751 | 299,794 | 115,495 | 50,916 | 139,747 | 31,783 | 14,931 |
| 562 | Waste Management and Remediation Services | 9,498 | 5,784 | 200,540 | 81,411 | 48,800 | 28,308 | 14,282 | 7,861 | 53,940 | 11,881 | 4,729 |
| 621 | Ambulatory Health Care Services | 241,989 | 184,880 | 3,280,819 | 1,503,287 | 640,546 | 422,653 | 318,243 | 209,280 | 43,042 | 675 | 3,320 |
| 622 | Hospitals | 4,087 | 3,122 | 3,358,307 | 1,538,792 | 655,675 | 432,635 | 325,760 | 214,222 | 44,058 | 690 | 3,399 |
| 623 | Nursing and Residential Care Facilities | 32,186 | 24,590 | 1,842,428 | 844,209 | 359,715 | 237,351 | 178,718 | 117,526 | 24,171 | 379 | 1,865 |
| 721 | Accommodation | 30,063 | 14,190 | 951,703 | 299,353 | 54,588 | 42,582 | 15,676 | 6,983 | 11,598 | 2,861 | 2,329 |
| 722 | Food Services and Drinking Places | 252,027 | 130,046 | 5,188,460 | 1,548,935 | 260,590 | 224,520 | 77,145 | 20,426 | 137,039 | 1,770 | 19,771 |
| 811 | Repair and Maintenance | 225,650 | 88,737 | 758,887 | 372,312 | 212,992 | 119,362 | 78,954 | 31,598 | 51,921 | 10,285 | 10,468 |
| 812 | Personal and Laundry Services | 99,253 | 45,160 | 809,579 | 254,649 | 74,296 | 42,508 | 24,439 | 8,714 | 14,877 | 1,345 | 2,437 |
| | Total | 2,885,732 | 1,699,945 | 55,554,552 | 24,854,597 | 11,297,750 | 6,481,200 | 3,689,247 | 2,011,216 | 5,658,075 | 1,200,478 | 696,905 |

[a] Figure is an estimate of the total number of PPE users in affected establishments, not the total number of PPE items in use. Figures will therefore not necessarily sum across.

Source: OSHA Office of Regulatory Analysis, based on 1999 Nationwide PPE Survey.

Table XV-1B

PPE Use Profile - Non State Plan States

| NAICS | Industry | Number of Employees Using Personal Protective Equipment | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | Gloves for Abrasion Protection | Gloves for Chemical Protection | Splash Aprons | Chemical Protective Clothing | Fall Protection | Welding Helmets | Welding Goggles | Welding Protective Clothing | Hearing Protection |
| 113 | Forestry and Logging | 14,258 | 5,519 | 1,471 | 943 | 6,253 | 1,051 | 621 | 80 | NA |
| 211 | Oil and Gas Extraction | 21,474 | 9,964 | 7,644 | 4,217 | 16,155 | 1,620 | 1,472 | 67 | NA |
| 221 | Utilities | 76,385 | 29,253 | 17,157 | 16,686 | 68,935 | 6,030 | 5,396 | 2,239 | NA |
| 236 | Construction of Buildings | 406,920 | 57,397 | 15,143 | 21,164 | 336,305 | 47,060 | 33,489 | 4,248 | 533,624 |
| 237 | Heavy and Civil Engineering Construction | 254,299 | 105,982 | 37,484 | 83,232 | 148,091 | 66,623 | 38,440 | 10,055 | 305,524 |
| 238 | Specialty Trade Contractors | 1,090,199 | 334,446 | 41,486 | 146,771 | 751,610 | 155,638 | 137,778 | 55,400 | 999,068 |
| 311 | Food Manufacturing | 188,727 | 150,779 | 73,262 | 20,630 | 35,081 | 22,046 | 15,824 | 5,335 | NA |
| 312 | Beverage and Tobacco Product Manufacturing | 18,584 | 17,719 | 9,053 | 3,325 | 4,389 | 2,164 | 1,487 | 526 | NA |
| 313 | Textile Mills | 20,703 | 19,327 | 8,822 | 2,257 | 4,181 | 2,451 | 1,682 | 621 | NA |
| 314 | Textile Product Mills | 23,253 | 21,707 | 9,908 | 2,536 | 4,696 | 2,753 | 1,889 | 698 | NA |
| 315 | Apparel Manufacturing | 27,637 | 23,875 | 10,046 | 2,540 | 5,307 | 3,455 | 2,365 | 1,052 | NA |
| 316 | Leather and Allied Product Manufacturing | 6,037 | 4,658 | 2,138 | 533 | 1,043 | 719 | 518 | 185 | NA |
| 321 | Wood Product Manufacturing | 65,259 | 53,720 | 20,359 | 6,613 | 13,331 | 8,825 | 5,913 | 3,335 | NA |
| 322 | Paper Manufacturing | 69,846 | 58,651 | 27,302 | 17,670 | 23,285 | 9,237 | 7,113 | 2,624 | NA |
| 323 | Printing and Related Support Activities | 92,672 | 68,837 | 29,693 | 10,467 | 17,924 | 11,940 | 8,368 | 3,959 | NA |
| 324 | Petroleum and Coal Products Manufacturing | 25,577 | 21,214 | 11,426 | 11,107 | 12,976 | 3,776 | 3,007 | 1,157 | NA |
| 325 | Chemical Manufacturing | 183,289 | 150,754 | 82,468 | 78,421 | 94,075 | 26,725 | 21,925 | 8,246 | NA |
| 326 | Plastics and Rubber Products Manufacturing | 104,655 | 91,421 | 40,087 | 8,488 | 18,930 | 12,514 | 8,710 | 3,251 | NA |
| 327 | Nonmetallic Mineral Product Manufacturing | 136,067 | 20,237 | 6,574 | 7,799 | 23,679 | 19,411 | 14,279 | 2,730 | NA |
| 331 | Primary Metal Manufacturing | 121,083 | 14,217 | 6,304 | 8,339 | 23,493 | 15,728 | 12,426 | 2,193 | NA |
| 332 | Fabricated Metal Product Manufacturing | 182,146 | 82,053 | 66,331 | 50,401 | 21,217 | 56,398 | 14,327 | 3,144 | NA |
| 333 | Machinery Manufacturing | 125,241 | 55,664 | 40,546 | 31,063 | 16,313 | 39,348 | 10,645 | 2,181 | NA |
| 334 | Computer and Electronic Product Manufacturing | 90,248 | 44,387 | 30,481 | 25,081 | 12,581 | 24,787 | 6,021 | 1,434 | NA |
| 335 | Electrical Equipment, Appliance, and Component Manufacturing | 44,255 | 21,914 | 15,280 | 12,589 | 6,104 | 12,056 | 2,857 | 693 | NA |
| 336 | Transportation Equipment Manufacturing, Except Shipbuilding | 123,272 | 71,661 | 38,968 | 40,079 | 19,659 | 31,757 | 8,906 | 2,091 | NA |
| 336611 | Ship Building and Repairing | 27,277 | 6,926 | 2,062 | 2,725 | 19,940 | 9,299 | 16,648 | 27,811 | NA |
| 337 | Furniture and Related Product Manufacturing | 60,847 | 55,797 | 23,678 | 6,409 | 12,568 | 7,604 | 5,123 | 2,352 | NA |
| 339 | Miscellaneous Manufacturing | 77,920 | 35,135 | 24,904 | 19,297 | 10,331 | 23,879 | 6,562 | 1,388 | NA |
| 423 | Merchant Wholesalers, Durable Goods | 399,872 | 121,876 | 28,035 | 66,530 | 228,733 | 87,832 | 42,998 | 36,806 | NA |
| 424 | Merchant Wholesalers, Nondurable Goods | 294,662 | 90,367 | 21,224 | 48,891 | 143,617 | 65,798 | 33,773 | 29,382 | NA |
| 441 | Motor Vehicle and Parts Dealers | 238,699 | 239,924 | 73,104 | 14,329 | 42,674 | 79,555 | 58,270 | 9,415 | NA |
| 442 | Furniture and Home Furnishings Stores | 42,970 | 24,953 | 7,905 | 596 | 14,768 | 222 | 1,603 | 665 | NA |
| 443 | Electronics and Appliance Stores | 32,721 | 19,002 | 6,020 | 454 | 11,245 | 169 | 1,221 | 507 | NA |
| 444 | Building Material and Garden Equipment and Supplies Dealers | 91,324 | 49,148 | 15,376 | 1,408 | 24,988 | 623 | 3,497 | 964 | NA |
| 445 | Food and Beverage Stores | 219,446 | 111,261 | 34,914 | 5,060 | 44,259 | 1,947 | 8,725 | 1,240 | NA |
| 446 | Health and Personal Care Stores | 81,479 | 48,733 | 15,887 | 1,618 | 27,840 | 429 | 3,113 | 1,246 | NA |
| 447 | Gasoline Stations | 115,113 | 115,704 | 35,254 | 6,910 | 20,579 | 38,366 | 28,101 | 4,540 | NA |

Table XV-1B

PPE Use Profile - Non State Plan States

| | | Number of Employees Using Personal Protective Equipment | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| NAICS | Industry | Gloves for Abrasion Protection | Gloves for Chemical Protection | Splash Aprons | Chemical Protective Clothing | Fall Protection | Welding Helmets | Welding Goggles | Welding Protective Clothing | Hearing Protection |
| 448 | Clothing and Clothing Accessories Stores | 118,024 | 70,634 | 23,089 | 2,082 | 41,189 | 602 | 4,533 | 1,850 | NA |
| 451 | Sporting Goods, Hobby, Book, and Music Stores | 44,150 | 26,406 | 8,608 | 877 | 15,085 | 232 | 1,687 | 675 | NA |
| 452 | General Merchandise Stores | 189,712 | 90,716 | 28,012 | 5,482 | 26,689 | 1,967 | 7,604 | 308 | NA |
| 453 | Miscellaneous Store Retailers | 59,047 | 35,317 | 11,513 | 1,172 | 20,176 | 311 | 2,256 | 903 | NA |
| 454 | Nonstore Retailers | 40,856 | 24,437 | 7,966 | 811 | 13,960 | 215 | 1,561 | 625 | NA |
| 481 | Air Transportation | 46,894 | 9,621 | 11,057 | 11,596 | 11,370 | 5,030 | 4,454 | 610 | NA |
| 482 | Rail Transportation | 23,161 | 7,482 | 6,817 | 7,262 | 6,951 | 2,577 | 2,180 | 171 | NA |
| 483 | Water Transportation | 8,421 | 1,139 | 1,403 | 1,285 | 1,764 | 1,390 | 1,186 | 94 | NA |
| 484 | Truck Transportation | 136,562 | 18,139 | 22,338 | 20,929 | 28,483 | 23,619 | 20,205 | 1,835 | NA |
| 485 | Transit and Ground Passenger Transportation | 41,946 | 4,865 | 5,190 | 4,586 | 6,849 | 7,941 | 6,595 | 686 | NA |
| 486 | Pipeline Transportation | 7,070 | 2,499 | 1,204 | 1,289 | 4,949 | 533 | 464 | 442 | NA |
| 487 | Scenic and Sightseeing Transportation | 1,359 | 158 | 168 | 149 | 222 | 257 | 214 | 22 | NA |
| 488 | Support Activities for Transportation, Except Longshoring | 51,633 | 4,720 | 7,356 | 5,945 | 11,365 | 9,934 | 8,595 | 467 | NA |
| 488320 | Marine Cargo Handling (Longshoring) | 10,245 | 2,283 | 709 | 633 | 4,529 | 912 | 751 | 15 | NA |
| 491 | Postal Service | 163,630 | 58,350 | 52,114 | 57,267 | 53,119 | 17,134 | 14,535 | 1,186 | NA |
| 492 | Couriers and Messengers | 55,139 | 7,324 | 9,019 | 8,450 | 11,500 | 9,536 | 8,158 | 741 | NA |
| 493 | Warehousing and Storage | 53,981 | 7,170 | 8,830 | 8,273 | 11,259 | 9,336 | 7,987 | 725 | NA |
| 511 | Publishing Industries (except Internet) | 138,348 | 102,765 | 44,328 | 15,626 | 26,758 | 17,824 | 12,492 | 5,910 | NA |
| 515 | Broadcasting (except Internet) | 34,664 | 12,977 | 7,124 | 7,479 | 29,739 | 2,623 | 2,310 | 1,230 | NA |
| 517 | Telecommunications | 163,728 | 61,295 | 33,646 | 35,327 | 140,462 | 12,389 | 10,912 | 5,807 | NA |
| 541 | Professional, Scientific, and Technical Services | 441,610 | 224,833 | 100,736 | 50,201 | 99,059 | 37,202 | 37,635 | 0 | NA |
| 561 | Administrative and Support Services | 273,851 | 361,196 | 77,243 | 12,887 | 76,805 | 13,259 | 15,837 | 5,208 | NA |
| 562 | Waste Management and Remediation Services | 38,035 | 14,566 | 8,543 | 8,309 | 34,326 | 3,003 | 2,687 | 1,115 | NA |
| 621 | Ambulatory Health Care Services | 377,623 | 599,758 | 432,092 | 311,343 | 50,018 | 2,924 | 3,607 | 455 | NA |
| 622 | Hospitals | 386,542 | 613,923 | 442,297 | 318,697 | 51,200 | 2,994 | 3,692 | 465 | NA |
| 623 | Nursing and Residential Care Facilities | 212,064 | 336,809 | 242,652 | 174,843 | 28,089 | 1,642 | 2,026 | 255 | NA |
| 721 | Accommodation | 31,064 | 57,995 | 11,933 | 1,041 | 9,161 | 1,317 | 2,448 | 710 | NA |
| 722 | Food Services and Drinking Places | 656,214 | 334,314 | 102,663 | 12,014 | 145,227 | 5,232 | 25,228 | 4,618 | NA |
| 811 | Repair and Maintenance | 179,596 | 175,783 | 49,415 | 12,338 | 35,050 | 61,137 | 42,857 | 7,744 | NA |
| 812 | Personal and Laundry Services | 32,527 | 78,841 | 23,453 | 2,895 | 14,420 | 2,042 | 2,437 | 1,319 | NA |
| | Total | 9,212,112 | 5,800,496 | 2,719,315 | 1,888,269 | 3,296,929 | 1,154,956 | 832,228 | 280,049 | 1,838,215 |

Source: OSHA Office of Regulatory Analysis, based on 1999 Nationwide PPE Survey

BILLING CODE 4510–26–C

Table XV–2 lists the rate of employer payment for various PPE item categories, as indicated in OSHA's 1999 survey. For nearly all industries, payment rates are very high—in excess of 90 percent. The largest exception to this pattern is marine cargo handling (NAICS 48832), averaging 78 percent for all items covered by this rulemaking. For most PPE items, rates of employer payment are very high—ranging between 96 percent for welding protective gear to almost 99 percent for eye and face protection. The primary exception to this pattern is foot protection (including metatarsal protection and chemical protective footwear, but not safety-toe shoes), for which the employer payment rate (including some sharing) is between 50 percent and 55 percent.[20] For all items except footwear, employers pay an average of 96.5 percent of the cost. For the items covered by this final rule, including metatarsal guards, weighted by the total societal cost (both the employee and employer share) of the various items, employers are currently paying approximately 95 percent of the costs of PPE.

BILLING CODE 4510–26–P

[20] Most items are either paid for by the employer or employee. However, some establishments, particularly for footwear, have established a variety of shared payment systems. In these systems, employers typically pay approximately 50 percent of the shared cost.

Table XV-2

Estimated Percentage of PPE Cost Currently Borne by Employers

| NAICS | Industry | Eye and Face Protection [a] | Head Protection [b] | Foot Protection [c] | Metatarsal Protection | Chemical Protective Footwear | Gloves and Chemical Protection [d] | Fall Protection [e] | Welding Protection[f] | Hearing Protection [g] | All PPE | All PPE Except Footwear |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 113 | Forestry and Logging | 100.0% | 100.0% | 25.6% | 6.7% | 62 9% | 96.9% | 100% | 100.0% | NA | 94.1% | 97 8% |
| 211 | Oil and Gas Extraction | 100.0% | 92.4% | 73 0% | 69 1% | 73.5% | 89 5% | 100% | 100.0% | NA | 92.8% | 94.5% |
| 221 | Utilities | 100.0% | 100 0% | 79 9% | 85.2% | 75 3% | 97 9% | 100% | 100.0% | NA | 97.7% | 98.6% |
| 236 | Construction of Buildings | 92.8% | 95 4% | 25.0% | 29.2% | 23.9% | 82.5% | 100% | 100.0% | 98.9% | 91.3% | 94.0% |
| 237 | Heavy and Civil Engineering Construction | 100.0% | 99.0% | 34 7% | 12.9% | 98.0% | 94 6% | 100% | 98.8% | 99.2% | 96.3% | 97.5% |
| 238 | Specialty Trade Contractors | 96.8% | 95.2% | 32.2% | 15.2% | 40.5% | 88.4% | 100% | 98 9% | 99.7% | 93.2% | 95 0% |
| 311 | Food Manufacturing | 100 0% | 99.2% | 69.4% | 45.8% | 94.8% | 96.5% | 100% | 100.0% | NA | 96.8% | 97 5% |
| 312 | Beverage and Tobacco Product Manufacturing | 100.0% | 99.9% | 71.5% | 48.7% | 90.6% | 95.8% | 100% | 100.0% | NA | 96.5% | 97.0% |
| 313 | Textile Mills | 100 0% | 99.5% | 69.5% | 47.3% | 94.4% | 97.1% | 100% | 100.0% | NA | 97.3% | 97.9% |
| 314 | Textile Product Mills | 100 0% | 99.5% | 69.5% | 47.3% | 94.4% | 97.1% | 100% | 100.0% | NA | 97.3% | 97 9% |
| 315 | Apparel Manufacturing | 100.0% | 98.2% | 72.4% | 43.0% | 97.9% | 96.3% | 100% | 100.0% | NA | 96.7% | 97 3% |
| 316 | Leather and Allied Product Manufacturing | 100.0% | 98.7% | 69.6% | 44.5% | 97.0% | 96.5% | 100% | 100.0% | NA | 96.7% | 97.5% |
| 321 | Wood Product Manufacturing | 100 0% | 96.2% | 76.9% | 37.3% | 99.4% | 94.5% | 100% | 100.0% | NA | 95.4% | 96.0% |
| 322 | Paper Manufacturing | 100.0% | 99.8% | 91.3% | 66.8% | 97.1% | 99.1% | 100% | 100.0% | NA | 98.4% | 98.8% |
| 323 | Printing and Related Support Activities | 100.0% | 96.9% | 74 5% | 37.5% | 98 2% | 94.3% | 100% | 100 0% | NA | 95.2% | 95.9% |
| 324 | Petroleum and Coal Products Manufacturing | 100 0% | 100 0% | 94.1% | 93.9% | 94.2% | 100.0% | 100% | 100.0% | NA | 99.0% | 99 4% |
| 325 | Chemical Manufacturing | 100.0% | 100 0% | 94.9% | 94.1% | 94.9% | 100 0% | 100% | 100 0% | NA | 99.0% | 99.4% |
| 326 | Plastics and Rubber Products Manufacturing | 100.0% | 99.0% | 69.2% | 46.2% | 96.9% | 97.3% | 100% | 100 0% | NA | 97.4% | 98.1% |
| 327 | Nonmetallic Mineral Product Manufacturing | 99 8% | 95.8% | 81.3% | 79.1% | 96.0% | 90.3% | 94% | 99.6% | NA | 92.5% | 93 7% |
| 331 | Primary Metal Manufacturing | 99 9% | 96.3% | 84.2% | 83.3% | 90.0% | 93.7% | 95% | 98.8% | NA | 94.4% | 95.7% |
| 332 | Fabricated Metal Product Manufacturing | 99.7% | 100.0% | 81 9% | 74.8% | 100.0% | 98.4% | 100% | 92.5% | NA | 97 5% | 97.7% |
| 333 | Machinery Manufacturing | 99.8% | 100.0% | 71 8% | 60.4% | 100.0% | 97.9% | 100% | 90.4% | NA | 96.5% | 96.9% |
| 334 | Computer and Electronic Product Manufacturing | 99.8% | 100.0% | 63.2% | 48.2% | 100 0% | 99.2% | 100% | 95.6% | NA | 96.7% | 97.3% |
| 335 | Electrical Equipment, Appliance, and Component Manufacturing | 99.8% | 100.0% | 63.6% | 48.8% | 100 0% | 99 3% | 100% | 96.3% | NA | 96.9% | 97.4% |
| 336 | Transportation Equipment Manufacturing, Except Shipbuilding | 99.4% | 99.3% | 55.9% | 35 7% | 100.0% | 99.6% | 100% | 95.1% | NA | 95.2% | 96.0% |
| 336611 | Ship Building and Repairing | 100 0% | 72.9% | 35 9% | 39.3% | 1 5% | 77.9% | 100% | 88.8% | NA | 87.4% | 88.3% |
| 337 | Furniture and Related Product Manufacturing | 100.0% | 98 4% | 72.6% | 43.3% | 97.1% | 96.4% | 100% | 100.0% | NA | 96.7% | 97.3% |
| 339 | Miscellaneous Manufacturing | 99.8% | 100.0% | 71.2% | 59.4% | 100.0% | 98.1% | 100% | 91.0% | NA | 96.5% | 96.9% |
| 423 | Merchant Wholesalers, Durable Goods | 98.7% | 100.0% | 34.5% | 70.8% | 20 7% | 88.8% | 73% | 94.8% | NA | 82.4% | 85.3% |
| 424 | Merchant Wholesalers, Nondurable Goods | 97 0% | 100.0% | 32.6% | 67.3% | 20.7% | 91.5% | 78% | 94.7% | NA | 84.8% | 88.3% |
| 441 | Motor Vehicle and Parts Dealers | 95.0% | 95.1% | 32 7% | 63 8% | 22 3% | 95.5% | 100% | 88.0% | NA | 93.5% | 94 8% |
| 442 | Furniture and Home Furnishings Stores | 100 0% | 100.0% | 0 7% | 50.0% | 0.0% | 100.0% | 100% | 100.0% | NA | 98.6% | 100.0% |
| 443 | Electronics and Appliance Stores | 100.0% | 100.0% | 0 7% | 50 0% | 0.0% | 100.0% | 100% | 100.0% | NA | 98.6% | 100 0% |
| 444 | Building Material and Garden Equipment and Supplies Dealers | 100.0% | 100 0% | 1 1% | 50.0% | 0.0% | 100.0% | 100% | 100.0% | NA | 98.6% | 100.0% |
| 445 | Food and Beverage Stores | 100.0% | 100.0% | 1.7% | 50.0% | 0.0% | 100.0% | 100% | 100 0% | NA | 98.7% | 100.0% |
| 446 | Health and Personal Care Stores | 100.0% | 100 0% | 0 7% | 50.0% | 0.0% | 100.0% | 100% | 100.0% | NA | 98.6% | 100.0% |
| 447 | Gasoline Stations | 95 0% | 95 1% | 32.7% | 63.8% | 22 3% | 95.5% | 100% | 88 0% | NA | 93.5% | 94.8% |
| 448 | Clothing and Clothing Accessories Stores | 100.0% | 100 0% | 0 6% | 50 0% | 0.0% | 100 0% | 100% | 100 0% | NA | 98.6% | 100.0% |
| 451 | Sporting Goods, Hobby, Book, and Music Stores | 100.0% | 100.0% | 0.7% | 50 0% | 0 0% | 100.0% | 100% | 100.0% | NA | 98.6% | 100.0% |
| 452 | General Merchandise Stores | 100.0% | 100.0% | 2 3% | 50 0% | 0.0% | 100 0% | 100% | 100.0% | NA | 98 7% | 100.0% |
| 453 | Miscellaneous Store Retailers | 100.0% | 100.0% | 0.7% | 50.0% | 0.0% | 100.0% | 100% | 100.0% | NA | 98.6% | 100.0% |
| 454 | Nonstore Retailers | 100 0% | 100.0% | 0 7% | 50.0% | 0.0% | 100.0% | 100% | 100.0% | NA | 98.6% | 100 0% |
| 481 | Air Transportation | 100.0% | 100.0% | 22.1% | 49 9% | 0.0% | 99 5% | 100% | 100.0% | NA | 95.0% | 99 7% |
| 482 | Rail Transportation | 100 0% | 100.0% | 88.0% | 57.3% | 100 0% | 100.0% | 100% | 100.0% | NA | 99.0% | 100 0% |
| 483 | Water Transportation | 100.0% | 100 0% | 34.3% | 51.5% | 0.0% | 99.1% | 100% | 100.0% | NA | 94.7% | 99.5% |
| 484 | Truck Transportation | 100 0% | 100.0% | 35.1% | 51.5% | 0.0% | 99.1% | 100% | 100 0% | NA | 94.7% | 99 5% |
| 485 | Transit and Ground Passenger Transportation | 100.0% | 100.0% | 39.6% | 52 4% | 0.0% | 98.5% | 100% | 100.0% | NA | 94.0% | 99.1% |
| 486 | Pipeline Transportation | 100.0% | 100.0% | 79.2% | 76 7% | 80.3% | 95.7% | 100% | 100 0% | NA | 95.9% | 96 8% |
| 487 | Scenic and Sightseeing Transportation | 100 0% | 100.0% | 39.6% | 52.4% | 0.0% | 98.5% | 100% | 100.0% | NA | 94.0% | 99 1% |

Table XV-2

Estimated Percentage of PPE Cost Currently Borne by Employers

| NAICS | Industry | Eye and Face Protection [a] | Head Protection [b] | Foot Protection [c] | Metatarsal Protection | Chemical Protective Footwear | Gloves and Chemical Protection [d] | Fall Protection [e] | Welding Protection[f] | Hearing Protection [g] | All PPE | All PPE Except Footwear |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 488 | Support Activities for Transportation, Except Longshoring | 100 0% | 100.0% | 39.7% | 51.2% | 0.0% | 99.3% | 100% | 100.0% | NA | 95.2% | 99.6% |
| 488320 | Marine Cargo Handling (Longshoring) | 99.5% | 98.5% | 7.9% | 20.7% | 7.6% | 86.7% | 100% | 97.6% | NA | 77 8% | 94.7% |
| 491 | Postal Service | 100.0% | 100 0% | 75.4% | 0.0% | 100.0% | 100.0% | 100% | 100.0% | NA | 97 9% | 100.0% |
| 492 | Couriers and Messengers | 100.0% | 100 0% | 35 1% | 51.5% | 0.0% | 99.1% | 100% | 100.0% | NA | 94 7% | 99.5% |
| 493 | Warehousing and Storage | 100.0% | 100.0% | 35.1% | 51.5% | 0.0% | 99.1% | 100% | 100.0% | NA | 94.7% | 99 5% |
| 511 | Publishing Industries (except Internet) | 100 0% | 96.9% | 74 5% | 37.5% | 98.2% | 94.3% | 100% | 100.0% | NA | 95.2% | 95.9% |
| 515 | Broadcasting (except Internet) | 100.0% | 100.0% | 76.9% | 81.7% | 73.1% | 97.5% | 100% | 100.0% | NA | 97.3% | 98.3% |
| 517 | Telecommunications | 100.0% | 100.0% | 76.9% | 81.7% | 73 1% | 97 5% | 100% | 100.0% | NA | 97.3% | 98.3% |
| 541 | Professional, Scientific, and Technical Services | 97.9% | 100 0% | 74.5% | 55.5% | 96 8% | 98.9% | 100% | 100.0% | NA | 97.6% | 98.9% |
| 561 | Administrative and Support Services | 99.6% | 100.0% | 53.1% | 10.4% | 84.4% | 95.8% | 100% | 100.0% | NA | 95 9% | 96 8% |
| 562 | Waste Management and Remediation Services | 100.0% | 100.0% | 79.9% | 85 2% | 75.3% | 97.9% | 100% | 100.0% | NA | 97.7% | 98 6% |
| 621 | Ambulatory Health Care Services | 100.0% | 100.0% | 96.7% | 50.0% | 100.0% | 97.7% | 100% | 100.0% | NA | 98.1% | 98.1% |
| 622 | Hospitals | 100.0% | 100.0% | 96.7% | 50.0% | 100.0% | 97.7% | 100% | 100.0% | NA | 98.1% | 98.1% |
| 623 | Nursing and Residential Care Facilities | 100.0% | 100.0% | 96.7% | 50.0% | 100.0% | 97.7% | 100% | 100.0% | NA | 98.1% | 98.1% |
| 721 | Accommodation | 99.5% | 100.0% | 64 9% | 0.0% | 92.4% | 96.2% | 100% | 100.0% | NA | 96.5% | 97.1% |
| 722 | Food Services and Drinking Places | 100.0% | 100.0% | 1 5% | 50.0% | 0.0% | 100.0% | 100% | 100.0% | NA | 98.7% | 100.0% |
| 811 | Repair and Maintenance | 95.1% | 95.0% | 40.7% | 78.4% | 28.0% | 96.3% | 100% | 85.8% | NA | 94.0% | 95.1% |
| 812 | Personal and Laundry Services | 98 4% | 100.0% | 83.9% | 0 0% | 99.8% | 91.9% | 100% | 100.0% | NA | 93.7% | 93 9% |
| | All Industries | 98 7% | 97.7% | 53 9% | 51 9% | 55.1% | 96.2% | 97% | 96.1% | NA | 95.2% | 96 5% |

[a] Nonprescription eyewear, safety goggles, chemical splash goggles, and faceshields
[b] Hardhats.
[c] Metatarsal protection and chemical protective footwear.
[d] Gloves for abrasion and chemical protection, splash aprons, and chemical protective clothing.
[e] Body harnesses, body belts, and lanyards.
[f] Welding goggles, helmets, and protective clothing.
[g] Ear muffs and inserts.

Sources OSHA Nationwide Telephone Survey, 1999 [Ex ]; OSHA Office of Regulatory Analysis

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A few comments (Ex. 12: 173, 189) suggested that OSHA should compare survey response rates to make sure there is no bias. It was suggested that given that employers were aware OSHA was conducting a survey of employer payment for PPE, they tried to avoid participating in the survey, despite the assurance of confidentiality. It was further asserted that ''a substantial percentage of the 'not available' category consists of employers who, if contacted, would have explicitly refused to participate'' (Ex. 12: 173, 189). Presumably, these employers would avoid participation or refuse to participate because they do not currently pay for their employee's PPE. This, in turn, could have inflated the survey's findings of the percentage of employers paying for PPE.

OSHA disagrees with these comments and believes that survey bias did not have a significant impact on the data used. First, most of the establishments listed as ''non-completes'' were not refusals.[21] Of the 53 percent of non-completed phone calls, 37.5 percent were not available; only 14.9 percent refused to participate. Many simply could not be reached given the time allotted for the survey. As described by ERG (Ex. 14, pp. 66–67):

> [a]mong the 2,963 not-available respondents, 1,862 (62.8 percent) were called fewer than six times. This group of potential respondents was drawn almost entirely as part of the supplemental sample, and, as noted, interviewers stopped calling them when simple targets were achieved near the end of the survey. For stratum-one, not-available respondents, fully 68 percent (1,407 out of 2,065) were part of this supplemental sample group that was called fewer than six times. If calling had continued so that each of these numbers had been called at least six times, the response rate would have been significantly higher. Doing so, however, would have resulted in oversampling the stratum one respondents. The response rate for stratum-one establishments in the primary sample was 52.6 percent; by comparison, the response rate for stratum-one establishments in the entire sample was 34.7 percent.[22]

Comments speculating that employers were attempting to avoid mentioning that they do not pay for PPE and thus did not respond (Ex. 12: 173, 189) also suggested that the survey was more likely to be avoided by large employers:

> Knowledgeable employers, especially large employers who employ the bulk of the workforce, are aware of OSHA's demands that employers should purchase personal-PE * * *. Accordingly, employers who do not pay for personal-PE would be less likely to respond to a survey about payment for personal-PE for fear of adverse action by OSHA. This fear is the most obvious potential bias to the survey, yet ERG made no attempt to test it.

In fact, the survey results showed just the opposite pattern. Larger employers (strata 2 and 3) generally showed higher rates of response to the survey than smaller employers (stratum 1) (61.7 percent and 58 percent for strata 2 and 3, as opposed to 34.7 percent complete responses for stratum 1) (Ex. 14, Table 13). This stands in stark contrast with the refusal rate for the survey, which was fairly constant between 14.6 and 15.5 percent across the three strata. The lower response rate for stratum 1 employers was entirely due to the ''not available'' segment. Smaller employers are less likely to maintain a daytime office staff, thus making it more difficult to reach them to conduct a survey. This may be particularly true for the construction industry, which accounted for nearly half of the total called sample; fully one-third of the entire called sample were construction employers with fewer than 20 employees (Ex. 14, p. 66, Table 12). In short, the pattern of nonreponse is consistent with a simple inability to reach people on the phone, not a refusal to participate for fear of an adverse action from OSHA.

Second, the response rate is not unusually low for surveys conducted in the last decade. It is well documented that the public at large, and probably employers in particular, are suffering from an element of ''survey fatigue'', given the large number of survey requests over the phone and on the Internet—people are simply less likely to agree to do any particular survey, unless there is direct payoff. In addition, individuals and employers are more likely to ''hide'' behind voice mail and answering machines than they were a few decades ago (Curtain, *et al*, 2005). Thus, it would be improper to assume that the failure to participate represents a response to this particular survey.

Third, an analysis of the response rate of small establishments in the survey suggests that many of the very small establishments OSHA did not reach simply were not under OSHA jurisdiction by virtue of being self-employed:

> [t]he average size of not-available establishments, as reported by D&B, was compared to that of establishments that completed the survey. For stratum-one respondents, the average D&B–reported employment size of not-available establishments was 3.9, compared to 5.6 for those who completed the survey. The relatively small size of the not-available establishments, however, is misleading because respondents for some of these (especially those for whom D&B reported a single employee) would have indicated, if they had been reached, that they were self-employed; their establishments, therefore, would have been judged out-of-scope. Among successfully contacted respondents with five or fewer employees (as reported by D&B), 56.3 percent reported they were self-employed. If the not-available respondents in stratum one were as likely to be self-employed as those successfully contacted, the average reported employment, adjusted for the projected number of screen-outs at each employment level, would be 5.3. This is very close to the average employment for stratum-one respondents who completed the survey (Ex. 14, pp. 67–69).

A potential source of bias not discussed in comments was the possibility that the nonresponders skewed the sample in favor of employers who used PPE (as opposed to those employers who paid for PPE). It may be that a disproportionate percentage of people who either declined to be interviewed directly, or simply did not return phone calls did so because they considered the survey inapplicable to their workplace because they do not use PPE. In that case, the sample ended up with a disproportionate number of PPE users.

In any case, the estimated number of PPE–using establishments approximately doubled between the analysis in the proposed rule and the analysis here, after incorporating the results of the 1999 survey. In fact, the estimated costs in this final analysis are higher than they were for the proposed rule in large part due to significantly greater reported use of PPE in certain items than indicated in the previous OSHA telephone survey on PPE in 1989. For example, the proposed rule, based on the 1989 survey data found 10.6 million employees using chemical and non-chemically protective gloves (64 FR 15417). The 1999 survey found a combined total approximately 50 percent higher. Much of this increase may have been related to the effectiveness of the 1994 PPE rulemaking at increasing the use of the PPE. At the same time, employers may not have bothered to participate in the survey because they simply did not use PPE, thus skewing upward the numbers of employers using PPE. OSHA has no specific information that this occurred;

[21] The ''non-completes'' were divided primarily between ''refusals'' and ''not available''. ''Refusal'' is a term of art with regard to surveys which denotes respondents who tell the questioner explicitly that they do not wish to participate in the survey. ''Not available'' describes the group of those who could not be reached; most ''non-completes'' were ''not available'', as opposed to ''refusals''.

[22] As discussed in the ERG report [Ex. 14], the survey targeted three employment size establishment strata, Stratum 1 (1–19 employees), Stratum 2 (20–499 employees), and Stratum 3 (500 or more employees), to ensure that each size group was adequately represented in the sample.

if it did, however, then the cost to employers (and society) would be less than estimated in this analysis. The Agency does not believe the costs are overestimated in this regard, but acknowledges that there are several different potential, and at least partially offsetting, sources of bias in the survey results.

OSHA recognizes that the existence of non-responses is a source of uncertainty with regard to the costs and benefits of the standard. The Agency has performed a sensitivity analysis to probe the effects of underestimating the extent to which employees currently pay for PPE.

Finally, it should be noted that absent vastly greater resources and a substantially greater level of intrusion on employers, it would be impossible, even on a subsample of the survey responders, to verify whether or not the behavior of non-responders is significantly different than responders. Given that many employers could not be reached by phone, it ultimately might be necessary to send someone in person to interview the non-responders. OSHA is limited in its resources and would be unable to perform this type of analysis. On balance, OSHA is confident that the results of this survey represent the best available evidence on the profile of payment patterns for PPE in industry.

*F. Technological Feasibility*

This rule does not change any PPE requirements, but affects only the issue of who pays for PPE required by OSHA standards. These PPE requirements have already been found to be technologically feasible in other rulemakings. Personal protective equipment is widely manufactured, distributed, and used in workplaces in all of the industries covered by OSHA standards. The rule thus raises no issues of technological feasibility.

*G. Benefits of the Final Rule*

OSHA concludes in this final rule that when employers do not provide and pay for PPE, it is often not worn, is worn improperly, or is not cared for and replaced appropriately. (See the Legal Authority section for OSHA's analysis of this issue.) When employees are required to pay for their own PPE, they are likely to minimize PPE costs and thus fail to purchase proper personal protective equipment. Further down the wage scale, these problems can be expected to worsen, and employees will be less likely to purchase adequate PPE and replace it when necessary, and are more likely to make cosmetic repairs, hide defects, or purchase used PPE aged beyond its service life.

Thus, at least two problems can occur when employers fail to pay for PPE: Either the PPE is not worn in cases where it is needed to protect against injury or illness, or the PPE that is worn is inadequate. The consequences of these failures are the same: Employees are exposed to chemical, physical, or safety hazards in the workplace, which, in turn, result in injuries, illnesses, and death.

In the proposed rule, OSHA estimated the quantitative differences in the misuse or nonuse of PPE when employers pay for PPE versus when employees pay for PPE. OSHA preliminarily determined that the rate of nonuse or misuse of PPE would be approximately 40 percent for employee purchased PPE verses 15 to 20 percent for employer purchased PPE. This quantitative estimate was provided by one member of OSHA's expert panel, but was consistent with the statements of other panelists, as well as with OSHA's enforcement and regulatory experience. Most panel members indicated that if the employer did not pay for PPE, the PPE was typically not fully provided, in some cases falling short by a wide margin. While commenters disagreed on whether the underlying premise behind employer payment for PPE was correct, there were no alternative point estimates provided (other than stating there was no difference between the two) to the aforementioned estimates. Thus, in this final rule, OSHA is continuing to use the point estimates given in the proposal as a basis for the benefits in the final rule. (However, as explained below, OSHA has also conducted a sensitivity analysis to evaluate concerns by commenters that OSHA's benefits estimate in the proposal was too high.)

1. Benefits From Injuries Prevented

To estimate the benefits of the final rule OSHA calculated the total number of injuries prevented annually by requiring employers to pay for PPE by body part. OSHA used the point estimates above and the steps which are illustrated in Table XV–3.

OSHA determined the number of injuries judged to be preventable by multiplying the total number of injuries [23] by body part (derived from 2005 lost work day data and shown in column A) [24] by the preventability factors OSHA developed in 1994 for the types of PPE examined (column B) (59 FR 16352).[25] In the 1994 analysis, most injuries were not considered preventable by PPE. For example, sprains and strains (nature) and injuries caused by overexertion (circumstance), were not considered to be preventable by PPE. On the whole, approximately one-third of injuries in general industry were considered preventable with PPE. However, within this group, it was apparent that PPE could be particularly effective in protecting certain body parts (*e.g.,* eye injuries were estimated to be 95 percent PPE–preventable; foot and toe, 75 percent; face and ear, 68 percent; and hand and finger, 63 percent). These estimates were based on a careful review of the descriptions of the accidents. Over 90 percent of these injuries were incurred by production employees in the subset of high-hazard industries selected for study in the PPE survey. This analysis did not cover the construction sector. OSHA assumes that the same preventability factors by body part would apply in construction as in the general industry and maritime sectors (see column B). The full analysis of the injuries judged to be preventable through the proper use of PPE is presented in detail in the Regulatory Impact Assessment of the 1994 rulemaking (Docket S060, Ex. 56).

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[23] This analysis does not examine the impact of the rule on occupational illnesses, such as contact dermatitis prevented by chemically protective PPE, but OSHA is confident the rule will produce additional benefits not accounted for here.

[24] OSHA extrapolated total injuries by body part from the number of detailed lost workday cases with days away work [BLS, 2006b] by multiplying by the overall ratio of total recordable cases [BLS, 2006a] to cases with days away from work. Body parts not included in this analysis: Trunk (*e.g.,* back & shoulder); wrist and other upper extremities except hand and finger; knee and other lower extremities except foot and toe; body systems, multiple body parts; and ''other body parts''. Together these excluded cases account for about 75% of LWD injuries.

[25] To calculate the preventability factors, OSHA reviewed 1,170 OSHA Form 200s describing almost 64,000 injuries. The profile of injuries, as defined by body part, very closely tracked those in BLS's injury data base [OSHA 1994, pp. V–11–13]. Information on the nature of the injury and the circumstances surrounding the accident was used to determine the extent to which PPE would have prevented the injury.

Table XV-3

Injuries Judged to Be Preventable if Employers Are Required to Pay for PPE Now Being Paid for by Employees

| Body Part | Total Injuries by Body Part [a] | Preventable Injuries based on Preventabillity Factors | | Total Preventable Injuries (Includes Both Employer Paid and Employee Paid PPE Users) | | Total Injuries Preventable Among Employees Paying for PPE | | Injuries Judged to Be Prevented by Requiring Employer Payment for PPE | |
|---|---|---|---|---|---|---|---|---|---|
| Gen. Ind. & Maritime | A | B[b] | C | D[c] | E | F[d] | G | H[e] | I |
| Eye | 94,729 | 95.0% | 89,993 | 48.9% | 44,036 | 2.3% | 1,033 | 56.3% | 581 |
| Face and ear | 51,491 | 68.0% | 35,014 | 59.1% | 20,686 | 1.3% # | 266 | 56.3% | 149 |
| Head and neck | 135,662 | 45.0% | 61,048 | 59.1% | 36,066 | 2.8% # | 1,002 | 56.3% | 563 |
| Hand and finger | 451,894 | 63.0% | 284,693 | 59.1% | 168,191 | 10.2% # | 17,087 | 56.3% | 9,611 |
| Foot and toe | 160,823 | 75.0% | 120,617 | 12.5% | 15,056 | 72.3% # | 10,879 | 56.3% | 6,120 |
| Subtotal | 894,599 | | 591,365 | | 284,034 | | 30,267 | | 17,025 |
| Construction | | | | | | | | | |
| Eye | 16,876 | 95.0% | 16,032 | 48.9% | 7,845 | 7.2% | 566 | 56.3% | 318 |
| Face and ear | 8,398 | 68.0% | 5,711 | 59.1% | 3,374 | 8.8% | 297 | 56.3% | 167 |
| Head and neck | 14,869 | 45.0% | 6,691 | 59.1% | 3,953 | 8.9% | 353 | 56.3% | 198 |
| Hand and finger | 60,400 | 63.0% | 38,052 | 59.1% | 22,480 | 29.1% | 6,553 | 56.3% | 3,686 |
| Foot and toe | 22,686 | 75.0% | 17,015 | 12.5% | 2,124 | 33.8% | 717 | 56.3% | 403 |
| Subtotal | 123,229 | | 83,500 | | 39,776 | | 8,485 | | 4,773 |
| Total | 1,017,828 | | 674,865 | | 323,810 | | 38,752 | | 21,798 |

Source: OSHA Office of Regulatory Analysis.

[a] OSHA extrapolated total injuries by relevant body part from the number of detailed lost workday cases with days away work [BLS, 2006b] by multiplying by the overall ratio of total recordable cases [BLS, 2006a] to cases with days away from work.
[b] Based on PPE preventability factors shown in OSHA, 1994 [64 FR 15421].
[c] Injuries are reduced by percentage of employees in State Plan States where employer-payment requirements are already in place. In the case of eye and foot and toe injuries, the adjustment factor is based on distribution of employees by State Plan State category and the fact that nonprescription safety glasses represent 82.9% of safety glass use and safety shoes with metatarsal guards account for 22.3% of safety shoe use.
[d] Percent of preventable injuries among employees paying for their own PPE = 0.4*Ep / (0.4*Ep + 0.175*En), where Ep equals the number of employees paying for their own PPE and En equals the number of employees with employer-paid PPE.
[e] Percent of injuries prevented by requiring employer PPE payment = (0.4 - 0.175)/(0.4) = 0.563 = 56.3%.

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Column C shows the number of preventable injuries based on the 1994 preventability factors and the 2005 data on total injuries. OSHA then reduced the numbers shown in column C by the percentage of employees in State Plan States where employer-payment requirements are already in place. (These reduction factors are shown in column D.) The resulting totals of preventable injuries, which includes both employee or employer paid PPE, are shown in Column E.

Next OSHA estimated the percentage of PPE-related injuries where employees paid for their own PPE. OSHA estimates that if employees are required to pay for their own PPE, this equipment will be lacking or inadequate 40 percent of the time, while if employers pay for PPE,

the equipment will be lacking or inadequate 17.5 percent of the time. Using these parameters, OSHA estimates that employees who pay for their own PPE are 2.3 times (0.4 divided by 0.175) as likely as employees whose PPE is paid for by their employers to suffer an injury that would otherwise be preventable by PPE use.

The number of such preventable injuries, however, depends on the percentage of employees that currently pay for their own PPE. The larger this percentage is, the greater of number of injuries are potentially preventable. Percentages of preventable injuries among employees paying for their own PPE were estimated by multiplying the number of employees paying for their own PPE by 0.4 and dividing this amount by the sum of the product of the number of employees paying for their own PPE and 0.4 and the product of the number of employees with employer-paid PPE and 0.175. The numerator of this ratio is the number of employees required to pay for their own PPE whose equipment will be lacking or inadequate, while the denominator is the total number of employees (both employee- and employer-paid PPE users) whose equipment will be lacking or inadequate. These percentages are shown in column F. Assuming injuries occur in proportion among employers, applying the resulting percentages to column E yields the total number of PPE related injuries where the employee is paying for PPE (shown in column G).

Once the number of preventable injuries among the employee-paying group is derived, it has to be recognized that not all of these will be preventable by switching payment systems. Requiring employer payment will reduce the injury rate to the level currently suffered by employees with employer-paid equipment. As outlined above, employees paying for their own equipment are 2.3 times (0.4/0.175) as likely to be injured as those with employer-paid equipment. The total number of injuries prevented by switching to employer payment equals: # of PPE-related injuries among the employee-paying group multiplied by

$$1-\frac{\text{percent of time PPE is not worn when employers pay}}{\text{percent of time PPE is not worn when employees pay}}$$

In terms of the specific numbers, this percentage reduction is calculated as 1-((0.175/0.4) , or 1-0.4375, or 56.3 percent, as shown in column H. Reducing the number of injuries in the employee-paying group (column G) by 56.3 percent results in the total number of injuries prevented by this rulemaking, as shown in column I.

As indicated in Table XV–3, this analysis indicates that the final rule would avert approximately 21,798 injuries annually.[26] OSHA provides a sensitivity analysis of this below, to reflect uncertainties in the strength of the employer payment effect.

While a number of commenters had concerns about the rule, there was general agreement on the value of PPE in preventing injuries (see, *e.g.*, Exs. 12: 2, 4, 6, 9, 10, 11, 13, 15, 20, 21, 32, 58, 66, 79, 100, 101, 105, 110, 113, 117, 130, 134, 149, 184, 190, 210, 218, 230, 233, 247, 248). One commenter questioned the underlying basis for OSHA's estimates in part because their experience has been that relatively few injuries are actually preventable by PPE.

> [w]e have approximately 50 accidents per year. I read every one of them. I would say in a given year there may be at most one or two accidents where the personal protective equipment was a factor in preventing or minimizing the injury. Remember, that is the barrier. That is the last resort is the personal protective equipment. As we all know, there should be other steps taken to prevent an injury before it gets to that point (Tr. 146).

OSHA disagrees with this commenter to the extent the commenter is suggesting that employer payment for PPE will not help prevent injuries. First, this represents one company's experience, which is not generalizable to the economy as a whole. OSHA's analysis of injuries allows for the fact that many injuries would not be preventable by PPE; this company may have an unusually large number of such cases. The commenter suggests, correctly, that engineering controls are the logical first line of defense against hazards. The company may have an excellent program in this regard. Second, the comment refers to cases where PPE is being worn and prevented accidents; it says nothing about any cases where PPE was not being worn and injuries resulted. A finding that suggests that PPE prevents only a few injuries is dramatically at odds with most of the rulemaking record both in this rulemaking and its predecessor in 1994. In both cases PPE was found to be of considerable value in reducing injuries.

Finally, it is worth noting the Agency is not claiming a dramatic percentage reduction in total injuries as a result of the rule, in part because most equipment is already paid for by most employers. A reduction of 1 or 2 cases out of 50 represents a relatively small number within one business unit, but extrapolated across the economy as a whole represents a large number of injuries prevented, resulting in a substantial net benefit for the nation as a whole.

2. Benefits From Prevented Fatalities

Although the primary benefits from this rule derive from the non-fatal injuries and associated costs that will be averted by requiring employers to assume the full costs of the covered types of PPE, some benefits are associated with the preventability of fatal injuries. Although most injuries preventable by appropriate PPE would not otherwise result in fatalities, certain fatal head injuries, particularly those classified as ''struck by'' or ''struck against'' injuries, would be prevented by PPE (i.e., hardhats). Recent data on occupational fatalities collected by the Bureau of Labor Statistics show that a yearly average of 112 such fatalities occurred in general industry and maritime, and 43 in construction during the period 2003 through 2005 (BLS, CFOI, 2004).

OSHA estimated the number of fatalities likely to be prevented by the rule by first considering the percentage of ''struck by'' and ''struck against'' fatalities that would be prevented if proper head PPE had been used. Many types (or ''events'') of fatal head injuries that would not be prevented by hardhats, such as those resulting from falls, some explosions, and most transportation-related accidents, have not been included in this analysis. In contrast, PPE should be relatively effective in preventing fatal ''struck by'' and ''struck against'' head injuries. Additional fatalities that would not be prevented include crushing accidents (force exceeds the protection of the head gear) and instances where the hazard could not be anticipated and the victim

[26] Within the 17,025 injuries estimated to be prevented in general industry and maritime, the Agency estimates 214 will be in maritime, the remainder in general industry.

could not reasonably be judged to be at risk and required to use PPE (passersby, for example.) For this analysis, OSHA estimates that 75 percent of fatal ''struck by'' and ''struck against'' injuries would otherwise be prevented by proper use of head protection.

Applying the 75 percent estimate described above to the total number of annual fatalities from the BLS data (112 in general industry and maritime, and 43 in construction) results in an estimated 84 fatalities in general industry and maritime and 32 fatalities in construction that would be preventable by wearing hardhats if all the fatalities occurred in industries within OSHA jurisdiction. However, approximately 59.1 percent of these preventable fatalities are estimated to occur in non State-Plan States.[27 28] Accordingly, the actual number of fatalities preventable by this rule is approximately 50 in general industry and maritime, and 19 in construction. In addition, only a subset of these preventable fatalities would be affected by switching payment systems, i.e. the subset where employees are currently paying for their own PPE. This is because the number of preventable fatalities affected by this rule depends on the percentage of employees that currently pay for their own PPE. The larger this percentage is, the greater the number of fatalities that are potentially preventable.

Data from OSHA's PPE payment survey suggest that about 1.2 percent of general industry and maritime employees and 4.1 percent of construction employees pay for their own head PPE. Combining these percentages with the point estimates for PPE nonuse/misuse discussed above (40 percent nonuse/misuse when employees pay for PPE versus 17.5 percent nonuse/misuse when employers pay for PPE), OSHA calculated the ratio of employee paid-PPE-related fatalities to all PPE related fatalities (i.e., the sum of the employee- and employer-paid PPE fatalities).

$$\frac{0.4\times E_p}{\left(0.4\times E_p\right)+\left(0.175\times E_n\right)} = \text{where Ep = \# employees paying PPE and En = \# employees with employer-paid PPE.}$$

Using the same methodology used for non-fatal injuries, the ratio for general industry is equal to (0.40*0.012)/(0.40*0.012 + 0.175*0.988) = 2.8 percent. For construction the ratio is equal to (0.40*0.041)/(0.40*0.041 + 0.175*0.959) = 8.9 percent.

In short, OSHA estimates that employees paying for their own PPE suffer 2.8 percent (1.4 fatalities annually) of the fatal ''struck by'' and ''stuck against'' head injuries in general industry and 8.9 percent (1.7 fatalities annually) of the fatal ''struck by'' and ''stuck against'' head injuries in construction. However, it is not the case that all of the employee-paying preventable fatalities (1.4 and 1.7 in general industry and construction respectively) will be prevented by switching payment systems because there is still a 17.5 percent nonuse/misuse rate among the employer-paying group. OSHA's estimate that requiring employer payment will reduce the rate of misuse or nonuse of PPE from 40 to 17.5 percent implies a resultant 56.3 percent reduction ((0.4–0.175)/0.40) in fatal head injuries among employees who pay for their own PPE. Thus OSHA estimates that 0.8 fatal head injuries (0.563 times 1.4) in general industry and 0.9 fatal head injuries (0.563 times 1.7) in construction will be prevented annually by this rule.

The Agency also believes that the final rule will achieve substantial benefits in the area of fall protection, particularly in construction. The rule will prevent a number of fatalities and severe injuries that are now occurring either because employee-provided PPE offers inadequate protection or because the employee arrives on site without the necessary PPE. For example, OSHA estimated in the Regulatory Impact Analysis for 29 CFR Part 1926 Subpart M that fall protection systems would prevent nearly 80 fatalities and 26,600 lost workday-injuries annually. To the extent that employers supply more effective harnesses and lanyards than those currently being provided by employees, or ensure that this equipment is available for use by the employee, this rule will prevent deaths and injuries caused by falls. However, at the current time, the Agency does not have sufficient detail on these accidents to quantify the benefits of this effect.

3. Uncertainties

As outlined elsewhere in this analysis, benefits associated with the rule are subject to uncertainty with respect to the number and types of accidents that will be avoided or mitigated by the use of PPE and cost and benefits estimates are further subject to uncertainty due to the survey's non-response levels. Further, this analysis assumes that the effect of the rule will be limited to situations where employees are now required to pay for their own PPE. This, however, while a simplifying assumption, may not be wholly accurate. As indicated in the Legal Authority section, there is evidence that employer payment for PPE is important to send a signal to employees on the importance of wearing PPE. The record is also clear that certain sectors, such as construction, have relatively high rates of employee turnover (BLS, 2004), and even where they are not so high, they do not remain static. If the rule has the effect of engendering a greater appreciation of the importance of wearing PPE, then this effect would logically extend into workplaces where employers pay for the equipment currently, through employee turnover as well as a general shift in norms of behavior in the industry. The analysis currently assumes that employees will fail to wear PPE 15–20 percent of the time even when the employer pays for PPE. Given that employers pay for most PPE items most of the time currently (typically greater than 95 percent of the time), if this percentage were to fall even a small amount as a result of this rulemaking, the benefits would be substantially greater than assumed in this analysis.

4. Willingness To Pay for Injuries and Fatalities Avoided

OSHA also performed an analysis of the value of injuries and fatalities avoided based on a willingness to pay approach. This approach employs the theory of compensating differentials in the labor market. A number of academic studies have drawn a correlation between higher risk on the job and higher wages, suggesting that employees demand monetary compensation in return for a greater risk of injury or fatality. OSHA has used this approach

[27–28] As indicated in Table XV–3, Census Bureau [Census, 2005a] data indicate non State-Plan States account for 59.1% of private sector employment.

in many recent proposed and final rules (See, *e.g.,* 71 FR 10099, 70 FR 34822).

In performing its willingness to pay analysis, OSHA uses an estimate of $50,000 per lost workday-injury avoided, based on two studies: Viscusi, 1993, and Viscusi & Aldy, 2003. In his 1993 paper (Viscusi, 1993, p. 1935), Viscusi reviewed the available literature and found the value of lost workday injuries to be: ''[i]n the area of $50,000, or at the high end of the range of estimates for the implicit value of injuries overall.'' His 2003 paper with Aldy broadly reaffirmed this, finding the literature to estimate the value in the $20,000-$70,000 range. While the literature covered many types of injuries, they focused primarily, particularly for many of the higher valuations, on lost workday injuries. The Agency has conservatively chosen to apply this value to only cases resulting in days away from work, even though there would be additional value attached to the larger class of injuries, especially cases resulting in restricted work. As shown in Table XV–4, the Agency estimates the value of injuries prevented using this approach to be $337 million per year.

By this methodology, a single fatality avoided is valued at $7 million [Viscusi 2003, p. 63]. As explained above, OSHA estimates that 1.7 fatalities may be prevented each year by this rule. Accordingly, this brings total the total monetized value of benefits to $349 million.

An alternate approach for valuing injuries is the direct cost approach, which OSHA used in the analysis for the proposal. A full discussion of this estimate is provided in an Appendix at the end of the Final Economic Analysis. Using a direct cost approach to monetize benefits for injuries avoided, and a willingness to pay approach to monetize fatalities avoided, OSHA estimates total benefits to be $228.3 million (See Table XV–14).

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Table XV-4

**Injuries Judged to Be Preventable if Employers Are Required to Pay for PPE Now Being Paid for by Employees (Days Away From Work Cases Only)**

| Body Part | Total Injuries by Body Part [a] | Preventable Injuries based on Preventabillity Factors | | Total Preventable Injuries (Includes both Employer Paid and Employee Paid PPE Users) | | Total Injuries Preventable Among Employees Paying for PPE | | Injuries Judged to Be Prevented by Requiring Employer Payment for PPE | | Estimated WTP Value of Injuries Avoided |
|---|---|---|---|---|---|---|---|---|---|---|
| Gen. Ind. & Maritime | A | B[b] | C | D[c] | E | F[d] | G | H[e] | I | |
| Eye | 27,462 | 95.0% | 26,089 | 48.9% | 12,766 | 2.3% | 300 | 56.3% | 168 | $8,424,943 |
| Face and ear | 14,927 | 68.0% | 10,150 | 59.1% | 5,997 | 1.3% | 77 | 56.3% | 43 | $2,166,408 |
| Head and neck | 39,328 | 45.0% | 17,698 | 59.1% | 10,455 | 2.8% | 290 | 56.3% | 163 | $8,166,264 |
| Hand and finger | 131,002 | 63.0% | 82,531 | 59.1% | 48,758 | 10.2% | 4,953 | 56.3% | 2,786 | $139,313,189 |
| Foot and toe | 46,622 | 75.0% | 34,966 | 12.5% | 4,365 | 72.3% | 3,154 | 56.3% | 1,774 | $88,703,011 |
| Subtotal | 259,341 | | 171,434 | | 82,340 | | 8,774 | | 4,935 | $246,773,815 |
| Construction | | | | | | | | | | |
| Eye | 6,390 | 95.0% | 6,071 | 48.9% | 2,970 | 7 2% | 214 | 56.3% | 121 | $6,028,697 |
| Face and ear | 3,180 | 68.0% | 2,162 | 59.1% | 1,277 | 8.8% | 112 | 56.3% | 63 | $3,158,168 |
| Head and neck | 5,630 | 45.0% | 2,534 | 59.1% | 1,497 | 8.9% | 134 | 56.3% | 75 | $3,755,778 |
| Hand and finger | 22,870 | 63.0% | 14,408 | 59.1% | 8,512 | 29.1% | 2,481 | 56.3% | 1,396 | $69,780,230 |
| Foot and toe | 8,590 | 75.0% | 6,443 | 12.5% | 804 | 33.8% | 272 | 56.3% | 153 | $7,638,495 |
| Subtotal | 46,660 | | 31,617 | | 15,061 | | 3,213 | | 1,807 | $90,361,368 |
| Total | 306,001 | | 203,051 | | 97,401 | | 11,987 | | 6,743 | $337,135,183 |

Source: OSHA Office of Regulatory Analysis.

[a] Bureau of Labor Statistics, Occupational Injuries and Illnesses - Characteristics Data (2005) [BLS, 2006b].
[b] Based on PPE preventability factors shown in OSHA, 1994 [64 FR 15421].
[c] Injuries are reduced by percentage of employees in State Plan States where employer-payment requirements are already in place. In the case of eye and foot and toe injuries, the adjustment factor is based on distribution of employees by State Plan State category and the fact that nonprescription safety glasses represent 82.9% of safety glass use and safety shoes with metatarsal guards account for 22.3% of safety shoe use.
[d] Percent of preventable injuries among employees paying for their own PPE = 0.4*Ep / (0.4*Ep + 0.175*En), where Ep equals the number of employees paying for their own PPE and En equals the number of employees with employer-paid PPE.
[e] Percent of injuries prevented by requiring employer PPE payment = (0.4 - 0.175)/(0.4) = 0.563 = 56.3%.

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*H. Costs of Compliance to Employers*

OSHA also used the survey results to estimate the costs to employers of compliance with the final rule. Based on the survey, OSHA estimated, by PPE type, the percentage of PPE users in non-State Plan States whose employers bear the full PPE costs and the percentage of PPE users in non-State Plan States whose employers pay some share of the PPE costs. The remaining employees are those who now pay for their own PPE. Under the final rule, employers will have to assume the PPE costs for these employees and, in addition, make up the share of PPE costs currently borne by employees who pay some portion of the equipment expense.

OSHA also determined unit cost estimates for PPE, based in part on assumptions used in the Preliminary Economic Analysis for the proposed rule (64 FR 15425), updated according to current price data obtained from safety equipment vendors. The unit costs represent annualized equipment costs, based on the prices and the estimated lifetimes of the PPE items, and are as follows:

- Based on prices from a current safety equipment catalog, hardhats costing $8.20, non-prescription safety glasses costing $6.20, and face shields costing $14.90 are all assumed to a have a useful life of one year.
- Chemical splash goggles costing $6.20 and safety goggles costing $4.65 are assumed to be replaced every six months with annualized costs of $13.05 and $9.79, respectively.
- Gloves for abrasion protection costing $8.30 are assumed to be replaced four times a year resulting in an annualized cost of $34.64 (Lab Safety, 2007).
- Welding helmets were assumed to have a life expectancy of 2 years and to cost $40.00; welding goggles were assumed to have a life expectancy of 1 year and to cost $13.62 (these assumptions yield a combined annualized welding unit cost of $36.69). According to OSHA's expert panel, welders need both helmets and goggles at different times of the year.
- Fall protection (body harness or belt, and lanyard) is assumed to have a life expectancy of 2 years, and to cost $93.90 (harnesses), $45.70 (belt), and $51.10 (lanyards), respectively, yielding a combined annualized fall protection unit cost of $80.20.
- Reusable chemical protective clothing is assumed to be replaced every 6 months and to cost $41.30, while chemical protective gloves costing $3.50 are assumed to be replaced every 10 working days (20 times a year), based on prices in the safety equipment catalog (Lab Safety, 2007).
- Paragraph (h)(3) of the revised rule requires employers to pay only for the cost of metatarsal guards, as opposed to the entire footwear item. The annualized cost of external metatarsal guards, assuming replacement every 2 years, is $15.49, based on a unit cost of $28 (Lab Safety Supply, 2007, Omark Safety Online, 2007, Working Person's Store, 2007, Grainger, 2007, Alpenco, 2007).

To derive the incremental cost to employers of compliance with the final rule, for each type of PPE, OSHA (a) multiplied the unit PPE cost by the number of employees in non-State Plan States who now pay for their equipment and (b) added to this, the unit PPE cost multiplied by 1 minus the percentage share of cost now paid by employers who share costs, multiplied by the number of employees in non-State Plan States who now pay some portion of the cost of their PPE.

Costs were adjusted for additional PPE expenditures resulting from employee turnover, based on turnover estimates prepared by the Bureau of Labor Statistics from their Job Openings and Labor Turnover Survey (JOLTS) (BLS, 2004). Two factors determine the impact of turnover on compliance costs. First, if the protective equipment is transferable to other employees and can be reused, turnover does not affect compliance costs. In this case, departing employees' equipment can be passed on to new employees. Second, for non-transferable PPE, the lifetime of the equipment determines the number of additional purchases required for new employees.[29] For example, turnover has less impact for PPE types with short lifetimes, because such equipment is regularly replaced even in the absence of employee turnover. To account for this, OSHA used a factor that was equal to the PPE lifetime (in fractions of a year) for PPE types with lifetimes less than one year and equal to 1 for PPE with lifetimes of one year or greater. For example, suppose that the turnover rate is 10 percent and the lifetime of the equipment is six months (0.5 years). If the hiring of new employees is spread out evenly over the year, half the new employees can be provided with equipment that would have been replaced even without employee turnover. In this case, the additional PPE required as a result of turnover would be 5 percent (10 percent times 0.5).

Table XV–5 presents compliance costs of the final rule to employers, by NAICS code. Table XV–6 summarizes the cost estimates by general category of PPE. Total compliance costs are estimated to be $85.7 million for all establishments. The cost of gloves for abrasion protection is estimated to be $27.8 million, or 32.5 percent of total costs. Chemical protective footwear is estimated to be $17.6 million, or 20.5 percent of total costs. Metatarsal guards for footwear are estimated to be $13.3 million, and gloves for chemical protection $10.2 million, at 15.5 percent and 11.8 percent of total costs respectively.

Several commenters stated that the cost analysis was unrealistic in assessing the costs in their industries. Representatives from the drilling industry (Ex. 12: 91) stated that the analysis failed to take into consideration the high rate of cotton glove usage in their industry, as they reported employees going through approximately one pair a day. OSHA questions whether the gloves described by the commenter constitute PPE; it is not clear for what safety or health purpose the gloves are being worn. If the gloves are being used for the purposes of abrasion protection, more durable and protective alternatives are available than cotton gloves. Regulatory analyses generally assume employers adopt the least-cost option, which may differ from the pattern of employee purchases; this applies to both the quantity (*e.g.,* bulk discounts) and quality of PPE purchased. This analysis assumes employers will use leather or Kevlar gloves for protection, a costlier (per unit), but more durable form of protection.

[29] This analysis assumes the following items are transferable: chemical splash goggles, faceshields, hardhats, metatarsal protection, splash aprons, chemical protective clothing, body harnesses, body belts, lanyards, welding helmets, welding goggles and ear muffs. Non-prescription safety glasses, safety goggles, chemical protective footwear, gloves for abrasive and chemical protection, protective welding clothing and ear inserts were assumed to be non-transferable.

Table XV-5

Cost Summary by PPE Category
All Establishments

| NAICS | Industry | Eye and Face Protection | Hardhats | Foot Protection | Gloves and Protective Clothing | Fall Protection | Welding Equipment | Hearing Protection | Total |
|---|---|---|---|---|---|---|---|---|---|
| 113 | Forestry and Logging | $0 | $0 | $104,980 | $32,272 | $0 | $0 | NA | $137,252 |
| 211 | Oil and Gas Extraction | $0 | $21,363 | $111,339 | $221,454 | $0 | $0 | NA | $354,156 |
| 221 | Utilities | $0 | $0 | $202,653 | $150,802 | $0 | $0 | NA | $353,454 |
| 236 | Construction of Buildings | $874,334 | $215,217 | $3,234,871 | $4,062,288 | $0 | $0 | $185,174 | $8,571,884 |
| 237 | Heavy and Civil Engineering Construction | $0 | $32,024 | $1,244,008 | $1,509,751 | $0 | $34,634 | $71,374 | $2,891,791 |
| 238 | Specialty Trade Contractors | $1,160,117 | $594,285 | $6,027,045 | $9,970,821 | $205,483 | $119,950 | $83,999 | $18,161,701 |
| 311 | Food Manufacturing | $0 | $4,949 | $301,199 | $774,761 | $0 | $0 | NA | $1,080,909 |
| 312 | Beverage and Tobacco Product Manufacturing | $0 | $49 | $24,601 | $104,340 | $0 | $0 | NA | $128,991 |
| 313 | Textile Mills | $0 | $325 | $30,007 | $76,052 | $0 | $0 | NA | $106,384 |
| 314 | Textile Product Mills | $0 | $365 | $33,703 | $85,419 | $0 | $0 | NA | $119,487 |
| 315 | Apparel Manufacturing | $0 | $1,546 | $43,290 | $122,227 | $0 | $0 | NA | $167,063 |
| 316 | Leather and Allied Product Manufacturing | $0 | $288 | $10,280 | $23,861 | $0 | $0 | NA | $34,429 |
| 321 | Wood Product Manufacturing | $0 | $6,902 | $103,796 | $421,776 | $0 | $0 | NA | $532,473 |
| 322 | Paper Manufacturing | $0 | $900 | $91,414 | $85,788 | $0 | $0 | NA | $178,102 |
| 323 | Printing and Related Support Activities | $0 | $8,721 | $156,967 | $591,262 | $0 | $0 | NA | $756,950 |
| 324 | Petroleum and Coal Products Manufacturing | $0 | $0 | $38,753 | $0 | $0 | $0 | NA | $38,753 |
| 325 | Chemical Manufacturing | $0 | $0 | $243,943 | $0 | $0 | $0 | NA | $243,943 |
| 326 | Plastics and Rubber Products Manufacturing | $0 | $3,325 | $164,480 | $335,897 | $0 | $0 | NA | $503,702 |
| 327 | Nonmetallic Mineral Product Manufacturing | $4,838 | $46,405 | $356,899 | $731,597 | $108,981 | $3,333 | NA | $1,252,053 |
| 331 | Primary Metal Manufacturing | $3,755 | $35,847 | $306,772 | $411,000 | $82,175 | $8,844 | NA | $848,393 |
| 332 | Fabricated Metal Product Manufacturing | $19,308 | $0 | $83,815 | $301,811 | $0 | $129,157 | NA | $534,091 |
| 333 | Machinery Manufacturing | $10,787 | $0 | $103,703 | $265,331 | $0 | $115,716 | NA | $495,537 |
| 334 | Computer and Electronic Product Manufacturing | $7,548 | $0 | $115,873 | $77,203 | $0 | $32,989 | NA | $233,612 |
| 335 | Electrical Equipment, Appliance, and Component Manufacturing | $3,822 | $0 | $55,735 | $31,833 | $0 | $13,486 | NA | $104,875 |
| 336 | Transportation Equipment Manufacturing, Except Shipbuilding | $27,123 | $888 | $233,059 | $58,084 | $0 | $49,653 | NA | $368,808 |
| 336611 | Ship Building and Repairing | $0 | $88,106 | $105,404 | $403,955 | $0 | $312,983 | NA | $910,448 |
| 337 | Furniture and Related Product Manufacturing | $0 | $2,732 | $91,366 | $278,770 | $0 | $0 | NA | $372,868 |
| 339 | Miscellaneous Manufacturing | $6,619 | $0 | $68,252 | $154,464 | $0 | $66,530 | NA | $295,865 |
| 423 | Merchant Wholesalers, Durable Goods | $171,980 | $0 | $3,068,615 | $3,498,563 | $4,189,342 | $294,634 | NA | $11,223,135 |
| 424 | Merchant Wholesalers, Nondurable Goods | $274,039 | $0 | $2,400,319 | $1,951,440 | $2,231,584 | $233,258 | NA | $7,090,640 |
| 441 | Motor Vehicle and Parts Dealers | $339,499 | $25,191 | $760,810 | $1,419,636 | $0 | $564,164 | NA | $3,109,301 |
| 442 | Furniture and Home Furnishings Stores | $0 | $0 | $90,650 | $0 | $0 | $0 | NA | $90,650 |
| 443 | Electronics and Appliance Stores | $0 | $0 | $69,029 | $0 | $0 | $0 | NA | $69,029 |
| 444 | Building Material and Garden Equipment and Supplies Dealers | $0 | $0 | $176,143 | $0 | $0 | $0 | NA | $176,143 |
| 445 | Food and Beverage Stores | $0 | $0 | $381,288 | $0 | $0 | $0 | NA | $381,288 |
| 446 | Health and Personal Care Stores | $0 | $0 | $174,957 | $0 | $0 | $0 | NA | $174,957 |
| 447 | Gasoline Stations | $163,724 | $12,148 | $366,903 | $684,624 | $0 | $272,070 | NA | $1,499,470 |
| 448 | Clothing and Clothing Accessories Stores | $0 | $0 | $257,647 | $0 | $0 | $0 | NA | $257,647 |
| 451 | Sporting Goods, Hobby, Book, and Music Stores | $0 | $0 | $94,801 | $0 | $0 | $0 | NA | $94,801 |
| 452 | General Merchandise Stores | $0 | $0 | $292,923 | $0 | $0 | $0 | NA | $292,923 |
| 453 | Miscellaneous Store Retailers | $0 | $0 | $126,791 | $0 | $0 | $0 | NA | $126,791 |
| 454 | Nonstore Retailers | $0 | $0 | $87,730 | $0 | $0 | $0 | NA | $87,730 |
| 481 | Air Transportation | $0 | $0 | $349,639 | $19,408 | $0 | $0 | NA | $369,047 |
| 482 | Rail Transportation | $0 | $0 | $51,839 | $0 | $0 | $0 | NA | $51,839 |
| 483 | Water Transportation | $0 | $0 | $57,448 | $4,981 | $0 | $0 | NA | $62,430 |
| 484 | Truck Transportation | $0 | $0 | $938,381 | $80,832 | $0 | $0 | NA | $1,019,213 |
| 485 | Transit and Ground Passenger Transportation | $0 | $0 | $285,437 | $39,023 | $0 | $0 | NA | $324,461 |
| 486 | Pipeline Transportation | $0 | $0 | $15,309 | $26,523 | $0 | $0 | NA | $41,832 |
| 487 | Scenic and Sightseeing Transportation | $0 | $0 | $9,251 | $1,265 | $0 | $0 | NA | $10,516 |
| 488 | Support Activities for Transportation, Except Longshoring | $0 | $0 | $314,736 | $22,486 | $0 | $0 | NA | $337,222 |
| 488320 | Marine Cargo Handling (Longshoring) | $2,453 | $2,951 | $429,075 | $86,307 | $0 | $765 | NA | $521,551 |

**Table XV-5**

**Cost Summary by PPE Category**
**All Establishments**

| NAICS | Industry | Eye and Face Protection | Hardhats | Foot Protection | Gloves and Protective Clothing | Fall Protection | Welding Equipment | Hearing Protection | Total |
|---|---|---|---|---|---|---|---|---|---|
| 491 | Postal Service | $0 | $0 | $806,599 | $0 | $0 | $0 | NA | $806,599 |
| 492 | Couriers and Messengers | $0 | $0 | $378,886 | $32,637 | $0 | $0 | NA | $411,524 |
| 493 | Warehousing and Storage | $0 | $0 | $370,929 | $31,952 | $0 | $0 | NA | $402,881 |
| 511 | Publishing Industries (except Internet) | $0 | $13,019 | $226,867 | $874,967 | $0 | $0 | NA | $1,114,854 |
| 515 | Broadcasting (except Internet) | $0 | $0 | $90,405 | $77,975 | $0 | $0 | NA | $168,380 |
| 517 | Telecommunications | $0 | $0 | $427,005 | $368,293 | $0 | $0 | NA | $795,298 |
| 541 | Professional, Scientific, and Technical Services | $311,842 | $0 | $1,285,365 | $477,729 | $0 | $0 | NA | $2,074,936 |
| 561 | Administrative and Support Services | $56,121 | $0 | $829,444 | $1,702,031 | $0 | $0 | NA | $2,587,595 |
| 562 | Waste Management and Remediation Services | $0 | $0 | $110,602 | $78,184 | $0 | $0 | NA | $188,786 |
| 621 | Ambulatory Health Care Services | $0 | $0 | $6,894 | $2,187,274 | $0 | $0 | NA | $2,194,168 |
| 622 | Hospitals | $0 | $0 | $7,057 | $2,238,934 | $0 | $0 | NA | $2,245,991 |
| 623 | Nursing and Residential Care Facilities | $0 | $0 | $3,872 | $1,228,320 | $0 | $0 | NA | $1,232,191 |
| 721 | Accommodation | $10,213 | $0 | $89,449 | $233,263 | $0 | $0 | NA | $332,925 |
| 722 | Food Services and Drinking Places | $0 | $0 | $1,256,499 | $0 | $0 | $0 | NA | $1,256,499 |
| 811 | Repair and Maintenance | $231,684 | $22,875 | $457,762 | $856,307 | $0 | $475,823 | NA | $2,044,452 |
| 812 | Personal and Laundry Services | $31,734 | $0 | $29,695 | $626,079 | $0 | $0 | NA | $687,507 |
| | Total | $3,711,539 | $1,140,422 | $30,865,261 | $40,131,852 | $6,817,564 | $2,727,990 | $340,548 | $85,735,176 |

Source: OSHA Office of Regulatory Analysis

**Table XV-6**

**Cost to Employers of PPE Payment Standard by Type of PPE**
**All Establishments**

| PPE Category | Annualized Cost ($millions) |
|---|---|
| Non-Prescription Safety Glasses | $1.7 |
| Safety Goggles | $0.9 |
| Chemical Splash Goggles | $0.3 |
| Face Shields | $0.8 |
| Hardhats | $1.1 |
| Metatarsal Protection | $13.3 |
| Chemical Protective Footwear | $17.6 |
| Gloves for Abrasion Protection | $27.8 |
| Gloves for Chemical Protection | $10.2 |
| Splash Aprons | $0.7 |
| Chemical Protective Clothing | $1.5 |
| Fall Protection | $6.8 |
| Welding Protective Equipment | $2.7 |
| Hearing Protection (Construction Industry | $0.3 |
| Total - All PPE Types | $85.7 |

Source: OSHA Office of Regulatory Analysis

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In a separate but related issue, this same commenter indicated that, from talking with their members, they thought OSHA's survey had underestimated the share of PPE which employees were paying for. OSHA recognizes that such results are inevitable in relying upon a sample. There will be instances where certain costs are underestimated. Likewise, there will be situations where costs are overestimated. These will tend to offset each other so that there is no systemic bias. For example, based heavily on one survey response, the analysis suggests that employers in wholesale trade are expected to have particularly heavy costs for certain PPE items, notably fall protection. However, in OSHA's professional judgment, uses of these PPE items in this sector are not as high as the survey would suggest. Nonetheless, it would be inconsistent and potentially in error to project a final estimate of costs to the economy without taking into account the full pattern of behavior indicated by the survey.

There may be instances where this analysis either fails to consider certain specialized PPE or PPE use patterns in particular industries that are more expensive than calculated. Alternately,

there will be instances where the analysis has overestimated the cost of PPE for various industries. However, as indicated later in this analysis, given the very limited costs of PPE as a percentage of revenue and profits, its comparatively ''level'' distribution as a per employee cost (i.e., costs as function of the size of employment), as well as the established patterns of employee payment currently for most types of PPE in most industries, cost estimates for particular industries would generally need to be off by well over an order of magnitude before these would begin to raise issues of economic feasibility.

It should also be noted that since this analysis is accepting the survey results at face value, there has been no attempt to correct for situations where OSHA already requires payment for PPE, *e.g.,* the bloodborne pathogens standard and numerous single substance standards. To the extent that employers are not adhering to existing requirements in this regard, these costs are overstated in this rulemaking.

Finally, this analysis makes no attempt to estimate to what extent employees will continue to voluntarily bring their own PPE into the workplace. Rather, this analysis assumes employers will pay 100 percent of the cost of the PPE covered by this rulemaking currently paid for by employees. To the extent employees choose to bring their own PPE into the workplace after the rule is issued, costs will be overstated.

*I. Economic Feasibility and RFA Certification*

A standard is economically feasible if it does not threaten massive dislocation to or imperil the existence of an industry. See *United Steelworkers of America,* 647 F.2d at 1265. That a standard is financially burdensome or threatens the survival of some companies in an industry is not sufficient to render it infeasible (Id. at 1265). The cost of compliance with an OSHA standard must be analyzed ''in relation to the financial health and profitability of the industry and the likely effect of such costs on unit consumer prices.'' (Id.) [The] practical question is whether the standard threatens the competitive stability of an industry, or whether any intra-industry or inter-industry discrimination in the standard might wreck such stability or lead to undue concentration (Id.) (citing *Industrial Union Dept., AFL–CIO* v. *Hodgson,* 499 F.2d 467 (DC Cir. 1974)). The courts have further observed that granting companies reasonable time to comply may enhance economic feasibility (Id.).

To assess the potential economic impacts of the final rule, OSHA compared the anticipated costs of achieving compliance against revenues and profits of PPE-using establishments in non-State Plan states. Per-establishment average costs were calculated by dividing total compliance costs for each industry by the number of affected establishments. OSHA then compared baseline financial data (from the U.S. Internal Revenue Service, Corporation Source Book, 2004) with total annualized costs of compliance to compute compliance costs as a percentage of revenues and profits. This impact assessment is presented in Table XV–7.

This table is considered a screening analysis because it measures costs as a percentage of pre-tax profits and sales but does not predict impacts on pre-tax profits and sales. This screening analysis is used to determine whether the compliance costs potentially associated with the standard would lead to significant impacts on establishments in the affected industries. The actual impact of the standard on the profits and revenues of establishments in a given industry will depend on the price elasticity of demand for the services sold by establishments in that industry.

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Table XV-7

Cost of the Final PPE Standard as a Percent of Revenues and Profits of Affected Establishments

| NAICS | Industry | Number of Affected Establishments | Annual Compliance Cost | Average Cost per Establishment | Average Sales | Pre-Tax Profit Rate | Average Pre-Tax Profit | Costs as a % of Sales | Costs as a % of Profits |
|---|---|---|---|---|---|---|---|---|---|
| 113 | Forestry and Logging | 5,868 | $137,252 | $23 | $1,005,573 | 4.2% | $42,307 | 0.002% | 0 06% |
| 211 | Oil and Gas Extraction | 4,054 | $354,156 | $87 | $22,361,933 | 12 1% | $2,714,551 | 0.000% | 0.00% |
| 221 | Utilities | 6,602 | $353,454 | $54 | $23,973,182 | 3 2% | $772,865 | 0.000% | 0.01% |
| 236 | Construction of Buildings | 91,962 | $8,571,884 | $93 | $2,399,671 | 4 7% | $112,219 | 0 004% | 0.08% |
| 237 | Heavy and Civil Engineering Construction | 23,388 | $2,891,791 | $124 | $3,840,250 | 2 8% | $109,226 | 0.003% | 0 11% |
| 238 | Specialty Trade Contractors | 211,881 | $18,161,701 | $86 | $1,077,013 | 3.9% | $41,674 | 0 008% | 0 21% |
| 311 | Food Manufacturing | 10,206 | $1,080,909 | $106 | $18,268,501 | 4.7% | $855,536 | 0.001% | 0 01% |
| 312 | Beverage and Tobacco Product Manufacturing | 975 | $128,991 | $132 | $32,390,819 | 10.2% | $3,313,667 | 0.000% | 0 00% |
| 313 | Textile Mills | 1,076 | $106,384 | $99 | $10,739,134 | 4 2% | $452,364 | 0.001% | 0 02% |
| 314 | Textile Product Mills | 2,827 | $119,487 | $42 | $4,720,007 | 6.2% | $293,619 | 0.001% | 0 01% |
| 315 | Apparel Manufacturing | 2,426 | $167,063 | $69 | $3,280,877 | 5.2% | $169,915 | 0.002% | 0 04% |
| 316 | Leather and Allied Product Manufacturing | 565 | $34,429 | $61 | $4,959,106 | 6.0% | $299,967 | 0.001% | 0 02% |
| 321 | Wood Product Manufacturing | 6,657 | $532,473 | $80 | $5,703,772 | 3.7% | $213,101 | 0.001% | 0.04% |
| 322 | Paper Manufacturing | 2,275 | $178,102 | $78 | $28,249,016 | 3.5% | $986,834 | 0.000% | 0.01% |
| 323 | Printing and Related Support Activities | 13,325 | $756,950 | $57 | $2,629,127 | 4.0% | $104,999 | 0.002% | 0.05% |
| 324 | Petroleum and Coal Products Manufacturing | 991 | $38,753 | $39 | $106,190,876 | 6.4% | $6,766,437 | 0 000% | 0 00% |
| 325 | Chemical Manufacturing | 5,227 | $243,943 | $47 | $36,834,936 | 9.2% | $3,391,484 | 0 000% | 0.00% |
| 326 | Plastics and Rubber Products Manufacturing | 6,047 | $503,702 | $83 | $11,777,378 | 3.3% | $389,895 | 0 001% | 0.02% |
| 327 | Nonmetallic Mineral Product Manufacturing | 8,747 | $1,252,053 | $143 | $5,976,098 | 4 1% | $245,996 | 0.002% | 0.06% |
| 331 | Primary Metal Manufacturing | 2,833 | $848,393 | $299 | $25,538,856 | 3 6% | $931,152 | 0 001% | 0.03% |
| 332 | Fabricated Metal Product Manufacturing | 27,474 | $534,091 | $19 | $4,258,734 | 5 1% | $218,203 | 0 000% | 0.01% |
| 333 | Machinery Manufacturing | 12,377 | $495,537 | $40 | $9,361,378 | 3.3% | $307,805 | 0 000% | 0.01% |
| 334 | Computer and Electronic Product Manufacturing | 5,836 | $233,612 | $40 | $23,277,453 | 4.9% | $1,149,915 | 0.000% | 0 00% |
| 335 | Electrical Equipment, Appliance, and Component Manufacturing | 2,845 | $104,875 | $37 | $16,279,903 | 4.4% | $723,845 | 0 000% | 0.01% |
| 336 | Transportation Equipment Manufacturing, Except Shipbuilding | 5,968 | $368,808 | $62 | $50,020,205 | 2.0% | $981,599 | 0.000% | 0.01% |
| 336611 | Ship Building and Repairing | 334 | $910,448 | $2,726 | $21,297,500 | 5 4% | $1,154,661 | 0.013% | 0.24% |
| 337 | Furniture and Related Product Manufacturing | 7,838 | $372,868 | $48 | $3,465,070 | 4 0% | $138,778 | 0.001% | 0.03% |
| 339 | Miscellaneous Manufacturing | 13,267 | $295,865 | $22 | $4,228,414 | 6.9% | $289,772 | 0.001% | 0.01% |
| 423 | Merchant Wholesalers, Durable Goods | 68,286 | $11,223,135 | $164 | $10,022,837 | 2.7% | $269,954 | 0 002% | 0.06% |
| 424 | Merchant Wholesalers, Nondurable Goods | 34,720 | $7,090,640 | $204 | $16,785,204 | 2 8% | $468,503 | 0 001% | 0.04% |
| 441 | Motor Vehicle and Parts Dealers | 52,674 | $3,109,301 | $59 | $6,638,715 | 1 4% | $92,882 | 0 001% | 0 06% |
| 442 | Furniture and Home Furnishings Stores | 14,136 | $90,650 | $6 | $1,560,965 | 3.6% | $56,581 | 0 000% | 0.01% |
| 443 | Electronics and Appliance Stores | 10,527 | $69,029 | $7 | $1,780,973 | 3.4% | $60,339 | 0.000% | 0.01% |
| 444 | Building Material and Garden Equipment and Supplies Dealers | 20,529 | $176,143 | $9 | $3,201,366 | 5 5% | $174,630 | 0.000% | 0.00% |
| 445 | Food and Beverage Stores | 33,896 | $381,288 | $11 | $3,142,551 | 1 7% | $52,971 | 0.000% | 0.02% |
| 446 | Health and Personal Care Stores | 18,454 | $174,957 | $9 | $2,419,698 | 2 7% | $65,792 | 0.000% | 0.01% |
| 447 | Gasoline Stations | 50,117 | $1,499,470 | $30 | $2,143,691 | 0 9% | $19,518 | 0.001% | 0.15% |
| 448 | Clothing and Clothing Accessories Stores | 31,891 | $257,647 | $8 | $1,228,894 | 5.0% | $61,861 | 0 001% | 0.01% |
| 451 | Sporting Goods, Hobby, Book, and Music Stores | 13,035 | $94,801 | $7 | $1,249,339 | 2.9% | $36,401 | 0.001% | 0.02% |
| 452 | General Merchandise Stores | 13,294 | $292,923 | $22 | $10,929,045 | 4 1% | $446,310 | 0 000% | 0 00% |
| 453 | Miscellaneous Store Retailers | 27,840 | $126,791 | $5 | $765,225 | 3 5% | $26,474 | 0 001% | 0.02% |
| 454 | Nonstore Retailers | 10,986 | $87,730 | $8 | $3,497,998 | 3.8% | $131,710 | 0.000% | 0.01% |

Table XV-7

Cost of the Final PPE Standard as a Percent of Revenues and Profits of Affected Establishments

| NAICS | Industry | Number of Affected Establishments | Annual Compliance Cost | Average Cost per Establishment | Average Sales | Pre-Tax Profit Rate | Average Pre-Tax Profit | Costs as a % of Sales | Costs as a % of Profits |
|---|---|---|---|---|---|---|---|---|---|
| 481 | Air Transportation | 1,680 | $369,047 | $220 | $17,038,405 | 1.0% | $162,777 | 0.001% | 0.13% |
| 482 | Rail Transportation | 3,165 | $51,839 | $16 | NA | 3.0% | NA | NA | NA |
| 483 | Water Transportation | 570 | $62,430 | $110 | $13,420,894 | 5.1% | $681,697 | 0.001% | 0.02% |
| 484 | Truck Transportation | 34,083 | $1,019,213 | $30 | $1,649,334 | 2.5% | $40,769 | 0.002% | 0.07% |
| 485 | Transit and Ground Passenger Transportation | 4,354 | $324,461 | $75 | $1,154,418 | 2.1% | $24,706 | 0.006% | 0.30% |
| 486 | Pipeline Transportation | 1,117 | $41,832 | $37 | $13,278,252 | 17.1% | $2,264,907 | 0.000% | 0.00% |
| 487 | Scenic and Sightseeing Transportation | 667 | $10,516 | $16 | $833,175 | 4.5% | $37,288 | 0.002% | 0.04% |
| 488 | Support Activities for Transportation, Except Longshoring | 9,482 | $337,222 | $36 | $1,821,786 | 3.0% | $54,471 | 0.002% | 0.07% |
| 488320 | Marine Cargo Handling (Longshoring) | 255 | $521,551 | $2,045 | $12,254,954 | 3.0% | $366,423 | 0.017% | 0.56% |
| 491 | Postal Service | 32,875 | $806,599 | $25 | NA | NA | NA | NA | NA |
| 492 | Couriers and Messengers | 3,737 | $411,524 | $110 | $4,129,863 | 3.0% | $123,483 | 0.003% | 0.09% |
| 493 | Warehousing and Storage | 3,646 | $402,881 | $110 | $5,685,200 | 3.9% | $223,283 | 0.002% | 0.05% |
| 511 | Publishing Industries (except Internet) | 11,445 | $1,114,854 | $97 | $8,000,475 | 11.8% | $942,153 | 0.001% | 0.01% |
| 515 | Broadcasting (except Internet) | 3,111 | $168,380 | $54 | $10,878,489 | 5.5% | $599,857 | 0.000% | 0.01% |
| 517 | Telecommunications | 15,162 | $795,298 | $52 | $7,987,007 | 3.3% | $261,588 | 0.001% | 0.02% |
| 541 | Professional, Scientific, and Technical Services | 136,528 | $2,074,936 | $15 | $1,357,718 | 6.4% | $87,535 | 0.001% | 0.02% |
| 561 | Administrative and Support Services | 93,344 | $2,587,595 | $28 | $1,320,756 | 4.0% | $52,808 | 0.002% | 0.05% |
| 562 | Waste Management and Remediation Services | 5,784 | $188,786 | $33 | $2,904,678 | 4.1% | $119,867 | 0.001% | 0.03% |
| 621 | Ambulatory Health Care Services | 184,880 | $2,194,168 | $12 | $1,129,609 | 5.3% | $60,066 | 0.001% | 0.02% |
| 622 | Hospitals | 3,122 | $2,245,991 | $719 | $77,389,822 | 4.4% | $3,427,341 | 0.001% | 0.02% |
| 623 | Nursing and Residential Care Facilities | 24,590 | $1,232,191 | $50 | $1,939,554 | 4.4% | $85,896 | 0.003% | 0.06% |
| 721 | Accommodation | 14,190 | $332,925 | $23 | $2,283,632 | 4.4% | $99,629 | 0.001% | 0.02% |
| 722 | Food Services and Drinking Places | 130,046 | $1,256,499 | $10 | $680,572 | 4.3% | $29,024 | 0.001% | 0.03% |
| 811 | Repair and Maintenance | 88,737 | $2,044,452 | $23 | $571,334 | 4.0% | $22,900 | 0.004% | 0.10% |
| 812 | Personal and Laundry Services | 45,160 | $687,507 | $15 | $373,170 | 5.3% | $19,882 | 0.004% | 0.08% |
| | Total | 1,735,985 | $85,735,176 | $49 | $3,544,194 | 4.2% | $147,246 | 0.001% | 0.03% |

Source: OSHA Office of Regulatory Analysis.

Note: Profit rates estimated as the average ratio of net income to total receipts over the years 2002 to 2004 as reported for 2003 by the US Internal Revenue Service, Corporation Source Book, 2004. <<http://www.irs.gov/taxstats/bustaxstats/article/0,,id=149687,00.html>> Data not available at dissagregated levels for all industries and profit rates at more highly aggregated levels are used for such industries. The profit rate for NAICS code 48 (Transportation and Warehousing) is used for NAICS code 492 (Couriers and Messengers).

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Price elasticity refers to the relationship between the price charged for a service and the demand for that service; that is, the more elastic the relationship, the less able an establishment is to pass the costs of compliance through to its customers in the form of a price increase and the more it will have to absorb the costs of compliance from its profits. When demand is inelastic, establishments can recover all the costs of compliance simply by raising the prices they charge for that service; under this scenario, profits are untouched. On the other hand, when demand is elastic, establishments cannot recover all the costs simply by passing the cost increase through in the form of a price increase; instead, they must absorb some of the increase from their profits. In general, ''when an industry is subject to a higher cost, it does not simply swallow it, it raises its price and reduces its output, and in this way shifts a part of the cost to its consumers and a part to its suppliers,'' (*ADA* v. *Secretary of Labor*, 984 F.2d 823, 829 (7th Cir. 1993)).

Specifically, if demand is completely inelastic (i.e., price elasticity is 0), then the impact of compliance costs that amount to 1 percent of revenues would be a 1 percent increase in the price of the product or service, with no decline in demand or in profits. Such a situation would be most likely when there are few, if any, substitutes for the product or service offered by the affected sector or if the products or services of the affected sector account only for a small portion of the income of its consumers. If the demand is perfectly elastic (i.e., the price elasticity is infinitely large), then no increase in price is possible, and before-tax profits would be reduced by an amount equal to the costs of compliance (minus any savings resulting from improved employee health and reduced insurance costs). Under this scenario, if the costs of compliance represent a large percentage of the sector's profits, some establishments might be forced to close. This scenario is highly unlikely to occur, however, because it can only arise when there are other goods and services that are, in the eye of the consumer, perfect substitutes for the goods and services the affected establishments produce or provide.

A common intermediate case would be a price elasticity of one. In this situation, if the costs of compliance amount to 1 percent of revenues, then production would decline by 1 percent and prices would rise by 1 percent. The sector would remain in business and maintain approximately the same profit rate as before but would produce 1 percent less of its services. Consumers would effectively absorb the costs through a combination of increased prices and reduced consumption; this, as the court described in *ADA* v. *Secretary of Labor*, is the more typical case.

As indicated in Table XV–7, the screening analysis indicates the highest revenue and profit impacts are for NAICS 48832, Marine Cargo Handling (0.017 percent of sales and 0.56 percent of profits); NAICS 336611, Ship Building and Repairing (0.013 percent of sales and 0.24 percent of profits); NAICS 238, Specialty Trade Contractors (0.008 percent of sales and .21 percent of profits); and NAICS 485, Transit and Ground Passenger Transportation (0.006 percent of sales and 0.3 percent of profits). Over the entire set of affected industries, the average impact on sales is 0.001 percent and the average impact on profits is 0.03 percent.

Costs of this magnitude do not threaten the financial health of even the most marginal firm. Since most employers in most industries already pay for PPE, the major competitive effect of the rule is to limit any small short-term competitive advantage a few firms gain by not paying for PPE, i.e., by requiring their employees to pay for PPE that other employers in their industry pay for. As shown elsewhere, many firms already pay for PPE because it proves cost-effective. Many firms will find that, when benefits as well as costs are considered, the costs of PPE are more than offset by these benefits.

It should be noted that these impacts could be nine times higher without reaching the level of 5 percent of profits or 1 percent of revenues in any industry. Thus, in spite of uncertainties about costs, this rule does not come close to a level threatening the economic viability of any affected industry. For all the aforementioned reasons, the Agency concludes the final rule is economically feasible.

OSHA also assessed the economic impact of the rule on small firms within each affected industry. Impacts on two size categories of small firms were estimated: Firms with fewer than 500 employees, and firms with fewer than 20 employees. In using 500 employees and 20 employees to characterize firms for this screening analysis for impacts, OSHA is not proposing definitions of small business that are different from those established by the Small Business Administration (SBA) in its ''Table of Size Standards''. The SBA size definitions are NAICS-code specific, and are generally expressed either in terms of number of employees or as annual receipts. Instead, OSHA is using 500 employees and 20 employees as a simple method of screening for significant impacts across the large number of industries potentially affected by the rule. Because the survey used the 500- and 20-employee levels, it is appropriate to retain these levels in the final rule. This approach also avoids the interpolation that would be necessary because the underlying industry profile data do not correspond with the NAICS-specific size categories established by the SBA. (OSHA notes that, for almost all of the industries affected by this rulemaking, the SBA size definitions fall within the 20- to 500-employee range.) OSHA believes that this screening approach will capture any significant impacts on small firms in affected industries.

As a conservative approach, in order to analyze the impact on firms with fewer than 500 employees, OSHA divided the total annual cost in each NAICS for establishments with fewer than 500 employees by the total number of firms with fewer than 500 employees in that NAICS. This approach tends to overstate the impact because some of the costs will be for establishments with fewer than 500 employees that are part of firms with more than 500 employees. These calculated costs per firm with fewer than 500 employees were then compared to average sales per firm with fewer than 500 employees and average pre-tax profits per firm with fewer than 500 employees. The same methodology was used to analyze the impact on firms with fewer than 20 employees.

The results of these analyses are shown in Tables XV–8 and XV–9, which demonstrate that the annualized costs of compliance do not exceed 0.035 percent of sales or 0.65 percent of profits for small firms in any industry, whether defined as fewer than 500 employees or as fewer than 20 employees. It should be noted that these impacts could be 8 times higher without reaching the level of 5 percent of profits or 1 percent of revenues that OSHA uses to determine if a Regulatory Flexibility Act (5 U.S.C. 605) Analysis (RFA) is necessary. Thus, in spite of uncertainties about costs, it is very unlikely that this rule would even rise to the level of needing more detailed analysis beyond this screening analysis. Based on these analyses, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605), OSHA certifies that the rule will not have a significant impact on a substantial number of small entities.

Because for most industries statistically meaningful survey data are available largely only at the three-digit North American Industrial Classification System level, OSHA has conducted this analysis of economic impacts primarily at the 3-digit level. OSHA believes that this level of analysis adequately captures meaningful variations in economic impacts. Further, the costs are so low that even if a sub-industry has substantially higher costs as a percentage of sales or profits, the financial health of that sub-industry would not be in any danger.

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Table XV-8

Cost of the Final PPE Standard to Affected Enterprises with Fewer than 500 Employees as a Percent of Revenues and Profits

| NAICS | Industry | Number of Affected Enterprises | Annual Compliance Cost | Average Cost per Enterprise | Average Sales | Pre-Tax Profit Rate | Average Pre-Tax Profit | Costs as a % of Sales | Costs as a % of Profits |
|---|---|---|---|---|---|---|---|---|---|
| 113 | Forestry and Logging | 5,867 | $76,390 | $13 | $878,634 | 4.2% | $36,966 | 0.001% | 0.04% |
| 211 | Oil and Gas Extraction | 4,048 | $158,282 | $39 | $4,325,559 | 12.1% | $525,087 | 0.001% | 0.01% |
| 221 | Utilities | 6,526 | $85,519 | $13 | $8,093,884 | 3.2% | $260,937 | 0.000% | 0 01% |
| 236 | Construction of Buildings | 91,903 | $6,814,494 | $74 | $1,831,558 | 4.7% | $85,651 | 0.004% | 0.09% |
| 237 | Heavy and Civil Engineering Construction | 23,319 | $1,821,520 | $78 | $2,829,551 | 2.8% | $80,479 | 0.003% | 0.10% |
| 238 | Specialty Trade Contractors | 211,787 | $16,969,520 | $80 | $954,590 | 3.9% | $36,937 | 0.008% | 0.22% |
| 311 | Food Manufacturing | 9,901 | $233,871 | $24 | $4,907,874 | 4.7% | $229,842 | 0.000% | 0.01% |
| 312 | Beverage and Tobacco Product Manufacturing | 941 | $10,412 | $11 | $4,935,839 | 10.2% | $504,950 | 0.000% | 0.00% |
| 313 | Textile Mills | 1,051 | $21,687 | $21 | $4,295,318 | 4.2% | $180,931 | 0.000% | 0.01% |
| 314 | Textile Product Mills | 2,784 | $36,518 | $13 | $1,773,417 | 6.2% | $110,320 | 0.001% | 0.01% |
| 315 | Apparel Manufacturing | 2,406 | $108,936 | $45 | $1,995,782 | 5.2% | $103,361 | 0.002% | 0.04% |
| 316 | Leather and Allied Product Manufacturing | 558 | $16,525 | $30 | $2,714,432 | 6.0% | $164,191 | 0.001% | 0.02% |
| 321 | Wood Product Manufacturing | 6,627 | $321,831 | $49 | $3,328,369 | 3.7% | $124,352 | 0.001% | 0.04% |
| 322 | Paper Manufacturing | 2,193 | $46,334 | $21 | $8,528,603 | 3.5% | $297,933 | 0.000% | 0.01% |
| 323 | Printing and Related Support Activities | 13,265 | $509,067 | $38 | $1,591,273 | 4.0% | $63,551 | 0.002% | 0 06% |
| 324 | Petroleum and Coal Products Manufacturing | 960 | $10,949 | $11 | $12,906,826 | 6.4% | $822,417 | 0.000% | 0.00% |
| 325 | Chemical Manufacturing | 5,123 | $83,965 | $16 | $8,177,829 | 9.2% | $752,953 | 0.000% | 0.00% |
| 326 | Plastics and Rubber Products Manufacturing | 5,954 | $168,730 | $28 | $5,143,226 | 3.3% | $170,269 | 0.001% | 0.02% |
| 327 | Nonmetallic Mineral Product Manufacturing | 8,717 | $708,900 | $81 | $3,037,685 | 4.1% | $125,041 | 0.003% | 0.07% |
| 331 | Primary Metal Manufacturing | 2,753 | $410,936 | $149 | $7,277,430 | 3.6% | $265,337 | 0.002% | 0.06% |
| 332 | Fabricated Metal Product Manufacturing | 27,330 | $369,641 | $14 | $2,500,476 | 5.1% | $128,116 | 0.001% | 0.01% |
| 333 | Machinery Manufacturing | 12,218 | $280,229 | $23 | $3,658,214 | 3.3% | $120,283 | 0.001% | 0.02% |
| 334 | Computer and Electronic Product Manufacturing | 5,670 | $71,955 | $13 | $5,100,513 | 4.9% | $251,967 | 0.000% | 0.01% |
| 335 | Electrical Equipment, Appliance, and Component Manufacturing | 2,761 | $31,853 | $12 | $4,956,285 | 4.4% | $220,369 | 0.000% | 0.01% |
| 336 | Transportation Equipment Manufacturing, Except Shipbuilding | 5,729 | $87,817 | $15 | $5,696,194 | 2.0% | $111,782 | 0.000% | 0.01% |
| 336611 | Ship Building and Repairing | 324 | $124,380 | $384 | $3,994,240 | 5.4% | $216,551 | 0.010% | 0.18% |
| 337 | Furniture and Related Product Manufacturing | 7,776 | $185,455 | $24 | $1,826,548 | 4.0% | $73,154 | 0.001% | 0.03% |
| 339 | Miscellaneous Manufacturing | 13,188 | $194,889 | $15 | $1,991,906 | 6.9% | $136,505 | 0.001% | 0.01% |
| 423 | Merchant Wholesalers, Durable Goods | 68,224 | $7,381,605 | $108 | $4,608,013 | 2.7% | $124,112 | 0.002% | 0.09% |
| 424 | Merchant Wholesalers, Nondurable Goods | 34,574 | $4,223,646 | $122 | $7,283,267 | 2.8% | $203,288 | 0.002% | 0.06% |
| 441 | Motor Vehicle and Parts Dealers | 52,671 | $2,430,154 | $46 | $6,631,399 | 1.4% | $92,780 | 0.001% | 0.05% |
| 442 | Furniture and Home Furnishings Stores | 14,134 | $58,539 | $4 | $1,165,217 | 3.6% | $42,236 | 0.000% | 0.01% |
| 443 | Electronics and Appliance Stores | 10,525 | $28,942 | $3 | $902,959 | 3.4% | $30,592 | 0.000% | 0.01% |
| 444 | Building Material and Garden Equipment and Supplies Dealers | 20,528 | $98,387 | $5 | $1,951,142 | 5.5% | $106,432 | 0.000% | 0.00% |
| 445 | Food and Beverage Stores | 33,825 | $134,360 | $4 | $1,169,933 | 1.7% | $19,720 | 0.000% | 0.02% |
| 446 | Health and Personal Care Stores | 18,452 | $59,863 | $3 | $1,462,224 | 2.7% | $39,758 | 0.000% | 0.01% |
| 447 | Gasoline Stations | 50,117 | $985,808 | $20 | $1,710,900 | 0.9% | $15,578 | 0.001% | 0.13% |
| 448 | Clothing and Clothing Accessories Stores | 31,886 | $68,478 | $2 | $683,242 | 5.0% | $34,393 | 0.000% | 0.01% |
| 451 | Sporting Goods, Hobby, Book, and Music Stores | 13,033 | $43,852 | $3 | $665,846 | 2.9% | $19,400 | 0.001% | 0.02% |
| 452 | General Merchandise Stores | 13,120 | $8,850 | $1 | $765,821 | 4.1% | $31,274 | 0.000% | 0.00% |
| 453 | Miscellaneous Store Retailers | 27,838 | $93,569 | $3 | $556,561 | 3.5% | $19,255 | 0.001% | 0.02% |
| 454 | Nonstore Retailers | 10,969 | $57,175 | $5 | $1,623,386 | 3.8% | $61,126 | 0.000% | 0.01% |
| 481 | Air Transportation | 1,634 | $25,122 | $15 | $2,875,941 | 1.0% | $27,475 | 0.001% | 0.06% |
| 483 | Water Transportation | 565 | $15,675 | $28 | $4,964,009 | 5.1% | $252,140 | 0.001% | 0.01% |
| 484 | Truck Transportation | 34,009 | $62,430 | $2 | $1,006,738 | 2.5% | $24,885 | 0.000% | 0.01% |
| 485 | Transit and Ground Passenger Transportation | 4,347 | $213,357 | $49 | $763,429 | 2.1% | $16,338 | 0.006% | 0 30% |
| 486 | Pipeline Transportation | 1,113 | $3,775 | $3 | $11,652,554 | 17.1% | $1,987,607 | 0.000% | 0.00% |

**Table XV-8**

**Cost of the Final PPE Standard to Affected Enterprises with Fewer than 500 Employees as a Percent of Revenues and Profits**

| NAICS | Industry | Number of Affected Enterprises | Annual Compliance Cost | Average Cost per Enterprise | Average Sales | Pre-Tax Profit Rate | Average Pre-Tax Profit | Costs as a % of Sales | Costs as a % of Profits |
|---|---|---|---|---|---|---|---|---|---|
| 487 | Scenic and Sightseeing Transportation | 667 | $8,138 | $12 | $711,416 | 4.5% | $31,839 | 0.002% | 0.04% |
| 488 | Support Activities for Transportation, Except Longshoring | 9,469 | $10,516 | $1 | $1,134,517 | 3.0% | $33,922 | 0.000% | 0.00% |
| 488320 | Marine Cargo Handling (Longshoring) | 247 | $23,025 | $93 | $4,317,396 | 3.0% | $129,090 | 0.002% | 0.07% |
| 492 | Couriers and Messengers | 3,698 | $24,606 | $7 | $739,893 | 3.0% | $22,123 | 0.001% | 0.03% |
| 493 | Warehousing and Storage | 3,590 | $51,667 | $14 | $1,924,313 | 3.9% | $75,576 | 0.001% | 0.02% |
| 511 | Publishing Industries (except Internet) | 11,326 | $117,568 | $10 | $2,233,975 | 11.8% | $263,078 | 0.000% | 0.00% |
| 515 | Broadcasting (except Internet) | 3,096 | $71,654 | $23 | $4,263,639 | 5.5% | $235,104 | 0.001% | 0.01% |
| 517 | Telecommunications | 14,994 | $78,342 | $5 | $2,836,095 | 3.3% | $92,887 | 0.000% | 0.01% |
| 541 | Professional, Scientific, and Technical Services | 135,989 | $111,782 | $1 | $812,927 | 6.4% | $52,411 | 0.000% | 0.00% |
| 561 | Administrative and Support Services | 92,895 | $546,004 | $6 | $705,173 | 4.0% | $28,195 | 0.000% | 0.02% |
| 562 | Waste Management and Remediation Services | 5,759 | $140,768 | $24 | $1,457,912 | 4.1% | $60,163 | 0.003% | 0.04% |
| 621 | Ambulatory Health Care Services | 184,223 | $8,221 | $0 | $874,636 | 5.3% | $46,508 | 0.000% | 0.00% |
| 622 | Hospitals | 2,018 | $1,091 | $1 | $13,064,752 | 4.4% | $578,595 | 0.000% | 0.00% |
| 623 | Nursing and Residential Care Facilities | 24,471 | $3,451 | $0 | $1,462,344 | 4.4% | $64,762 | 0.000% | 0.00% |
| 721 | Accommodation | 14,073 | $73,581 | $5 | $923,380 | 4.4% | $40,285 | 0.000% | 0.01% |
| 722 | Food Services and Drinking Places | 130,020 | $3,872 | $0 | $520,342 | 4.3% | $22,191 | 0.000% | 0.00% |
| 811 | Repair and Maintenance | 88,727 | $269,714 | $3 | 489025.4632 | 4.0% | $19,601 | 0.000% | 0.02% |
| 812 | Personal and Laundry Services | 45,153 | $24,234 | $1 | $298,986 | 5.3% | $15,930 | 0.000% | 0.00% |
| | Total | 1,693,654 | $47,522,424 | $28 | $1,722,987 | 5.4% | $93,843 | 0.002% | 0.03% |

Source: OSHA Office of Regulatory Analysis.

Note: Profit rates estimated as the average ratio of net income to total receipts over the years 2002 to 2004 as reported for 2003 by the US Internal Revenue Service, Corporation Source Book, 2004. <<http://www.irs.gov/taxstats/bustaxstats/article/0,,id=149687,00.html>> Data not available at dissagregated levels for all industries and profit rates at more highly aggregated levels are used for such industries. The profit rate for NAICS code 48 (Transportation and Warehousing) is used for NAICS code 492 (Couriers and Messengers).

Table XV-9

Cost of the Final PPE Standard to Affected Enterprises with Fewer than 20 Employees as a Percent of Revenues and Profits

| NAICS | Industry | Number of Affected Enterprises | Annual Compliance Cost | Average Cost per Enterprise | Average Sales | Pre-Tax Profit Rate | Average Pre-Tax Profit | Costs as a % of Sales | Costs as a % of Profits |
|---|---|---|---|---|---|---|---|---|---|
| 113 | Forestry and Logging | 5,492 | $65,904 | $12 | $620,854 | 4.2% | $26,121 | 0.002% | 0.05% |
| 211 | Oil and Gas Extraction | 3,560 | $36,720 | $10 | $1,466,795 | 12.1% | $178,057 | 0.001% | 0.01% |
| 221 | Utilities | 4,632 | $27,418 | $6 | $1,743,811 | 3.2% | $56,218 | 0.000% | 0.01% |
| 236 | Construction of Buildings | 85,711 | $4,208,335 | $49 | $937,766 | 4.7% | $43,854 | 0.005% | 0.11% |
| 237 | Heavy and Civil Engineering Construction | 18,706 | $698,586 | $37 | $895,800 | 2.8% | $25,479 | 0.004% | 0.15% |
| 238 | Specialty Trade Contractors | 191,885 | $6,348,800 | $33 | $473,096 | 3.9% | $18,306 | 0.007% | 0.18% |
| 311 | Food Manufacturing | 6,137 | $176,200 | $29 | $948,240 | 4.7% | $44,407 | 0.003% | 0.06% |
| 312 | Beverage and Tobacco Product Manufacturing | 595 | $6,616 | $11 | $972,802 | 10.2% | $99,520 | 0.001% | 0.01% |
| 313 | Textile Mills | 591 | $14,239 | $24 | $1,031,710 | 4.2% | $43,459 | 0.002% | 0.06% |
| 314 | Textile Product Mills | 2,096 | $29,451 | $14 | $629,738 | 6.2% | $39,174 | 0.002% | 0.04% |
| 315 | Apparel Manufacturing | 1,743 | $91,259 | $52 | $487,343 | 5.2% | $25,239 | 0.011% | 0.21% |
| 316 | Leather and Allied Product Manufacturing | 395 | $13,099 | $33 | $594,842 | 6.0% | $35,981 | 0.006% | 0.09% |
| 321 | Wood Product Manufacturing | 4,351 | $235,255 | $54 | $849,548 | 3.7% | $31,740 | 0.006% | 0.17% |
| 322 | Paper Manufacturing | 687 | $22,129 | $32 | $1,623,126 | 3.5% | $56,701 | 0.002% | 0.06% |
| 323 | Printing and Related Support Activities | 10,496 | $461,922 | $44 | $513,248 | 4.0% | $20,498 | 0.009% | 0.21% |
| 324 | Petroleum and Coal Products Manufacturing | 612 | $8,102 | $13 | $2,933,402 | 6.4% | $186,915 | 0.000% | 0.01% |
| 325 | Chemical Manufacturing | 2,477 | $75,515 | $30 | $1,892,436 | 9.2% | $174,241 | 0.002% | 0.02% |
| 326 | Plastics and Rubber Products Manufacturing | 2,719 | $115,425 | $42 | $1,087,752 | 3.3% | $36,011 | 0.004% | 0.12% |
| 327 | Nonmetallic Mineral Product Manufacturing | 5,998 | $234,175 | $39 | $884,178 | 4.1% | $36,396 | 0.004% | 0 11% |
| 331 | Primary Metal Manufacturing | 1,368 | $71,739 | $52 | $1,188,672 | 3.6% | $43,339 | 0.004% | 0.12% |
| 332 | Fabricated Metal Product Manufacturing | 18,666 | $347,662 | $19 | $688,549 | 5.1% | $35,279 | 0.003% | 0.05% |
| 333 | Machinery Manufacturing | 7,684 | $269,420 | $35 | $904,513 | 3.3% | $29,741 | 0.004% | 0.12% |
| 334 | Computer and Electronic Product Manufacturing | 3,311 | $65,497 | $20 | $1,198,167 | 4.9% | $59,190 | 0.002% | 0.03% |
| 335 | Electrical Equipment, Appliance, and Component Manufacturing | 1,497 | $28,402 | $19 | $1,155,603 | 4.4% | $51,381 | 0.002% | 0.04% |
| 336 | Transportation Equipment Manufacturing, Except Shipbuilding | 3,396 | $78,596 | $23 | $1,185,120 | 2.0% | $23,257 | 0.002% | 0.10% |
| 336611 | Ship Building and Repairing | 201 | $57,512 | $286 | $822,329 | 5.4% | $44,583 | 0.035% | 0.64% |
| 337 | Furniture and Related Product Manufacturing | 5,957 | $159,628 | $27 | $516,205 | 4.0% | $20,674 | 0.005% | 0.13% |
| 339 | Miscellaneous Manufacturing | 10,387 | $186,258 | $18 | $555,131 | 6.9% | $38,043 | 0.003% | 0.05% |
| 423 | Merchant Wholesalers, Durable Goods | 54,337 | $4,181,996 | $77 | $2,187,586 | 2.7% | $58,920 | 0.004% | 0.13% |
| 424 | Merchant Wholesalers, Nondurable Goods | 26,685 | $2,322,617 | $87 | $2,797,035 | 2.8% | $78,070 | 0.003% | 0.11% |
| 441 | Motor Vehicle and Parts Dealers | 42,341 | $675,051 | $16 | $1,472,524 | 1.4% | $20,602 | 0.001% | 0.08% |
| 442 | Furniture and Home Furnishings Stores | 12,087 | $39,031 | $3 | $731,834 | 3.6% | $26,527 | 0.000% | 0.01% |
| 443 | Electronics and Appliance Stores | 9,255 | $21,855 | $2 | $615,204 | 3.4% | $20,843 | 0.000% | 0.01% |
| 444 | Building Material and Garden Equipment and Supplies Dealers | 16,031 | $57,654 | $4 | $971,974 | 5.5% | $53,020 | 0.000% | 0.01% |
| 445 | Food and Beverage Stores | 23,330 | $82,472 | $4 | $637,106 | 1.7% | $10,739 | 0.001% | 0.03% |
| 446 | Health and Personal Care Stores | 14,023 | $41,694 | $3 | $1,108,089 | 2.7% | $30,129 | 0.000% | 0.01% |
| 447 | Gasoline Stations | 46,531 | $552,494 | $12 | $1,285,874 | 0.9% | $11,708 | 0.001% | 0.10% |
| 448 | Clothing and Clothing Accessories Stores | 26,754 | $49,583 | $2 | $491,050 | 5.0% | $24,719 | 0.000% | 0.01% |
| 451 | Sporting Goods, Hobby, Book, and Music Stores | 10,788 | $30,864 | $3 | $460,473 | 2.9% | $13,416 | 0.001% | 0.02% |
| 452 | General Merchandise Stores | 6,836 | $7,607 | $1 | $449,405 | 4.1% | $18,352 | 0.000% | 0.01% |
| 453 | Miscellaneous Store Retailers | 24,643 | $71,566 | $3 | $424,394 | 3.5% | $14,683 | 0.001% | 0.02% |
| 454 | Nonstore Retailers | 9,469 | $31,579 | $3 | $816,088 | 3.8% | $30,728 | 0.000% | 0.01% |
| 481 | Air Transportation | 1,107 | $5,780 | $5 | $1,022,779 | 1.0% | $9,771 | 0.001% | 0.05% |
| 483 | Water Transportation | 409 | $2,682 | $7 | $1,288,994 | 5.1% | $65,473 | 0.001% | 0.01% |
| 484 | Truck Transportation | 28,485 | $57,448 | $2 | $461,400 | 2.5% | $11,405 | 0.000% | 0.02% |
| 485 | Transit and Ground Passenger Transportation | 2,931 | $41,942 | $14 | $290,669 | 2.1% | $6,221 | 0.005% | 0.23% |
| 486 | Pipeline Transportation | 907 | $762 | $1 | $6,477,844 | 17.1% | $1,104,943 | 0.000% | 0.00% |

Table XV-9

Cost of the Final PPE Standard to Affected Enterprises with Fewer than 20 Employees as a Percent of Revenues and Profits

| NAICS | Industry | Number of Affected Enterprises | Annual Compliance Cost | Average Cost per Enterprise | Average Sales | Pre-Tax Profit Rate | Average Pre-Tax Profit | Costs as a % of Sales | Costs as a % of Profits |
|---|---|---|---|---|---|---|---|---|---|
| 487 | Scenic and Sightseeing Transportation | 556 | $3,013 | $5 | $330,185 | 4.5% | $14,777 | 0.002% | 0.04% |
| 488 | Support Activities for Transportation, Except Longshoring | 8,021 | $9,251 | $1 | $625,223 | 3.0% | $18,694 | 0.000% | 0.01% |
| 488320 | Marine Cargo Handling (Longshoring) | 132 | $1,850 | $14 | $1,009,221 | 3.0% | $30,176 | 0.001% | 0.05% |
| 492 | Couriers and Messengers | 2,655 | $13,739 | $5 | $372,873 | 3.0% | $11,149 | 0.001% | 0.05% |
| 493 | Warehousing and Storage | 2,348 | $9,780 | $4 | $783,528 | 3.9% | $30,773 | 0.001% | 0.01% |
| 511 | Publishing Industries (except Internet) | 8,480 | $68,067 | $8 | $604,556 | 11.8% | $71,194 | 0.001% | 0.01% |
| 515 | Broadcasting (except Internet) | 2,113 | $31,134 | $15 | $667,750 | 5.5% | $36,821 | 0.002% | 0.04% |
| 517 | Telecommunications | 11,854 | $42,235 | $4 | $955,644 | 3.3% | $31,299 | 0.001% | 0.01% |
| 541 | Professional, Scientific, and Technical Services | 121,574 | $111,782 | $1 | $420,232 | 6.4% | $27,093 | 0.000% | 0.00% |
| 561 | Administrative and Support Services | 78,758 | $287,094 | $4 | $334,103 | 4.0% | $13,358 | 0.000% | 0.03% |
| 562 | Waste Management and Remediation Services | 4,472 | $60,964 | $14 | $623,452 | 4.1% | $25,728 | 0.003% | 0.05% |
| 621 | Ambulatory Health Care Services | 162,210 | $0 | $0 | $540,452 | 5.3% | $28,738 | 0.000% | 0.00% |
| 622 | Hospitals | 353 | $0 | $0 | $1,420,752 | 4.4% | $62,920 | 0.000% | 0.00% |
| 623 | Nursing and Residential Care Facilities | 13,581 | $0 | $0 | $311,136 | 4.4% | $13,779 | 0.000% | 0.00% |
| 721 | Accommodation | 10,263 | $66,524 | $6 | $421,782 | 4.4% | $18,401 | 0.000% | 0.04% |
| 722 | Food Services and Drinking Places | 75,325 | $0 | $0 | $262,489 | 4.3% | $11,194 | 0.000% | 0.00% |
| 811 | Repair and Maintenance | 84,192 | $105,422 | $1 | 369413.7776 | 4.0% | $14,807 | 0.000% | 0.01% |
| 812 | Personal and Laundry Services | 42,328 | $0 | $0 | $210,323 | 5.3% | $11,206 | 0.000% | 0.00% |
| | Total | 1,387,516 | $23,219,392 | $17 | $705,543 | 4.1% | $29,242 | 0.002% | 0.06% |

Source: OSHA Office of Regulatory Analysis.

Note: Profit rates estimated as the average ratio of net income to total receipts over the years 2002 to 2004 as reported for 2003 by the US Internal Revenue Service, Corporation Source Book, 2004. <<http://www.irs.gov/taxstats/bustaxstats/article/0,,id=149687,00.html>> Data not available at dissagregated levels for all industries and profit rates at more highly aggregated levels are used for such industries. The profit rate for NAICS code 48 (Transportation and Warehousing) is used for NAICS code 492 (Couriers and Messengers).

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*J. Social Costs and Social Benefits*

For the most part, the rule will simply shift the cost of purchasing PPE from employees to employers. However, the record demonstrates that employer payment will also result in more PPE used and improved PPE use at the workplace. This will lead to social costs and social benefits. For purposes of estimating the social costs, OSHA assumed, based largely on expert opinion as discussed above in the benefits analysis, that employees lack the proper PPE an average of 17.5 percent of the time when employers pay, and 40 percent of the time when employees pay. The social cost represents the cost of closing the gap between the two numbers; the remainder of the employers' cost is merely an economic transfer from the employee to employer. Thus, the social costs of requiring employer payment would represent the following portion of the total cost to employers: 1–((1–0.4)/(1–0.175)), where (1–0.4)/(1–0.175) represents the relative likelihood that employees are actually wearing the proper PPE. If the relative likelihood were 1 (the numerator and denominator equal), there would be no social cost. Calculated out, this becomes 1–(0.6/0.825), 1–0.727, or 27.3 percent. As indicated in Table XV–10 this suggests that about $23.4 million out of the total $85.7 million estimated costs to employers are social costs.

In the case of comparing social costs and social benefits, the magnitude of social costs and benefits are closely linked—the benefits of reducing the injuries are dependent upon the purchase and use of PPE. To assess the benefits of the final rule, OSHA estimated that PPE is misused or not used at all 40 percent of the time when employees pay and 17.5 percent of the time when employers pay. There is necessarily uncertainty in these estimates. Accordingly, OSHA has performed an analysis of the social costs and social benefits of the rule given different sets of assumptions, commonly referred to as a sensitivity analysis, in this case with respect to different rates of PPE misuse/nonuse. The Agency found that if the difference in PPE usage patterns between the employee- and employer-pay groups is much smaller than OSHA's assumption, the social benefits are still several times larger than the social costs.

If one assumed the gap between the two groups were only half of what was assumed in the benefits estimate based on direct cost (i.e., assume employees paying for their own PPE were lacking the proper PPE 28.75 percent of the time, and employees who had the PPE paid for by their employer were lacking it 17.5 percent of the time, meaning a difference of 11.25 percent, as opposed to 22.5 percent in main estimate), OSHA estimates total social costs of $11.7 million and total social benefits of $125.3 million, for a net benefit of $113.6 million. If the ''employer payment effect'' were only 10 percent of the main benefits estimate (i.e., assume employees paying for their own PPE were lacking the proper PPE 19.75 percent of the time, and employees who had the PPE paid for by their employer were lacking it 17.5 percent of the time), the social costs would be only $2.3 million; the remainder of the cost to employers would simply be a transfer. The estimated benefits would be $27.6 million, for a net benefit of $25.3 million.[30]

OSHA performed an analysis of these alternate assumptions incorporating the estimated value of willingness to pay for injuries avoided, estimated at approximately $50,000 per lost workday injury (Viscusi 1993, Viscusi & Aldy 2003). As shown in Table XV–11, OSHA estimates the net social benefits of the rule to be $334 million using the main benefits estimate, and $185 and $39 million using the alternate 50 percent and 10 percent assumptions on the ''employer payment effect''.

The Agency also examined the effect of doubling the estimated share of PPE employees currently pay for to examine the consequences of the survey underestimating the employees' share of payment. Both the costs of the standard to employers and the social costs would double—the estimated social costs would increase to $47 million. The estimated annual benefits of the standard would increase to 37,188 injuries and 3.4 fatalities prevented, producing an estimated social value of $609 million, and raising the net social benefit to $562 million. Therefore, the Agency concludes that if the survey did underestimate the current employee-paying share, the net benefits of the standard would be larger than OSHA's primary estimate.

As discussed previously, these sensitivity analyses of the net social benefits are intended to explore the implications of the uncertainties outlined previously in this analysis. Nonetheless, under any scenario, the rule will produce a high ratio of benefits to costs and positive net benefits; the primary uncertainty is the magnitude of the social costs and benefits.

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[30] Total social benefits include fatalities prevented, which are valued at $7 million per fatality avoided, using the willingness to pay approach [Viscusi, 2003, p. 763].

**TABLE XV-10**

**ANNUAL SOCIAL COSTS, BENEFITS, SOCIAL AND NET BENEFITS OF PPE PAYMENT RULE BASED ON DIRECT COST OF INJURIES**

| Benefit Assumption* | Social Cost ($millions) | Injuries Avoided | Fatalities Avoided | Monetized Benefits** ($millions) | Net Benefits |
|---|---|---|---|---|---|
| Base (22.5%) | $23.4 | 21,798 | 1.7 | $228.3 | $204.9 |
| 50% of base (11.25%) | $11.7 | 12,019 | 0.9 | $125.9 | $114.2 |
| 10% of base (2.25%) | $2.3 | 2,662 | 0.2 | $27.9 | $25.6 |

*Assumed difference in usage of appropriate PPE, when employers pay, compared to employees.
Base assumption: 40% of employees are lacking appropriate PPE when employees pay vs. 17.5% when employers pay, or a difference of 22.5%. Alternate assumptions: 28.75% vs. 17.5%; 19.75% vs. 17.5%.
**Direct cost savings estimated at $9,928 per injury; willingness-to-pay benefit of $7 milliion per fatality avoided

**TABLE XV-11**

**ANNUAL SOCIAL COSTS, BENEFITS, SOCIAL AND NET BENEFITS OF PPE PAYMENT RULE BASED ON WILLINGNESS TO PAY TO AVOID INJURIES**

| Benefit Assumption* | Social Cost ($millions) | Injuries Avoided | Fatalities Avoided | Monetized Benefits** ($millions) | Net Benefits |
|---|---|---|---|---|---|
| Base (22.5%) | $23.4 | 21,798 | 1.7 | $349.0 | $325.6 |
| 50% of base (11.25%) | $11.7 | 12,019 | 0.9 | $192.3 | $180.6 |
| 10% of base (2.25%) | $2.3 | 2,662 | 0.2 | $42.5 | $40.2 |

*Assumed difference in usage of appropriate PPE, when employers pay, compared to employees.
Base assumption: 40% of employees are lacking appropriate PPE when employees pay vs. 17.5% when employers pay, or a difference of 22.5%. Alternate assumptions: 28.75% vs. 17.5%; 19.75% vs. 17.5%.
**Willingess to pay to avoid injuries estimated at $50,000 per lost workday injury, $7 milliion per fatality avoided. The benefits are therefore based on a subset of all injuries: 6743, 3714 or 820 lost workday cases with days away from work in the respective scenarios.

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*K. Direct Savings Resulting From the Reduction in Injuries Attributable to the Final Rule*

This section evaluates the direct savings associated with the injuries prevented by the final rule. It should be noted that occupational injuries impose an enormous burden on society in addition to the direct outlays of money for medical expenses, lost wages and production, and other purely economic effects. This section of the analysis does not attempt to place a monetary value on the pain and suffering experienced by employees and their families, loss of esteem, disruption of family life, feelings of anger and helplessness and other effects. However, many of these considerations go into the monetary calculation of the social benefits of injury reduction used in the social costs and benefits above (see Section J). In

addition, there are some purely economic costs that have not been captured in this analysis, such as legal costs to employees and lost output at home.

Some aspects of the burden of occupational injuries can be quantified in monetary terms. These aspects of the problem of work-related injuries and illnesses can be measured by the losses experienced by employees and by the other costs that are externalized to the rest of society. One consequence of the failure of PPE programs to prevent job-related injuries is the growth of enormously expensive income maintenance programs such as workers' compensation and long-term disability programs. These costs impose a burden on society separate from and in addition to the human toll in pain and suffering caused by workplace-related injuries.

One measure of some of the losses associated with lost time due to work-related injuries is the lost output of the employee, measured by the value the market places on his or her time. This value is measured as the employee's total wage plus fringe benefits. Other costs include: (1) Medical expenses, (2) costs of workers' compensation insurance administration, and (3) indirect costs to employers (other than those for workers' compensation administration).

a. Lost Output

OSHA estimates the value of lost output by starting with workers' compensation indemnity payments and then adding other losses associated with work-related injuries. The Agency follows four steps to arrive at a value for lost output:

(1) Calculate PPE-related injury in terms of workers' compensation indemnity payments;

(2) Add the difference between the value of these indemnity payments and the employee's after-tax income, based on various studies comparing workers' compensation payments with after-tax income. This step estimates the magnitude of lost after-tax income;

(3) Add the estimated value of taxes, based on the typical value of taxes as a percentage of after-tax income. This step estimates the value of total income lost; and

(4) Add the value of fringe benefits, based on data on fringe benefits as a percentage of total income. This step estimates the total market value of the lost output.

In this approach, injuries are clearly undervalued, because OSHA assumes that the value associated with injuries is the same as the value of claims for workers' compensation. An analysis of 1993 workers' compensation claim data from the Argonaut Insurance Company, updated to reflect current dollars using a ratio of claims value to total injuries, shows that the weighted average claim value of the injuries shown in Table XV–3 is $3,833. Based on nationwide estimates from the U.S. Social Security Administration, an average of 53 percent of these payments are paid out for indemnity, and the remaining 47 percent are paid out for medical costs (NASI, 2006).

b. Indemnity/Lost Income

Workers' compensation indemnity payments typically take two forms: temporary total disability payments, which cover absences from work prior to the stabilization of the condition, and permanent disability payments, which compensate the employee for the long-term effects of a stabilized condition. On a nationwide basis, the National Academy of Social Insurance (NASI) estimates that permanent disability payments account for 79 percent of all indemnity payments. Considering all payments, those cases classified as permanent partial disability account for 67 percent of the total, while those classified as permanent total disability account for 12 percent of the total. The remaining indemnity payments are for temporary total disability cases and account for 21 percent of the total (NASI, 2006).

The extent to which income is replaced by each type of indemnity payment (i.e., temporary or permanent) differs. First, although rules vary by State, temporary disability income is designed in most States to replace two-thirds of the employee's before-tax income. However, most States place a maximum and minimum on the amount of money paid out to the employee, regardless of his/her actual former income. Studies by the Worker Compensation Research Institute (WCRI) show that temporary total disability payments replace between 80 to 100 percent of the after-tax income of the majority of employees (WCRI, 1993). From 3 to 44 percent of the employees receive less than 80 percent of their after-tax income, and from 0 to 16 percent receive more than 100 percent of their after-tax income. Unfortunately, WCRI does not provide estimates of average replacement rates as they vary significantly by State for a number of reasons, including policy differences, injury rates, employee demographics, and wage and price variations (NASI, 2006). However, based on these data, it seems reasonable to assume that, on average, employees receive no more than 90 percent of their after-tax income while on temporary disability.

On the other hand, data show that permanent partial disability payments replaced 75 percent of income lost in Wisconsin, 58 percent in Florida, and 45 percent in California [Berkowitz and Burton]. OSHA uses the simple average of these three—59 percent—to estimate the extent of after-tax income replacement for permanent partial disabilities.[31]

Based on these data and the NASI estimates of the distribution of payments by type, OSHA estimated after-tax income from the total indemnities paid for injuries preventable by the proposed rule by assuming payments for temporary disabilities account for 21 percent of all PPE-preventable indemnity payments and replace 90 percent of after-tax income and that payments for permanent disabilities account for 79 percent of PPE-preventable indemnity payments and replace approximately 60 percent of after-tax income.

c. Fringe Benefits

In addition to after-tax income loss, lost output includes the value of taxes that would have been paid by the injured employee and fringe benefits that would have been paid by the employee's employer. Total income-based taxes (individual Social Security payments, Federal income tax, and State income tax) paid were assumed to be 30 percent of total income.[32] Fringe benefits were estimated as 40.4 percent of before-tax income, based on the average fringe benefit data provided by BLS (BLS, 2005).

Tables XV–12 and XV–13 apply the estimation parameters developed above to calculate the total value of the lost output associated with temporary and permanent disabilities, respectively. As shown, the total value of the lost output associated with potentially avoidable approved workers' compensation claims for temporary total disability is estimated at $17.3 million, and that associated with permanent disabilities (partial and total) at $93.9 million a

[31] The use of a simple average rather than a population-weighted average results in a lower estimate of income loss and is thus a more conservative approach.

[32] A CBO (CBO, 2004) study estimated the current effective Federal tax rate, averaged over all income levels, at 21.6% (Table 2, p. 18). To this Social Security taxes and state and local income taxes must be added, so that the number 30% should be a conservative estimate in most cases.

year. By preventing injuries that lead to disability, the PPE payment rule will also prevent this lost output.

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**Table XV-12**

**Annual Value of Lost Output Associated With Temporary Total Disabilities Resulting from PPE-Preventable Injuries**

| Type of Benefit | Injuries/Cost Prevented |
|---|---|
| Total Number of PPE-Preventable Cases Annually | 21,798 |
| Weighted Average Total Cost per Claim | $3,833 |
| Indemnity Share of Payment (53% of Total Claim) | $2,035 |
| Medical Share of Payment (47% of Total Claim) | $1,798 |
| Value of Temporary Total Disability Indemnity Payments [a] | $9,317,009 |
| Lost-After-Tax Income Above the Value of Indemnity Payments [b] | $724,656 |
| Lost Value of Tax Payments [c] | $3,105,670 |
| Lost Value of Fringe Benefits [d] | $4,182,302 |
| TOTAL | $17,329,637 |

Source: OSHA Office of Regulatory Analysis.

[a] Number of cases * indemnity payments per case * 21 percent indemnity value share attributable to temporary total disability.
[b] Temporary total disability payments have been estimated to equal 90 percent of lost after-tax income.
[c] Taxes are estimated to equal 30 percent of before-tax income.
[d] Fringe benefits equal 40.4 percent of wage income. BLS, *Employer Cost for Employee Compensatio* n (4th quarter, 2004)

**Table XV-13**

**Annual Value of Lost Output Associated With Permanent Partial Disabilities Resulting from PPE-Preventable Injuries**

| Type of Benefit | Injuries/Costs Prevented |
|---|---|
| Number of PPE-Preventable Injury Cases | 21,798 |
| Value of Indemnity Payments (Permanent Partial) [a] | $35,049,702 |
| Lost-After-Tax Income Above the Value of Indemnity Payments [b] | $17,049,601 |
| Lost Value of Tax Payments [c] | $17,821,882 |
| Lost Value of Fringe Benefits [d] | $24,000,135 |
| TOTAL | $93,921,320 |

Source: OSHA Office of Regulatory Analysis.

[a] Number of cases prevented * indemnity payments per claim * 79 percent value share attributable to permanent partial disability. Includes 12 percent of all cases classified as "total permanent disabilty".
[b] Permanent partial disability payments are estimated to equal 59 percent of the value of lost after-tax income.
[c] Taxes are estimated to be 30 percent of before tax income.
[d] Fringe benefits equal 40.4 percent of wage income. BLS, *Employer Cost for Employee Compensatio* n (4th quarter, 2004)

BILLING CODE 4510–26–C

d. Medical

Most elements of medical costs are included in the share of payments paid for medical costs, estimated to be 47 percent of the cost of the claims. However, medical costs do not include any first-aid costs incurred by the employer and, in some cases, costs for transportation to a medical facility. It should be noted that costs for treating injuries will remain relatively constant, regardless of who is actually paying for the medical care (i.e., the employer through workers' compensation, or a medical insurer). As presented in Table XV–14, OSHA estimates the medical costs of injuries preventable by the proposed standard to be $39.2 million a year.

e. Administrative Costs

The administrative costs of workers' compensation insurance include any funds spent directly on claims adjustment, as well as all other administrative costs incurred by the insurer in conjunction with experienced losses.

OSHA calculates the administrative costs of PPE-related injury claims based on the estimates of benefits and costs to employers for workers' compensation as provided by the National Academy of Social Insurance (NASI, 2006). Table XV–15 presents administrative costs as a percent of the value of claims, by type of insurer. Administrative costs for private carriers, State funds, and self-insured companies are estimated to be 71.8 percent, 73.5 percent, and 16.2 percent, respectively. To estimate the aggregate value of the administrative costs of insurance, these costs were weighted by the value of the benefit payments made by each type of insurer. The aggregate value of the administrative costs of workers' compensation insurance is estimated to be 58.1 percent of the value of claims. The total value of claims includes both the indemnity and medical portions of insurance company payments. As indicated in Table XV–14, the Agency estimates that the revisions to the PPE standard will save $48.5 million annually in administrative costs.

It should be noted that cases that fall outside the workers' compensation system will typically have administrative costs associated with them—indeed, to the extent they are borne by private medical insurers, they will carry relatively greater administrative expenses than the average estimated here.

**Table XV-14**

**Annual Social Benefits Associated With The Reduction in Injuries as a Result of Employer Payment for PPE**

| Type of Benefit | Injuries/Costs Prevented |
|---|---|
| Lost Output Associated with Temporary Disabilities [a] | $17,329,637 |
| Lost Output Associated with Permanent Disabilities [b] | $93,921,320 |
| Medical Costs [c] | $39,190,595 |
| Insurance Administrative Costs [d] | $48,546,795 |
| Indirect Costs [e] | $17,379,920 |
| TOTAL | $216,368,267 |

Source: OSHA Office of Regulatory Analysis.

[a] Derived from Table VI-12
[b] Derived from Table VI-13
[c] Calculated by multiplying the number of injuries by the value of medical payments presented in Table VI-4
[d] Calculated by multiplying the total value of claims times 58.1 percent.
[e] Calculated by multiplying the total value of workers' compensation medical and indemnity payments times 20.8 percent.

TABLE XV–15.—DERIVATION OF AVERAGE ADMINISTRATIVE COSTS AS A PERCENT OF THE VALUE OF CLAIMS, BY TYPE OF INSURANCE

[$ millions]

| Type of insurance | Total cost | Benefits | Administrative cost | Ratio of administrative costs to benefits |
|---|---|---|---|---|
| Private | $48,695 | $28,346 | $20,349 | 71.8 percent. |
| State | $19,157 | $11,044 | $8,113 | 73.5 percent. |
| Self-Insured | $15,478 | $13,321 | $2,157 | 16.2 percent. |
| All Insurance | $83,330 | $52,711 | $30,619 | 58.1 percent. |

Source: National Academy of Social Insurance, Workers Compensation: Benefits, Coverage, and Costs, 2004 (Washington, DC, 2006).

f. Indirect Costs

The term ''indirect costs'' describes the costs of work-related injuries that are borne directly by employers but are not included in workers' compensation claim costs. Such costs are best estimated by looking at the costs an employer actually incurs at the time a workers' compensation claim is filed. These costs include a number of different social costs, not included elsewhere in these calculations, such as loss of productivity measured by sick leave to employees for absences that are shorter than the workers' compensation waiting period, losses in production associated with the injured workers' departure and return to work, losses in the productivity of other employees, and a wide variety of administrative costs other than those borne directly by the workers' compensation insurer, *e.g.*, medical management costs for the injured employee. Based on a study (Hinze & Applegate) of indirect costs of injuries in the construction industry, OSHA estimates that indirect costs are 20.8 percent of the value of workers' compensation medical and indemnity payments. As indicated in Table XV–14, the Agency estimates that the PPE payment rule will save $17.4 million annually in these indirect costs.

Taken in its entirety, this final rule is estimated to save $216 million annually by avoiding preventable injuries. See Table XV–14. These cost savings do not include the economic value of the loss of leisure time. They do not account for

the burden of chores that are forced on other household members or hired out. The direct savings also do not include the value of preventing pain and suffering or loss of life.

## L. References


Alpenso, 2007. *www.alpenco.com*. Accessed May 8, 2007 (Docket OSHA–S042–2006–0667).

American Association of Railroads, 2006. *North American Freight Railroad Statistics*. November 6 (Docket OSHA–S042–2006–0667).

Berkowitz, M., and Burton, J. *Permanent Partial Disability Benefits In Worker Compensation*. W. E. Upjohn Institute for Employment Research, Kalamazoo, Michigan, 1987 (Docket S777, Ex. 1605).

Bureau of Labor Statistics. ''Employer Costs for Employee Compensation Summary,'' News Release, December 9, 2005.

Bureau of Labor Statistics, 2004. *Job Openings and Labor Turnover Survey*, 2004.

Bureau of Labor Statistics. ''Workplace Injuries and Illnesses in 2005,'' News Release, October 19, 2006.

Bureau of Labor Statistics. ''Nonfatal Occupational Injuries and Illnesses Requiring Days Away From Work, 2005,'' News Release, November 17, 2006.

Bureau of National Affairs. *Basic Patterns in Union Contracts*, Fourteenth Edition, BNA Books, 1995 (Docket OSHA–S042–2006–0667).

Curtin, R., Presser, S., and Singer, E., ''Changes in Telephone Survey Nonresponse Over the Past Quarter Century'', *Public Opinion Quarterly*, Vol. 69, No. 1, Spring 2005, pp. 87–98 (Docket OSHA–S042–2006–0667).

Congressional Budget Office, *Effective Tax Rates Under Current Law, 2001–2004*, 2004.

Eastern Research Group, *Patterns of PPE Provision*. 1998 (Ex. 1).

Eastern Research Group, *PPE Cost Survey*, 1999 (Ex. 14).

Eastern Research Group, *Revised Estimates of PPE Use and Payment Patterns*, 2007 Business Roundtable. *Improving Construction Safety Performance: A Construction Industry Cost Effectiveness Project*. Report A–3, January, 1982 (Docket OSHA–S042–2006–0667).

Grainger, 2007. *www.grainger.com*, Accessed May 8, 2007 Business Roundtable. *Improving Construction Safety Performance: A Construction Industry Cost Effectiveness Project*. Report A–3, January, 1982 (Docket OSHA–S042–2006–0667).

Hinze, J. and Applegate, L.L. ''Costs of Construction Injuries'', *Journal of Construction Engineering and Management*, 117(3):537–550, 1991 (Docket S777, Ex. 26–1589).

Klein, R.W., Nordman, E.C., and Fritz, J.L. *Market Conditions in Workers' Compensation Insurance*. Interim Report Presented to the NAIC Workers' Compensation Task Force, July 9, 1993 (Docket S777, Ex. 26–1586).

Lab Safety Supply, *http://www.labsafety.com*. Accessed May 1, 2007 Business Roundtable. *Improving Construction Safety Performance: A Construction Industry Cost Effectiveness Project*. Report A–3, January, 1982 (Docket OSHA–S042–2006–0667).

National Academy of Social Insurance, Workers Compensation: Benefits Coverage, and Costs, 2004 (Washington, DC, 2006) Business Roundtable. *Improving Construction Safety Performance: A Construction Industry Cost Effectiveness Project*. Report A–3, January, 1982 (Docket OSHA–S042–2006–0667).

Occupational Safety and Health Administration, Office of Regulatory Analysis, *Background Document to the Regulatory Impact and Regulatory Flexibility Assessment for the PPE Standard*, 1994, (Docket S060, Ex. 56).

Office of Technology Assessment, *Preventing Illness and Injury in the Workplace, Volume 2-Part B: Working Papers*, 1994 (Docket H049, Ex. 189).

Omark Safety Online, 2007. *www.omarksafety.com*. Accessed May 8, 2007 Business Roundtable. *Improving Construction Safety Performance: A Construction Industry Cost Effectiveness Project*. Report A–3, January, 1982 (Docket OSHA–S042–2006–0667).

Ryscavage, Paul. ''Dynamics of Economic Well-Being: Labor Force, 1991 to 1993'', U.S. Census Bureau, *Current Population Reports, Household Economic Studies*, P70–48, August 1995.

U.S. Census Bureau, 2004. *State and Local Employment and Payroll*, March 2004.

U.S. Census Bureau, 2005a. *County Business Patterns, 2004*.

U.S. Census Bureau, 2005b. *Statistics of U.S. Businesses 2004*.

U.S. Internal Revenue Service, *Corporation Source Book, 2004*. Accessed online at *http://www.irs.gov/taxstats/bustaxstats/article/0,,id=149687,00.html*, March 2007.

U.S. Postal Service. 2006. *Annual Report, 2006*.

U.S. Small Business Administration, 2004. *Table of Small Business Size Standards Matched to the North American Industry Classification System, Effective July 31, 2004*. Accessed on-line at <*http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf*>, March, 2007.

U.S. Social Security Administration. Annual Statistical Supplement to the Social Security Bulletin. Washington, DC, 2006.

Viscusi, K., ''The Value of Risks to Life and Health'', *Journal of Economic Literature*, Vol. 31, No. 4. (Dec., 1993), pp. 1912–1946 (Docket OSHA–S042–2006–0667).

Viscusi, K. and Aldy, J. ''The Value of a Statistical Life: A Critical Review of Market Estimates Throughout the World'', *The Journal of Risk and Uncertainty*, 2003, 27:1:5–76, 2003 (Docket OSHA–S042–2006–0667).

Worker Compensation Research Institute. *Income Replacement in California*. December, 1993 (Docket S777, Ex. 26–1586).

Working Person's Store, 2007. *www.workingperson.com*, Accessed May 8, 2007 (Docket OSHA–S042–2006–0667).


## XVI. Environmental Impacts

OSHA has reviewed this rule in accordance with the National Environmental Policy Act (NEPA), (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR Part 1500), and DOL's NEPA procedures (29 CFR Part II). As a result of this review, OSHA has determined that this action will have no significant impact on the external environment.

## XVII. Federalism

OSHA has reviewed this final rule in accordance with the Executive Order on Federalism (Executive Order 13132, 64 FR 43255, August 10, 1999), which requires that federal agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. Executive Order 13132 provides for preemption of state law only if there is a clear congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the OSH Act (29 U.S.C. 651 *et seq.*) expresses Congress' intent to preempt state laws where OSHA has promulgated occupational safety and health standards. Under the OSH Act, a state can avoid preemption on issues covered by federal standards only if it submits, and obtains federal approval of, a plan for the development of such standards and their enforcement (state plan state) (29 U.S.C. 667). Occupational safety and health standards developed by such state plan states must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the federal standards. Subject to these requirements, state plan states are free to develop and enforce under state law their own requirements for safety and health standards.

This final rule complies with Executive Order 13132. As Congress has expressed a clear intent for OSHA standards to preempt state job safety and health rules in areas addressed by OSHA standards in states without OSHA-approved state plans, this rule limits state policy options in the same manner as all OSHA standards. In states with OSHA-approved state plans, this action does not significantly limit state policy options.

## XVIII. Unfunded Mandates

This final rule has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) and Executive Order 12875. As discussed in the Final Economic Analysis, OSHA estimates that compliance with the rule will require expenditures of $85.7 million per year by affected employers.

Therefore, this rule is not a significant regulatory action within the meaning of Section 202 of UMRA (Pub. L. 104–4, 2 U.S.C. 1532). OSHA standards do not apply to State and local governments except in States that have voluntarily elected to adopt an OSHA State plan. Consequently, the rule does not meet the definition of a ''Federal intergovernmental mandate'' (Section 421(5) of UMRA) (2 U.S.C. 658).

In addition, the Agency has concluded that virtually all State Plan States, the only States in which this rule could have any effect on State and local government employers, already require that employers pay for all types of PPE that will be covered by this rule. Thus, this rule will not have a significant impact on employers who are State and local governments. In sum, this rule does not impose unfunded mandates within the meaning of UMRA.

## XIX. OMB Review Under the Paperwork Reduction Act of 1995

The final PPE payment rule simply clarifies that employers must pay for PPE used to comply with OSHA standards, with a few limited exceptions. As such, the rule does not contain collection-of-information (paperwork) requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA–95), 44 U.S.C. 3501 *et seq.*, and OMB's regulations at 5 CFR part 1320. PRA–95 defines ''collection of information'' as ''[t]he obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public of facts or opinions by or for an agency regardless of form or format * * *.'' (44 U.S.C. 3502(3)(A)).

A number of commenters questioned whether they would be required to keep receipts to prove PPE purchases and, thus, whether the final rule contains paperwork requirements (See, *e.g.,* Exs. 12: 22, 31, 36, 44, 54, 56, 68, 72, 73, 78, 80, 95, 102, 115, 118, 127, 128, 136, 140, 157, 158, 165, 166, 176, 186, 194, 197, 202, 208, 212, 219, 224, 226, 232, 238, 241). In a representative comment, the NAHB asked:

> How will OSHA enforce this standard? When a compliance officer comes on to the jobsite and sees every employee wearing a hard hat and safety glasses, will he request to see a receipt from the employer for the purchase of the PPE? Will the employer then be cited if he does not have a receipt to prove that he did, in fact, pay for the PPE being used? (Ex. 12: 212).

The final standard does not require employers to maintain receipts or any other form of paperwork involving PPE payment, and OSHA will not cite an employer for failure to have such paperwork. The Agency understands that businesses commonly keep receipts to comply with standard accounting codes, for tax accounting purposes, and as a standard good business practice. However, an employer is not required to do so by this final rule.

In response to the comment from NAHB, in most instances, an OSHA inspector will interview employers and employees to determine if an employer is complying with the PPE payment rule. OSHA does not believe it will be difficult to ascertain whether an employer paid for a particular piece of PPE and employers will not need to justify their purchases with receipts. After publishing the final rule, OSHA will instruct its inspectors in the requirements of the final rule and that the final rule does not require employers to keep a record of receipts or otherwise document determinations made.

## XX. State Plan Standards

When federal OSHA promulgates a new standard or more stringent amendment to an existing standard, the 26 states or U.S. territories with their own OSHA-approved occupational safety and health plans must revise their standards to reflect the new standard or amendment, or show OSHA why there is no need for action, *e.g.,* because an existing state standard covering this area is already ''at least as effective'' as the new federal standard or amendment (29 CFR 1953.5(a)). The state standard must be at least as effective as the final federal rule, must be applicable to both the private and public (state and local government employees) sectors, and must be completed within six months of the publication date of the final federal rule. When OSHA promulgates a new standard or amendment that does not impose additional or more stringent requirements than an existing standard, states are not required to revise their standards, although the Agency may encourage them to do so. These 26 states and territories are: Alaska, Arizona, California, Connecticut (plan covers only State and local government employees), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New Jersey (plan covers only State and local government employees), New York (plan covers only State and local government employees), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands (plan covers only Territorial and local government employees), Washington, and Wyoming.

While this final rule does not change the types of PPE that are required, it imposes additional or more stringent PPE payment requirements on employers than existing OSHA standards. Therefore, the states will be required to revise their standards within six months of this **Federal Register** notice or show OSHA why their existing standard is already ''at least as effective'' as the new federal standard. Thirteen states require payment for most PPE through regulation or policy. In addition, three states (California, Minnesota, and Puerto Rico) currently require payment for all PPE. (In these states, the employer may be required to pay for the minimal PPE needed to do the job, but can require the employee to pay for equipment upgraded at the employee's request.)

OSHA received very few comments concerning implementation of the final rule in the state plan states. The State of Minnesota noted that it has required PPE payment by employers since 1973, without any exceptions, under Minnesota Statute § 182, subd. 10(a). Minnesota advocated federal adoption of the State's policy of requiring the employer to pay at least the minimum cost of all PPE needed for the job, including items of a personal nature that can be used off the job, *e.g.,* safety-toe footwear and prescription safety eyewear, without exception. The State expressed concern that employers in Minnesota would be confused if OSHA adopted a requirement different from the State's (Ex. 12: 20). It is the employer's responsibility to know and comply with the applicable occupational safety and health requirements, whether they are federal or OSHA-approved state plan requirements. States that choose to operate state programs are free to adopt more stringent standards but in doing so have a responsibility to communicate those requirements to employers in their state. A state plan state may always adopt standards identical to the federal if they wish to avoid such differences.

While each state plan is ultimately responsible for communicating its state-specific standards and policies to the employers and employees within the state, federal OSHA will continue to work with the state plans to make information about state-specific policies and regulations that differ from the federal, including PPE payment requirements, publicly available to employers and employees through Web postings and other outreach activities.

## XXI. Authority and Signature

This document was prepared under the direction of Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210. This action is taken pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333), and Secretary of Labor's Order No. 5–2007 (72 FR 31160), and 29 CFR part 1911.

**List of Subjects**

*29 CFR Part 1910*

Chemicals, Electric power, Fire prevention, Gases, Hazardous substances, Health facilities, Health professions, Laboratories, Logging, Occupational safety and health, Protective equipment, Radiation protection.

*29 CFR Part 1915*

Chemicals, Electric power, Fire prevention, Gases, Hazardous substances, Health facilities, Health professions, Laboratories, Longshore and harbor workers, Occupational safety and health, Protective equipment, Radiation protection.

*29 CFR Part 1917*

Chemicals, Electric power, Fire prevention, Gases, Hazardous substances, Health facilities, Health professions, Laboratories, Longshore and harbor workers, Occupational safety and health, Protective equipment, Radiation protection.

*29 CFR Part 1918*

Chemicals, Electric power, Fire prevention, Gases, Hazardous substances, Health facilities, Health professions, Laboratories, Longshore and harbor workers, Occupational safety and health, Protective equipment, Radiation protection.

*29 CFR Part 1926*

Chemicals, Construction industry, Electric power, Fire prevention, Gases, Hazardous substances, Health facilities, Health professions, Laboratories, Occupational safety and health, Protective equipment, Radiation protection.

Signed at Washington, DC this 2nd day of November, 2007.

**Edwin G. Foulke, Jr.,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

■ Accordingly, the Occupational Safety and Health Administration amends parts 1910, 1915, 1917, 1918, and 1926 of Title 29 of the Code of Federal Regulations as follows:

**XXII. Final Rule**

**General Industry**

## PART 1910—[AMENDED]

■ 1. The authority citation for subpart I of 29 CFR part 1910 is revised to read as follows:

**Authority:** Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), or 5–2007 (72 FR 31160), as applicable, and 29 CFR Part 1911.

■ 2. A new paragraph (h) is added to § 1910.132, to read as follows:

### § 1910.132 General requirements.

* * * * *

(h) *Payment for protective equipment.*

(1) Except as provided by paragraphs (h)(2) through (h)(6) of this section, the protective equipment, including personal protective equipment (PPE), used to comply with this part, shall be provided by the employer at no cost to employees.

(2) The employer is not required to pay for non-specialty safety-toe protective footwear (including steel-toe shoes or steel-toe boots) and non-specialty prescription safety eyewear, provided that the employer permits such items to be worn off the job-site.

(3) When the employer provides metatarsal guards and allows the employee, at his or her request, to use shoes or boots with built-in metatarsal protection, the employer is not required to reimburse the employee for the shoes or boots.

(4) The employer is not required to pay for:

(i) The logging boots required by 29 CFR 1910.266(d)(1)(v);

(ii) Everyday clothing, such as long-sleeve shirts, long pants, street shoes, and normal work boots; or

(iii) Ordinary clothing, skin creams, or other items, used solely for protection from weather, such as winter coats, jackets, gloves, parkas, rubber boots, hats, raincoats, ordinary sunglasses, and sunscreen.

(5) The employer must pay for replacement PPE, except when the employee has lost or intentionally damaged the PPE.

(6) Where an employee provides adequate protective equipment he or she owns pursuant to paragraph (b) of this section, the employer may allow the employee to use it and is not required to reimburse the employee for that equipment. The employer shall not require an employee to provide or pay for his or her own PPE, unless the PPE is excepted by paragraphs (h)(2) through (h)(5) of this section.

(7) This paragraph (h) shall become effective on February 13, 2008. Employers must implement the PPE payment requirements no later than May 15, 2008.

**Note to § 1910.132(h):** When the provisions of another OSHA standard specify whether or not the employer must pay for specific equipment, the payment provisions of that standard shall prevail.

## PART 1915—[AMENDED]

■ 1. The authority citation for 29 CFR part 1915 is revised to read as follows:

**Authority:** Section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Sections. 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), or 5–2007 (72 FR 31160) as applicable; 29 CFR Part 1911.

■ 2. A new paragraph (f) is added to § 1915.152, to read as follows:

### § 1915.152 General requirements.

* * * * *

(f) Payment for protective equipment.

(1) Except as provided by paragraphs (f)(2) through (f)(6) of this section, the protective equipment, including personal protective equipment (PPE), used to comply with this part, shall be provided by the employer at no cost to employees.

(2) The employer is not required to pay for non-specialty safety-toe protective footwear (including steel-toe shoes or steel-toe boots) and non-specialty prescription safety eyewear, provided that the employer permits such items to be worn off the job-site.

(3) When the employer provides metatarsal guards and allows the employee, at his or her request, to use shoes or boots with built-in metatarsal protection, the employer is not required to reimburse the employee for the shoes or boots.

(4) The employer is not required to pay for:

(i) Everyday clothing, such as long-sleeve shirts, long pants, street shoes, and normal work boots; or

(ii) Ordinary clothing, skin creams, or other items, used solely for protection from weather, such as winter coats, jackets, gloves, parkas, rubber boots, hats, raincoats, ordinary sunglasses, and sunscreen.

(5) The employer must pay for replacement PPE, except when the

employee has lost or intentionally damaged the PPE.

(6) Where an employee provides appropriate protective equipment he or she owns, the employer may allow the employee to use it and is not required to reimburse the employee for that equipment. The employer shall not require an employee to provide or pay for his or her own PPE, unless the PPE is excepted by paragraphs (f)(2) through (f)(5) of this section.

(7) This paragraph (f) shall become effective on February 13, 2008. Employers must implement the PPE payment requirements no later than May 15, 2008.

**Note to § 1915.152(f):** When the provisions of another OSHA standard specify whether or not the employer must pay for specific equipment, the payment provisions of that standard shall prevail.

## Longshoring

## PART 1917—[AMENDED]

■ 1. The authority citation for 29 CFR part 1917 is revised to read as follows:

**Authority:** Section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), or 5–2007 (72 FR 31160) as applicable; 29 CFR Part 1911.

■ 2. A new § 1917.96 is added, to read as follows:

### § 1917.96 Payment for protective equipment.

(a) Except as provided by paragraphs (b) through (f) of this section, the protective equipment, including personal protective equipment (PPE), used to comply with this part, shall be provided by the employer at no cost to employees.

(b) The employer is not required to pay for non-specialty safety-toe protective footwear (including steel-toe shoes or steel-toe boots) and non-specialty prescription safety eyewear, provided that the employer permits such items to be worn off the job-site.

(c) When the employer provides metatarsal guards and allows the employee, at his or her request, to use shoes or boots with built-in metatarsal protection, the employer is not required to reimburse the employee for the shoes or boots.

(d) The employer is not required to pay for:

(1) Everyday clothing, such as long-sleeve shirts, long pants, street shoes, and normal work boots; or

(2) Ordinary clothing, skin creams, or other items, used solely for protection from weather, such as winter coats, jackets, gloves, parkas, rubber boots, hats, raincoats, ordinary sunglasses, and sunscreen.

(e) The employer must pay for replacement PPE, except when the employee has lost or intentionally damaged the PPE.

(f) Where an employee provides adequate protective equipment he or she owns, the employer may allow the employee to use it and is not required to reimburse the employee for that equipment. The employer shall not require an employee to provide or pay for his or her own PPE, unless the PPE is excepted by paragraphs (b) through (e) of this section.

(g) This section shall become effective on February 13, 2008. Employers must implement the PPE payment requirements no later than May 15, 2008.

**Note to § 1917.96:** When the provisions of another OSHA standard specify whether or not the employer must pay for specific equipment, the payment provisions of that standard shall prevail.

## Marine Terminals

## PART 1918—[AMENDED]

■ 1. The authority citation for 29 CFR part 1918 is revised to read as follows:

**Authority:** Section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Sections. 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), or 5–2007 (72 FR 31160) as applicable; 29 CFR Part 1911.

■ 2. A new § 1918.106 is added, to read as follows:

### § 1918.106 Payment for protective equipment.

(a) Except as provided by paragraphs (b) through (f) of this section, the protective equipment, including personal protective equipment (PPE), used to comply with this part, shall be provided by the employer at no cost to employees.

(b) The employer is not required to pay for non-specialty safety-toe protective footwear (including steel-toe shoes or steel-toe boots) and non-specialty prescription safety eyewear, provided that the employer permits such items to be worn off the job-site.

(c) When the employer provides metatarsal guards and allows the employee, at his or her request, to use shoes or boots with built-in metatarsal protection, the employer is not required to reimburse the employee for the shoes or boots.

(d) The employer is not required to pay for:

(1) Everyday clothing, such as long-sleeve shirts, long pants, street shoes, and normal work boots; or

(2) Ordinary clothing, skin creams, or other items, used solely for protection from weather, such as winter coats, jackets, gloves, parkas, rubber boots, hats, raincoats, ordinary sunglasses, and sunscreen.

(e) The employer must pay for replacement PPE, except when the employee has lost or intentionally damaged the PPE.

(f) Where an employee provides adequate protective equipment he or she owns, the employer may allow the employee to use it and is not required to reimburse the employee for that equipment. The employer shall not require an employee to provide or pay for his or her own PPE, unless the PPE is excepted by paragraphs (b) through (e).

(g) This section shall become effective on February 13, 2008. Employers must implement the PPE payment requirements no later than May 15, 2008.

**Note to § 1918.106:** When the provisions of another OSHA standard specify whether or not the employer must pay for specific equipment, the payment provisions of that standard shall prevail.

## Construction

## PART 1926—[AMENDED]

■ 1. The authority citation for subpart E of 29 CFR part 1926 is revised to read as follows:

**Authority:** Section. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Sections. 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 5–2002 (67 FR 65008), or 5–2007 (72 FR 31160) as applicable; and 29 CFR Part 1911.

■ 2. A new paragraph (d) is added to § 1926.95, to read as follows:

### § 1926.95 Criteria for personal protective equipment.

* * * * *

(d) *Payment for protective equipment.* (1) Except as provided by paragraphs (d)(2) through (d)(6) of this section, the protective equipment, including personal protective equipment (PPE), used to comply with this part, shall be

provided by the employer at no cost to employees.

(2) The employer is not required to pay for non-specialty safety-toe protective footwear (including steel-toe shoes or steel-toe boots) and non-specialty prescription safety eyewear, provided that the employer permits such items to be worn off the job-site.

(3) When the employer provides metatarsal guards and allows the employee, at his or her request, to use shoes or boots with built-in metatarsal protection, the employer is not required to reimburse the employee for the shoes or boots.

(4) The employer is not required to pay for:

(i) Everyday clothing, such as long-sleeve shirts, long pants, street shoes, and normal work boots; or

(ii) Ordinary clothing, skin creams, or other items, used solely for protection from weather, such as winter coats, jackets, gloves, parkas, rubber boots, hats, raincoats, ordinary sunglasses, and sunscreen.

(5) The employer must pay for replacement PPE, except when the employee has lost or intentionally damaged the PPE.

(6) Where an employee provides adequate protective equipment he or she owns pursuant to paragraph (b) of this section, the employer may allow the employee to use it and is not required to reimburse the employee for that equipment. The employer shall not require an employee to provide or pay for his or her own PPE, unless the PPE is excepted by paragraphs (d)(2) through (d)(5) of this section.

(7) This section shall become effective on February 13, 2008. Employers must implement the PPE payment requirements no later than May 15, 2008.

**Note to § 1926.95(d):** When the provisions of another OSHA standard specify whether or not the employer must pay for specific equipment, the payment provisions of that standard shall prevail.

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# Part IV

# Department of Energy

## Office of Energy Efficiency and Renewable Energy

## 10 CFR Parts 430 and 431

## Energy Conservation Program: Energy Conservation Standards for Certain Consumer Products (Dishwashers, Dehumidifiers, Electric and Gas Kitchen Ranges and Ovens, and Microwave Ovens) and for Certain Commercial and Industrial Equipment (Commercial Clothes Washers); Proposed Rule

**DEPARTMENT OF ENERGY**

**Office of Energy Efficiency and Renewable Energy**

**10 CFR Parts 430 and 431**

**[Docket No. EE–2006–STD–0127]**

**RIN 1904–AB49**

# Energy Conservation Program: Energy Conservation Standards for Certain Consumer Products (Dishwashers, Dehumidifiers, Electric and Gas Kitchen Ranges and Ovens, and Microwave Ovens) and for Certain Commercial and Industrial Equipment (Commercial Clothes Washers)

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

**ACTION:** Advance notice of proposed rulemaking and notice of public meeting.

**SUMMARY:** The Energy Policy and Conservation Act (EPCA or the Act) authorizes the Department of Energy (DOE) to establish energy conservation standards for various consumer products and commercial and industrial equipment—including residential dishwashers, dehumidifiers, and electric and gas kitchen ranges and ovens and microwave ovens (hereafter referred to as ''cooking products''), as well as commercial clothes washers—if DOE determines that energy conservation standards would be technologically feasible and economically justified, and would result in significant energy savings. DOE is publishing this advance notice of proposed rulemaking (ANOPR) to consider establishing energy conservation standards for these products and to announce a public meeting to receive comments on a variety of issues.

**DATES:** DOE will hold a public meeting on December 13, 2007, starting at 9 a.m. in Washington, DC. DOE must receive requests to speak at the public meeting no later than 4 p.m., November 29, 2007. DOE must receive a signed original and an electronic copy of statements to be given at the public meeting no later than 4 p.m., December 6, 2007.

DOE will accept comments, data, and information regarding the ANOPR before or after the public meeting, but no later than January 29, 2008. See section IV, ''Public Participation,'' of this ANOPR for details.

**ADDRESSES:** The public meeting will be held at the Holiday Inn Capital, 550 C Street, SW., DC 20024.

Any comments submitted must identify the ANOPR for Home Appliance Products, and provide the docket number EE–2006–STD–0127 and/or Regulatory Information Number (RIN) 1904–AB49. Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: home_appliance.rulemaking@ee.doe.gov.* Include the docket number EE–2006–STD–0127 and/or RIN 1904–AB49 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Room 1J–018, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: (202) 586–2945. Please submit one signed paper original.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section IV of this document (Public Participation).

*Docket:* For access to the docket to read background documents or comments received, visit the U.S. Department of Energy, Forrestal Building, Room 1J–018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards-Jones at the above telephone number for additional information regarding visiting the Resource Room. Please note: DOE's Freedom of Information Reading Room (Room 1E–190 at the Forrestal Building) no longer houses rulemaking materials.

**FOR FURTHER INFORMATION CONTACT:** Stephen Witkowski, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–7463. E-mail: *stephen.witkowski@ee.doe.gov.*

Francine Pinto or Eric Stas, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Avenue, SW., Washington, DC, 20585. Telephone: (202) 586–9507. E-mail: *Francine.Pinto@hq.doe.gov* or *Eric.Stas@hq.doe.gov.*

Regarding the public meeting, Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Room 1J–018, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: (202) 586–2945. E-mail: *Brenda.Edwards-Jones@ee.doe.gov.*

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## I. Introduction

### *A. Purpose of the Advance Notice of Proposed Rulemaking*

The purpose of this ANOPR is to provide interested persons with an opportunity to comment on:

1. The product classes that the Department of Energy (DOE) is planning to analyze in this rulemaking;

2. The analytical framework, models, and tools (*e.g.*, life-cycle cost (LCC) and national energy savings (NES) spreadsheets) DOE is using in performing analyses of the impacts of energy conservation standards for residential dishwashers, dehumidifiers, cooking products, and commercial clothes washers (CCWs) (collectively referred to in this ANOPR as ''the four appliance products'');

3. The analyses performed for the ANOPR, including in particular the results of the engineering analyses, the LCC and payback period (PBP) analyses, and the NES and national impact analyses, which are presented in the *ANOPR Technical Support Document (TSD): Energy Efficiency Standards for Consumer Products and Commercial and Industrial Equipment: Residential Dishwashers, Dehumidifiers, And Cooking Products And Commercial Clothes Washers*,[1] as summarized in this ANOPR (2007 TSD); and

4. The candidate energy conservation standard levels that DOE has developed from these analyses.

### *B. Overview of the Analyses Performed*

The Energy Policy and Conservation Act (42 U.S.C. 6291 *et seq.*) directs DOE to consider establishing or amending energy conservation standards for various consumer products and commercial and industrial equipment, including the four appliance products which are the subject of this ANOPR. For each of these products, DOE conducted in-depth technical analyses for this ANOPR in the following areas: (1) Engineering, (2) energy and water use characterization, (3) markups to determine equipment price, (4) LCC and PBP, (5) shipments, (6) national impacts, and (7) preliminary manufacturer impacts. The ANOPR presents a discussion of the methodologies and assumptions utilized in these analyses. For each type of analysis, Table I.1 identifies the sections in this document that contain the results of the analysis, and summarizes the methodologies, key inputs, and assumptions for the analysis. DOE consulted with interested parties in developing these analyses, and invites further input from stakeholders on these topics. Obtaining that input is the purpose of this ANOPR. Thus, it should be noted that the analytical results presented here are subject to revision following review and input from stakeholders and other interested parties. The final rule will contain the final analytical results.

[1] To be published on the DOE Web site at: *http://www.eere.energy.gov/buildings/appliance_standards/residential/cooking_products.html*

TABLE I.1.—IN-DEPTH TECHNICAL ANALYSES CONDUCTED FOR THE ADVANCE NOTICE OF PROPOSED RULEMAKING

| Analysis area | Methodology | Key inputs | Key assumptions | ANOPR section for results |
|---|---|---|---|---|
| Engineering (TSD Chapter 5): | | | | |
| Dishwashers ..... Dehumidifiers | Efficiency level approach supplemented with design option analysis. | Component cost data; Performance values. | Analysis can be extended in subsequent analyses to product classes and efficiency levels for which the Association of Home Appliance Manufacturers (AHAM) did not provide data. | Section II.C.3. |
| Cooking Products ..... | ..... | ..... | Historical data from DOE's 1996 analysis on residential cooking products are still representative of current manufacturing costs. | |
| Commercial Clothes Washers. | ..... | ..... | Analysis can be extended to energy and water efficiency levels for which AHAM did not provide data. | |
| Energy and Water Use Characterization (TSD Chapter 6): | | | | |
| Dishwashers ..... | Establish per-cycle energy and water use and then multiply by annual cycles. | Per-cycle energy and water use; Average annual usage of 215 cycles based on DOE test procedure; Variability of usage based on Energy Information Administration (EIA)'s Residential Energy Consumption Survey (RECS). | Per-cycle water use is a direct function of per-cycle energy use (based on AHAM data). | Section II.D.1. |
| Dehumidifiers ..... | Establish daily energy use by dividing product capacity by efficiency and then multiply by annual hourly usage. | Per-cycle energy and water use; Average annual usage of 1095 hours based on AHAM estimates; Variability of usage based on multiple sources. | Average usage of 1095 hours is representative of dehumidifier use. | Section II.D.2. |
| Cooking Products ..... | Use recent survey data to estimate annual energy use. | Recent survey data from California and Florida—indicates a drop in annual energy use of ~40% for electric and gas ranges and ~15% for microwave ovens relative to DOE test procedure estimates; Variability of usage based on EIA's RECS. | Recent survey data are indicative of current household cooking habits; Historical data from DOE's 1996 analysis on residential cooking products are still representative of component energy use (*e.g.*, self-cleaning, clock, ignition). | Section II.D.3. |
| Commercial Clothes Washers. | Establish per-cycle energy and water use and then multiply by annual cycles. | Per-cycle energy and water use; Average daily usage of 3.4 cycles for multi-family and 6 cycles for laundromats; Variability of usage based on multiple sources. | Per-cycle energy use data in DOE's 2000 TSD on residential clothes washers is representative of per-cycle drying and per-cycle machine energy for commercial washers. | Section II.D.4. |
| Markups to Determine Equipment Price (TSD Chapter 7): | | | | |
| Dishwashers ..... Dehumidifiers Cooking Products Commercial Clothes Washers. | Assess financial data from: (1) U.S. Securities and Exchange Commission (SEC) reports on appliance manufacturers to develop manufacturer markups and (2) the U.S. Census Business Expenditure Survey to develop retailer and commercial distributor markups. Use markups to transform manufacturer costs into consumer prices. | Distribution channels; SEC reports on appliance manufacturers; U.S. Census Business Expenditure Survey; State sales taxes; Shipments to different States. | Markups for baseline and more-efficient equipment are different. | Section II.E. |

TABLE I.1.—IN-DEPTH TECHNICAL ANALYSES CONDUCTED FOR THE ADVANCE NOTICE OF PROPOSED RULEMAKING—Continued

| Analysis area | Methodology | Key inputs | Key assumptions | ANOPR section for results |
|---|---|---|---|---|
| LCC and PBP (TSD Chapter 8): | | | | |
| Dishwashers | Use Monte Carlo simulation in combination with inputs that are characterized with probability distributions to establish a distribution of consumer economic impacts (*i.e.*, LCC savings and PBPs) that identify the percent of. | Manufacturer costs; Markups (including sales taxes); Installation costs; Annual energy (and water) consumption; Energy (and water) prices and future trends; Maintenance and repair costs; Product lifetime; Discount rates. | Only 3% of consumers purchase dishwashers at existing minimum standards (based on AHAM data); Standards do not impact repair and maintenance costs; *AEO2007* basis for energy price forecasts; Average product lifetime is 12.3 years; Average discount rate is 5.6%. | II.G.4 |
| Dehumidifiers | ..... | ..... | Approximately 30% of consumers purchase dehumidifiers at existing minimum standards (based on AHAM data); Standards do not impact repair and maintenance costs; *Annual Energy Outlook (AEO) 2007* basis for energy price forecasts; Average product lifetime is 11 years; Average discount rate is 5.6%. | |
| Cooking Products | ..... | ..... | For gas ranges, only 18 percent of consumers purchase equipment with standing pilots; For electric cooking products and microwave ovens, 100 percent of consumer purchase equipment at baseline levels; Average product lifetime is 19 years for electric and gas ranges and 9 years for microwave ovens; Standards do not impact repair and maintenance costs; *AEO2007* basis for energy price forecasts; Average discount rate is 5.6%. | |
| Commercial Clothes Washers. | ..... | ..... | Approximately 80 percent of consumers purchase equipment at existing minimum standards (based on AHAM data); Standards do not impact repair and maintenance costs; *AEO2007* basis for energy price forecasts; Average product lifetime is 7.1 or 11.3 years depending on product application; Discount rate can be estimated by company-weighted average cost of capital. | |
| Shipments (TSD Chapter 9): | | | | |

TABLE I.1.—IN-DEPTH TECHNICAL ANALYSES CONDUCTED FOR THE ADVANCE NOTICE OF PROPOSED RULEMAKING—Continued

| Analysis area | Methodology | Key inputs | Key assumptions | ANOPR section for results |
|---|---|---|---|---|
| Dishwashers<br>Dehumidifiers<br>Cooking Products<br>Commercial Clothes Washers. | Forecast shipments through the use of a product stock accounting model by dividing market into segments—*e.g.*, new construction, replacements, and early replacements, or first-time owners; Use increases in purchase price and savings in operating costs to forecast the impact of standards on shipments. | Historical shipments (for calibration purposes); Historical product saturations; New construction forecasts; Survival functions (based on product lifetimes); Sensitivity to 'relative price,' *i.e.*, sensitivity to the combined effect of purchase price increases, operating cost savings, and household income. | Market segments are: new construction, replacements, and first-time owners (existing households without the product); Sensitivity to 'relative price' is low.<br>Market segments are: replacements and first-time owners; Sensitivity to 'relative price' is low.<br>Market segments are: new construction, replacements, and early replacements; Sensitivity to 'relative price' is low.<br>Market segments are: new construction and replacements; New construction shipments driven by multi-family housing market only; Sensitivity to 'relative price' is low. | II.H.3. |
| National Impacts (TSD Chapter 10):<br>Dishwashers<br>Dehumidifiers<br>Cooking Products<br>Commercial Clothes Washers. | Forecast national annual energy (and water) use, national annual equipment costs, and national annual operating cost savings. | Annual forecasted shipments; Forecasted base case and standards case efficiencies; Per-unit annual energy (and water) consumption, Per-unit total installed costs; Per-unit operating costs; Site-to-source conversion factors for electricity and natural gas; Discount rates; Effective date of standard; and Present year. | Annual shipments from shipments model; Forecasted base case and standards case efficiencies remain frozen at levels in the year 2012; National Energy Modeling System (NEMS) basis for site-to-source conversion factors; Discount rates are 3 percent and 7 percent real based on Office of Management and Budget (OMB) guidelines; Future costs discounted to present year: 2007. | Section II.I.4. |

1. Engineering Analysis

The engineering analysis establishes the relationship between the cost and efficiency of a product DOE is evaluating for standards. This relationship serves as the basis for cost and benefit calculations for individual consumers, manufacturers, and the Nation. The engineering analysis identifies representative baseline equipment, which is the starting point for analyzing technologies that provide energy efficiency improvements. Baseline equipment here refers to a model or models having features and technologies typically found in equipment currently offered for sale. The baseline model in each product class represents the characteristics of products in that class, and, for products already subject to energy conservation standards, usually is a model that just meets the current standard. After identifying the baseline models, DOE estimates their manufacturing cost, after which, DOE estimates the incremental manufacturing costs for producing more efficient equipment.

For dishwashers, dehumidifiers, and CCWs, the engineering analysis uses industry-supplied cost-efficiency data, which are based on an efficiency-level approach (which calculates the relative costs of achieving increases in energy efficiency levels), and cost-efficiency curves that DOE derived based on a design-option approach (which calculates the incremental costs of adding specific design options to a baseline model). For kitchen ranges and ovens (including microwave ovens), DOE established cost-efficiency curves using its 1996 *Technical Support Document for Residential Cooking Products,*[2] updated to the present time in the 2007 TSD for this rulemaking, as discussed below. Some stakeholders provided comments to DOE that the design options and associated efficiency increments were still valid for cooking products other than microwave ovens. For microwave ovens, DOE analyzed current efficiency data to validate the efficiency increments specified in the 1996 technical analysis, after which it was determined that no changes to those increments were necessary. To determine manufacturing cost increments, DOE, with the concurrence of manufacturers, used producer price index (PPI) data from the Bureau of Labor Statistics (BLS) to scale costs identified in the 1996 analysis to 2006$. Section II.C on the engineering analysis discusses this cost-efficiency relationship, as well as the product

[2] Available online at DOE's website: *http://www.eere.energy.gov/buildings/appliance_standards/residential/cooking_products_0998_r.html.*

classes analyzed, the representative baseline units, and the methodology to be used to extend the analysis to product classes for which DOE did not receive data

2. Energy and Water Use Characterization

The energy use and water characterization provides estimates of annual energy and water consumption for the four appliance products, which DOE uses in the subsequent LCC and PBP analyses and the national impact analysis (NIA). DOE developed energy consumption estimates for all of the product classes analyzed in the engineering analysis, as the basis for its energy and water use estimates. In the case of dishwashers, DOE used the annual usage (in cycles per year) established in its test procedure to estimate the product's annual energy and water use. For dehumidifiers, DOE relied on industry-supplied estimates of annual usage (in hours per year) to estimate the product's annual energy use. For kitchen ranges and ovens, the 2004 California Residential Appliance Saturation Study (CA RASS) [3] and a year-long monitoring study conducted in 1999 by the Florida Solar Energy Center (FSEC) [4] indicate that household cooking has continued to drop since the mid-1990s; DOE used these surveys as the basis for estimating product annual energy use. For CCWs, DOE used industry-sponsored research to estimate the product's annual energy and water use. For further details on the CCW estimates, see section II.D.4 of this ANOPR.

3. Markups to Determine Equipment Price

DOE derives consumer prices for products based on manufacturer markups, retailer markups (for residential products), distributor markups (for CCWs), and sales taxes. In deriving these markups, DOE has determined: (1) The distribution channels for product sales; (2) the markup associated with each party in the distribution channels, and (3) the existence and magnitude of differences between markups for baseline equipment (''baseline markups'') and for more-efficient equipment (''incremental markups''). DOE calculates both overall baseline and overall incremental markups based on the product markups at each step in the distribution channel. It defines the overall baseline markup as the ratio of consumer price (not including sales tax) and manufacturer cost for baseline equipment; the overall incremental markup relates the change in the manufacturer sales price of higher-efficiency models (the incremental cost increase) to the change in the retailer or distributor sales price. DOE determined manufacturer markups through the use of U.S. Securities and Exchange Commission (SEC) reports on appliance manufacturers, and used U.S. Census Business Expenditure Surveys to develop retailer and commercial distributor markups. DOE collected consumer retail prices for each of the four appliance products to provide a rough validation of its markups for baseline equipment. Baseline equipment is produced in large volumes, is not heavily laden with consumer features, and is typically competitively priced by retailers and distributors; therefore, collected retail prices of baseline equipment are likely to reflect the actual cost of producing and selling minimally-compliant products.

Because DOE's approach for calculating baseline retail prices through the use of manufacturing costs, baseline markups, and sales taxes are intended to capture only the cost of producing minimally-compliant equipment, any collected baseline retail prices serve as a good check on the prices calculated through the markup approach. But because more-efficient equipment often includes non-energy related features, DOE cannot rely solely on collected retail prices for high-efficiency products to validate the prices determined through its markup approach. Current retail prices for high-efficiency equipment likely reflect the added cost of consumer amenities that have no impact on efficiency and, therefore, mask the incremental price associated with features that only affect product efficiency.

4. Life-Cycle Cost and Payback Period Analyses

The LCC and PBP analyses determine the economic impact of potential standards on individual consumers. The LCC is the total consumer expense for a product over the life of the product. The LCC analysis compares the LCCs of products designed to meet possible energy-efficiency standards with the LCCs of the products likely to be installed in the absence of standards. DOE determines LCCs by considering: (1) Total installed cost to the purchaser (which consists of manufacturer costs, sales taxes, distribution chain markups, and installation cost); (2) the operating expenses of the product (determined by energy and water use, energy and water prices, and repair and maintenance costs); (3) product lifetime; and (4) a discount rate that reflects the real consumer cost of capital and puts the LCC in present value terms.

The PBP represents the number of years needed to recover the increase in purchase price (including the incremental installation cost) of more-efficient equipment through savings in the operating cost of the product. It is the change in total installed cost due to increased efficiency divided by the change in annual operating cost from increased efficiency.

5. National Impact Analysis

The NIA estimates both the national energy savings (NES) and the net present value (NPV) of total customer costs and savings expected to result from new standards at specific efficiency levels (referred to as candidate standard levels). In conducting the NIA, DOE calculated NES and NPV for any given candidate standard level for each of the four appliance products as the difference between a base case forecast (without new standards) and the standards case forecast (with standards). DOE determined national annual energy consumption by multiplying the number of units in use (by vintage [5]) by the average unit energy (and water) consumption (also by vintage). Cumulative energy savings are the sum of the annual NES determined over a specified time period, which in the NIA consisted of the range of years for which the forecast was made. The national NPV is the sum over time of the discounted net savings each year, which consists of the difference between total operating cost savings and increases in total installed costs. Critical inputs to this analysis include shipments projections, retirement rates (based on estimated product or equipment lifetimes), and estimates of changes in shipments and retirement rates in response to changes in product or equipment costs due to standards.

[3] California Energy Commission. *California Statewide Residential Appliance Saturation Study,* June 2004. Prepared for the California Energy Commission by KEMA–XENERY, Itron, and RoperASW. Contract No. 400–04–009. *http://www.energy.ca.gov/appliances/rass/index.html.*

[4] Parker, D. S. *Research Highlights from a Large Scale Residential Monitoring Study in a Hot Climate. Proceeding of International Symposium on Highly Efficient Use of Energy and Reduction of its Environmental Impact,* January 2002. Japan Society for the Promotion of Science Research for the Future Program, Osaka, Japan. JPS–RFTF97P01002: pp. 108–116. Also published as FSEC–PF369–02, Florida Solar Energy Center, Cocoa, FL. *http://www.fsec.ucf.edu/en/publications/html/FSEC-PF–369–02/index.htm.*

[5] The term ''vintage'' refers to the age of the unit in years.

*C. Authority*

Part B of Title III of EPCA established the energy conservation program for consumer products other than automobiles, including dishwashers and electric and gas kitchen ranges and ovens (which include microwave ovens). (This ANOPR refers to electric and gas kitchen ranges and ovens and microwave ovens collectively as ''cooking products.'') Amendments to EPCA in the National Appliance Energy Conservation Act of 1987 (Pub. L. 100–12; NAECA) established energy conservation standards for dishwashers and cooking products, as well as requirements for determining whether these standards should be amended. (See 42 U.S.C. 6295(g) and (h), respectively) Subsequent amendments expanded Title III of EPCA to include additional consumer products and certain commercial and industrial equipment, including dehumidifiers and CCWs. In particular, sections 135(c)(4) and 136(e) of the Energy Policy Act of 2005, Public Law 109–58; (EPACT 2005) amended EPCA to authorize DOE to consider the need to modify the energy conservation standards that the Act, as amended, prescribed for dehumidifiers (42 U.S.C. 6295(cc)) and for CCWs (42 U.S.C. 6313(e)), respectively. This includes authority for DOE to amend the water efficiency standard the Act, as amended, prescribes for commercial clothes washers.

Before DOE prescribes any new or amended standard for any of the four appliance products, however, it must first solicit comments on a proposed standard. Moreover, DOE must design each new or amended standard for these products to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified, and such a standard must also result in significant conservation of energy. (42 U.S.C. 6295(o)(2)(A) and (o)(3); 42 U.S.C. 6316(a)) To determine whether a proposed standard is economically justified, DOE must, after receiving comments on the proposed standard, determine whether the benefits of the standard exceed its burdens to the greatest extent practicable, weighing the following seven factors:

1. The economic impact of the standard on manufacturers and consumers of products subject to the standard;

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

3. The total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard;

4. Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

5. 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;

6. The need for national energy and water conservation; and

7. Other factors the Secretary of Energy (Secretary) considers relevant. (42 U.S.C. 6295(o)(2)(B)(i); 42 U.S.C. 6316(a))

*D. Background*

1. History of Standards Rulemaking for Residential Dishwashers, Dehumidifiers, and Cooking Products; and Commercial Clothes Washers

For dishwashers, NAECA amended EPCA to establish prescriptive standards, requiring that dishwashers be equipped with an option to dry without heat, and further requiring that DOE conduct two cycles of rulemakings to determine if more stringent standards are justified. (42 U.S.C. 6295 (g)(1) and (4)) On May 14, 1991, DOE issued a final rule establishing the first set of performance standards for dishwashers (56 FR 22250); the new standards became effective on May 14, 1994 (10 CFR 430.32(f)). DOE initiated a second standards rulemaking for dishwashers by issuing an ANOPR on November 14, 1994 (59 FR 56423). However, as a result of the priority-setting process outlined in its *Procedures for Consideration of New or Revised Energy Conservation Standards for Consumer Products* (the ''Process Rule'') (61 FR 36974 (July 15, 1996); 10 CFR part 430, Subpart C, Appendix A), DOE suspended the standards rulemaking for dishwashers.

Section 135(c)(4) of EPACT 2005 added dehumidifiers as products covered under EPCA and established standards for them that will become effective on October 1, 2007. (42 U.S.C. 6295(cc)) DOE has incorporated these standards into its regulations (70 FR 60407, 60414 (October 18, 2005); 10 CFR 430.32(v)). The amendments to EPCA also require that DOE issue a final rule by October 1, 2009, to determine whether these standards should be amended. (42 U.S.C. 6295(cc)) If amended standards are justified, they must become effective by October 1, 2012. (*Id.*) In the event that DOE fails to publish such a final rule, the EPACT 2005 specifies a new set of amended standards with an effective date of October 1, 2012. (*Id.*)

As with dishwashers, NAECA amended EPCA to establish prescriptive standards for cooking products, requiring gas ranges and ovens with an electrical supply cord that are manufactured on or after January 1, 1990 not to be equipped with a constant burning pilot, and requiring DOE to conduct two cycles of rulemakings for ranges and ovens to determine if the standards established should be amended. (42 U.S.C. 6295 (h)(1)–(2)) DOE initially analyzed standards for cooking products as part of an eight-product standards rulemaking. It issued a notice of proposed rulemaking (NOPR) on March 4, 1994, proposing performance standards for gas and electric residential cooking products, including microwave ovens (59 FR 10464). In accordance with the Process Rule, DOE refined its standards analysis for cooking products. For gas cooking products, DOE focused on the economic justification for eliminating constant burning pilots. Partially due to the difficulty of conclusively demonstrating that elimination of constant burning pilots was economically justified for gas cooking products without an electrical supply cord, DOE issued a final rule on September 8, 1998, that covered only electric cooking products, including microwave ovens (63 FR 48038). The final rule found that no standards were justified for electric cooking products. DOE never completed its standards rulemaking for gas cooking products.

Similar to dehumidifiers, EPACT 2005 included amendments to EPCA that added CCWs as covered equipment, and it also established standards for such equipment that is manufactured on or after January 1, 2007. (EPACT 2005, section 136(a) and (e); 42 U.S.C. 6311(1) and 6313(e)) DOE has incorporated these standards into its regulations (70 FR 60407, 60416 (October 18, 2005); 10 CFR 431.156). EPACT 2005 also requires that DOE issue a final rule by January 1, 2010, to determine whether these standards should be amended. (EPACT 2005, section 136(e); 42 U.S.C. 6313(e))

2. Current Rulemaking Process

To initiate the current rulemaking to develop standards for the four appliance products, on March 15, 2006, DOE published on its Web site the *Rulemaking Framework for Commercial Clothes Washers and Residential Dishwashers, Dehumidifiers, and Cooking Products* (the Framework

Document). The Framework Document describes the procedural and analytic approaches DOE anticipates using to evaluate the establishment of energy conservation standards for these products. This document is available at: *http://www.eere.energy.gov/buildings/appliance_standards/pdfs/home_appl_framework_31506.pdf.*

DOE subsequently published a notice announcing the availability of the Framework Document, inviting written public comments to be submitted by May 11, 2006, and announcing a public meeting to discuss the proposed analytical framework for this rulemaking (71 FR 15059 (March 27, 2006)). At the April 27, 2006 public meeting, DOE described the different analyses it would conduct, such as the LCC and PBP analyses, the methods proposed for conducting them, and the relationship among the various analyses. Manufacturers, trade associations, environmental advocates, regulators, and other interested parties attended the meeting. The major issues discussed at the public meeting were: (1) Relevance of the existing DOE test procedure for microwave ovens; (2) baseline unit definitions for the four appliance products; (3) product classes for the four appliance products; (4) consideration of limiting standby power as a design option for all four appliance products; (5) technology options for improving efficiency for all four appliance products; (6) type of approach to employ for the engineering analysis; (7) efficiency levels to consider for all four appliance products; (8) inclusion of a water factor for dishwashers; (9) consideration of cleaning performance in setting dishwasher standards; (10) implications of clothes container volume on CCW efficiency; (11) proposed approaches for specifying typical annual energy and water consumption for all four products; (12) potential data sources for characterizing variability in annual energy and water consumption; (13) typical distribution channels and markups for all four appliance products; (14) data sources for retail prices; (15) type of approach to employ for the LCC and PBP analyses; (16) variability of forecasted energy and water prices; (17) repair, maintenance, and installation cost relationship to product efficiency; (18) product lifetimes; (19) development of consumer discount rates; (20) purchase price impacts on product shipments; (21) forecasted saturation rates of commercial clothes washers; (22) consumer subgroups; (23) water and wastewater utility impacts; and (24) wastewater discharge impacts.

Written comments submitted during the Framework Document comment period elaborated on the issues raised at the meeting and also addressed other major issues, including the following: (1) Transparency of manufacturer cost data development; (2) engineering data availability for dishwashers, kitchen ranges and ovens, and CCWs; and (3) inclusion of embedded energy in supplying water and treating wastewater.

DOE developed two spreadsheet tools for this rulemaking. The first tool calculates LCC and PBPs. There are six LCC spreadsheets, one each for the following products: (1) Dishwashers, (2) dehumidifiers, (3) cooktops, (4) ovens, (5) microwave ovens, and (6) CCWs. Each of the LCC spreadsheets includes product efficiency distributions and has the capability to determine LCC savings and PBPs based on average values. The spreadsheets also can be combined with Crystal Ball (a commercially available software program) to generate a Monte Carlo simulation, which incorporates uncertainty and variability considerations. The second tool (the NIA spreadsheet tool) calculates the impacts of candidate standards at various levels on shipments and calculates the NES and NPV at various candidate standard levels. There are five NIA spreadsheets, one each for the following products and combinations of products: (1) Dishwashers, (2) dehumidifiers, (3) cooktops and ovens, (4) microwave ovens, and (5) CCWs. DOE posted these spreadsheets on its Web site on December 4, 2006, for early stakeholder review and comment.[6]

Comments received since publication of the Framework Document have helped identify issues involved in this rulemaking, and have provided information that has contributed to DOE's proposed resolution of these issues. This ANOPR quotes and summarizes many of these public comments. A parenthetical reference at the end of a quotation or paraphrase provides the location of the item in the public record.

3. Analysis Process

Table I.2 sets forth the analyses DOE has conducted and intends to conduct in its evaluation of standards for CCWs, and residential dishwashers, cooking products, and dehumidifiers. Until recently, DOE performed the manufacturer impact analysis (MIA) in its entirety between the ANOPR and NOPR during energy conservation standards rulemakings. As noted in the table, however, DOE has performed a preliminary MIA for this ANOPR. DOE believes this change will improve the rulemaking process.

TABLE I.2.—THE FOUR APPLIANCE PRODUCTS—ANALYSIS PROCESS

| ANOPR | NOPR | Final rule |
|---|---|---|
| Market and technology assessment | Revised ANOPR analyses | Revised analyses. |
| Screening analysis | Life-cycle cost sub-group analysis. | |
| Engineering analysis | Manufacturer impact analysis. | |
| Energy use and end-use load characterization | Utility impact analysis. | |
| Markups for equipment price determination | Net national employment impacts. | |
| Life-cycle cost and payback period analyses | Environmental assessment. | |
| Shipments analysis | Regulatory impact analysis. | |
| National impact analysis. | | |
| Preliminary manufacturer impact analysis. | | |

The analyses listed in Table I.2 reflect analyses used in the rulemaking, including the development of economic models and analytical tools. In addition, in an effort to support groups of interested parties seeking to develop and present consensus recommendations on standards, DOE posted draft versions of its LCC and NIA spreadsheets on its Web site. If timely new data, models, or tools that enhance the development of standards become

[6] Available online at DOE's Web site: *http://www.eere.energy.gov/buildings/appliance_standards/residential/cooking_products.html*

available, DOE will incorporate them into this rulemaking.

4. Miscellaneous Rulemaking Issues

a. Joint Stakeholder Recommendations

The Edison Electric Institute (EEI) suggested that DOE should use a negotiated rulemaking process for residential dishwashers and cooking equipment, because manufacturers appear to want regulatory certainty for these products. EEI suggested a separate negotiated process for CCWs because these products are designed for a different market. For dehumidifiers, EEI suggested DOE analyze the standards identified in EPACT 2005 that are due to become effective in 2012, and if they are technically feasible, economically justified, and will not reduce competition, consider a negotiated rulemaking so that standards can be issued before the October 1, 2009 deadline mandated by EPACT 2005. (EEI, No. 7 at p. 2) [7]

The Process Rule specifically identifies ''consensus proposals for new or revised standards as an effective mechanism for balancing the economic, energy, and environmental interests affected by standards. Thus, notwithstanding any other policy on selection of proposed standards, a consensus recommendation on an updated efficiency level submitted by a group that represents all interested parties will be proposed by DOE if it is determined to meet the statutory criteria.'' (10 CFR Part 430, Appendix A to Subpart C, section 5(e)(2)). Therefore, DOE encourages the submittal of any consensus proposals or joint stakeholder recommendations pertaining to any or all of the four appliance products. If the supporting analyses provided by the group address all of the statutory criteria and use valid economic assumptions and analytical methods, DOE expects to use these supporting analyses as the basis of a proposed rule.

b. Standby Power for Dishwashers and Cooking Products

Standby power is currently incorporated into the energy factor [8] (EF) for conventional ovens via the measurement of clock power consumption and for gas cooktops via the energy consumption of constant burning pilots, both of which are incorporated into the EF calculation for their respective products. The dishwasher test procedure includes a measurement of standby power, but standby energy use is not incorporated into calculated EF. The issue of whether to include standby power in the energy efficiency metrics for dishwashers and cooking products was addressed in several comments that DOE received. The Alliance to Save Energy, American Council for an Energy-Efficient Economy (ACEEE), Appliance Standards Awareness Project, Natural Resources Defense Council, and Northeast Energy Efficiency Partnerships (hereafter ''Joint Comment'') stated that standby energy use should be included in the analyses for all products, with the appropriate metric for the standards being annual energy consumption rather than energy factor. The Joint Comment stated that EPACT 2005 instructs DOE to consider standby power in its rulemaking for all products, and where significant, to include standby power in some fashion into the appropriate standard. The Joint Comment further stated that standby energy use can be significant for clothes washers, dishwashers, and microwave ovens. (Joint Comment, No. 9 at p. 2)

For dishwashers, Potomac Resources Inc. (Potomac) commented that it would be useful to address standby power directly through design options such as the power supply. (Public Meeting Transcript, No. 5 at p. 61) [9] ACEEE, EEI, and Whirlpool Corporation (Whirlpool) agreed that standby power is important to include in the energy use calculations, but EEI and Whirlpool argued that individual system components should not be regulated, instead stating that standby power should be addressed for the system as a whole. (Public Meeting Transcript, No. 5 at pp. 62, 64, and 66) ACEEE commented that if standby energy use is determined to be significant, then DOE's analysis should include design options, efficiency levels, or increased annual energy consumption to capture efficiency improvement opportunities. (Public Meeting Transcript, No. 5 at p. 64) ACEEE, the Association of Home Appliance Manufacturers (AHAM), and Whirlpool stated that if DOE incorporates standby power into the efficiency standard, it should do this through maximum annual energy usage rather than a prescriptive standby power level. These commenters argued that such an approach would allow manufacturers flexibility in meeting the standard. (Public Meeting Transcript, No. 5 at p. 125; AHAM, No. 14 at p. 8; Whirlpool, No. 10 at p. 8) Whirlpool further commented that if standby power is included in annual energy consumption, DOE should add 8.5 kilowatt-hours (kWh) to the standard, equating to one watt standby power per covered appliance over the course of a year. In addition, Whirlpool argued that standby power should not be driven so low that it impacts the adoption of electronics that can shift start times to off-peak periods. (Whirlpool, No. 10 at p. 8)

In response to the comments, we note that the analysis DOE conducted for dishwashers does not explicitly consider design options to reduce standby energy consumption. DOE conducted the engineering analysis to capture the costs associated with improving EF only. The cost data AHAM provided and the product teardowns did not specifically account for changes in standby power. The LCC analysis, however, does account for standby power in the calculation of annual energy consumption. The LCC assumes a baseline standby power draw of two watts, totaling 17 kWh of annual energy consumption. DOE assumes this same consumption level at all EF values. If technologies to decrease standby power consumption are determined to be a significant source of energy savings and are technologically feasible and economically justified, DOE plans to consider standby power as part of an overall energy efficiency standard focusing on maximum annual energy usage, rather than a separate standby power level, in order to allow manufacturers maximum flexibility in specifying features and design options while still remaining below a certain annual energy consumption level. As one approach, DOE tentatively believes that a reduction in the two-watt baseline standby power level could be reflected in a corresponding reduction in annual energy usage, which could be modeled for the purposes of this analysis as an equivalent change in EF. DOE seeks comment on the specification of annual energy usage as the metric for dishwasher standards.

[7] A notation in the form ''EEI, No. 7, p. 2'' identifies a written comment that DOE has received and has included in the docket of this rulemaking. This particular notation refers to a comment (1) by the Edison Electric Institute, (2) in document number 7 in the docket of this rulemaking, and (3) appearing on page 2 of document number 7.

[8] Energy factor (EF) is a measure of the energy consumption required by the product under the conditions of the DOE test procedure. The units of EF vary depending on the product. For example, the EF for dishwashers is expressed in cycles/kWh, while the EF for dehumidifiers is in liters/kWh.

[9] A notation in the form ''Public Meeting Transcript, No. 5 at p. 61'' identifies an oral comment that DOE received during the April 27, 2006, Framework public meeting and which was recorded in the public meeting transcript in the docket for this rulemaking (Docket No. EE–2006–STD–0127), maintained in the Resource Room of the Building Technologies Program. This particular notation refers to a comment (1) made during the public meeting, (2) recorded in document number 5, which is the public meeting transcript that is filed in the docket of this rulemaking, and (3) which appears on pages 61 of document number 5.

ACEEE commented during the Framework public meeting that the use of standby power needs to be considered for all cooking products. (Public Meeting Transcript, No. 5 at p. 91) AHAM recognized that standby power consumption is essentially already included in the test procedure for ovens and cooktops; however, for microwave ovens, a test procedure revision would be required. (Public Meeting Transcript, No. 5 at p. 92) AHAM also stated that manufacturers (driven by consumer/market desires) want the flexibility to produce microwave ovens with different displays, and, thus, different levels of standby power consumption, in order to provide products with market differentiation. Therefore, AHAM recommended that standby power not be considered as a separate prescriptive requirement, but instead, if regulated, standby power should be incorporated in an annual energy consumption metric (AHAM, No. 17 at p. 4). Contrary to these views, GE Consumer & Industrial (GE) opposed incorporating standby power into efficiency standards because that would result in a determination of higher energy consumption under the regulation for ''intelligent'' appliances. (GE, No. 13 at p. 4)

DOE added low-standby-power electronic controls as design options for both standard and self-cleaning gas ovens, as well as for both standard and self-cleaning electric ovens. However, it did not include these design options when setting overall efficiency levels for these products because DOE does not have efficiency improvement or incremental cost information on them. DOE is seeking data to conduct this analysis and requests stakeholder comment on this issue.

AHAM provided data on microwave standby power for a sample of 21 microwave ovens available in the U.S. market. For the AHAM submission, standby power was tested in accordance with International Electrotechnical Commission (IEC) 62301–2005, *Household electrical appliances—Measurement of standby power*. These data show a wide range of standby power use. Microwave oven standby power consumption is understood to be a function of the digital clock display, with more complex graphical displays drawing more power. AHAM did not provide the type of oven characteristics information which could provide more insight into the factors affecting standby power or the costs associated with reducing the standby energy consumption.

For the NOPR analysis, DOE is considering purchasing, testing, and analyzing microwave ovens to better understand the utility, cost, and cost implications of reducing standby power consumption. Addition of a standby power test to the existing test procedure would be necessary before standby power could be included in an efficiency standard. DOE intends to modify the test procedure accordingly because it believes that standby power represents a significant portion of microwave oven annual energy usage. According to the DOE test procedure, the annual useful cooking energy output of a microwave oven is 79.8 kWh. For a baseline microwave oven with an efficiency of 55.7 percent, annual energy consumption for cooking processes is 143.3 kWh. Each watt of standby power represents an additional 8.76 kWh per year, or 6 percent of the annual cooking energy consumption. AHAM-supplied data demonstrated a wide variation in existing standby power levels, with values ranging between 1.5 and 5.8 watts, such that the likely impact of a standard would be significant. DOE will conduct testing and teardown analysis in support of the test procedure NOPR to incorporate standby power. DOE plans to complete the test procedure change prior to publishing the NOPR for this standard-setting rulemaking.

DOE specifically seeks data and stakeholder feedback on how to conduct an analysis of standby power for microwave ovens. This is identified as Issue 1 under ''Issues on Which DOE Seeks Comment'' in section IV.E of this ANOPR.

5. Test Procedures

A test procedure outlines the method to determine the energy efficiency and annual energy use of products and equipment, and it is used as the basis for representation and determination of compliance with energy conservation standards. Section 7(b) of the Process Rule provides that DOE will propose necessary modifications to the test procedures for a product before issuing an ANOPR concerning energy conservation standards for that product. Section 7(c) of the Process Rule states that DOE will issue a final modified test procedure prior to issuing a proposed rule for energy conservation standards.

DOE has established test procedures for each of the four appliance products subject to today's notice. DOE last revised its test procedures for cooking products in 1997, to make several revisions to more accurately measure the efficiency of these products (62 FR 51976 (Oct. 3, 1997); 10 CFR part 430, Subpart B, Appendix I). Similarly, in 2003, DOE revised its test procedures for dishwashers to more accurately measure their efficiency, as well as their water use (68 FR 51887 (Aug. 29, 2003); 10 CFR part 430, Subpart B, Appendix C). At this time, DOE does not expect to make further changes to the dishwasher test procedure.

EPACT 2005 amended EPCA to require that CCWs be rated according to the same test procedures established for residential clothes washers. (EPACT 2005, section 136(f); 42 U.S.C. 6314(a)(8)) DOE adopted those test procedures for CCWs in its final rule published on October 18, 2005 (70 FR 60407, 60416). EPACT 2005 also amended EPCA to specify that the U.S. Environmental Protection Agency (EPA) test criteria used under the Energy Star Program must serve as the basis for DOE's test procedure for dehumidifiers. (EPACT 2005, section 135(b); 42 U.S.C. 6293(b)(13)) The Energy Star test criteria for dehumidifiers require that American National Standards Institute (ANSI)/AHAM Standard DH–1–2003, *Dehumidifiers*, be used to measure energy use during capacity-rating tests, and that the Canadian Standards Association (CAN/CSA) standard CAN/CSA–C749–1994 (R2005), *Performance of Dehumidifiers*, be used to calculate the energy factor. DOE has adopted these test criteria, along with related definitions and tolerances, as its test procedure for dehumidifiers (71 FR 71340, 71347, 71366, 713667–68 (Dec. 8, 2006); 10 CFR part 430, Subpart B, Appendix X).

DOE received comments pertaining to its test procedures for kitchen ranges and ovens and CCWs. With regard to kitchen ranges and ovens, Wolf Appliance Company, LLC , an affiliate of Sub-Zero Freezer Company, Inc. (Wolf), and Whirlpool suggested that DOE modify its test procedure for residential kitchen ranges and ovens because it is inadequate for measuring the energy use of certain product characteristics and features. Specifically, Wolf stated that the current test procedure does not accurately measure the performance and efficiency of several components (such as larger burner rings, heavier burner grates, and high performance convection systems). (Wolf, No. 6 at p. 1) Whirlpool stated that the current test procedure does not measure energy consumption as a function of oven cavity size, does not address the fundamental differences in commercial-type products [10] versus more traditional residential cooking products, and does not recognize that

[10] Commercial-type cooktops and ovens are characterized by higher burner firing rates, larger dimensions, and heavier components than typical residential cooking products.

gas surface burner efficiency is a function of the burner rate. Whirlpool added that the microwave oven test procedure does not account for the variation in the product's size and wattage, both of which affect microwave oven energy consumption. (Whirlpool, No. 10 at p. 6) With regard to CCWs, Whirlpool noted that commercial laundry practices differ from the more familiar residential practices in several key respects (*e.g.*, the test procedure assumes that a modest eight-pound load will be used, but commercial washers typically are filled with a larger load). (Whirlpool, No. 10 at p. 3)

In response, DOE recognizes that there may be issues with its test procedures for measuring the energy use impacts of the cooking product characteristics noted by Wolf and Whirlpool. However, with the exception of standby power consumption for microwave ovens, DOE does not intend to initiate rulemakings to modify its test procedures for appliances covered by this rulemaking, before finalizing amended energy conservation standards, for the reasons that follow. DOE intends to initiate a test procedure modification for microwave ovens to include standby power consumption because the data received from AHAM indicates that standby power represents a significant portion of annual energy usage and because the data shows a wide spread in current standby power levels. DOE does not plan a test procedure change for conventional ovens because the oven test procedure already measures standby power in the form of clock power and, for standard gas ovens, the pilot light. For cooktops, DOE does not believe that standby power not already captured in the test procedure represents a significant portion of annual energy consumption. Gas cooktops already measure the energy consumption of standing pilots, which for the baseline configuration are assumed to consume 600 kWh annually and which are in addition to the annual cooking energy consumption. In comparison, each watt of standby power consumes 8.76 kWh annually. For electric cooktops, DOE does not have any data on standby power consumption that indicate the potential for significant energy savings. Therefore, a test procedure change to measure standby power for cooktops would not be warranted. With regard to CCWs, although for efficiency rating purposes CCWs use the residential clothes washer test procedure, DOE's methods for characterizing the energy and water use for commercial washers (as described in section II.D.4) accounted for the consumer usage patterns specific to this product.

DOE specifically seeks data and stakeholder feedback on the decision to retain the existing test procedures for appliances covered under this rulemaking other than microwave ovens. This is identified as Issue 6 under ''Issues on Which DOE Seeks Comment'' in section IV.E of this ANOPR.

## II. Analyses for the Four Appliance Products

This section addresses the analyses DOE has performed and intends to perform for this rulemaking. For each product covered by this rulemaking (*i.e.*, residential dishwashers, dehumidifiers, and cooking products, and CCWs), DOE will perform a set of separate analyses, including a market and technology assessment, a screening analysis, an engineering analysis, an energy use and water use characterization, LCC and PBP analyses, a shipments analysis, a NIA, and a MIA. A separate sub-section addresses each type of analysis, which contains a general introduction that describes the analysis and a discussion of related comments received from interested parties.

### *A. Market and Technology Assessment*

When DOE begins a standards rulemaking, it develops information that provides an overall picture of the market for the products concerned, including the nature of the product, the industry structure, and market characteristics for the product. This activity consists of both quantitative and qualitative efforts based primarily on publicly available information. The subjects addressed in the market and technology assessment for this rulemaking include product classes, baseline units, technologies for design options, manufacturers, quantities and types of products sold and offered for sale, retail market trends, industry cost structure, and regulatory and non-regulatory programs. This information serves as resource material throughout the rulemaking.

#### 1. Product Classes

In general, when evaluating and establishing energy efficiency standards, DOE divides covered products into classes by: (1) The type of energy used, and (2) capacity or other performance-related features that affect consumer utility and efficiency. Different energy conservation standards may apply to different product classes. The following describes and discusses the product classes DOE plans to use in this rulemaking.

a. Dishwashers

For dishwashers, the size of the unit significantly affects the amount of energy consumed due to the corresponding amount of water heating required. In other words, standard-sized dishwashers with relatively greater water consumption have significantly greater energy use than compact units. Because standard dishwashers offer enhanced consumer utility over compact units (*i.e.*, the ability to wash more dishes), DOE has established the following product classes, which are based on the size of the dishwasher (as specified in ANSI/AHAM Standard DW–1–2005, Dishwashers):

- Compact (capacity less than eight place settings plus six serving pieces); and
- Standard (capacity equal to or greater than eight place settings plus six serving pieces).

AHAM and EEI both commented that the two product classes are appropriate for the analysis. (Public Meeting Transcript, No. 5 at p. 55; AHAM, No. 14 at p. 8; EEI, No. 7 at p. 3) Potomac, however, suggested that the standard product class should be disaggregated to at least several product classes based on place-setting capacity. (Public Meeting Transcript, No. 5 at pp. 61–62). American Rivers, Association of Metropolitan Water Agencies, Austin Water Utility, California Urban Water Conservation Council, East Bay Municipal Utility District, and Seattle Public Utilities (hereafter ''Multiple Water Organizations'') recommended that one or more new product classes be defined in addition to compact and standard sizes, which would allow flexibility for manufacturers to make smaller or larger machines. According to the Multiple Water Organizations, consumers would then be encouraged to wash full dishwasher loads rather than partial or multiple loads. (Multiple Water Organizations, No. 11 at p. 2) DOE notes that current dishwasher models include single- and two-drawer units as well as dishwashers that provide a user-selectable option for upper-or lower-rack-only washing to aid in running optimal load sizes. Therefore, DOE believes the current two product classes offer adequate flexibility in terms of dishwasher loading to maintain consumer utility and wash performance for different load sizes. Thus, additional product classes are not warranted.

b. Dehumidifiers

EPACT 2005 sets energy conservation standards for dehumidifiers based on the capacity of the unit as measured in

pints of water extracted per day. (EPACT 2005, section 135(c); 42 U.S.C. 6295(cc)) Specifically, for units manufactured on or after October 1, 2007, EPACT 2005 sets a separate standard for dehumidifiers in each of the following five categories: (1) 25.00 pints/day or less, (2) 25.01–35.00 pints/day, (3) 35.01–54.00 pints/day, (4) 54.01–74.99 pints/day, and (5) 75.00 pints/day or more. (*Id.*) EPACT 2005 also prescribes more stringent energy conservation standards that would go into effect if DOE fails to issue amended standards that apply to products manufactured on or after October 1, 2012. (*Id.*) In prescribing these standards, EPACT 2005 subdivides the 35.01–54.00 pints/day category into two categories: 35.01–45.00 pints/day and 45.01–54.00 pints/day. Therefore, in accordance with EPACT 2005 amendments to EPCA, DOE is using the following product classes for dehumidifiers:

- 25.00 pints/day or less;
- 25.01–35.00 pints/day;
- 35.01–45.00 pints/day;
- 45.01–54.00 pints/day;
- 54.01–74.99 pints/day; and
- 75.00 pints/day or more.

During the Framework public meeting and Framework comment period, stakeholders differed as to appropriate specifications for the product classes for dehumidifiers. EEI asked whether a distinction should be made between fixed and portable dehumidifers. (EEI, No. 7 at p. 3) AHAM opposed EEI's suggestions, expressing a preference for the product classes as identified in EPACT 2005. (Public Meeting Transcript, No. 5 at p. 70; AHAM, No. 14 at p. 9)

While fixed and portable dehumidifiers offer different utility in terms of ease of installation and flexibility in location, DOE is unaware of any dehumidification performance differences. Therefore, DOE has determined that additional product classes are not warranted based on portability, and for the purpose of this rulemaking, DOE intends to maintain the dehumidifier product classes as defined by EPACT 2005 (*i.e.*, a ''self-contained, electrically operated, and mechanically encased assembly''). (EPACT 2005, section 135(a); 42 U.S.C. 6291(34))

DOE also received comments that baseline unit characteristics for dehumidifiers may not be possible to establish since EPACT 2005 will not come into effect until October 1, 2007. DOE performed its engineering analysis across a wide range of unit capacities and efficiencies to capture as complete a picture of the 25–75 pints/day dehumidifier market as possible. In total, DOE has disassembled and analyzed 14 dehumidifiers to date. Furthermore, DOE used market and technology assessment research and consulted with numerous stakeholders to determine basline unit characteristics. (Refer to Chapters 3 and 5 of the TSD for further details.) DOE intends to use EPACT 2005-compliant dehumidifiers as a baseline since manufacturers are already modifying any non-compliant product they have to meet this new minimum energy efficiency level.

c. Cooking Products

For cooking products, DOE based its product classes on energy source (*i.e.*, gas or electric) and cooking method (*i.e.*, cooktops, ovens, and microwave ovens). DOE identified five categories of cooking products:

- Gas cooktops;
- Electric cooktops;
- Gas ovens;
- Electric ovens; and
- Microwave ovens.

In its regulations implementing EPCA, DOE defines a ''conventional range'' as ''a class of kitchen ranges and ovens which is a household cooking appliance consisting of a conventional cooking top and one or more conventional ovens.'' 10 CFR 430.2. In this rulemaking, DOE is not treating gas and electric ranges as a distinct product category and is not basing its product classes on that category. Because ranges consist of both a cooktop and oven, any potential cooktop and oven standards would apply to the individual components of the range. As a result, product classes for ranges, for the purpose of standards-setting, are not warranted.

This general approach for defining product classes was validated in comments received after the Framework public meeting. EEI stated that the product classes are appropriate. (EEI, No. 7 at p. 3) Wolf stated that the burden of considering new product classes since the previous rulemaking (including modification of existing test procedures) is not justified by the small potential energy savings. (Wolf, No. 6 at p. 2)

DOE also received comments during the Framework public meeting and subsequent comment period questioning whether DOE should consider for analysis product classes for cooking products with small shipment volumes. Whirlpool noted that the rationale for excluding certain product classes from analysis in the previous rulemaking (*e.g.*, grills, griddles, induction cooktops, and warming/simmering burners) was based upon consideration of factors such as the lack of an appropriate test procedure, the niche nature of those products, and the small amount of empirical data. Since these conditions still remain today, Whirlpool commented that DOE should not analyze these classes. (Whirlpool, No. 10 at p. 5) Wolf stated during the Framework public meeting that product classes that were not analyzed in the prior rulemaking need to be considered in this standards rulemaking. (Public Meeting Transcript, No. 5 at p. 84) DOE is not aware of any data upon which to determine the measurement of energy efficiency or energy efficiency characteristics of products in these niche classes. Therefore, DOE will not conduct analyses on product classes that were identified but excluded in the previous rulemaking. DOE seeks efficiency data and inputs to characterize any limitations of the test procedure for these product classes. This topic is identified as Issue 6 under ''Issues on Which DOE Seeks Comment'' in section IV.E of this ANOPR.

The single product class that DOE proposes to use for gas cooktops is gas cooktops/conventional burners, in accordance with the previous rulemaking.

AHAM commented that if DOE decides to proceed with further analysis of cooking products, DOE should include an additional product class for high-performance, commercial-style products. AHAM stated that the unique utility and performance attributes associated with high-performance cooking products must be recognized and allowed to continue under the ''safe harbor'' provisions of NAECA, which prevent Federal energy efficiency standards from resulting in the unavailability of product types, classes, performance characteristics, and other key aspects of the product that are currently available. (42 U.S.C. 6295 (o)(4)) Due to test procedure complexities and small market share, AHAM recommends that DOE exempt high-performance, commercial-style residential cooking products. (AHAM, No. 14 at p. 2) DOE received additional comments specifically regarding commercial-type ranges. These comments are discussed in the context of gas cooktops, although it should be recognized that similar responses apply to the oven component of the range as well. During the Framework public meeting, EEI suggested a need to establish the market share of commercial-type ranges for this rulemaking. (Public Meeting Transcript, No. 5 at p. 81) Both AHAM and Wolf stated that commercial-type ranges warrant a separate product class. (Public

Meeting Transcript, No. 5 at pp. 84 and 86). Wolf further elaborated in the comment period after the Framework public meeting that the unique utility and performance attributes of commercial-type ranges (explained below) justify a separate product class. (Wolf, No. 6 at p. 1) DOE considers commercial-style ranges to be those products which incorporate gas cooktops with higher input rate burners (*i.e.*, greater than 14,000 Btu/h) and heavy-duty grates that provide faster cooking and the ability to cook larger quantities of food in larger cooking vessels. The burners are optimized for the larger-scale cookware to maintain high cooking performance. Similarly, DOE considers commercial-style ovens to have higher input rates (*i.e.*, greater than 22,500 Btu/h) and dimensions to accommodate larger cooking utensils or greater quantity of food items, as well as features to optimize cooking performance. GE stated that commercial-type products should be exempt from regulation due to their unique utility and cost, but if they are regulated, they should be categorized into a separate product class. (GE, No. 13 at p. 2) Whirlpool commented that, although shipments of commercial-type products have increased since the prior rulemaking, they still remain a niche product. Whirlpool shared GE's position that these products should be exempt from regulation, particularly since there is a lack of efficiency data available and there is little potential for meaningful energy savings. (Whirlpool, No. 10 at p. 6)

After considering stakeholder comments, DOE has tentatively decided to exclude high-performance, commercial-style gas cooktops (including the cooktop component of commercial-style ranges) from the energy efficiency standard due to the lack of available data for determining efficiency characteristics of those products. In addition, the test procedure for gas cooktops is based on measuring temperature rise in an aluminum block with a diameter dictated by the firing rate of the burner. The maximum diameter of the test block is sufficient to measure higher output residential-scale burners. For commercial-type burners that must have larger diameter burner rings to accomplish complete combustion, however, this maximum test block diameter may be too small to achieve proper heat transfer and may not be representative of the dimensions of suitable cookware. However, DOE is not aware of any data to determine the measurement of energy efficiency or energy efficiency characteristics for commercial-style cooktops. DOE seeks data and inputs regarding the energy efficiency of commerical-type cooktops as well as any limitations of the test procedure for this product class. This topic is identified as Issue 6 under ''Issues on Which DOE Seeks Comment'' in section IV.E of this ANOPR.

Whirlpool and AHAM commented that DOE should add sealed gas burners as a separate product class. (Public Meeting Transcript, No. 5 at pp. 82 and 85) Whirlpool stated that the added utility of sealed burners based upon the ease of consumer cleaning justifies this distinction. In addition, the increasing firing rates of sealed burners since the previous rulemaking coupled with the necessary grate height increase to achieve proper combustion make sealed burners less efficient than open burners. Whirlpool cited the 1983 International Gas Research Conference (IGRC)[11] report that claimed an efficiency reduction associated with sealed burners. In Whirlpool's opinion, the boiling water tests upon which this conclusion was based represented an inappropriate metric, and any efficiency determination for sealed burners must be based on the DOE test procedure. For these reasons, Whirlpool recommended development of a separate product class for sealed burners. (Public Meeting Transcript, No. 5 at pp. 82–83 and 88) AHAM stated that gas sealed burners should be considered as a separate product class within gas cooktops because changes are required to provide appropriate amounts of primary and secondary air for proper combustion, which inherently affects energy efficiency. (AHAM, No. 14 at p. 2)

DOE has observed that there are conflicting data on the impacts of sealed burners on energy efficiency measurements. In the previous rulemaking, AHAM had stated that sealed burners often have a lower gas input rating than conventional burners due to the reduction in secondary air. The sealed burner must obtain all of its secondary air from air that is available above the cooktop. To obtain sufficient air for proper combustion, it becomes necessary to either raise the grate height or to derate the burner. The IGRC report, however, states that the reduction in secondary air results in more primary aeration to the sealed burner. The increased primary aeration allows for a reduced pan-to-burner separation and increased burner efficiency.

According to the boiling water tests conducted in the report, the efficiency of conventional burners ranged from 42 percent to 48 percent, while the sealed burner was rated at an efficiency of 53 percent. Commenters have not provided data showing the correlation of boiling water tests with efficiency testing according to the DOE test procedure, as would render the IGRC report inapplicable. Accordingly, without clear indication that the performance of sealed burners is sufficiently distinct from that of conventional open gas burners, DOE will retain the single product class for gas cooktops and consider sealed burners as a design option within that class.

The American Gas Association (AGA) also proposed two product classes for gas cooktops, differentiated by the method of heat transfer associated with the burners. The two product classes suggested by the AGA would consist of direct-flame contact burners that provide conductive heat transfer and other burner types that employ convective and radiant heat transfer. (AGA, No. 12 at p. 2) DOE believes that the method of heat transfer does not provide any unique utility, nor are there data available that characterize substantially different performance based on heat transfer means. Thus, DOE will retain a single product class for gas cooktops.

For electric cooktops, DOE determined that the ease of cleaning smooth elements means that they have greater utility to the consumer than coil elements. Because smooth elements typically use more energy than coil elements, DOE has defined the following product classes for electric cooktops:

- Electric cooktop/low or high wattage open (coil) elements; and
- Electric cooktop/smooth elements.

AHAM stated that if DOE decides to proceed with further analysis of cooking products, DOE should include an additional product class for induction cooktops. AHAM commented the utility and performance attributes associated with high-performance cooking products must be recognized and allowed to continue under the safe harbor provisions of NAECA. Due to test procedure complexities, small market share, and lack of empirical data, AHAM and Whirlpool recommended that DOE exempt induction cooktops. Whirlpool further commented that if induction cooktops are analyzed, they must be treated as a separate product class, which would entail development of a new test procedure. (Public Meeting Transcript, No. 5 at p. 85; AHAM, No. 14 at pp. 2–4; Whirlpool, No. 10 at p.

[11] J. Flood and T. Enga, ''Energy Conservation 'Aspects of Cooking Appliances,'' *Proceedings of the 1983 International Gas Research Conference, June 13, 1983, London, UK,* pp 741–54. Available online at: *http://www.osti.gov/energycitations.*

5) During the engineering analysis (Chapter 5 of the TSD) DOE determined that induction cooktops cannot be tested according the existing test procedure, and, therefore, DOE will not consider this technology for the ANOPR analysis. DOE seeks efficiency data and inputs to characterize any limitations of the test procedure for induction cooktops. This topic is identified as Issue 6 under ''Issues on Which DOE Seeks Comment'' in section IV.E of this ANOPR.

For electric ovens, DOE determined that the type of oven-cleaning system is a utility feature that affects performance. DOE found that standard ovens and ovens using a catalytic continuous-cleaning process use roughly the same amount of energy. On the other hand, self-cleaning ovens use a pyrolytic process that provides enhanced consumer utility with different overall energy consumption, as compared to either standard or catalytically-lined ovens, due to the amount of energy used during the cleaning cycle and better insulation. Thus, DOE has defined the following product classes for electric ovens:

- Electric oven/standard oven with or without a catalytic line; and
- Electric oven/self-clean oven.

AHAM concurred with this approach during the Framework public meeting, stating that non-self-cleaning and self-cleaning ovens should remain as separate product classes. (Public Meeting Transcript, No. 5 at pp. 85–86) AHAM and Whirlpool both commented that the feature of a ''catalytic line'' is obsolete and, therefore, should be removed from the non-self-cleaning oven product class description. (Public Meeting Transcript, No. 5 at p. 86; Whirlpool, No. 10 at pp. 9–10) While DOE is not aware of any electric ovens currently on the market that are catalytically lined, it will retain the current description for completeness.

For gas ovens, for the same reasons as for electric ovens, DOE is using the following product classes:

- Gas oven/standard oven with or without a catalytic line; and
- Gas oven/self-clean oven.

AHAM stated that if DOE decides to proceed with further analysis, DOE should include additional product classes for high-performance, commercial-style products, which include commercial-style gas ovens (*i.e.*, with burner firing rates greater than 22,500 Btu/h). AHAM commented that the utility and performance attributes associated with high-performance cooking products must be recognized and allowed to continue under the safe harbor provisions of NAECA. Due to test procedure complexities and small market share, AHAM recommended that DOE exempt high-performance, commercial-style products. (Public Meeting Transcript, No. 5 at pp. 85–86; AHAM, No. 14 at pp. 2–4) DOE recognizes that the test procedure may not adequately measure performance of commercial-style ovens. The single test block may not adequately measure the temperature distribution that is inherent with the larger cavity volumes and higher firing rates typically found in these products. DOE is not aware of any data upon which to determine the measurement of energy efficiency or energy efficiency characteristics for commercial-style ovens, so therefore will not conduct an analysis on this product class at this time. DOE seeks data and inputs regarding the energy efficiency of commercial-type cooktopsstyle ovens as well as any limitations of the test procedure for this product class. This topic is identified as Issue 6 under ''Issues on Which DOE Seeks Comment'' in section IV.E of this ANOPR.

As discussed for electric ovens, AHAM and Whirlpool stated that the ''catalytic line'' descriptor for the standard gas oven product class is obsolete and should be removed. While DOE is not aware of any gas ovens currently on the market that are catalytically lined, it will retain the current description for completeness.

Finally, microwave ovens will constitute a single product class in this rulemaking. DOE did not break down this category of cooking product into further product classes. This product class can encompass microwave ovens with and without browning (thermal) elements, but does not include microwave ovens that incorporate convection systems. DOE is unaware of any data evaluating the efficiency characteristics of microwave ovens incorporating convection systems, so therefore this type of unit will not be included in the analysis. DOE seeks data and inputs on the performance of microwave ovens with convection systems. This topic is identified as Issue 6 under ''Issues on Which DOE Seeks Comment'' in section IV.E of this ANOPR.

AHAM stated during the Framework public meeting that additional product classes for microwave ovens are needed that would likely be a function of volume and wattage, and possibly installation configuration (*i.e.*, counter-top versus over-the-range ovens). (Public Meeting Transcript, No. 5 at pp. 86–87) In comments submitted after the Framework public meeting, AHAM reiterated these comments and added that humidity sensors would also need to be considered. However, AHAM conceded that the lack of efficiency data makes it impossible to determine the appropriate product classes at this time. (AHAM, No. 14 at p. 6) Similarly, Whirlpool stated that, without existing energy consumption standards, it does not have any data to formulate appropriate product classes for microwave ovens, and the company commented that obtaining these data would be costly and time consuming. (Whirlpool, No. 10 at p. 6) After the Framework public meeting, AHAM supplied microwave oven efficiency data to DOE that failed to identify any correlation between efficiency and either rated output power or cavity volume. Therefore, DOE has decided not to define product classes as a function of features such as volume or wattage, and instead will retain the single product class of microwave ovens with or without thermal elements.

Comments did not strongly support the inclusion of microwave/thermal ovens in the analyses. In addition, several comments used the term ''combination ovens'' to refer to not only microwave/thermal ovens but also other technologies, such as halogen bulbs. EEI questioned whether DOE would consider combination ovens for future analysis, referring to both microwave plus thermal and microwave plus convection units. (Public Meeting Transcript, No. 5 at p. 139) GE and AHAM both commented that the DOE test procedure is inadequate to measure combination ovens. AHAM further stated that the small market share of combination ovens should preclude them from the analysis. (Public Meeting Transcript, No. 5 at pp. 140–141). In comments submitted after the Framework meeting, EEI stated that, depending on market share, combination ovens could impact baseline energy usage. Although EEI did not suggest including combination ovens in the analyses, it did state that DOE should ensure that any standards do not eliminate these products from the market. (EEI, No. 7 at p. 6) Whirlpool, however, expressed its opinion that combination ovens should not be considered a separate product class due to variations in design and low market share. (Whirlpool, No. 10 at p. 6)

DOE recognizes that the microwave oven test procedure can only test the microwave heating function of microwave/thermal ovens, and that it cannot test the browning function of the radiant or halogen elements. However, such browning features are typically a secondary function of a microwave/thermal unit, with the primary cooking

being accomplished via microwave heating. In combination units, the convection system performs a significant portion of the cooking process, and, therefore, the inability to measure performance of the convection component would render the test procedure inadequate. DOE has no information that demonstates a difference in energy performance between microwave/thermal ovens operating in microwave mode and microwave ovens. Therefore, DOE will include microwave ovens with thermal browning elements in the single product class. As discussed above, DOE will not conduct an analysis at this time of combination microwave ovens due to a lack of data evaluating energy efficiency or energy efficiency characteristics of microwave ovens incoporating convection systems.

DOE received several comments regarding additional product classes for cooking products not specifically covered in the above product classes. For example, EEI questioned whether outdoor natural-gas-fired or propane-fired grills are a covered product for this analysis, and, if so, it recommended that DOE conduct an investigation into shipments and usage patterns. (EEI, No. 7 at p. 5) The test procedures established in 10 CFR Part 430, Subpart B, Appendix I are specified for kitchen ranges and ovens. Further, the test procedures provide for estimating annual operating cost for conventional ranges, conventional cooking tops, conventional ovens, microwave ovens, and microwave/conventional ranges. In response, DOE believes that the specification of ''kitchen'' and ''household cooking appliance'' in the definitions of ''conventional range'' and ''conventional cooking top'' excludes outdoor gas/propane grills. Therefore, DOE has decided not to include outdoor gas/propane grills in the present analyses.

EEI also commented after the Framework public meeting that DOE should include compact cooking products such as toaster ovens in the analysis. (EEI, No. 7 at p. 3) However, the definition of ''conventional oven'' provided in 10 CFR 430.2 states, in relevant part, ''It does not include portable or countertop ovens which use electric resistance heating for the cooking or heating of food and are designed for an electrical supply of approximately 120 volts.'' Therefore, DOE is not including toaster ovens in the present analyses because they are not covered products.

In sum, in this rulemaking DOE is using the following eight product classes in analyzing and setting standards for cooking products:

- Gas cooktops/conventional burners;
- Electric cooktop/low or high wattage open (coil) elements;
- Electric cooktop/smooth elements;
- Gas oven/standard oven with or without a catalytic line;
- Gas oven/self-clean oven;
- Electric oven/standard oven with or without a catalytic line;
- Electric oven/self-clean oven; and
- Microwave oven with or without thermal elements.

d. Commercial Clothes Washers

EPACT 2005 amendments to EPCA placed all CCWs in one product class and applied a single standard for energy efficiency and a single standard for water efficiency for this equipment. (EPACT 2005, section 136(e); 42 U.S.C. 6313(e)) This class encompasses both top-loading (vertical-axis) and front-loading (horizontal-axis) units.

During the Framework public meeting and Framework comment period, DOE received comments expressing opposing viewpoints regarding the use of one or two product classes for CCWs. Alliance Laundry Systems (ALS) pressed for two product classes, because ALS believes that in the eyes of consumers, horizontal- and vertical-axis washers can be significantly differentiated in terms of utility and cost. (Public Meeting Transcript, No. 5 at p. 42) However, the Joint Comment argued for a single product class, saying that consumers only want to clean their clothes and, thus, make no distinction between washer product platforms. (Joint Comment, No. 9 at p. 5) The Joint Comment argued that, according to EPCA's definition of classes found at 42 U.S.C. 6219(a), commercial clothes washers should be treated as one class because ''the function * * * of commericial clothes washers (*i.e.*, cleaning clothes) does not depend on the orientation of the clothes washer drum axis.'' (Joint Comment, No. 9 at p. 5) In addition, the Joint Comment contended that DOE chose to maintain one product class during the residential clothes washer rulemaking [12] and, as a result, urged DOE to do the same in this rulemaking. (Joint Comment, No. 9 at p. 5) EEI also supported DOE's designation of a single commercial clothes washer product class. (EEI, No. 7 at p. 3) AHAM ''recommends that the Department conduct its analysis using the product categories currently provided for in its regulations.'' (AHAM, No. 14 at p. 7) The Multi-Housing Laundry Association (MLA) deferred to its member manufacturers' opinions regarding a single product class. (MLA, No. 8 at p. 2) All manufacturers interviewed by DOE as part of the manufacturer impact analysis opposed the elimination of vertical-axis washers, which could arise as an issue if a single product class is analyzed. (See TSD, Chapter 12.)DOE recognizes that, by analyzing a single product class and applying a single standard for energy efficiency and a single standard for water efficiency to all CCWs, absent the consideration of other relevant factors, the highest economically justified standards could be sufficiently stringent as to possibly cause manufacturers to cease production of vertical-axis washers.

As noted above, EPCA, as amended by EPACT 2005, applies a single standard for energy efficiency and a single standard for water efficiency to all CCWs. The Congress enacted a single standard for CCWs some years after DOE has established five classes for residential clothes washers, which may suggest that Congress's initial assessment was that a single class would be most reasonable when updating these standards. The statutory provisions do not, however, specifically prevent DOE from exercising its technical expertise to create separate product classes subject to the same standards, if such differentiation is determined to be appropriate.

After considering the comments on the Framework Document, DOE decided to keep the single class of commercial clothes washers for today's ANOPR, but remains open to the possibility of changing this approach if further comments demonstrate that such a change is warranted. The Joint Comment, for example, argued that the function of clothes washers is to clean clothes and that all commercial clothes washers perform this function and, therefore, should be treated as a single class. DOE has previously rejected this argument. The residential clothes washer rulemaking history clearly demonstrated that size, the axis of access and certain technologies (*e.g.*, suds savings) had consumer utility that affect performance and, therefore, warranted separate classes for residential products. Nevertheless, DOE has decided to maintain a single class

[12] DOE notes that the Joint Comment is incorrect. DOE has established five classes of residential clothes washers, including top-loading compact, top-loading standard and front-loading (See 10 CFR part 430, section 430.32(g)). DOE understands how some stakeholders could believe there is only one class of standard-size residential clothes washers in DOE's regulations since the value of the energy efficiency standard is the same for both classes. While the standards are the same, DOE notes they are separate in DOE's regulations found at 430.32(g). The max tech level for the two classes are different, because of the utility features, and are, therefore, separate classes.

for CCWs in today's ANOPR, for the reasons that follow. First, other stakeholders did not provide any compelling information to support proposing multiple product classes for CCWs, Second, even though there may be some performance-related features on existing CCWs that might warrant multiple CCW product classes (as was demonstrated in the residential clothes washer rulemaking), technologies may be available to enable top-loading units to attain the same efficiency level as front-loading units, thereby rendering any product class distinction meaningless.

In tentatively deciding to retain a single product class for CCWs, DOE was sensitive to other considerations including the likely outcome of requisite U.S. Department of Justice (DOJ) review of the potential impacts, if any, of efficiency standards on competition, given that a large percentage of the overall market for commercial washers is produced by one manufacturer that specializes in vertical-axis machines. Another consideration may be the potential effect of multiple-class standards on the market shares of vertical-axis and horizontal-axis machines. For example, if separate standards further widened the first cost differences between these two classes of washers, then the overall result might be a decline in the market share of the more energy efficient horizontal-axis machines, which could more than offset any energy savings achieved in vertical-axis machines.

DOE notes that sections 325 (o)(4) and 327(d)(4) of EPCA require DOE to consider the availability of performance characteristics, features, and other characteristics in setting standards and in considering State petitions for exemption from Federal preemption. (42 U.S.C. 6295(o)(4) and 6297(d)(4)) The California Energy Commission (CEC) submitted a petition for exemption from Federal preemption by DOE's residential clothes washer standard.[13] One of the factors on which DOE based its denial of the CEC petition was that it would make top-loading clothes washers unavailable in the market. (71 FR 78157)

Based on the discussion above, DOE requests comments on clothes washer product classes and, if DOE were to keep a single class for commercial clothes washers, how to consider the requirements of section 325(o)(4) of EPCA in considering Trial Standard Levels. DOE specifically seeks feedback on these product classes and invites interested persons to submit written presentations of data, views, and arguments as discussed in section IV.E of this ANOPR.

2. Market Assessment

AHAM is the trade association representing the majority of dishwasher, dehumidifier, and cooking product manufacturers. AHAM conducts market and consumer research studies and publishes a biennial *Major Appliance Fact Book.* AHAM also develops and maintains technical standards for various appliances to provide uniform, repeatable procedures for measuring specific product characteristics and performance features. Other trade associations relevant to this rulemaking include the Coin Laundry Association (CLA), representing the 30,000 coin laundry owners globally, and the MLA, a trade association of operator and supplier companies providing professional laundry services for the multi-housing industry.

The majority of the domestic share of CCWs is held by four major manufacturers: ALS, the Maytag Corporation (Maytag), Whirlpool, and GE. Maytag and Whirlpool merged in 2006 but have continued to maintain both product lines to this date.

DOE estimates that there are approximately 13 manufacturers of residential dishwashers that serve the domestic market. Approximately 94 percent of the market is served by four manufacturers: AB Electrolux (Frigidaire), GE, Maytag, and Whirlpool. The merger between Whirlpool and Maytag resulted in the combined company accounting for 51 percent of the domestic market.

DOE estimates that there are approximately 18 manufacturers of residential dehumidifiers that serve the domestic market. Approximately two thirds of the market is represented by two manufacturers: Whirlpool and LG Electronics (LG).

DOE estimates that there are approximately 14 manufacturers of cooking products (including ovens, cooktops, and ranges) that serve the U.S. market. The majority of the cooking products market is represented by four companies: Frigidaire, GE, Maytag, and Whirlpool. GE and Whirlpool represent nearly three quarters of the electric range products market. GE represents over a third of the gas range products market, while the combined Whirlpool and Maytag comprise over a quarter.

The microwave oven market differs from the rest of the domestic cooking product market in that many of the manufacturers are foreign-owned companies with manufacturing facilities outside of the United States. Many of the domestic appliance manufacturers rebrand foreign-manufactured microwave products. Major microwave oven manufacturers are: LG, Samsung Electronics America, Inc. (Samsung), and the Sharp Electronics Corporation (Sharp), serving 67 percent of the domestic market. The second tier of approximately 9 manufacturers serves the remaining 33 percent of the domestic market.

Due to mergers and acquisitions, the home appliance industry continues to consolidate. While the degree of market share concentration varies by product type, the market shares of a few companies provide evidence in support of this characterization. According to the September 2006 issue of *Appliance Magazine*, Whirlpool, GE, Frigidaire, and Maytag comprise 92 percent of the U.S. core appliance market share. ''Core appliances'' include dishwashers, freezers, ranges, refrigerators, and clothes washers. Whirlpool and Maytag were allowed by the U.S. Department of Justice (DOJ) to complete a merger on March 31, 2006, after an investigation that focused primarily on residential laundry but with consideration of impacts across all product lines. Although opponents of the merger had asserted that the combined companies would control as much as 70 percent of the residential laundry market and as much as 50 percent of the residential dishwasher market,[14] DOJ determined that the merger would not give Whirlpool excessive market power in the sale of its products and that any attempt to raise prices would likely be unsuccessful. In support of this claim, DOJ noted: (1) Other U.S. brands, including Sears Brands LLC (Kenmore), GE, and Frigidaire, are well established; (2) foreign manufacturers, including LG and Samsung, are gaining market share; (3) existing U.S. manufacturers are operating below production capacity; (4) the large home appliance retailers have alternatives available to resist price increase attempts; and (5) Whirlpool and Maytag substantiated large cost savings and other efficiencies that would benefit consumers. The Whirlpool-Maytag merger follows several other mergers and acquisitions in the home appliance industry. For example, Maytag acquired Jenn-Air Corporation in 1982, Magic Chef, Inc. in 1986, and Amana Appliances in 2001. Whirlpool acquired the KitchenAid division of Hobart Corporation in 1986. White Consolidated Industries (WCI)

[13] DOE Docket No. EE–RM–PET–100, submitted by the California Energy Commission.

[14] P. Hussmann, ''Justice to Extend Maytag-Whirlpool Merger Review,'' Newton Daily News Online (Feb. 14, 2006).

acquired the Frigidaire division of General Motors Corporation in 1979, and AB Electrolux acquired WCI (and therefore Frigidaire) in 1986. See Chapter 3 of the TSD for more information regarding manufacturers of CCWs and residential dishwashers, dehumidifiers, and cooking products.

In addition, DOE considers the possibility of small businesses being impacted by the promulgation of energy conservation standards for CCWs and residential dishwashers, dehumidifiers, and cooking products. At this time, DOE is not aware of any small manufacturers, defined by the Small Business Administration as having 750 employees or fewer, who produce products that fall under this rulemaking and who, therefore, would be impacted by a minimum efficiency standard. Should any small business manufacturers of the four appliance products be identified, DOE will study the potential impacts on these small businesses in greater detail during the MIA, which it will conduct as a part of the NOPR analysis. See Chapter 3 of the TSD for more information regarding small business manufacturers of CCWs and residential dishwashers, dehumidifiers, and cooking products.

Next, DOE identified distribution channels for each of the products covered by this rulemaking. For CCWs, DOE determined that the market consists of laundromats, private multi-family housing, and large institutions (*e.g.*, military barracks, universities, and housing authorities). Most large institutions and a majority of private multi-family housing (between 50 and 90 percent) do not purchase clothes washers directly. Rather, these organizations lease their laundry space to a third party known as a route operator. Route operators supply laundry equipment and maintain facilities in exchange for a percentage of the laundry revenue. Laundromats and some private building managers purchase or lease clothes washers directly from distributors. The main difference between route operators and distributors is the length of service provided to their clients. Route operators provide ongoing support while distributor support ends at the point of sale.

The distribution chain for residential appliances, including dishwashers, dehumidifiers, and cooking products, differs from commercial products, since the majority of consumers purchase their appliances directly from retailers. These retailers include: (1) Home improvement, appliance, and department stores; (2) Internet retailers; (3) membership warehouse clubs; and (4) kitchen remodelers. DOE determined that over 93 percent of residential appliances are distributed from the manufacturer directly to a retailer. See Chapter 3 of the TSD for more information regarding distribution channels for CCWs and residential dishwashers, dehumidifiers, and cooking products.

DOE considers regulatory and non-regulatory initiatives that affect CCWs and residential dishwashers, dehumidifiers, and cooking products. NAECA established Federal standards for residential dishwashers, which were subsequently amended by DOE by a final rule published in the **Federal Register** on May 14, 1994. (56 FR 22250) NAECA established prescriptive standards for gas cooking products, requiring gas ranges and ovens with an electrical supply cord not to be equipped with constant burning pilots, and directed DOE to conduct two cycles of rulemakings to determine if more stringent standards are justified. (42 U.S.C. 6295 (h)(1)–(2)) DOE issued a NOPR on March 4, 1994, proposing performance standards for gas and electric residential cooking products, including microwave ovens. 59 FR 10464. In accordance with its 1996 Process Rule, DOE refined its standards analysis of cooking products. With regard to gas cooking products, DOE focused on the economic justification for eliminating standing pilot lights. Partially due to the difficulty of conclusively demonstrating that elimination of standing pilot lights was economically justified, DOE issued a final rule on September 8, 1998, that covered only electric cooking products, including microwave ovens. 63 FR 48038. The final rule found that standards were not economically justified for electric cooking products. DOE never completed its standards rulemaking for gas cooking products.

Section 136(e) of EPACT 20005 amends section 342 of EPCA, 42 U.S.C. 6313, to add subsection (e) for CCWs. Likewise, section 135(c)(4) of EPACT 2005 amends section 325 of EPCA, 42 U.S.C. 6295, to add subsection (cc) for dehumidifiers. New subsection 342(e), 42 U.S.C. 6313(e) establishes energy conservation standards for CCWs. Further, it requires that DOE issue a final rule by January 1, 2010, to determine whether the standards for CCWs should be amended. New subsection 325(cc), 42 U.S.C. 6295(cc), establishes energy conservation standards for dehumidifiers based on a unit's capacity to extract moisture from the surrounding air (in pints/day). These Federally mandated standards for dehumidifiers will be the national standards when they take effect on October 1, 2007. In addition, EPACT 2005 requires that by October 1, 2009, DOE issue a final rule for dehumidifiers to determine whether the standards should be amended. (EPACT 2005, section 135(c)(4)) Further, in the event that DOE fails to publish a final rule requiring new standards to take effect by October 1, 2012, EPACT 2005 also prescribes a new set of amended standards for dehumidifiers. (*Id.*)

Prior to the passage of EPACT 2005, the following States proposed and adopted State-level efficiency regulations for CCWs that are identical, or very similar, to EPACT 2005 regulations: Arizona, California, Connecticut, Maryland, New Jersey, Oregon, Rhode Island, and Washington. The EPACT 2005 energy and water use standards for CCWs preempt any State efficiency standards since they became effective January 1, 2007.[15] In addition to the efficiency standards discussed above, the State of California requires that commercial top-loading, semi-automatic clothes washers and commercial suds-saving clothes washers manufactured on or after January 1, 2005 have an unheated rinse water option.

DOE reviewed several voluntary programs that promote energy-efficient CCWs, residential dishwashers, dehumidifiers, and cooking products in the United States. Many programs, including the Consortium for Energy Efficiency (CEE), Energy Star, and the Federal Energy Management Program (FEMP), establish voluntary energy conservation standards for these products. CEE issues voluntary specifications for CCWs and standard-sized dishwashers under its Commercial, Family-Sized Washer Initiative and Super-Efficient Home Appliance Initiative, respectively. Energy Star, a voluntary labeling program backed by the EPA and DOE, identifies energy efficient products through a qualification process. To qualify, a product must exceed Federal minimum standards by a specified amount, or if no Federal standard exists, exhibit selected energy-saving features. The Energy Star program works to recognize the top quartile of products on the market, meaning that approximately 25 percent of products on the market meet or exceed the Energy Star levels. Energy Star specifications exist for many products, including CCWs, dishwashers, and dehumidifiers. FEMP

[15] None of these States submitted a petition for waiver to DOE, seeking to maintain their existing efficiency standards for commercial clothes washers.

works to reduce the cost and environmental impact of the Federal government by advancing energy efficiency and water conservation, promoting the use of distributed and renewable energy, and improving utility management decisions at Federal sites. FEMP helps Federal buyers identify and purchase energy efficient equipment, including CCWs, residential dishwashers, and microwave ovens. See Chapter 3 of the TSD for more information regarding regulatory and non-regulatory initiatives. During the engineering analysis (Chapter 5 of the TSD), efficiency levels specified by many of these initiatives will be analyzed during the generation of cost-efficiency curves.

DOE reviewed data collected by the U.S. Census Bureau, EPA, and AHAM to evaluate annual residential appliance product shipment trends and the value of these shipments. As the number of new home starts and the percentage of consumers with multiple units of some appliances increases annually, the unit shipments of most appliances are expected to increase as well. The shipments of built-in dishwashers increased by over 76 percent from 1995 to 2005, while the shipments of portable dishwashers declined 35 percent in the same time period. After a period of decline from 1995 to 2002, shipments of dehumidifiers increased sharply in 2003 and have continued to rise through 2005. Shipments of dehumidifiers nearly doubled between 1995 and 2005. From 1995 to 2005, shipments of electric and gas free-standing ranges and surface cooking units, electric built-in ranges, and microwave ovens increased, while shipments of built-in gas ranges decreased. However, in real dollars, the value of shipments for the household appliance industry has declined by nearly 14 percent over the period from 1994 to 2005.

The historical shipments data shown in Tables II.1, II.2, and II.3 and the historical market saturation data shown in Table II.4 provide a better picture of the market for the four appliance products. The market saturation data indicate the percentage of the housing stock with the appliance. The data in Table II.4 also include for each of the given years the number of appliances in the housing stock. Because commercial clothes washers are not a household appliance, market saturation data are not provided. The historical shipments and market saturation data for dishwashers, dehumidifiers, and cooking products are from the 2005 AHAM *Fact Books*,[16] while the commercial clothes washer historical shipments data are based on data provided to DOE by AHAM for the years 2002–2005 and *Appliance Magazine* for the years 1988–1998.[17]

TABLE II.1.—INDUSTRY SHIPMENTS OF DISHWASHERS AND DEHUMIDIFIERS

[Domestic and import in thousands of units]

| Year | Dishwashers | | | Dehumidifiers |
|---|---|---|---|---|
| | Built-In | Portable | Total | |
| 2005 | 7,294 | 133 | 7,428 | 1,957 |
| 2004 | 6,953 | 153 | 7,106 | 1,672 |
| 2003 | 6,280 | 148 | 6,428 | 1,311 |
| 2002 | 6,049 | 158 | 6,207 | 799 |
| 2001 | 5,478 | 149 | 5,627 | 806 |
| 2000 | 5,663 | 164 | 5,827 | 975 |
| 1999 | 5,542 | 170 | 5,712 | 950 |
| 1998 | 4,969 | 175 | 5,144 | 1,031 |
| 1997 | 4,653 | 173 | 4,826 | 820 |
| 1996 | 4,417 | 189 | 4,606 | 977 |
| 1995 | 4,141 | 205 | 4,346 | 1,003 |

TABLE II.2.—INDUSTRY SHIPMENTS OF COOKING PRODUCTS

[Domestic and import in thousands of units]

| Year | Cooking products | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | Electric ranges | | | | Gas ranges | | | | Microwave ovens |
| | Free-standing | Built-In | Surface cooking units | Total | Free-standing | Built-In | Surface cooking units | Total | |
| 2005 | 4,685 | 973 | 542 | 6,201 | 3,139 | 64 | 560 | 3,762 | 13,862 |
| 2004 | 4,612 | 963 | 570 | 6,145 | 3,124 | 67 | 528 | 3,719 | 15,526 |
| 2003 | 4,238 | 841 | 543 | 5,622 | 2,897 | 67 | 455 | 3,419 | 14,274 |
| 2002 | 4,030 | 780 | 528 | 5,338 | 2,781 | 71 | 416 | 3,268 | 13,311 |
| 2001 | 3,842 | 726 | 498 | 5,066 | 2,580 | 72 | 384 | 3,036 | 13,446 |
| 2000 | 3,826 | 706 | 494 | 5,026 | 2,729 | 70 | 377 | 3,176 | 12,644 |
| 1999 | 3,785 | 705 | 493 | 4,983 | 2,698 | 72 | 367 | 3,137 | 11,422 |
| 1998 | 3,481 | 652 | 506 | 4,639 | 2,543 | 71 | 336 | 2,950 | 10,365 |
| 1997 | 3,177 | 617 | 446 | 4,240 | 2,391 | 73 | 280 | 2,744 | 8,883 |
| 1996 | 3,123 | 614 | 418 | 4,155 | 2,366 | 72 | 272 | 2,710 | 8,771 |
| 1995 | 2,931 | 598 | 389 | 3,917 | 2,391 | 84 | 240 | 2,715 | 8,162 |

[16] AHAM, *2005 Fact Book*, 2005. Washington, DC. Available for purchase at: *http://www.aham.org/ht/d/Store/name/FACTBOOK*.

[17] 'Statistical Review'. *Appliance Magazine*, April, 1998, 1999.

TABLE II.3.—INDUSTRY SHIPMENTS OF COMMERCIAL CLOTHES WASHERS

[Thousands of units]

| Year | Units |
|---|---|
| 2005 | 177 |
| 2004 | 178 |
| 2003 | 191 |
| 2002 | 175 |
| 2001 | 194 |
| 2000 | 215 |
| 1999 | 239 |
| 1998 | 265 |
| 1997 | 241 |
| 1996 | 232 |
| 1995 | 209 |
| 1994 | 205 |
| 1993 | 190 |
| 1992 | 188 |
| 1991 | 193 |
| 1990 | 225 |
| 1989 | 215 |
| 1988 | 213 |

TABLE II.4.—APPLIANCE MARKET SATURATIONS: NUMBER OF HOUSEHOLDS WITH PRODUCT (IN MILLIONS) AND PERCENTAGE OF U.S. HOUSEHOLDS WITH PRODUCT

| Product | 1970 | | 1982 | | 1990 | | 2001 | | 2005 | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent |
| Dishwashers | 12 | 18.9 | 37.2 | 44.5 | 50.3 | 53.9 | 61.8 | 59.3 | 80.2 | 73.7 |
| Dehumidifiers | NA | NA | 9.2 | 11 | 15.6 | 16.7 | 14.7 | 14.1 | 20.6 | 18.9 |
| Electric Ranges/Cooktops* | 25.8 | 40.6 | 48.4 | 58 | 58.4 | 62.6 | 69.2 | 66.3 | 71 | 65.3 |
| Gas Ranges/Cooktops* | 36.6 | 57.7 | 35.7 | 42.7 | 36.1 | 38.7 | 39.4 | 37.8 | 42.2 | 39 |
| Microwave Ovens | Neg. | Neg. | 21.4 | 25.6 | 77.2 | 82.7 | 94.6 | **90.7 | 97.2 | 89.3 |

*Cooktops not included in 1970 or 1982 data.
**Includes over-the-range and countertop microwave ovens.

During the Framework public meeting, DOE solicited comments regarding existing databases to track CCW efficiencies. ALS commented that the existing CEC database contains useful data and should be reviewed. (Public Meeting Transcript, No. 5 at p. 44) As of March 2007, the CEC database had 626 entries for dishwashers and 196 entries for CCWs. This database, however, does not specify which models are current, and it does not appear to cover the entire range of dishwasher models. DOE also consulted the Energy Star database for residential clothes washers, dishwashers, and dehumidifiers. DOE subsequently used these data to identify units for reverse engineering tear-downs and other analysis. Whenever possible, DOE investigated the design options of the listed appliances, which then helped DOE design the interview guides for the MIA interviews with stakeholders to solicit comments about design options. DOE used the data for residential clothes washers as an additional means of validation for the CCW analysis.

Natural Resources Canada (NRCan) publishes a database of electric cooking appliance performance. Although it is not completely representative of the current U.S. cooking products market, this database covers products available in the Canadian market, which overlaps with the U.S. market. Chapter 3 of the TSD presents data that detail the energy factors of standard and self-cleaning electric ranges and ovens, along with coil-element and smooth element electric cooktops.

DOE also evaluated import and export trends for CCWs and residential dishwashers, dehumidifiers, and cooking products as reported by the U.S. Census Bureau and AHAM, as well as the market saturation for dishwashers, dehumidifiers, and cooking products according to AHAM. On the whole, major appliance unit imports increased 1.8 percent in 2005 from 2004. Major appliance unit exports increased 13.5 percent over the same period. In terms of market saturation, while the percentage of U.S. households with electric ranges and/or cooktops and microwave ovens has decreased slightly since 2001, the market saturation of dishwashers, dehumidifiers, and gas cooking products has increased. See Chapter 3 of the TSD for more information regarding historical shipments and market saturation.

From AHAM data [18]18 and the U.S. Department of Labor's Consumer Price Index, DOE estimated average retail prices for residential appliances, including clothes washers, dishwashers, dehumidifiers, and cooking products. Although prices for electric and gas ranges have increased in the period from 1980 to 2005, the increase has been at a much slower rate than the annual rate of inflation. Prices of residential dishwashers, dehumidifiers, microwave ovens, and clothes washers have decreased in the same time period. DOE also developed the household appliance industry cost structure from publicly available information from the U.S. Census Bureau, the *Annual Survey of Manufacturers* (ASM), and the SEC 10–K reports filed by publicly-owned manufacturers. The statistics illustrate a steady decline in the number of production and non-production workers in the industry.

Inventory levels, expressed both in dollars and as a percentage of value of shipments, have steadily declined since 1995 for the household appliance industry, according to the ASM. DOE obtained full-production-capacity utilization rates from the U.S. Census Bureau, *Survey of Plant Capacity* from 1994 to 2004. Full production capacity is defined as the maximum level of production an establishment could attain under normal operating conditions. In the *Survey of Plant Capacity* report, the full production utilization rate is a ratio of the actual level of operations to the full production level. The full-production-capacity utilization rate for household appliances in aggregate, along with the rates for cooking appliances and household laundry appliances, show a decrease in utilization from 1994 to 2004, although trends in subsets of that time period have fluctuated. See Chapter 3 of the TSD for more information regarding retail pricing, industry cost structure, inventory levels, and production capacity utilization.

[18] Data submitted to DOE as part of this rulemaking, contained in DOE Docket No. EE–2006–STD–0127.

3. Technology Assessment

In the technology assessment, DOE identifies technologies and design options that appear to be feasible means of improving product efficiency, and characterizes energy efficiency of residential dishwashers, dehumidifiers, and cooking products, and CCWs currently available in the marketplace. This assessment provides the technical background and structure on which DOE bases its screening and engineering analyses.

a. Dishwashers

DOE identified technologies to increase the energy efficiency of residential dishwashers primarily from a review of the following three sources: (1) DOE's ANOPR initiating a standards rulemaking for dishwashers, published on November 14, 1994 (59 FR 56423); (2) recent information provided by trade publications; and (3) design data identified in manufacturer product offerings. Except where otherwise noted, design options are taken from the 1994 ANOPR. DOE derived the variable washing pressure and variable-speed drive technologies from the February 2006 edition of *Appliance Magazine.* DOE grouped these technologies together because they collectively address manufacturers' design tradeoffs between the mechanical soil removal function of the water and the cycle time and energy associated with the dishwasher pump. Condenser and fan/jet drying are technologies listed in one manufacturer's product offerings. DOE also identified supercritical carbon dioxide washing from the November 2005 issue of *Appliance Magazine.* It added low-standby-loss electronic controls based on DOE's analysis of controller standby power in dishwashers currently on the market.

In addition to these design options, the multiple water organizations commented that DOE should consider a two-drawer design or similar option which would improve efficiency under partial loads. The multiple water organizations also believe DOE should consider any design option that would reduce pre-rinsing. (Multiple Water Organizations, No. 11 at p. 3) In interviews with manufacturers, DOE determined that two-drawer designs contain no control systems to link the operation of one drawer with another, so that each drawer acts in its own capacity as a compact-size dishwasher. Therefore, a two-drawer design cannot be considered as a design option. Minimizing consumer pre-rinsing depends on maintaining cleaning performance; there are no design options that specifically address pre-rinsing. Any design option that achieves energy efficiency improvements without incurring significant performance penalties will indirectly address pre-rinsing.

DOE considered the design options that follow.

- Condenser drying
- Fan/jet drying
- Flow-through heating
- Improved fill control
- Improved food filter
- Improved motor efficiency
- Improved spray-arm geometry
- Increased insulation
- Low-standby-loss electronic controls
- Microprocessor controls and fuzzy logic, including adaptive or soil-sensing controls
- Modified sump geometry, with and without dual pumps
- Reduced inlet-water temperature
- Supercritical carbon dioxide washing
- Ultrasonic washing
- Variable washing pressure and flow rates

DOE characterized energy efficiency as an EF, expressed as cycles/kWh for dishwashers currently on the market via a survey of the CEC database of certified dishwashers.[19]

b. Dehumidifiers

DOE has not previously conducted a comprehensive analysis of energy conservation standards for dehumidifiers because there are currently no Federal standards for these products. The first such standards become effective October 2007. To build a list of possible design options, DOE surveyed the marketplace for dehumidifier design options by reviewing a wide assortment of product literature, through discovery during the teardown analysis, during stakeholder interviews, and by using its previous room-air conditioning rulemaking analysis as a source for further design options. DOE identified the following design options as possible means to improve dehumidifier performance.

- Built-in hygrometer/humidistat
- Improved compressor efficiency
- Improved condenser performance
- Improved controls
- Improved defrost methods
- Improved demand-defrost controls
- Improved evaporator performance
- Improved fan and fan-motor efficiency
- Improved flow-control devices
- Low-standby-loss electronic controls
- Washable air filters

Based on product literature research, comments, and teardown analysis, DOE has identified compressor, heat exchanger, and fan motor improvements as the most common ways by which manufacturers improve the energy efficiency of their dehumidifiers as measured by the DOE test procedure.

During the Framework public meeting and Framework comment period, stakeholders asked that DOE add improved control systems to the dehumidifier design options list. ACEEE and other energy efficiency advocates recommended that improved controls (such as fuzzy logic) be added to the design option list to better control the dehumidifier. (Public Meeting Transcript, No. 5 at p. 73; Joint Comment, No. 9 at p. 4) DOE agrees that such control technologies offering potential energy savings are being implemented by manufacturers, and, therefore, it added improved controls as a design option for dehumidifiers.

c. Cooking Products

DOE most recently analyzed energy conservation standards for cooking products in 1996 and 1997. In the 1997 analysis, DOE analyzed only gas cooking products to determine the technical and economic feasibility of eliminating standing pilot lights. In its prior analysis, DOE identified many technologies that have the potential for improving gas and electric cooking efficiency. It has considered all of these in this rulemaking. In addition, DOE identified low-standby-loss electronic controls as a design option for several cooking products, based on review of standby power data for microwave ovens and the potential applicability to conventional cooking products as well. Radiant elements for smooth electric cooktops, which were included in the previous analysis, were not considered as a design option for this rulemaking because manufacturer data provided to DOE in the prior rulemaking indicated that this technology does not offer an efficiency improvement over the baseline according to the DOE test procedure. DOE considered the technologies that follow.

For gas cooktops:

- Catalytic burners
- Electronic ignition
- Insulation
- Radiant gas burners
- Reduced excess air at burner
- Reflective surfaces
- Sealed burners
- Thermostatically-controlled burners

For open (coil) element electric cooktops:

- Electronic controls

[19] Available online at: *http://www.energy.ca.gov/appliances/appliance/excel_based_files/.*

- Improved contact conductance
- Insulation
- Low-standby-loss electronic controls
- Reflective surfaces

For smooth element electric cooktops:

- Electronic controls
- Halogen elements
- Induction elements
- Low-standby-loss electronic controls

For gas and electric ovens:

- Bi-radiant oven (electric only)
- Forced convection
- Halogen lamp oven (electric only)
- Improved and added insulation
- Improved door seals
- Low-standby-loss electronic controls
- No oven-door window
- Oven separator
- Pilotless ignition (gas only)
- Radiant burner (gas only)
- Reduced conduction losses
- Reduced thermal mass
- Reduced vent rate
- Reflective surfaces
- Steam cooking

DOE received several comments that the design options from the previous rulemaking are still relevant because there have been no major technological breakthroughs in conventional cooking products since that time. AHAM recommended looking at the same design options because there has been no change in the market other than for induction cooking, which according to AHAM is so expensive it should not be considered. (Public Meeting Transcript, No. 5 at p. 93) ACEEE and the Joint Comment agreed with retaining the design options from the previous rulemaking, stating that only modest updates are needed for conventional cooking products. (Public Meeting Transcript, No. 5 at p. 97; Joint Comment, No. 9 at p. 3) Whirlpool stated that many of the previous design options either are not economically justifiable or have safety issues (Public Meeting Transcript, No. 5 at p. 94), while Wolf commented that the cost and risk of modifying today's well-performing products with questionable design options should not be underestimated. (Wolf, No. 6 at p. 2) DOE believes the aforementioned design options are still relevant and has retained them for analysis. Consumer safety is a screening criterion that DOE has applied in the screening analysis (Chapter 4 of the TSD), and DOE assessed economic viability in the LCC and PBP analyses (Chapter 8 of the TSD).

For microwave ovens, in the previous rulemaking, DOE identified all of the technologies listed below, with the exception of cooking sensors, dual magnetrons, and low-standby-loss electronic controls. DOE identified cooking sensors from product literature, while dual magnetrons were identified in the February 2006 edition of *Appliance Design* as a means to decrease cooking times. DOE identified low-standby-loss electronic controls by reviewing AHAM data for standby power. In addition, DOE received comments stating that it needed to consider sensors and controls that detect completion of the cooking process and variable power supplies that adjust power to the magnetron during cooking. (Public Meeting Transcript, No. 5 at p. 91; Joint Comment, No. 9 at p. 3) DOE did not receive any information regarding the energy efficiency impacts of variable power supplies, and, therefore, will limit the design option relating to variable magnetron output to dual magnetrons. In view of the above, DOE considered the design options that follow.

- Added insulation
- Cooking sensors
- Dual magnetrons
- Eliminate or improve ceramic stirrer cover
- Improved fan efficiency
- Improved magnetron efficiency
- Improved power supply efficiency
- Low-standby-loss electronic controls
- Modified wave guide
- Reflective surfaces

In written comments, AHAM stated that DOE considered many design options for microwave ovens in its 1998 rule and that, after extensive analysis, DOE determined that no design options were technologically feasible or economically justifiable. AHAM also stated that there have been no technological or economic breakthroughs since the previous determination that would change the previous conclusion. (AHAM, No. 17 at p. 1) However, ACEEE disagreed, stating that there have been some significant changes in microwave oven technology since the prior rulemaking. Thus, it stated that the previous design options need to be reviewed. (Public Meeting Transcript, No. 5 at p. 97)

During the Framework public meeting and Framework comment period, DOE received comments that the lack of efficiency data for microwave ovens would hinder DOE's ability to establish efficiency levels, and that DOE should conduct a test program specifically to obtain such efficiency data since it would be difficult for the manufacturers to do so themselves. Whirlpool stated that manufacturers are not using the microwave oven test procedure and, as a result, there is a lack of efficiency data. (Public Meeting Transcript, No. 5 at p. 86) Whirlpool commented that the absence of a microwave oven energy efficiency standard has resulted in a dearth of data on microwave ovens. (Whirlpool, No. 10 at p. 10). ACEEE commented that, because there are very few data on microwave ovens, the baseline efficiency level needs to be updated from the numbers in the previous rulemaking. (Public Meeting Transcript, No. 5 at p. 91) ACEEE further stated that the process to update the data should include collecting as much information from manufacturers as possible, then supplementing these data with product testing. The purpose of these test data, according to ACEEE, should be to assess the validity of the efficiency levels analyzed in the previous rulemaking rather than to quantify a new cost-efficiency relationship. (Public Meeting Transcript, No. 5 at pp. 142–143) AHAM concurred with DOE's intention to conduct microwave oven efficiency testing as part of this rulemaking because it would take industry a significant amount of time to provide efficiency data. AHAM suggested DOE may want to commission the National Institute of Standards and Technology or some other source to do an independent evaluation. (Public Meeting Transcript, No. 5 at p. 143) The Joint Comment stated that because microwave oven technology has changed substantially since the previous rulemaking, DOE should quickly collect current data on product performance and features from manufacturers, and fill in gaps where necessary. Manufacturers could then provide incremental cost data at the selected efficiency levels. (Joint Comment, No. 9 at p. 3)

Stakeholders questioned which microwave oven test procedure should be used. he current DOE test procedure requires manufacturers to test to IEC 705–1988, Household Microwave Ovens—Methods for Measuring Performance, and Amendment 2–1993. The current IEC test procedure is designated IEC 60705 Edition 3.2–2006. Differences between the 1988 and current IEC test procedures can result in differences in measured microwave oven efficiency. In comments received during the Framework public meeting, Sharp asked which test procedure would be used to define microwave oven efficiency. (Public Meeting Transcript, No. 5 at p. 141)

Recognizing the lack of existing energy efficiency data, AHAM conducted a test program on 21

microwave ovens from nine manufacturers, representing a broad spectrum of units available in the marketplace and incorporating a variety of capacities and features. AHAM tested microwave oven efficiency according to DOE's test procedure and standby power according to IEC 62301–2005, Household Electrical Appliances—Measurement of Standby Power. AHAM found no correlation between energy efficiency and rated output power or cavity volume. Efficiencies ranged from 54.8 percent to 61.8 percent. Given the uncertainties in the test procedure, resulting in large test-to-test variations, DOE considers these efficiencies to be comparable to the efficiencies in the prior rulemaking's analysis. Standby power also showed no correlation with rated output power, varied significantly from unit to unit, and ranged from 1.5 watts to 5.8 watts. The FEMP database of microwave oven standby power indicates that 90 percent of reported microwave ovens consume greater than 2 watts in standby mode.

The energy efficiency data upon which DOE based its analysis was measured according to the DOE test procedure, which references IEC 705–1988 and Amendment 2–1993. DOE does not plan to revise the test procedure to incorporate IEC 60705 Edition 3.2–2006, to measure the cooking efficiency, because DOE is unaware of any efficiency comparison data that would justify such a change. However, as discussed above, DOE is examining changes to the test procedure to measure standby-power use.

d. Commercial Clothes Washers

DOE identified technologies to improve the energy efficiency of CCWs. The majority of these technologies are described in the 1996 report entitled *Design Options for Clothes Washers*. (LBNL–47888, October 1996, Lawrence Berkeley National Laboratory) Steam washing and improved horizontal-axis-washer drum design were identified in the September 2005 edition of *Appliance Magazine*. DOE identified the low-standby-power design option during its engineering analysis review of all AHAM product classes. It added spray rinse and advanced agitator design options in response to comments received following the Framework public meeting. DOE considered the design options that follow.

- Adaptive control systems
- Added insulation
- Advanced agitation concepts for vertical-axis machines
- Automatic fill control
- Bubble action
- Direct-drive motor
- Electrolytic disassociation of water
- Horizontal-axis design
- Horizontal-axis design with recirculation
- Improved fill control
- Improved horizontal-axis-washer drum design
- Improved water extraction to lower remaining moisture content
- Increased motor efficiency
- Low-standby-power design
- Ozonated laundering
- Reduced thermal mass
- Spray rinse or similar water-reducing rinse technology
- Steam washing
- Suds savings
- Thermostatically-controlled mixing valves
- Tighter tub tolerance
- Ultrasonic washing

The Multiple Water Organizations requested that DOE add the following design options: (1) Spray rinse, (2) nutating or other advanced agitators, (3) advanced power supplies, and (4) steam cleaning. (Multiple Water Organizations, No. 11 at p. 1 ) ACEEE requested that DOE consider more water-saving design options (*e.g.*, spray rinse), in addition to energy-saving design options. (Public Meeting Transcript, No. 5 at p. 51) In a joint letter, the Joint Comment requested the addition of a spray wash design option. (Joint Comment, No. 9 at p. 5)

DOE has added advanced agitation concepts for vertical-axis washers. These agitation systems include nutating plates, side-mounted mounted impellers, and any other agitation technology that eliminates the need for the traditional large and centrally-mounted agitator found in vertical-axis clothes washer tubs. While such agitation systems are currently only found on high-end residential clothes washers, they have the potential to be adapted for CCWs and can reduce the water consumption of vertical-axis clothes washers substantially.

DOE has also added spray rinse as a design option but notes that this design option may not be appropriate for the commercial laundry market. ALS commented that some water-reduction design options (such as the ''innovative rinse technology'' in its vertical-axis models) have faced strong opposition from some consumers. (ALS, No. 19 at p. 1) Whirlpool noted that commercial customers tend to overload their washers, which leads to unacceptable rinsing performance. (Whirlpool, No. 10 at p. 3) Given that the industry has fielded washers with rinse-water use reduction technologies (such as spray rinse) in the past and continues to develop other water saving approaches, DOE will consider this design option.

During the Framework public meeting, stakeholders asked DOE whether it will address standby power in CCWs. Potomac suggested that DOE consider technologies that limit standby power in CCWs. Such design options could include improved power supplies or other technologies that limit power consumption in standby mode. (Public Meeting Transcript, No. 5 at p. 52) DOE recognizes the importance of studying all aspects of power consumption by consumer appliances. With the growing trend of upgrading consumer appliances to use electronic controllers, standby power has become a topic of interest across all appliance categories.

During the Framework public meeting, DOE solicited comments regarding existing databases to track CCW efficiencies. ALS commented that the existing CEC database is a good source of information and that DOE should review it. (Public Meeting Transcript, No. 5 at p. 44) DOE subsequently used that database and others to identify CCWs that meet various modified energy factor (MEF) and WF levels. Whenever possible, DOE investigated the design options of the listed washers, which then helped DOE design the interview guides for the MIA interviews with stakeholders to solicit comments about design options.

Additional detail on the technology assessment can be found in Chapter 3 of the TSD.

*B. Screening Analysis*

1. Purpose

The purpose of the screening analysis is to evaluate the design options that improve the efficiency of a product, in order to determine which options to consider further and which options to screen out because they may not be technologically feasible, may exhibit practicability problems (related to manufacture, installation, or service), may result in adverse impact on product utility or product availability, or may have an adverse impact on health or safety. DOE consults with industry, technical experts, and other interested parties in developing a list of design options for consideration. DOE then applies the following set of screening criteria to determine which design options are unsuitable for further consideration in the rulemaking (10 CFR Part 430, Subpart C, Appendix A at 4(a)(4) and 5(b)).

a. Technological Feasibility

DOE will consider technologies incorporated in commercial products or in working prototypes to be technologically feasible.

b. Practicability To Manufacture, Install, and Service

If mass production of a technology in commercial products and reliable installation and servicing of the technology could be achieved on the scale necessary to serve the relevant market at the time of the effective date of the standard, then DOE will consider that technology practicable to manufacture, install, and service.

c. Adverse Impacts on Product Utility or Product Availability

If DOE determines a technology to have significant adverse impact on the utility of the product to significant subgroups of consumers, or to 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. at the time, it will not consider this technology further.

d. Adverse Impacts on Health or Safety

If DOE determines that a technology will have significant adverse impacts on health or safety, it will not consider this technology further.

2. Design Options

a. Dishwashers

For dishwashers, DOE screened out reduced inlet-water temperature, supercritical carbon dioxide washing, and ultrasonic washing technologies, for the reasons that follow.

Reduced inlet-water temperature requires that dishwashers tap the cold water line for the water supply, which would require significant alteration of existing dishwasher installations in order to accommodate newly-purchased units incorporating this design option. Whirlpool commented that such a retrofit of existing residential plumbing necessary to accommodate a reduced inlet-water temperature design would be costly, and, therefore, DOE should eliminate this design option. (Whirlpool, No. 10 at p. 4) DOE agrees that this design option does not meet the screening criterion of practicability to install. Therefore, DOE screened out reduced inlet-water temperature from further analysis. AHAM supported this decision. (AHAM, No. 14 at p. 8)

Supercritical carbon dioxide washing, in which supercritical carbon dioxide dissolves grease from the dishware instead of conventional detergent and water, is in the research stage, so DOE believes it would not be practicable to manufacture, install, and service at the time of the effective date of an amended standard. Furthermore, it is also not yet possible to assess whether it will have any adverse impacts on equipment utility to consumers or equipment availability, or any adverse impacts on consumers' health or safety. Therefore, DOE screened out supercritical carbon dioxide washing from further analysis.

For ultrasonic washing, high frequency energy input into the wash water creates cavitation bubbles that remove soil from the dishware via mechanical scrubbing action. With this technology, consumer utility is decreased due to the potential for the ultrasonic cleaning action to damage fragile dishware and due to the perception that the low temperatures do not sterilize dishes. Whirlpool also commented that ultrasonic dishwashing is beyond the technological scope of current product development. (Whirlpool, No. 10 at p. 4) Since no manufacturer currently produces ultrasonic dishwashers, it is impossible to assess whether this design option would have any impacts on consumer health or safety, or product availability. Therefore, DOE screened out ultrasonic dishwashing from further analysis. In comments submitted after the Framework public meeting, AHAM agreed that DOE should eliminate ultrasonic dishwashing. (AHAM, No. 14 at p. 8) Table II.5 lists the dishwasher design options that DOE has retained for analysis.

TABLE II.5.—RETAINED DESIGN OPTIONS FOR DISHWASHERS

| |
|---|
| 1. Condenser drying. |
| 2. Fan/jet drying. |
| 3. Flow-through heating. |
| 4. Improved fill control. |
| 5. Improved food filter. |
| 6. Improved motor efficiency. |
| 7. Improved spray-arm geometry. |
| 8. Increased insulation. |
| 9. Low-standby-loss electronic controls. |
| 10. Microprocessor controls and fuzzy logic, including adaptive or soil-sensing controls. |
| 11. Modified sump geometry, with and without dual pumps. |
| 12. Variable washing pressures and flow rates. |

According to Whirlpool, soil sensors have contributed to significant dishwasher water and energy savings. However, Whirlpool is unaware of any further technological breakthroughs which would dramatically change the energy consumption of dishwashers. Approximately 90 percent of dishwashers are currently Energy Star-qualified. (Whirlpool, No. 10 at p. 1) DOE has noted that many dishwashers are able to meet Energy Star requirements without the use of a soil sensor. It may be assumed that the incorporation of soil sensors to such models offers the potential for additional energy savings. DOE also notes that there are multiple technologies that can be used by themselves or to complement others to determine soiling levels inside a dishwasher. For example, it is possible to use a pressure sensor, rather than the more typical turbidity sensors, to detect clogging of a filter to infer soil loads. The maximum technologically feasible (''max-tech'') dishwasher that DOE investigated went a step further, featuring both a turbidity and a pressure sensor, implying a benefit from using both sensor technologies. Since there are many approaches to and levels of sophistication of soil sensing may be taken to depending on the underlying dishwasher platform, DOE will retain soil sensing for further analysis.

Whirlpool also stated that variable washing pressures and flow rates and condenser drying are beyond the technological scope of current product development, and therefore DOE should eliminate them from further analysis. (Whirlpool, No. 10 at p. 4) AHAM stated without elaboration that condenser drying should be eliminated from the analysis. (AHAM, No. 14 at p. 8) In reviewing current dishwasher models, DOE noted multiple instances in which manufacturer specifications indicate variable washing pressures and flow rates. For example, such a strategy may include alternating wash water to the top and bottom racks. In addition, DOE is aware of at least one dishwasher platform on the market with true condensation drying, in which relatively cool ambient air is drawn across the outside of the stainless steel dishwasher cavity, providing a surface on which moisture from the hotter dishware can condense. Since variable washing pressures and flow rates and condenser drying are already in wide distribution, DOE will retain these design options for further analysis.

AHAM also requested that DOE replace the term ''fan/jet drying'' with the term ''fan-assist drying'' and clarify the term ''flow-through heating.'' (AHAM, No. 14 at p. 8) DOE believes that the change to fan-assist drying is appropriate, and will designate the design option in further analyses accordingly.

''Flow-through heating'' is differentiated from conventional dishwasher heating by the positioning of the heating element. Conventional dishwasher heaters use a tubular electric resistance element positioned inside the dishwasher cavity, above the sump, where it is exposed to the wash

and rinse water. Flow-through heaters pass the water through a metallic tube around which a resistive heating element is wrapped. Consequently, less water is typically required in the dishwasher sump for flow-through heaters since they form an integrated part of the water flow path and do not require high levels of standing water above the sump, as do tubular heating elements. Therefore, the potential exists for dishwashers using flow-through heating to have reduced water and energy consumption.

b. Dehumidifiers

For dehumidifiers, all technologies meet the screening criteria.

Table II.6 lists the dehumidifier design options that DOE has retained for analysis.

TABLE II.6.—RETAINED DESIGN OPTIONS FOR DEHUMIDIFIERS

| |
|---|
| 1. Built-in hygrometer/humidistat. |
| 2. Improved compressor efficiency. |
| 3. Improved condenser performance. |
| 4. Improved controls. |
| 5. Improved defrost methods. |
| 6. Improved demand-defrost controls. |
| 7. Improved evaporator performance. |
| 8. Improved fan and fan-motor efficiency. |
| 9. Improved flow-control devices. |
| 10. Low-standby-loss electronic controls. |
| 11. Washable air filters. |

c. Cooking Products.

For cooking products, Whirlpool commented that DOE should eliminate from this analysis all design options that DOE eliminated in the previous rulemaking for reasons of feasibility, cost, and/or consumer safety. (Whirlpool, No. 10 at pp. 5–7) DOE will evaluate each design option again, and only will eliminate from further consideration those technologies that fail to meet one or more of the screening criteria.

1. Cooktops and Ovens

For gas cooktops, DOE screened out catalytic burners, radiant gas burners, reduced excess air at burner, and reflective surfaces for the reasons that follow.

DOE is not aware of any commercialized catalytic burners for gas cooktops. Therefore, DOE believes they would not be practicable to manufacture, install, and service at the time of the effective date of an amended standard. Also, because this technology is in the research stage, it is not possible to assess whether it will have any adverse impacts on equipment utility to consumers or equipment availability, or any adverse impacts on consumers' health or safety. Therefore, DOE has decided to exclude catalytic burners from further analysis.

In the previous rulemaking, manufacturers concluded that infrared jet-impingement radiant gas burners would not be able to comply with the ANSI Standard Z21.1–2005, *Household Cooking Gas Appliances.* Field testing had shown that users were unable to turn down the burner satisfactorily, which indicated a potential health and safety risk. More recently, a silicon carbide radiant burner has been tested to the Japanese Industrial Standard (JIS) S 2103–1996, *Gas Burning Appliances for Domestic Use,* but there is no data to evaluate whether this burner would conform to the ANSI standard since it is not commercially available in the U.S. Due to potential impacts on consumer health and safety, DOE screened out radiant gas burners from further analysis.

Reduced excess air at the burner has not been definitively shown to increase efficiency. Also, because the technology has not been commercialized, DOE believes it would not be practicable to manufacture, install, and service at the time of the effective date of an amended standard. In addition, DOE cannot assess adverse impacts on consumers' utility, health, or safety or equipment availability for this technology. Further, Whirlpool suggests there are combustion-related issues with reducing excess air. (Public Meeting Transcript, No. 5 at p. 94) DOE agrees that reducing excess air at the burner increases the possibility of adverse conditions such as poor flame quality and elevated carbon monoxide levels, which would suggest adverse impacts on consumers' utility, health, and safety. For these reasons, DOE screened out reduced excess air at the burner from further analysis.

In the previous rulemaking, manufacturers reported adverse impacts on consumer utility due to the requirement for regular and careful cleaning of reflective surfaces, and this concern remains at present. In addition, since this technology has still not been commercialized, DOE cannot assess the impacts on consumer health and safety or equipment availability. Therefore, DOE screened out reflective surfaces for gas cooktops from further analysis.

Table II.7 lists the gas cooktop design options that DOE has retained for analysis.

TABLE II.7.—RETAINED DESIGN OPTIONS FOR GAS COOKTOPS

| |
|---|
| 1. Electronic ignition. |
| 2. Insulation. |
| 3. Sealed burners. |
| 4. Thermostatically-controlled burners. |

The Joint Comment agreed with the inclusion of electronic ignition for gas ranges, and thereby for gas cooktops and ovens. They stated that earlier analysis found significant, cost-effective savings achieved by eliminating pilot lights. (Joint Comment, No. 9 at p. 3)

For electric open (coil) cooktops, DOE screened out reflective surfaces, for the reasons that follow.

In the previous rulemaking, manufacturers reported adverse impacts on consumer utility due to the requirement for regular and careful cleaning of reflective surfaces, and this concern remains at present. Furthermore, because this technology has still not been commercialized, DOE cannot assess its impacts on consumer health and safety or equipment availability. Therefore, DOE screened out reflective surfaces from further analysis for electric coil cooktops.

Table II.8 lists the electric open (coil) cooktop design options that DOE has retained for analysis.

TABLE II.8.—RETAINED DESIGN OPTIONS FOR ELECTRIC OPEN (COIL) ELEMENT COOKTOPS

| |
|---|
| 1. Electronic controls. |
| 2. Improved contact conductance. |
| 3. Insulation. |
| 4. Low-standby-loss electronic controls. |

For electric smooth cooktops, all technologies meet the screening criteria.

Table II.9 lists the electric smooth cooktop design options that DOE has retained for analysis.

TABLE II.9.—RETAINED DESIGN OPTIONS FOR ELECTRIC SMOOTH ELEMENT COOKTOPS

| |
|---|
| 1. Electronic controls. |
| 2. Halogen elements. |
| 3. Induction elements. |
| 4. Low-standby-loss electronic controls. |

For ovens, DOE screened out added insulation, bi-radiant oven, halogen lamp oven, no oven door window, oven separator, reduced thermal mass, and reflective surfaces, for the reasons that follow.

Although some analyses have shown reduced energy consumption by increasing the thickness of the insulation in the oven cabinet walls and doors from two inches to four inches,

consumer utility would be negatively impacted by the necessary reduction in cavity volume to maintain the same oven footprint and overall cabinet volume. Therefore, DOE screened out added insulation. The improved insulation design option, however, will be retained, because insulation with a higher density (*i.e.*, greater insulating value) does not require additional space and thus would not impact oven cavity size.

The last working prototype of a bi-radiant oven known to DOE was tested in the 1970s. The technology requires a low-emissivity cavity, electronic controls, and highly absorptive cooking utensils. The need for specialized cookware and cavity maintenance issues negatively impact consumer utility. Therefore, DOE screened out bi-radiant ovens from further analysis.

While GE currently markets a line of electric ovens that incorporates halogen elements along with conventional resistance heating elements, microwave heating, and, optionally, a convection system, DOE is not aware of any ovens that utilize halogen lamps alone as the heating element, and no data were found or submitted to demonstrate how efficiently halogen elements alone perform relative to conventional ovens. DOE believes that it would not be practicable to manufacture, install, and service halogen lamps for use in consumer cooking products on the scale necessary to serve the relevant market at the time of the standard's effective date. Therefore, DOE screened out halogen lamp ovens.

The previous rulemaking's analysis reported a small annual energy savings associated with no oven door window, but that consumer practices of opening the door to inspect the food while cooking could negate any benefit. EEI commented during the Framework public meeting that DOE should eliminate the no oven door window design option due to the potential impact on utility and safety, and it is likely that the technology is not a feasible option for most ovens. EEI also suggested evaluating double-pane or similar oven door windows. (Public Meeting Transcript, No. 5 at p. 94; EEI, No. 7 at p. 6) DOE agrees that reduced consumer utility along with decreased safety due to the additional door openings justify elimination of this design option from further analysis. In addition, DOE addresses the efficiency impact of double-pane or other highly insulated oven door windows by means of the reduced conduction losses design option, which has been retained for further analysis.

An oven separator has been researched but has never been put into production. Manufacturers stated during the previous rulemaking that a separator could not be economically designed for conventional gas ovens. The use of a separator in electric ovens would require the installation of an additional element and a non-conventional control system. Manufacturers also stated that it would be difficult to obtain Underwriters Laboratory and AGA approvals and meet existing ANSI standards because of the effect the separator would have on safety and performance. Manufacturers also stated that consumer acceptance would probably be low because appliances such as microwave and toaster ovens already exist to cook small loads. In addition, the separator would have to be designed to be ''fool-proof'' to prevent consumers from accidentally installing it incorrectly. With regard to energy use, the additional metal added to the oven by the separator (increased thermal mass) might result in increased energy losses, although data provided by AHAM indicated an increase in efficiency of approximately 0.82 percentage points in an electric oven. However, the anticipated negative impacts on consumer utility and safety, along with practicability to manufacture, resulted in DOE screening out the oven separator from further analysis. Whirlpool expressed support for elimination of this design option, mentioning consumer safety as one of many issues. (Public Meeting Transcript, No. 5 at p. 95) For example, safety issues could arise in a gas oven if the separator is incorrectly installed, resulting in improper burner operation.

In the previous rulemaking, manufacturers commented that a thermal mass reduction in ovens was not possible without compromising structural integrity (during both use and transportation) and increasing heat losses. Although tests by the Gas Research Institute (GRI) showed a small efficiency improvement, the issues of structural integrity and associated consumer product safety led DOE to eliminate thermal mass reduction from further analysis.

Manufacturers stated in the previous rulemaking that reflective surfaces degrade throughout the life of the oven, particularly for self-cleaning ovens, and GRI reported tests that showed this design option can actually result in a decrease of energy efficiency. The uncertainty in energy savings, coupled with a lack of sophistication in the technology in terms of maintaining the reflective surfaces over the lifetime of the oven, led DOE to eliminate this technology from further analysis.

Table II.10 lists the gas and electric oven design options that DOE has retained for analysis.

TABLE II.10.—RETAINED DESIGN OPTIONS FOR GAS AND ELECTRIC OVENS

| |
|---|
| 1. Forced convection. |
| 2. Improved door seals. |
| 3. Improved insulation. |
| 4. Low-standby-loss electronic controls. |
| 5. Pilotless ignition (gas only). |
| 6. Radiant burner (gas only). |
| 7. Reduced conduction losses. |
| 8. Reduced vent rate. |
| 9. Steam cooking. |

The Joint Comment recommended that DOE study the energy used by ignition devices in gas ovens. (Joint Comment, No. 9 at p. 3) DOE will include the gas energy consumption of pilot lights and electrical energy consumption of pilotless ignition in the engineering analysis (see Chapter 5 of the TSD).

2. Microwave Ovens

For microwave ovens, all technologies meet the screening criteria.

Table II.11 lists the microwave oven design options that DOE has retained for analysis.

TABLE II.11.—RETAINED DESIGN OPTIONS FOR MICROWAVE OVENS

| |
|---|
| 1. Added insulation. |
| 2. Cooking sensors. |
| 3. Dual magnetrons. |
| 4. Eliminate or improve ceramic stirrer cover. |
| 5. Improved fan efficiency. |
| 6. Improved magnetron efficiency. |
| 7. Improved power supply efficiency. |
| 8. Low-standby-loss electronic controls. |
| 9. Modified wave guide. |
| 10. Reflective surfaces. |

AHAM submitted written comments on the microwave oven design options. For improved fan efficiency, AHAM commented that, since the fan accounts for less than 2 percent of the total energy consumption in the microwave oven, a high efficiency fan would improve energy factor by less than 0.5 percent. Therefore, AHAM argued that efficient fans are not economically justified. (AHAM, No. 17 at pp. 2–3) However, AHAM did not provide any data that supported their conclusion of a lack of economic justification. Therefore, DOE will consider improved fan efficiency in its analysis.

According to AHAM, considerable effort has already been expended to optimize magnetron efficiency.

Manufacturers' specifications indicate that typical efficiency is about 73 percent with only a plus or minus 2 percentage point variance. Thus, AHAM argued that there is little opportunity to improve microwave energy efficiency for manufacturers using magnetrons. (AHAM, No. 17 at p. 3) A literature review that DOE performed, however, determined that oscillation efficiencies of up to 78 percent have been reported. DOE has decided to retain improved magnetron efficiency for analysis, because this design option: (1) Is technologically feasible; (2) is practicable to manufacture, install, and service; (3) does not result in loss of product utility or product availability; and (4) does not have adverse impacts on health or safety.

AHAM commented that there are two types of high-voltage power supplies used in microwave ovens, as described below. The most common type is the inductive capacitance transformer, which has an efficiency of about 82 percent. More expensive inverter-based power supplies are about 84 percent efficient. Higher efficiency general purpose transformers do not have stable enough output power for microwave oven application. AHAM stated that, among the units tested, there was no correlation between power supply type and cooking efficiency. AHAM also does not believe there is a cost-effective opportunity for improving the efficiency of the power supply. (AHAM, No. 17 at p. 3) However, AHAM did not submit any data demonstrating a lack of correlation between power supply type and cooking efficiency or refuting economic justification. Therefore, DOE will consider improved power supply efficiency in its analysis, during which it will assess economic viability.

For reflective surfaces, AHAM commented that manufacturers are already using surface finishes to optimize efficiency. Also, AHAM stated that proper oven cavity design would obviate the need to add any metallic plates inside the cavity to match the highest oscillation impedance of the magnetron. (AHAM, No. 17 at p. 2) Testing by manufacturers, however, has shown that a high-grade stainless steel or reflective material steel coating can improve efficiency by 0.5 percent over painted cold-rolled steel. Since DOE is aware of data demonstrating efficiency improvement as a function of surface reflectivity, DOE will retain reflective surfaces for analysis.

d. Commercial Clothes Washers

During the Framework public meeting and Framework comment period, DOE solicited comments from stakeholders regarding which design options found in residential clothes washers would be applicable to CCWs. However, multiple manufacturers of CCWs cautioned that CCWs are not just slightly modified extensions of their residential product lines, and, thus, some design options currently found on their residential lines may not be applicable for commercial use.

In addition, ALS requested that DOE recognize the unique environment in which CCWs operate and how that precludes the implementation of several design options found in the residential market. Such options could be incompatible with the requirements regarding ruggedness, reliability, and performance routinely demanded in a commercial setting. (Public Meeting Transcript, No. 5 at p. 43) For example, Whirlpool stated that design options such as spray rinse have not performed adequately in commercial settings due to the routine problem of overloading by consumers. Commenters also asserted that inadequate rinsing performance typically leads consumers to re-run loads, thereby increasing water and energy consumption.

Whirlpool, ALS, and AHAM requested that the following design options be removed from consideration: Bubble action, electrolytic disassociation of water, ozonated laundering, reduced thermal mass, suds saving, ultrasonic washing, and horizontal-axis design. Whirlpool and AHAM additionally requested that steam washing be removed from consideration. Whirlpool stated that all of the aforementioned design options were removed from consideration during the recent residential clothes washer rulemaking and, therefore, should be removed from consideration during this rulemaking as well. ALS provided a similar rationale for the design options it requested to be excluded. AHAM further requested that the improved horizontal-axis-washer drum design option be removed. (Whirlpool, No. 10 at p. 3; Public Meeting Transcript, No. 5 at p. 49; AHAM, No. 14 at p. 7)

In light of the available information, DOE subsequently screened out bubble action, electrolytic disassociation of water, ozonated laundering, reduced thermal mass, suds saving, and ultrasonic washing from further analysis, for the reasons that follow.

Although bubble washing has been incorporated into commercial products, production is extremely limited and further commercialization would require manufacturers to develop entirely new platforms. Therefore, DOE does not believe that this technology would be practicable to manufacture, install, and service on the scale necessary to serve the relevant market at the time of the effective date of an amended standard. For these reasons, DOE screened out the bubble action design option.

DOE is not considering electrolytic disassociation of water and ozonated laundering because these technologies are at the research stage. Therefore, DOE believes that it would not be practicable to manufacture, install, and service either technology on the scale necessary to serve the relevant market at the time of the effective date of an amended standard. Also, because these technologies are in the research stage, it is not possible to assess whether they will have any adverse impacts on equipment utility to consumers or equipment availability, or any adverse impacts on consumers' health or safety. Therefore, DOE screened out electrolytic disassociation of water and ozonated laundering as design options for improving the energy efficiency of CCWs.

Reduced thermal mass has not been incorporated into clothes washers, so DOE believes that it would not be practicable to manufacture, install, and service this technology on the scale necessary to serve the relevant market at the time of the effective date of an amended standard. Also, because this technology has not been incorporated into clothes washers, it is not possible to assess whether it will have any adverse impacts on equipment utility to consumers or equipment availability, or any adverse impacts on consumers' health or safety. Therefore, DOE screened out reduced thermal mass as a design option for improving the energy efficiency of CCWs.

Suds-saving residential clothes washers, in which wash water is stored for subsequent reuse, were previously commercially available, but required an adjacent washtub to store suds in between wash cycles. Due to these installation requirements, DOE believes that suds saving clothes washers would be impractical to install in many locations. Suds-saving clothes washers reduce consumer utility by requiring consumers to occupy space adjacent to the washer with an additional washtub. In a commercial setting, this may limit the number of clothes washers that may be installed. Consumers must also wash clothes sequentially to fully capture the energy saving benefits of suds saving. Delays between wash cycles allow the saved water to cool, reducing wash performance and energy savings. Finally, suds-saving clothes washers can carry over heavy soiling between

clothing loads, reducing wash performance as well. Therefore, DOE will not consider suds saving as a design option for improving the energy efficiency of commercial clothes washers.

Ultrasonic washing promotes mechanical soil removal through the introduction of ultrasonic vibrations into the wash tub. This technology has been demonstrated in clothes washers, but the ultrasonic clothes washer did not adequately remove soil from the clothes. Thus, ultrasonic clothes washing would reduce consumer utility by not adequately washing clothes. In addition, bubble cavitations caused by standing ultrasonic waves could potentially damage some fragile clothing or clothing fasteners, further reducing consumer utility. Since no manufacturers currently produce ultrasonic clothes washers, it is impossible to assess whether it will have any impacts on consumers' health or safety, or product availability. For these reasons, DOE screened out ultrasonic washing as a design option for improving the energy efficiency of CCWs.

In the comment period following the Framework public meeting, EEI suggested that at least one major detergent manufacturer has formulated a cold-water detergent, capable of washing all types of clothes in cold water. According to EEI, such detergents promise significant energy savings since they could eliminate the need for heated water in CCWs. (EEI, No. 7 at p. 4) While cold-water detergents show promise, the present clothes washer test procedure does not recognize the potential energy benefits of such detergents. DOE will consider possible future amendments to the test procedure to account for cold-water detergents. Thus, in the context of the present rulemaking, DOE will not analyze the potential impact of cold-water detergents.

Table II.12 lists the CCW design options that DOE has retained for analysis. For further review of the retained design options, please see Chapter 3 of the TSD.

TABLE II.12.—RETAINED DESIGN OPTIONS FOR COMMERCIAL CLOTHES WASHERS

| |
|---|
| 1. Adaptive control systems. |
| 2. Added insulation. |
| 3. Advanced agitation concepts for vertical-axis machines. |
| 4. Automatic water fill control. |
| 5. Direct-drive motor. |
| 6. Horizontal-axis design. |
| 7. Horizontal-axis design with recirculation. |
| 8. Improved fill control. |
| 9. Improved horizontal-axis-washer drum design. |
| 10. Improved water extraction to lower remaining moisture content. |
| 11. Increased motor efficiency. |
| 12. Low-standby-power design. |
| 13. Spray rinse or similar water-reducing rinse technology. |
| 14. Steam washing. |
| 15. Thermostatically-controlled mixing valves. |
| 16. Tighter tub tolerance. |

In general, for more detail on how DOE developed all of the technology options discussed above and the process for screening these options, refer to the technology and screening section (Chapter 4) of the TSD.

*C. Engineering Analysis*

In the engineering analysis DOE evaluates a range of product efficiency levels and their associated manufacturing costs. The purpose of the analysis is to estimate the incremental manufacturer selling prices for a product that would result from achieving increased efficiency levels, above the level of the baseline model, in each product class. The engineering analysis considers technologies and design option combinations not eliminated in the screening analysis. The LCC analysis uses the cost-efficiency relationships developed in the engineering analysis.

DOE typically structures its engineering analysis around one of three methodologies. These are: (1) The design-option approach, which calculates the incremental costs of adding specific design options to a baseline model; (2) the efficiency-level approach, which calculates the relative costs of achieving increases in energy efficiency levels, without regard to the particular design options used to achieve such increases; and/or (3) the reverse engineering or cost-assessment approach, which involves a ''bottom-up'' manufacturing cost assessment based on a detailed bill of materials derived from teardowns of the product being analyzed. Deciding which methodology to use for the engineering analysis depends on the product, the design options under study, and any historical data that DOE can draw on.

Traditionally, DOE used a design-approach for all of its cost-benefit analyses. However, in more recent rulemakings, DOE has shifted to using an efficiency-level approach that may or may not be supplemented with a reverse-engineering analysis. The shift is due to past input from stakeholders who were concerned about the possibility of double-counting the energy-efficiency benefits of various design options. While the efficiency-level approach has the benefit of being absolute (each appliance has a tested efficiency and derivable manufacturing cost), it depends on the appliance actually having an efficiency test that manufacturers report. For product classes where there are no published efficiencies, a design-option approach remains the best alternative to an efficiency-level approach.

1. Approach

DOE solicited comments during the Framework public meeting and subsequent comment period on the possible approaches to the engineering analysis. ALS and AHAM stated during the Framework public meeting that they support the efficiency-level approach generally, and ACEEE commented that the efficiency-level approach should be verified with the design-option approach, recognizing that there is variation in how manufacturers implement design options. (Public Meeting Transcript, No. 5 at pp. 65, 73 and 107–110) AHAM commented that manufacturers will use different design options to achieve higher efficiency levels. (Public Meeting Transcript, No. 5 at p. 55) AHAM stated that the design-option approach has validity only for cooking products, but can serve as a means of cross-checking the analysis for the other products. (Public Meeting Transcript, No. 5 at p. 110) Whirlpool, GE, and AHAM stated that DOE should analyze CCWs, dishwashers, and dehumidifiers with the efficiency-level approach, while using a design-option approach for cooking products. (Whirlpool, No. 10 at pp. 4 and 7; GE, No. 13 at p. 3; AHAM, No 14 at pp. 4–9)

In comments submitted during the comment period after the Framework public meeting, the Joint Comment disagreed with using the efficiency-level approach as the primary means to estimate efficiency costs. The Joint Comment stated that the design-option approach is very important and should be included for all products as a complement to and validation of manufacturer estimates. The Joint Comment stated that manufacturers have historically estimated higher costs during the rulemaking stage, as compared to the actual costs when the standards take effect. In addition, the design-option approach allows interactions between design options to factor into the analysis to take advantage of synergies between measures and to

avoid double-counting of energy savings. The Joint Comment also expressed the need for DOE to make detailed manufacturing cost data publicly available, while maintaining manufacturers' confidentiality to protect their competitive positions. They described manufacturer cost estimates as a ''black box'' for other stakeholders. (Joint Comment, No. 9 at pp. 1–2)

DOE conducted the engineering analysis for this rulemaking using an efficiency-level approach supplemented by a design-option approach for CCWs, dishwashers, and dehumidifiers. DOE based this analysis on detailed incremental cost data primarily supplied by AHAM. DOE supplemented these industry-supplied data with its own design-option analysis by performing limited product efficiency testing and physical teardown analysis of several dishwashers and dehumidifiers, and by conducting manufacturer interviews for all three products. The teardown analysis used the reverse engineering approach and resulted in the production of detailed bills of materials for dishwashers and dehumidifiers.

For cooking products, DOE conducted the engineering analysis for this rulemaking using the design-option approach, under which it identifies incremental increases in manufacturer selling prices for each design option or combination of design options. As discussed in section I.B.1 of this ANOPR, DOE based much of this analysis on cost and efficiency information supplied in the previous rulemaking's analysis, with costs updated to reflect current pricing. DOE supplemented this analysis with new data that AHAM supplied for microwave ovens.

In summary, DOE used an efficiency-level approach supported by a design-option approach for CCWs, dishwashers, and dehumidifiers, and a design-option approach for cooking products. Stakeholders were supportive of this approach for cooking products. For CCWs, dishwashers, and dehumidifiers, DOE supplemented the industry-supplied data with consultation with outside experts and further review of publicly available cost and performance information. The supplemental design-option analysis (which included the reverse engineering) allowed for validation of the efficiency-level data, transparency in assumptions and results, and the ability to perform independent analyses for verification. In addition, the supplemental design-option analysis allowed DOE to generate analytically-derived cost-efficiency curves for product classes for which industry-supplied curves were not provided. The methodology DOE used to perform the efficiency-level and design-option analyses is described in further detail in the engineering analysis (Chapter 5 of the TSD).

The Joint Comment recommended that the computation of manufacturing costs also take into account the effect of market forces by using the simple average of the lowest cost estimate and the weighted-average cost. The Joint Comment stated that manufacturers with below-average costs will determine market prices, since higher-priced manufacturers will need to ''sharpen their pencils'' to reduce costs in order to maintain market share. Additionally, the Joint Comment stated that manufacturers should ensure that their cost estimates reflect mass production, since efficiency standards will make today's niche products commodity products in the future. (Joint Comment, No. 9 at p. 2) In response, we note that DOE conducted its analysis using the average costs provided by industry, because DOE believes these are the most representative of manufacturer costs. The AHAM-supplied average cost by efficiency level is shipment-weighted, which thus represents the most likely average cost for the industry to make an incremental efficiency change. The limited DOE reverse-engineering analysis based on two dishwasher platforms that span an efficiency range from 0.58 to 1.11 EF also largely agreed with the AHAM-supplied average incremental cost data. The effects of mass production were captured in the cost estimates and reflected in the production volume estimates that AHAM provided, as well as in the production volumes used in DOE's cost modeling.

The methodology DOE used to perform the efficiency-level and design-option analyses and reverse engineering are described in further detail in the engineering analysis chapter (Chapter 5) of the TSD.[20]

2. Technologies Unable To Be Included in the ANOPR Analysis

In performing the engineering analysis, DOE did not consider for analysis certain technologies that met the screening criteria but were unable to be further evaluated for one or more of the following reasons: (1) Data are not available to evaluate consumer usage of a product incorporating the technology, and, therefore the test procedure conditions and methods may not be applicable; (2) data are not available to evaluate the energy efficiency characteristics of the technology; and (3) available data suggest that the efficiency benefits of the technology are negligible. In the first two cases, DOE is unable to adequately assess how these technologies impact annual energy consumption. Although it did not consider these technologies further in the ANOPR analyses, DOE specifically seeks data and inputs on consumer usage, performance characteristics, and representative test methods and conditions to extend the analyses to these technologies and to evaluate the test procedures for the NOPR. This is identified as Issue 6 under ''Issues on Which DOE Seeks Comment'' in section IV.E of this ANOPR.

For technologies that lack consumer usage details (including operating conditions, duration, and frequency), DOE believes that the existing test procedures may specify conditions and methods that are not representative of actual usage. DOE further believes that even if data were available to amend the test procedure, such changes could be extensive enough to require total revision, which in turn could warrant the creation of a separate product class for that technology in the event that the test procedure changes indicated unique utility. For example, many dehumidifiers feature a built-in relative humidity (RH) sensor, or hygrometer, and most (including all units upon which DOE conducted reverse-engineering) feature a built-in humidistat, a device that allows the consumer to set the desired RH level for the room. When the humidity near the dehumidifier drops below the user-defined or pre-set value, the dehumidifier automatically shuts off. This sensor-controlled system presumably saves energy by avoiding running the dehumidifier when the RH is such that further dehumidification would be neither effective nor desirable. However, there is no industry consensus on patterns in ambient conditions and usage. If such parameters were known to DOE, the test procedure, which currently specifies constant ambient temperature and humidity, would need to be revised to measure energy savings associated with these technologies. Therefore, the built-in hygrometer/humidistat design option was not considered for further analysis. Similar exclusions based on lack of information on representative consumer usage were

[20] The engineering analysis does not take into account future increases in manufacturing efficiency which would affect the cost-efficiency relationship, due to the inherently speculative nature of such an inquiry. Accordingly, this analysis is based on extant products and manufacturing processes.

made for several other design options. For dehumidifiers, these included improved controls, improved flow-control devices, and low-standby-loss controls. For cooking products, these included thermostatically-controlled gas cooktop burners, electronic controls for electric cooktops, cooking sensors for microwave ovens, and steam cooking for electric ovens.

Furthermore, certain technologies cannot be measured according to the conditions and methods specified in the existing test procedure. For example, induction cooktops require ferromagnetic cookware in order to transfer energy to the food contents. The test block specified in the DOE test procedure is aluminum and thus is unable to measure the efficiency of induction cooktops. Although DOE is aware of a NIST study that suggests induction cooktops provide an efficiency improvement over baseline electric smooth cooktops, DOE did not consider this design option further in the ANOPR analysis because of the unresolved nature of the NIST data. DOE seeks input from stakeholders on whether the NIST data warrants further study for the NOPR. Similarly, for dehumidifiers DOE excluded improved defrost measures and washable air filters. Low-standby-loss electronic controls were not analyzed for electric cooktops, microwave ovens, and commercial clothes washer because, even though DOE considers consumer usage of these products to be well-defined, the current test procedures do not measure standby power. For microwave ovens specifically, for reasons described in section I.D.4.b, DOE is considering amending the test procedure to incorporate a measurement of standby power consumption. Other cooking product technologies that do not have energy benefits captured by the test procedures include radiant burners for gas ovens. As mentioned above, DOE specifically seeks data and inputs on representative test methods and conditions to extend the analyses to these technologies and to evaluate the test procedures for the NOPR. This is identified as Issue 6 under ''Issues on Which DOE Seeks Comment'' in section IV.E of this ANOPR.

Available data suggest that some of the design options would result in such small energy savings as to be negligible. For example, according to AHAM, dual magnetrons in microwave ovens do not improve energy efficiency due to the added losses associated with two magnetron heaters. AHAM also commented that are no significant energy savings opportunities associated with improved ceramic stirrers, modified waveguides, or added insulation. (AHAM, No. 17 at pp. 2–3) Similarly, DOE is unaware of any data that indicates a measurable energy efficiency impact of insulation in gas and electric coil cooktops. DOE will be reevaluating microwave oven design options through reverse-engineering, and will update the design options and efficiency levels as necessary for the NOPR. For commercial clothes washers, DOE removed improved drum designs for horizontal-axis clothes washers. Because DOE intends to focus on the technologies with measurable impact on efficiency, design options with negligible energy savings have been eliminated from further consideration.

For further information on these design options, refer to the market and technology assessment chapter (Chapter 3) and engineering analysis chapter (Chapter 5) of the TSD.

3. Product Classes, Baseline Models, and Efficiency Levels Analyzed

DOE conducted the engineering analysis on the single product class for CCWs and on all product classes for cooking products. For dishwashers, DOE identified baseline models and efficiency levels for the standard-sized dishwasher product class. It then scaled these standard dishwasher efficiency levels by the ratio of the current minimum efficiency standards for standard-versus-compact product classes to obtain the efficiency levels for compact-sized machines. For dehumidifiers, DOE conducted the engineering analysis on product classes for which it received incremental cost data, with the expectation that the analysis results will be extended to the remaining product classes in subsequent analyses.

For each product class, DOE selected a baseline model as a reference point, against which to measure changes resulting from energy conservation standards. The baseline model in each product class represents the basic characteristics of products in that class. Typically, it is a model that just meets current required energy conservation standards.

Tables II.13 through II.20 provide all of the efficiency levels DOE analyzed in the engineering analysis and the reference source of each level for each of the four appliance product classes analyzed. Many of these efficiency levels correspond to those set by energy efficiency programs or organizations, including the DOE and EPA Energy Star Program, and the CEE. DOE calculated other levels from existing levels to fill in gaps.

For the purpose of today's ANOPR, DOE considers the highest candidate standard levels, identified in section II.C.3 below, to be the maximum technologically feasible level. DOE notes that in some cases the highest efficiency level was identified based on a review of available product literature for products commercially available (*i.e.*, commercial clothes washers and dehumidifiers). For cooking products, the maximum levels identified in section II.C.3.c are based on data developed from the design option analysis in the previous rulemaking. (For more information, see the market and technology assessment (Chapter 3) and engineering analysis (Chapter 5) of the TSD.) Because DOE is required to determine the maximum technologically feasible energy efficiency level(s) in any notice of proposed rulemaking (42 U.S.C. 6295 (p)(2)), DOE seeks comment on the highest energy efficiency levels identified in today's ANOPR for the purpose of determining appropriate maximum technologically feasible energy efficiency levels in the proposed rule.

a. Dishwashers

For dishwashers, the energy conservation standards are expressed as a minimum EF, which is a function of cycles per kWh. In this rulemaking, DOE is using baseline models that have the following efficiencies, which are the current minimum standards for compact and standard capacity dishwashers (10 CFR 430.32(f)):

- Compact = 0.62 EF
- Standard = 0.46 EF

For standard dishwasher efficiency levels, DOE used the Energy Star criteria, CEE Tier 1 and 2 levels, and the current maximum technology that is commercially available. DOE also added two levels to fill the gap between CEE Tier 2 and the current maximum technology that is commercially available. DOE achieved scaling for compact dishwashers by using the ratio of current standard levels for standard size versus compact size units, although it determined the max-tech level by a review of technology in the current Energy Star database of certified dishwashers. Table II.13 lists the levels DOE analyzed for compact and standard dishwashers:

TABLE II.13.—EFFICIENCY LEVELS FOR RESIDENTIAL DISHWASHERS

| Efficiency levels | Energy Factor, (cycles/kWh) | |
|---|---|---|
| | Compact | Standard |
| Baseline | 0.62 | 0.46 |

TABLE II.13.—EFFICIENCY LEVELS FOR RESIDENTIAL DISHWASHERS—Continued

| Efficiency levels | Energy Factor, (cycles/kWh) | |
|---|---|---|
| | Compact | Standard |
| 1 | 0.78 | 0.58 |
| 2 | 0.84 | 0.62 |
| 3 | 0.88 | 0.65 |
| 4 | 0.92 | 0.68 |
| 5 | 1.01 | 0.72 |
| 6 | 1.08 | 0.80 |
| 7 | 1.74 | 1.11 |

DOE has specified the current Federal dishwasher standard as the baseline unit efficiency level, recognizing that a significant percentage of dishwashers on the market meet or exceed Energy Star levels. Whirlpool agreed with this approach, commenting that this baseline efficiency level maintains a necessary entry-level product. It noted that raising the baseline efficiency above the standard could make entry-level dishwashers unaffordable to low-end consumers, thus driving down market penetration of dishwashers and increasing hand-washing and the associated water and energy consumption. Whirlpool also commented that market-pull programs such as Energy Star are responsible for higher efficiency units on the market. (Public Meeting Transcript, No. 5 at pp. 59–60 and 66–67; Whirlpool, No. 10 at p. 8)

Northwest Power and Conservation Council (NWPCC), however, commented that the baseline EF may need to be raised above the current Federal standard. (Public Meeting Transcript, No. 5 at p. 57) Other stakeholders agreed. For example, Potomac commented that the baseline EF should represent a shipment-weighted average (likely to be between 0.46 and 0.58), which was the Energy Star level in effect at the time of the Framework public meeting. (Public Meeting Transcript, No. 5 at pp. 123–124) ACEEE commented that, since over 80 percent of the market meets the current Energy Star level, that level might be appropriate as the baseline. (Public Meeting Transcript, No. 5 at p. 124) After the Framework public meeting, the Multiple Water Organizations stated that the baseline should be above the current Federal standard, and that using the standard as the baseline would distort the analyses by making higher efficiency levels appear more costly and burdensome to achieve than they really are. (Multiple Water Organizations, No. 11 at p. 3)

In light of the above, DOE believes that setting the baseline at the current Federal standard appropriately analyzes entry-level dishwashers, and, thus, we are retaining an engineering baseline EF of 0.46 for standard-sized dishwashers. As will be discussed in section II.G.2.d, because some consumers already purchase products with efficiencies greater than the baseline levels, the LCC and PBP analysis considers the distribution of products currently sold. This is done to accurately estimate the percentage of consumers that would be affected by a particular standard level and to prevent overstating the benefits to consumers of increased minimum efficiency standards. Also, as will be discussed in section II.I.2, the resulting shipment-weighted efficiency (SWEF) that is determined from the distribution of products currently sold, as well as historical SWEFs, are accounted for in the NIA.

Whirlpool commented that, of the efficiency levels suggested in the Framework Document, efficiency levels up to an EF of 0.68 are reasonable, while the ''gap fill'' levels are arbitrary and the max-tech level is taken from an extremely expensive, niche machine from a manufacturer with negligible market share. (Whirlpool, No. 10 at p. 4) ACEEE and the Joint Comment recommended including an efficiency level for standard dishwashers between the 0.68 and 0.75 EF levels. They suggested an EF of 0.71 or 0.72 since there are three manufacturers with models currently at 0.72 EF. (Public Meeting Transcript, No. 5 at p. 124; Joint Comment, No. 9 at p. 4) DOE selected a 0.72 EF dishwasher as one of its teardown units on the basis of its highest level of design option combinations for a given platform. Additionally, AHAM stated that some efficiency levels exceed the point for which AHAM members can provide meaningful cost-efficiency data. (AHAM, No. 14 at p. 8) Thus, AHAM's aggregated manufacturer data were limited to a maximum EF of 0.72. DOE included this efficiency level in its analysis because one of the platforms upon which DOE performed the reverse-engineering analysis included a model at an EF of 0.72 as its highest efficiency version. DOE extended its analysis to include EF up to the max-tech level of 1.11 because this unit represented the high end of an additional product platform that DOE reverse-engineered.

The Joint Comment, Multiple Water Organizations, and Austin Water Utility (AWU) commented that DOE should conduct an analysis to determine whether it should define a standard for water consumption in addition to energy consumption. The Multiple Water Organizations recommended assigning a water factor to each proposed dishwasher efficiency level, and substantiating the relationship between energy and water consumption. They stated that water consumption is not so tightly correlated with energy consumption as to obviate the need for a separately stated WF. They referred DOE to databases maintained by NRCan and the Oregon Department of Energy for data on dishwasher energy and water consumption. (Public Meeting Transcript, No. 5 at p. 63; Joint Comment, No. 9 at pp. 3–4; Multiple Water Organizations, No. 11 at p. 3) DOE notes that it does not have statutory authority to prescribe a water consumption standard for dishwashers.

The City of Seattle suggested that DOE base the efficiency metric on energy and water use per place setting, rather than an EF according to the two product classes. (Public Meeting Transcript, No. 5 at p. 58) In response, we note that the current test procedure does not have any provision for defining efficiency as a function of the number of place settings a dishwasher can clean, and, therefore, DOE is currently unable to define an efficiency metric on this basis.

Whirlpool commented that cleaning performance must be taken into consideration at higher efficiency levels, and it stated that, at the max-tech level, cleaning performance would be highly suspect. (Public Meeting Transcript, No. 5 at p. 123) DOE notes that while there is no provision in the current DOE test procedure for measuring cleaning performance, interviews conducted by DOE with manufacturers indicated that the manufacturers are unwilling to compromise cleaning performance to achieve higher energy efficiency at the expense of market share. Manufacturer concerns over the potential loss of consumer utility at higher standard levels are discussed in Chapter 12, MIA, of the TSD.

b. Dehumidifiers

For dehumidifiers, each energy efficiency level is expressed as a minimum EF, which is a function of liters per kWh. In this rulemaking, DOE is using baseline models that have the following efficiencies, which are the current minimum standards for this product (EPACT 2005, section 135(c)(4); 42 U.S.C. 6295(cc); 70 FR 60407, 60414, (October 18, 2005); 10 CFR 430.32(v)):

- 25.00 pints/day or less = 1.00 EF
- 25.01–35.00 pints/day = 1.20 EF
- 35.01–45.00 pints/day = 1.30 EF
- 54.01–74.99 pints/day = 1.50 EF

DOE combined two product classes defined by EPACT 2005—25.00 pints/

day or less and 25.01–35.00 pints/day—to form a single product class of 0–35.00 pints/day for this analysis, due to the similar aggregation of data by AHAM in its manufacturer cost data submittal. EPACT 2005 also defines two other product classes, 45.01–54.00 pints/day and 75.00 pints/day or more, which DOE did not analyze since AHAM did not provide data for them. For purposes of conducting the NIA, DOE believes that the results from the product classes analyzed can be extended to the two statutorily-set product classes for which AHAM data (or comparable data) are unavailable. This approach is believed to be valid due to chassis and component similarities among the product classes, with primary differences due to scaling. DOE's approach for extending the results to the omitted product classes is discussed further in section II.I.3 of this ANOPR. DOE seeks comment on this approach to extend the engineering analysis to product classes for which a complete analysis was not performed.

In the Framework public meeting and during the Framework comment period, DOE received comments on the dehumidifier engineering analysis approach. All stakeholders agreed that DOE should analyze multiple product classes to capture the particular efficiency characteristics of varying capacity levels. Instead of extrapolating from one capacity platform, multiple stakeholders recommended analyzing a minimum of three capacities (small, medium, and large) to serve as a baseline. (Public Meeting Transcript, No. 5 at pp. 70 and 126–128; AHAM, No. 14 at p. 9; Joint Comment, No. 9 at p. 4 ; EEI, No. 7 at pp. 3 and 5) Whirlpool recommended defining ''small'' as <25 pints/day, ''medium'' as 35–45 pints/day, and ''large'' as 75+ pints/day capacity. (Whirlpool, No. 10 at p. 5) AHAM recommended that DOE analyze separately each capacity range mentioned in the Framework Document, because component availability, compressor efficiencies, and other factors vary widely. (AHAM, No. 14 at p. 9) As discussed above, DOE performed a complete analysis for the product classes for which AHAM supplied data, and extended the results to the remaining product classes in subsequent analyses.

DOE received numerous comments from stakeholders regarding the appropriateness of the dehumidifier energy efficiency levels under review in the Framework Document. AHAM stated concerns regarding the max-tech and some of the intermediate efficiency levels, recommending that DOE eliminate the EF level of 1.74 for the 35–45 pints/day product category and replace it with an EF level of 1.45–1.50, which AHAM argued is more representative of max-tech in that capacity range. (Public Meeting Transcript, No. 5 at pp. 72 and 129; AHAM, No. 14 at p. 9) EEI questioned some of the max-tech levels set for the lower capacity ranges. (Public Meeting Transcript, No. 5 at p. 126) Referring to Table 5.3 in the Framework Document, Whirlpool commented that the industry considers an EF of 1.4 for 35–45 pints/day as the *de facto* baseline efficiency standard. Thus, Whirlpool stated that DOE should drop the EF levels of 1.35 and below for this product class. Whirlpool also commented that the efficiency standards described by the EF level of 1.50 may not be attainable and should be reduced to an EF of 1.45. Whirlpool stated that an EF of 1.50 would make dehumidifiers so expensive that consumers would forgo them and live with damp, unhealthy basements instead. Thus, Whirlpool argued that an even higher EF level would not be economically justified, and it recommended that DOE drop the max-tech level EF of 1.74. (Whirlpool, No. 10 at p. 5)

Based on comments received, DOE analyzed three product classes (0–35.00 pints/day, 35.01–45.00 pints/day, and 54.01–74.99 pints/day) and five efficiency levels for each product class. The levels DOE analyzed are set forth in Table II.14. DOE also reviewed the efficiency levels proposed in the Framework Document using available databases, stakeholder interviews, and insights from the reverse engineering efforts. As discussed above, through its tear-down analysis, DOE found dehumidifiers with energy efficiency levels at the highest candidate standard level identified in section III of today's notice. Therefore, DOE believes that the efficiency levels defined in the Framework Document are representative of currently available models, and, therefore, we have retained them for further analysis. DOE seeks comment on the highest energy efficiency levels identified in today's ANOPR for the purpose of determining appropriate maximum technologically feasible energy efficiency levels in the proposed rule.

TABLE II.14.—EFFICIENCY LEVELS FOR RESIDENTIAL DEHUMIDIFIERS

| Efficiency levels | Energy factor (liters/kWh) | | |
|---|---|---|---|
| | 0–35.00 (pints/day) | 35.01–45.00 (pints/day) | 54.01–74.99 (pints/day) |
| Baseline | 1.20 | 1.30 | 1.50 |
| 1 | 1.25 | 1.35 | 1.55 |
| 2 | 1.30 | 1.40 | 1.60 |
| 3 | 1.35 | 1.45 | 1.65 |
| 4 | 1.40 | 1.50 | 1.70 |
| 5 | 1.45 | 1.74 | 1.80 |

c. Cooking Products

For residential cooking products (except for the prescriptive standard for gas products), there are no existing minimum energy conservation standards, as previous analyses failed to determine economic justification for them. The DOE test procedure uses an EF to rate the efficiency of cooking products. The EF for these products is the ratio of the annual useful cooking energy output of the residential cooking appliance (*i.e.*, the energy conveyed to the item being heated) to its total annual energy consumption. In accordance with the previous rulemaking for residential cooking products, DOE has selected the following baseline EFs for the product classes DOE is using in this rulemaking:

- Electric cooktops, open (coil) elements = 0.737 EF
- Electric cooktops, smooth elements = 0.742 EF
- Gas cooktops, conventional burners = 0.156 EF
- Electric ovens, standard with or without a catalytic line = 0.107 EF
- Electric ovens, self-clean = 0.096 EF
- Gas ovens, standard with or without a catalytic line = 0.030 EF

- Gas ovens, self-clean = 0.054 EF
- Microwave ovens = 0.557 EF

During the Framework public meeting, Whirlpool suggested that DOE might need to update baseline efficiency levels to reflect changes in current oven cavity volumes. DOE has defined baseline volumes for gas and electric non-self cleaning and self-cleaning ovens as 3.9 cubic feet in accordance with the previous rulemaking. Whirlpool believes this volume is too small to be representative of current ovens. At the Framework public meeting, Whirlpool stated that, since the mid-1990s, oven volumes have increased due to consumer usage patterns and consumer demand. As a result, Whirlpool stated that a more representative baseline volume would be five cubic feet. (Public Meeting Transcript, No. 5 at pp. 90 and 132) DOE has retained the 3.9 cubic feet volume to define the efficiency standard at baseline because there are a large number of ovens on the market sized for a 27-inch built-in installation which incorporate this cavity volume. The analysis accounts for larger oven cavity volumes by scaling the efficiency standard according to linear functions. DOE defined these scaling functions for gas and electric standard and self-cleaning ovens based on oven volume, since it is recognized that efficiency is affected by thermal mass and vent rates that are functions of volume. The scaling functions consist of linear equations relating EF to volume, which are described in greater detail in the TSD. DOE believes the slopes and intercepts of these equations from the previous rulemaking to still be valid. Whirlpool agreed that oven efficiency is a function of volume, and stated that the relationship is similar for gas and electric ovens. However, Whirlpool commented that DOE should review the linear equations from the previous rulemaking. (Public Meeting Transcript, No. 5 at pp. 90, 133, and 138) DOE has not identified any technological changes that would impact the efficiency-volume relationship, and, therefore, we are retaining the equations as defined.

Whirlpool also suggested that baseline efficiency levels might need to account for sealed burners and high-input-rate burners as separate product classes. (Public Meeting Transcript, No. 5 at p. 131) As discussed previously, DOE determined that sealed burners do not warrant a separate product class due to insufficient evidence that the performance of sealed burners is distinct from that of conventional open gas burners. Therefore, DOE analyzed a single product class for gas cooktops. Given the lack of empirical data, DOE will not analyze commercial-type ranges (the type of appliances normally incorporating high-input-rate burners) as a separate product class.

During the Framework public meeting, the AWU questioned whether baseline units would be equipped with standing pilot ignition systems, while Whirlpool stated that self-cleaning ovens do not have standing pilot lights. (Public Meeting Transcript, No. 5 at p. 136 and 138) In comments received after the Framework public meeting, EEI stated that gas pilot lights contribute to significant standby energy losses. According to EEI calculations, gas cooktop pilot lights (assuming 8000 hours of standby) account for 18.72 therms of the total annual baseline energy consumption of 33 therms, or 56.7 percent. Similarly, of the 29.6 therms annual baseline energy consumption for standard gas ovens, EEI attributes 14.0 therms, or 47.3 percent, to the pilot light. (EEI, No. 7 at p. 5) Conversely, AGA disputed DOE's presumption of significant energy savings associated with the elimination of standing pilot lights. AGA argued that it is likely that less that 20 percent of gas ranges currently have pilot ignition, and therefore potential energy savings will be less than the 0.06 quads over 30 years that DOE had estimated in the prior rulemaking. AGA concluded that pilot ignition cooking appliances are a niche product with unique utility, and their elimination would result in equity issues to consumers for whom installing electrical service adjacent to the range hookup is not economically justified. (AGA, No. 12 at pp. 2–3) DOE has structured the analysis for standing pilot igntion systems as a design option associated with the baseline configurations because DOE has determined that cooktops incorporating such ignition systems do not provide unique utility. Power outages are not frequent and long enough for residential electricity customers to consider operation during a lack of electric power a significant utility. Between 90 and 93 percent of such customers experience no electricity outages longer than four hours per year.[21]

To analyze the cost-efficiency relationships for each of the classes of cooking products, DOE retained the efficiency levels from the previous rulemaking for residential cooking products. For gas cooktops/conventional burners and gas standard ovens with or without a catalytic line, the baseline efficiency level assumes that the product is equipped with standing pilot lights and the first standards efficiency level corresponds to the elimination of standing pilot lights. However, because the cleaning cycle of gas self-clean ovens requires electrical energy use, EPCA in effect requires that such ovens currently be equipped with a non-standing pilot ignition system because a standing pilot light ignition system is disallowed if there is an electrical cord provided on the product. Therefore, the baseline efficiency level for these ovens assumes they lack a standing pilot light, as do all of the efficiency levels DOE analyzed for this rulemaking. Further, the first standards efficiency level is not based on elimination of a standing pilot, but rather on the addition of the forced convection design option. For microwave ovens, DOE used the efficiency levels corresponding to those in the previous rulemaking, after first determining that these levels are representative of the range of efficiencies of currently-available products. Tables II.15 through II.19 set forth the levels DOE analyzed for cooking products. For open coil-type and smooth electric cooktops, only a single standards efficiency level is analyzed because design options associated with higher efficiency levels were either screened out, as described in section II.B.2.c.1, or eliminated from the analysis for the reasons described in section II.C.2. For gas and electric ovens, the efficiency levels reported in Tables II.17 and II.18 are slightly different than those identified in the previous rulemaking's analysis. Refer to Chapter 5 of the TSD for an explanation of the cause for these slight differences in the oven efficiency levels.

TABLE II.15.—EFFICIENCY LEVELS FOR RESIDENTIAL GAS COOKTOPS

| | Conventional burners | |
|---|---|---|
| Efficiency levels | Cooking efficiency | Energy factor |
| Baseline | 0.399 | 0.156 |
| 1 | 0.399 | 0.399 |
| 2 | 0.420 | 0.420 |

Whirlpool and GE both commented that gas cooktop efficiencies should scale with burner size, in a similar manner as the relationship between oven efficiency and volume. (Public Meeting Transcript, No. 5 at pp. 134–135) The test procedure, however, currently contains provisions for testing gas cooktop burners with different size test blocks, depending on maximum burner firing rate. Because the test

[21] A. P. Sanghvi, Cost-Benefit Analysis of Power System Reliability: Determination of Interruption Costs. Prepared by RCG/Hagler Bailly, Inc., Arlington, VA for Electric Power Research Institute, Palo Alto, CA, EL–6791. Vol. 2, p. 3–3 and Vol. 3, p. 3–3. Available online at *http://www.epri.com.*

procedure already accounts for burner size, DOE will retain the existing efficiency levels without a scaling function for burner size.

TABLE II.16.—EFFICIENCY LEVELS FOR RESIDENTIAL ELECTRIC COOKTOPS

| Efficiency levels | Open (coil) elements | | Smooth elements | |
|---|---|---|---|---|
| | Cooking efficiency | Energy factor | Cooking efficiency | Energy factor |
| Baseline | 0.737 | 0.737 | 0.742 | 0.742 |
| 1 | 0.769 (max-tech) | 0.769 | 0.753 (max-tech) | 0.753 |

DOE received a comment from Whirlpool that the efficiency levels for electric cooktops listed in Table II.16 are representative of currently available technology. (Public Meeting Transcript, No. 5 at p. 137)

TABLE II.17.—EFFICIENCY LEVELS FOR RESIDENTIAL GAS OVENS

| Efficiency levels | Standard oven | | Self-cleaning oven | |
|---|---|---|---|---|
| | Cooking efficiency | Energy factor | Cooking efficiency | Energy factor |
| Baseline | 0.059 | 0.0298 | 0.071 | 0.0540 |
| 1 | 0.058 (globar ignition) | 0.0536 | 0.088 | 0.0625 |
| 2 | 0.061 | 0.0566 | 0.088 | 0.0627 |
| 3 | 0.062 | 0.0572 | 0.089 (max-tech) | 0.0632 |
| 4 | 0.065 | 0.0593 | | |
| 5 | 0.065 | 0.0596 | | |
| 6 | 0.066 (max-tech) | 0.0600 | | |
| 1a[1] | 0.058 | 0.0583 | | |

**Note:** Efficiency levels 1 and 1a correspond to designs that are utilized for the same purpose—eliminate the need for a standing pilot—but the technologies for each design are different. Efficiency level 1 is a hot surface ignition device while efficiency level 1a is a spark ignition device. Efficiency level 1a is presented at the end of the table because efficiency levels 2 through 6 are derived from efficiency level 1.

TABLE II.18.—EFFICIENCY LEVELS FOR RESIDENTIAL ELECTRIC OVENS

| Efficiency levels | Standard oven | | Self-cleaning oven | |
|---|---|---|---|---|
| | Cooking efficiency | Energy factor | Cooking efficiency | Energy factor |
| Baseline | 0.122 | 0.1066 | 0.138 | 0.1099 |
| 1 | 0.128 | 0.1113 | 0.138 | 0.1102 |
| 2 | 0.134 | 0.1163 | 0.142 (max-tech) | 0.1123 |
| 3 | 0.137 | 0.1181 | | |
| 4 | 0.140 | 0.1206 | | |
| 5 | 0.141 (max-tech) | 0.1209 | | |

TABLE II.19.—EFFICIENCY LEVELS FOR RESIDENTIAL MICROWAVE OVENS

| Efficiency levels | Energy factor |
|---|---|
| Baseline | 0.557 |
| 1 | 0.586 |
| 2 | 0.588 |
| 3 | 0.597 |
| 4 (max-tech) | 0.602 |

AHAM noted that many microwave oven design features impact energy efficiency, and that the choice of features may be dictated by marketplace demands. For example, higher wattage cavity lamps produce a brightly illuminated cavity interior, but increasing the lamp wattage by only 10 watts could lower efficiency by about 0.5 percent. Even so, some manufacturers select higher wattage lamps for product differentiation. Manufacturers also may focus on features that optimize cooking performance, such as mode stirrers, that may also be accompanied by small increases in energy consumption. (AHAM, No. 17 at p. 2) DOE recognizes that manufacturers may choose to incorporate features that enhance product differentiation at the expense of energy consumption. For a given energy efficiency level, manufacturers must weigh the appropriate combination of design options and other features to meet the energy consumption requirement set forth in the relevant efficiency standard.

d. Commercial Clothes Washers

For all CCWs, EPCA establishes the following energy and water conservation standards: A minimum MEF of 1.26 and a maximum WF of 9.5. (EPACT 2005, section 136(e); 42 U.S.C. 6313(e); see also 70 FR 60416 (Oct. 18, 2005), adding 10 CFR 431.156) In this rulemaking, DOE is using a baseline model that has those efficiencies.

As indicated previously for CCWs, EPCA mandates that DOE determine both a minimum MEF and a maximum WF. For the purposes of analyzing the cost-efficiency relationships for this product, DOE based some of the efficiency levels on the MEF and WF specifications prescribed by the Energy Star program and the CEE Commercial Clothes Washer Initiative, and the maximum levels that are currently commercially available. These levels are set forth in the Table II.20:

TABLE II.20.—EFFICIENCY LEVELS FOR COMMERCIAL CLOTHES WASHERS

| Efficiency levels | Modified Energy Factor ($ft^3/kWh$) | Water Factor ($gallons/ft^3$) |
|---|---|---|
| Baseline | 1.26 | 9.5 |
| 1 | 1.42 | 9.5 |
| 2 | 1.60 | 8.5 |
| 3 | 1.72 | 8.0 |
| 4 | 1.80 | 7.5 |
| 5 | 2.00 | 5.5 |
| 6 (max-tech) | 2.20 | 5.1 |

In the Framework public meeting and during the Framework comment period, DOE received comments regarding how some energy efficiency levels under consideration for CCWs could eliminate vertical-axis clothes washers. GE stated concerns regarding proposed standards levels for CCWs. GE commented that low WFs may not be attainable with vertical-axis clothes washers, thereby eliminating this low-cost platform from the CCW market, which in turn could lead to a decline in the number of clothes washers available in multi-family housing due to increased costs. GE urged DOE to consider the consumer utility of vertical-axis clothes washers, and it further argued that some proposed standards levels may not be attainable even with horizontal-axis clothes washers. (Public Meeting Transcript, No. 5 at p. 45; GE, No. 13 at p. 3) Whirlpool argued that a WF below 9.5 could render a top-loading CCW incapable of washing clothes properly and that NAECA would not allow the elimination of a product class. (Whirlpool, No. 10 at p. 7) In response to these comments, DOE notes that it placed all CCWs in one product class pursuant to EPACT 2005 (see discussion of product class definition for CCWs in section II.A.1.d of this ANOPR), which applies a single standard for energy efficiency and a single standard for water efficiency to all of the CCWs. (EPACT 2005, section 136(e); 42 U.S.C. 6313(e)) Thus, as discussed in II.C.3.d above, DOE is treating commercial clothes washers as a single class that encompasses both top- and front-loading units.

Several stakeholders requested that DOE consider additional efficiency levels for the CCW rulemaking. For example, ACEEE requested that DOE evaluate a 2.0 MEF and 5.5 WF level, since multiple clothes washer models with this efficiency level are on the market. (Public Meeting Transcript, No. 5 at p. 51; Public Meeting Transcript, No. 5 at p. 121) Potomac recommended that DOE consider the CEC waiver petition's WF breakpoint of 6.0.[22] (Public Meeting Transcript, No. 5 at p. 118) The Joint Comment and the Multiple Water Organizations requested a gap-fill level between the 1.8 MEF and the 2.79 MEF max-tech efficiency levels at 2.0 MEF/5.5 WF as per CEE Tier 3B, or 2.0 MEF/6.0 WF. (Joint Comment, No. 9 at p. 5; Multiple Water Organizations, No. 11 at p. 1) As shown in Table II.20, DOE is evaluating a level of 2.0 MEF combined with a 5.5 WF.

DOE received numerous comments regarding the appropriateness of the max-tech level defined in the CCW section of the Framework Document. AHAM objected to the hybrid approach of choosing the MEF from one washer model while choosing a WF from another, as this does not represent an actual CCW. (Public Meeting Transcript, No. 5 at p. 46) AHAM subsequently recommended the elimination of this efficiency level. (AHAM, No. 14 at p. 7) According to Whirlpool, this max-tech level was particularly objectionable because of the hybrid origin of the MEF and WF. (Public Meeting Transcript, No. 5 at p. 118) Some stakeholders countered that the hybrid approach is a reasonable way to estimate what could be attainable but that the economics of such a CCW would probably preclude such a standards level. (Public Meeting Transcript, No. 5 at p. 121; Joint Comment, No. 9 at p. 5) EEI and multiple stakeholders also suggested that, if DOE were to reject the hybrid approach, DOE could instead consider a max-tech level of 2.48 MEF and 3.5 WF, since that represents an actual clothes washer. (EEI, No. 7 at p. 6; Multiple Water Organizations, No. 11 at p. 2) In response to these comments, DOE subsequently altered the Framework Document exploratory efficiency levels to include a max-tech level where it took the MEF and WF from an existing clothes washer.

[22] DOE published a **Federal Register** notice on February 6, 2006 acknowledging receipt of and summarizing the California Energy Commission's Petition for Exemption from Federal Preemption of California's Water Conservation Standards for Residential Clothes Washers (71 FR 6022) (Docket No. EE–RM–PET–100).

In addition to comments regarding the appropriateness of the max-tech level, DOE received further comments regarding adding more efficiency levels to the CCW analysis during the Framework public meeting and through subsequent written comments. ALS agreed with analyzing all proposed effiency levels with the exception of max-tech, which ALS rejected because of the hybrid origin of the MEF and WF, and because DOE derived these levels from residential clothes washer data. (Public Meeting Transcript, No. 5 at pp. 117–118) Multiple Water Organizations recommended that DOE adopt step-like incremental increases in both MEF and WF for each efficiency level. (Multiple Water Organizations, No. 11 at p. 2)

During the Framework comment period, DOE received multiple comments regarding the applicability of residential clothes washer efficiency levels in a commerical setting. Both Whirlpool and GE submitted that the efficiency levels achieved by residential clothes washers are not representative of levels achievable by commercial products, which experience harder and more frequent use than residential products. (Whirlpool, No. 10 at p. 9; GE, No. 13 at p. 3) AHAM stated that the efficiency levels set forth in the Framework Document are not appropriate and recommended that DOE consider the different nature of CCWs. (AHAM, No. 14 at p. 7) DOE recognizes that current product offerings in the commercial laundry market do not include products at each efficiency level for which DOE is performing an analysis. DOE notes, however, that products exist that meet all the levels specified, so manufacturing cost data are available to assess CCWs that meet or exceed the levels specified. Since the standards are minimum performance standards, not presciptive standards, these levels do not represent predetermined technologies and are therefore not tied to the residential or commercial markets.

DOE also received comments regarding data requests for the CCW engineering analysis. Whirlpool stated

that data for the baseline level are readily available, and that data for some higher efficiency levels are also available. (Whirlpool, No. 10 at p. 9) According to Whirlpool, the low volume of the U.S. CCW market, the limited scope of products, and the small number of manufacturers complicates the task of establishing manufacturing cost data in a way that does not lead to the disclosure of confidential information. (Whirlpool, No. 10 at p. 12) The Multiple Water Organizations requested that DOE work closely with manufacturers to obtain and make manufacturing cost data available before the ANOPR is published. (Multiple Water Organizations, No. 11 at p. 2) DOE worked with AHAM and stakeholders to obtain as much data as possible. DOE withheld from publication whatever data could not be aggregated to maintain confidentiality.

Additional detail on the product classes, baseline models, and efficiency levels can be found in Chapter 5 of the TSD.

4. Cost-Efficiency Results

DOE reports the results of the engineering analysis as cost-efficiency data (or ''curves'') in the form of incremental manufacturing costs versus EF (or MEF and WF for CCWs). These data form the basis for subsequent analyses in the ANOPR. DOE received industry-aggregated curves for CCWs, dishwashers, and dehumidifiers from AHAM. DOE validated these data through manufacturer interviews for all three products and the independent generation of similar curves for dishwashers and dehumidifiers. DOE based these curves on testing and reverse engineering activities, which resulted in the generation of a detailed bill of materials for each product.

For cooking products, DOE retained the cost data at each efficiency level that it had defined in the previous rulemaking's analysis, updated by scaling incremental manufacturing costs by the PPI from 1990 (the reference year in the prior analysis) to 2006. In addition, for microwave ovens, DOE received efficiency test data submitted by AHAM. The following table summarizes the data that DOE's engineering analysis used to generate the cost-efficiency results.

TABLE II.21.—ENGINEERING ANALYSIS METHODS

| Method | Products | | | |
|---|---|---|---|---|
| | Cooking products | Dishwashers | Dehumidifiers | Commercial clothes washers |
| AHAM Data | √ | √ | √ | √ |
| Review of Past TSD | √ | | | √ |
| Product Teardown | | √ | √ | |
| Product Testing | | √ | | |
| Manufacturer Interviews | | √ | √ | √ |

a. Dishwashers

For dishwashers, AHAM provided manufacturing cost data up to an efficiency level of 0.72 EF. DOE supplemented AHAM's efficiency-level cost data submittal with cost information generated from the efficiency testing and teardown of currently-available dishwashers. DOE conducted efficiency testing of six dishwashers, representing a range of EFs across two different product platforms. Beyond the measurements required to measure the performance according to the DOE test procedure, the testing consisted of multi-submetering to record disaggregated energy consumption associated with various design options. The EFs of the washers tested were 0.58, 0.64, 0.68, 0.78, 0.93, and 1.11.

In addition to efficiency testing, DOE performed reverse engineering on the six units tested, as well as on an additional dishwasher with an EF of 0.72. This last dishwasher was not yet available on the market at the time of testing but was released for high-volume manufacturing three weeks later. To validate the AHAM data and supply incremental cost information above the 0.72 EF level, DOE tore down the seven dishwashers (three high-efficiency dishwashers that shared the same basic platform and four other washers spanning the efficiency range 0.58–0.72 EF). A comparison of AHAM's and DOE's costs indicates that DOE's cost estimates are somewhat lower that the AHAM average costs, but above the AHAM minimum.

The purpose of comparing DOE's and AHAM's results was to assess the reasonableness of AHAM's data submission, and DOE believes this has been demonstrated. DOE's teardown sample size was very small and could not be expected to adequately capture the variability of all products in the marketplace. Another reason why DOE's results are lower than AHAM's average is the influence of product platforms. DOE's teardown analysis and manufacturer interviews confirmed that upgrading components can only raise EF to a certain point and that overall system architecture limits EF. The platform which DOE reverse-engineered is among the most efficient available from large-volume manufacturers (with an EF that spans the range of 0.58 to 0.72). Thus, it is reasonable to assume that starting from a lower efficiency platform will result in larger incremental costs. The results of the testing and teardown analysis, including the list of design options identified and other observations, can be further reviewed in Chapter 5 of the TSD. If the reverse-engineering sample size had been larger, it is reasonable to assume that the range of incremental costs by efficiency level would have broadened. As a result, DOE feels that the AHAM submission is reasonable and reflective of the gamut of dishwasher platforms and their inherent efficiencies on the market today.

Standard dishwasher cost-efficiency results are shown in Table II.22. DOE was unable to obtain incremental manufacturing cost information for compact dishwashers. Accordingly, DOE particularly seeks stakeholder feedback on how it can extend the results of the analysis for the standard-class dishwashers to compact dishwashers. This is identified as Issue 4 under ''Issues on Which DOE Seeks Comment'' in section IV.E of this ANOPR.

TABLE II.22.—INCREMENTAL MANUFACTURING COST FOR RESIDENTIAL STANDARD DISHWASHERS

| Standard | |
|---|---|
| Energy factor (*cycles/kWh*) | Incremental cost |
| Baseline | |
| 0.58 | $4.01 |
| 0.62 | 7.38 |

TABLE II.22.—INCREMENTAL MANUFACTURING COST FOR RESIDENTIAL STANDARD DISHWASHERS—Continued

| Standard | |
|---|---|
| Energy factor (*cycles/kWh*) | Incremental cost |
| 0.65 | 14.00 |
| 0.68 | 30.35 |
| 0.72 | 71.38 |
| 0.80 | 129.28 |
| 1.11 | 180.66 |

b. Dehumidifiers

For dehumidifiers, AHAM collected incremental manufacturing cost data from its member companies and submitted them to DOE. DOE validated AHAM's efficiency-level cost data submittal with a design-options-based/reverse engineering analysis, tearing down 14 dehumidifiers representing a range of capacities and efficiencies. In generating the cost-efficiency results, DOE combined the first two product classes proposed by EPACT 2005, 25.00 pints/day or less and 25.01–35.00 pints/day, because some manufacturers did not have shipments in the 25.01 to 35.00 pints/day category. To prevent disclosure of sensitive information, AHAM did not provide data for the EPACT 2005 categories 45.01–54.00 pints/day and 75 pints/day and greater because fewer than three manufacturers produce units in these categories. Therefore cost-efficiency curves were only generated for the following product classes: 0 to 35.00 pints/day, 35.01 to 45.00 pints/day, and 54.01 to 74.99 pints/day. Results of the reverse engineering analysis for the product classes analyzed were in good agreement with the AHAM data. The following table shows the dehumidifier cost-efficiency results. AHAM provided all of the data for the three product classes analyzed, except the value for an EF of 1.74 in the 35.01 to 45.00 product class, which DOE extrapolated from the AHAM data.

TABLE II.23.—INCREMENTAL MANUFACTURING COST FOR RESIDENTIAL DEHUMIDIFIERS

| Product class, *pints/day* | Energy factor (*L/kWh*) | Incremental cost |
|---|---|---|
| 0 to 35.00 | Baseline | |
| | 1.25 | $3.12 |
| | 1.30 | 4.92 |
| | 1.35 | 10.41 |
| | 1.40 | 18.80 |
| | 1.45 | 25.61 |
| 35.01 to 45.00 | Baseline | |
| | 1.35 | 6.11 |
| | 1.40 | 14.47 |
| | 1.45 | 22.68 |
| | 1.50 | 32.84 |
| | 1.74 | 74.72 |
| 54.01 to 74.99 | Baseline | |
| | 1.55 | 4.18 |
| | 1.60 | 8.00 |
| | 1.65 | 12.36 |
| | 1.70 | 23.18 |
| | 1.80 | 33.94 |

c. Cooking Products

For conventional cooking products, DOE derived the cost-efficiency curves from the previous rulemaking's analysis, scaling the incremental manufacturing costs by the PPI in accordance with stakeholder comments. Tables II.24 through II.30 and Table II.32 detail the cost-efficiency results.

TABLE II.24.—INCREMENTAL MANUFACTURING COST FOR RESIDENTIAL GAS COOKTOPS

| Level | Efficiency level source | EF | Incremental cost |
|---|---|---|---|
| 0 | Baseline | 0.156 | |
| 1 | 0 + Electronic Ignition | 0.399 | $12.06 |
| 2 | 1 + Sealed Burners | 0.420 | 32.06 |

TABLE II.25.—INCREMENTAL MANUFACTURING COST FOR RESIDENTIAL ELECTRIC COIL COOKTOPS

| Level | Efficiency level source | EF | Incremental cost |
|---|---|---|---|
| 0 | Baseline | 0.737 | |
| 1 | 0 + Improved Contact Conductance | 0.769 | $2.28 |

TABLE II.26.—INCREMENTAL MANUFACTURING COST FOR RESIDENTIAL ELECTRIC SMOOTH COOKTOPS

| Level | Efficiency level source | EF | Incremental cost |
|---|---|---|---|
| 0 | Baseline | 0.742 | ..... |
| 1 | 0 + Halogen Lamp Element | 0.753 | $89.09 |

TABLE II.27.—INCREMENTAL MANUFACTURING COST FOR RESIDENTIAL GAS STANDARD OVENS

| Level | Efficiency level source | EF | Incremental cost |
|---|---|---|---|
| 0 | Baseline | 0.0298 | ..... |
| 1 | 0 + Electric Globar Ignition | 0.0536 | $12.06 |
| 2 | 1 + Improved Insulation | 0.0566 | 15.64 |
| 3 | 2 + Improved Door Seals | 0.0572 | 16.72 |
| 4 | 3 + Forced Convection | 0.0593 | 38.86 |
| 5 | 4 + Reduced Vent Rate | 0.0596 | 40.48 |
| 6 | 5 + Reduced Conduction Losses | 0.0600 | 44.11 |
| 1a | 0 + Electronic Spark Ignition | 0.0583 | 15.00 |

TABLE II.28.—INCREMENTAL MANUFACTURING COST FOR RESIDENTIAL GAS SELF-CLEANING OVENS

| Level | Efficiency level source | EF | Incremental cost |
|---|---|---|---|
| 0 | Baseline | 0.0540 | ..... |
| 1 | 0 + Forced Convection | 0.0625 | $11.01 |
| 2 | 1 + Reduced Conduction Losses | 0.0627 | 15.38 |
| 3 | 2 + Improved Door Seals | 0.0632 | 16.60 |

TABLE II.29.—INCREMENTAL MANUFACTURING COST FOR RESIDENTIAL ELECTRIC STANDARD OVENS

| Level | Efficiency level source | EF | Incremental cost |
|---|---|---|---|
| 0 | Baseline | 0.1066 | ..... |
| 1 | 0 + Reduced Vent Rate | 0.1113 | $1.63 |
| 2 | 1 + Improved Insulation | 0.1163 | 4.84 |
| 3 | 2 + Improved Door Seals | 0.1181 | 8.53 |
| 4 | 3 + Forced Convection | 0.1206 | 48.14 |
| 5 | 4 + Reduced Conduction Losses | 0.1209 | 51.69 |

TABLE II.30.—INCREMENTAL MANUFACTURING COST FOR RESIDENTIAL ELECTRIC SELF-CLEANING OVENS

| Level | Efficiency level source | EF | Incremental cost |
|---|---|---|---|
| 0 | Baseline | 0.1099 | ..... |
| 1 | 0 + Reduced Conduction Losses | 0.1102 | $4.37 |
| 2 | 1 + Forced Convection | 0.1123 | 43.98 |

For conventional ovens, the linear relationships for EF versus volume allow scaling of the efficiency levels to cavity volumes other than the baseline volume. Table II.31 shows the slopes and intercepts of these relationships. The table does not show values for every oven efficiency level because the previous rulemaking did not analyze data at every efficiency level, and because certain design options have been screened out in the current analysis.

TABLE II.31.—SLOPES AND INTERCEPTS FOR OVEN ENERGY FACTOR VERSUS VOLUME RELATIONSHIP

| Level | Intercepts, Electric | | Intercepts, Gas | |
|---|---|---|---|---|
| | Slope = –0.0157 | | Slope = –0.0073 | |
| | Standard | Self-Clean | Standard | Self-Clean |
| 0 | ..... | 0.1632 | 0.0865 | 0.0865 |
| 1 | 0.1752 | ..... | 0.0895 | ..... |
| 2 | 0.1802 | ..... | ..... | ..... |

TABLE II.31.—SLOPES AND INTERCEPTS FOR OVEN ENERGY FACTOR VERSUS VOLUME RELATIONSHIP—Continued

| Level | Intercepts, Electric | | Intercepts, Gas | |
|---|---|---|---|---|
| | Slope = –0.0157 | | Slope = –0.0073 | |
| | Standard | Self-Clean | Standard | Self-Clean |
| 3 | 0.1822 | | 0.0935 | |

**Note:** EF = (Slope x Volume) + Intercept where Volume is expressed in cubic feet.

For microwave ovens, the design options and efficiency levels DOE analyzed are those identified in the previous rulemaking, with incremental manufacturing costs scaled by the PPI.

DOE specifically seeks stakeholder feedback on the approach of analyzing additional design options that would result in a lowering of the energy consumption of non-cooking features (*e.g.*, standby power), even though the test procedure currently does not account for such usage in EF. This is identified as Issue 5 under ''Issues on Which DOE Seeks Comment'' in section IV.E of this ANOPR. It should be noted that DOE is considering the addition of standby power measurement to the test procedure, as identified as Issue 1 under ''Issues on Which DOE Seeks Comment'' in section IV.E of this ANOPR. The table below shows the cost-efficiency results for microwave ovens.

TABLE II.32.—INCREMENTAL MANUFACTURING COST FOR RESIDENTIAL MICROWAVE OVENS

| Level | Efficiency level source | EF | Incremental cost |
|---|---|---|---|
| 0 | Baseline | 0.557 | |
| 1 | 0 + More Efficient Power Supply | 0.586 | $8.68 |
| 2 | 1 + More Efficient Fan | 0.588 | 17.95 |
| 3 | 2 + More Efficient Magnetron | 0.597 | 32.53 |
| 4 | 3 + Reflective Surfaces | 0.602 | 51.11 |

d. Commercial Clothes Washers

For CCWs, DOE derived the cost-efficiency curves from AHAM-submitted data. Due to limited data collected, AHAM supplied cost data only at 1.42 MEF/9.5 WF and 2.0 MEF/5.5 WF. Based on a survey of CCWs currently sold, it is DOE's understanding that all products sold which meet an efficiency level of 1.6 EF/8.5 MEF or greater are based on a horizontal axis platform. Furthermore, based on interviews with manufacturers of CCWs, it is DOE's understanding that energy and water efficient vertical-axis-based designs currently sold in the residential market are not being considered for market introduction into the commercial laundry sector. Such designs include spray rinse and non-agitator vertical-axis clothes washers that replace the agitator with an impeller, nutating plate, or other alternative manipulator. Manufacturers commented during interviews that such designs are not appropriate for the heavy-duty demands of commercial laundry applications.

Notwithstanding the lack of manufacturing data for CCWs at several efficiency levels, the information gathered from the market research and manufacturer interviews suggests that CCWs cannot attain satisfactory cleaning performance at or above efficiency level 2 (1.6 MEF and 8.5 WF) without the use of horizontal-axis technology. Thus, since DOE believes vertical-axis CCWs cannot perform satisfactorily at these efficiency levels, DOE assumes that all units sold at efficiency level 2 and higher will be horizontal-axis CCWs and likely, more efficient than required. In determining the incremental costs associated with these efficiency levels, DOE notes that, like dishwashers, CCWs are platform-driven products where a given platform achieves an inherent efficiency based on design and an optimized control strategy. This inherent efficiency can be further enhanced via design option improvements that the control strategy can incorporate. However, a manufacturer may also choose to offer a range of product efficiencies and redesign existing products to offer a less-efficient unit for marketing or other reasons. The per-unit cost of redesigning a product to reduce the efficiency is typically low, though a manufacturer will have to pay an up-front cost to develop the new controller, pay for certifications, etc. Thus, there is a disincentive to develop less-efficient units (*i.e.*, ones that marginally meet the standard) unless the market is large enough to have the scale to support multiple price points based in part on energy efficiency.

Thus, it is not surprising that the CCW market currently does not offer a wide range of efficiencies for a given axis of rotation. The scale of the market is small, and the presence of an Energy Star program deters manufacturers from offering CCWs that have efficiencies that lie between the baseline and Energy Star efficiency levels, as such units would be more costly than a baseline unit yet not be eligible for rebates from utilities. Since all manufacturers currently produce horizontal-axis CCWs in the range of 2.0 MEF/5.5 WF, no platform change would be required to the existing horizontal-axis CCW lines to meet any efficiency level up to and including 2.0 MEF/5.5 WF.[23] During interviews with DOE, manufacturers provided estimates of the cost increment to meet 2.2 MEF/5.1 WF, ranging from $316 to $450. DOE notes that $316 is the manufacturing cost increment provided by AHAM to take a CCW from a baseline efficiency level of 1.26 MEF/9.5 WF to a level of 2.0 MEF/5.5 WF. Thus, DOE expects that the incremental costs between 1.60 MEF/8.5 WF and 2.2 MEF/5.1 WF would be constant at the same value as those provided by AHAM for

[23] DOE recognizes, however, that changes to the horizontal-axis CCW lines may be needed to meet higher production volumes. Any investment to the horizontal-axis CCW production lines to accommodate higher sales volumes were not captured in this analysis. For a qualitative discussion of capital expenditures required for such a product conversion, see the preliminary manufacturer impact analysis chapter (Chapter 12) of the TSD.

the level 2.0 MEF/5.5 WF. For further information, see Chapter 5 of the TSD.

DOE specifically seeks feedback on the validity of this approach. DOE seeks information about lower-cost alternatives to horizontal-axis designs for levels greater than 1.42 MEF/9.5 WF and lower than 2.0 MEF/5.5 WF. Additionally, DOE seeks information that would enable it to change the energy and water features of the 2.0 MEF/5.5 WF level to allow for manufacturer cost differentiation at the lower (and the higher) levels. DOE is also interested in receiving comment on how to weigh the impacts of a market-shift from vertical-axis technologies to horizontal-axis technologies. These issues are identified as Issue 3 under ''Issues on Which DOE Seeks Comment'' in section IV.E of this ANOPR.

The following table shows the preliminary commercial clothes washer cost-efficiency results.

TABLE II.33.—INCREMENTAL MANUFACTURING COST FOR COMMERCIAL CLOTHES WASHERS

| Efficiency levels (MEF/WF) | Incremental cost |
|---|---|
| Baseline | ..... |
| 1.42/9.5 | $74.73 |
| 1.60/8.5 | 316.35 |
| 1.72/8.0 | 316.35 |
| 1.80/7.5 | 316.35 |
| 2.00/5.5 | 316.35 |
| 2.20/5.1 | 316.35 |

Additional detail on the cost-efficiency results can be found in Chapter 5 of the TSD.

*D. Energy Use and Water Use Characterization*

The purpose of the energy use characterization, which DOE performed for the four appliance products covered in the ANOPR, is to help assess the energy-savings potential of different product efficiencies. The purpose of the water use characterization, performed only for CCWs and residential dishwashers, is to help assess the water-savings potential of more efficient products. DOE relied on existing test procedures, as well as the Energy Information Administration (EIA)'s Residential Energy Consumption Survey (RECS) and other sources (which are described below for each product) to establish a range of energy (and water) use for the four appliance products.

1. Dishwashers

DOE relied on the information in the DOE test procedure to establish the typical annual energy and water consumption of dishwashers. 10 CFR Part 430, Subpart B, Appendix C. In particular, DOE determined the annual energy and water consumption of dishwashers by multiplying the per-cycle energy and water use by the number of cycles per year, consistent with the DOE test procedure.

Dishwasher per-cycle energy consumption consists of three components: (1) Water-heating energy; (2) machine energy; and (3) drying energy. The machine energy consists of the motor energy (for water pumping and food disposal) and booster heater energy. The DOE test procedure provides equations to calculate the total per-cycle dishwasher energy consumption.

The largest component of dishwasher energy consumption is water-heating energy use, which is directly dependent on water use. AHAM stated that it was not possible to provide either disaggregated per-cycle energy use or water use data by standard level because, for any given standard level, the disaggregated energy use components and water use can vary greatly depending on dishwasher design. (AHAM, No. 14 at p. 8) However, AHAM did provide data showing how aggregate per-cycle energy use and per-cycle water use has changed over time since 1993. An analysis of the submitted AHAM data demonstrated that the relationship between energy and water use is nearly linear. This correlation is largely due to the energy required to heat water to the test procedure inlet temperature of 120 °F (49 °C) that most dishwashers use. The energy required to heat the inlet water to 120 °F (49 °C) usually represents the largest proportion of the overall per-cycle energy usage. Therefore, by knowing the aggregate per-cycle energy use, DOE determined the per-cycle water use and, in turn, the per-cycle water-heating energy consumption using DOE test procedure equations.

DOE analyzed the energy and water use for candidate standard levels ranging from 0.58 EF to 1.11 EF for standard-sized dishwashers. Because Whirlpool does not produce products with efficiencies higher than 0.68 EF, Whirlpool commented that it cannot provide energy and water consumption data for efficiency levels 0.72 EF, 0.80 EF, and 1.11 EF. (Whirlpool, No. 10 at pp. 9 and 12) However, based on the relationship between aggregate per-cycle energy use (which can be deduced from the dishwasher EF) and water use, which AHAM provided, DOE was able to estimate the energy use and water use of dishwashers at all candidate standard levels. Table II.34 shows the candidate standard levels for standard-sized dishwashers and their corresponding per-cycle energy and water use.

Per-cycle energy use is disaggregated into two general categories: (1) Water heating; and (2) machine (*e.g.*, motor energy for pumping) and dish drying from an electrical heating element. DOE estimated the per-cycle energy use by taking the inverse of the EF. It estimated the per-cycle water consumption based on the relationship between energy and water use. DOE estimated the per-cycle water-heating energy consumption by assuming the use of an electric water heater and multiplying the per-cycle water consumption by an assumed temperature rise of 70 °F (21 °C) and a specific heat of water of 0.0024 kWh/gal × °F (4.186 joule/gram × °C). The per-cycle machine and drying energy were determined by DOE by subtracting the water-heating energy consumption from the total energy consumption. The table below provides the standby power, which DOE assumed to be two watts. EEI questioned the degree to which consumers use the ''heated dry'' option to dry dishes instead of air-drying. (EEI, No. 7 at p. 5) For purposes of developing the per-cycle energy use and water use data shown below in Table II.34, DOE based the amount of time that the heated dry option is used on the DOE test procedure (*i.e.*, 50 percent of the dishwasher cycles).

TABLE II.34.—STANDARD DISHWASHERS: PER-CYCLE ENERGY AND WATER USE BY CANDIDATE STANDARD LEVEL

| Candidate Standard Level | EF | Energy Use | Water Use | Energy Use Components | | Standby |
|---|---|---|---|---|---|---|
| | | | | Water Heating | Machine + Drying | |
| | *cycles/kWh* | *kWh/cycle* | *gal/cycle* | *kWh/cycle* | *kWh/cycle* | *kW* |
| Baseline | 0.46 | 2.17 | 8.16 | 1.37 | 0.80 | 0.002 |
| 1 | 0.58 | 1.72 | 6.07 | 1.02 | 0.70 | 0.002 |
| 2 | 0.62 | 1.61 | 5.56 | 0.93 | 0.68 | 0.002 |
| 3 | 0.65 | 1.54 | 5.21 | 0.88 | 0.66 | 0.002 |
| 4 | 0.68 | 1.47 | 4.90 | 0.82 | 0.65 | 0.002 |
| 5 | 0.72 | 1.39 | 4.52 | 0.76 | 0.63 | 0.002 |
| 6 | 0.80 | 1.25 | 3.87 | 0.65 | 0.60 | 0.002 |
| 7 | 1.11 | 0.90 | 2.25 | 0.38 | 0.52 | 0.002 |

DOE determined the average annual energy and water consumption by multiplying the per-cycle energy and water consumption by the number of cycles per year. In 2003, DOE revised its test procedure for dishwashers to more accurately establish their efficiency and energy and water use. The 2003 test procedure amendments included a reduction in the average use cycles per year, from 264 to 215 cycles per year.[24] Arthur D. Little (ADL) conducted a comprehensive analysis of dishwasher usage in 2001 that revealed that dishwashers are used, on average, 215 cycles per year. This usage pattern is currently used to establish the annual energy consumption of dishwashers with the DOE test procedure.

In the context of the present rulemaking, DOE analyzed additional sources to determine whether the number of dishwasher cycles per year has changed. For example, DOE reviewed EIA's 2001 RECS data, which includes the annual usage of households with dishwashers. Of the more than 4,800 households in RECS, almost 2,500 have dishwashers. However, the average-use value for dishwashers is 180 cycles per year, with minimum and maximum values of 26 and 500 cycles per year, respectively. The Joint Comment argued that DOE should continue to use 215 cycles per year in its analysis of dishwashers. The organizations maintained that any estimate derived from the EIA's 2001 RECS is not nearly as robust as the estimate derived from the work conducted by ADL to revise the dishwasher test procedure. For example, the Joint Comment stated that RECS represents a much smaller sample than the one ADL used (about 2,500 households versus 26,000 households) and that the questions pertaining to dishwashers in RECS are just one component in a very large and complex survey instrument dealing with all aspects of home energy use. (Joint Comment, No. 9 at p. 4) The Multiple Water Organizations also urged DOE to retain the use of 215 cycles per year in the analysis. (Multiple Water Organizations, No. 11 at p. 3) Whirlpool also stated that DOE should retain the use of 215 cycles per year in its analysis. (Whirlpool, No. 10 at p. 9) Because the ADL survey is a much more comprehensive and larger survey than the survey performed for RECS, DOE chose an average usage of 215 cycles per year as the most representative value for average dishwasher use.

Therefore, the annual energy and water consumption shown in Table II.35 reflect an annual usage of 215 cycles per year. The annual water-heating energy consumption reflects the use of either an electric, gas-fired, or oil-fired water heater.

TABLE II.35.—STANDARD DISHWASHERS: ANNUAL ENERGY AND WATER USE BY CANDIDATE STANDARD LEVEL

| Candidate standard level | Energy factor | Annual energy use | | | | |
|---|---|---|---|---|---|---|
| | | Water heating* | | | | |
| | *cycle/kWh* | Electric | Gas | Oil | | |
| | | | | *kWh/year* | *MMBtu/year* | *MMBtu/year* |
| Baseline | 0.46 | 295 | 1.34 | 1.24 | 190 | 1.8 |
| 1 | 0.58 | 219 | 1.00 | 0.92 | 168 | 1.3 |
| 2 | 0.62 | 201 | 0.91 | 0.85 | 163 | 1.2 |
| 3 | 0.65 | 188 | 0.86 | 0.79 | 160 | 1.1 |
| 4 | 0.68 | 177 | 0.80 | 0.74 | 156 | 1.1 |
| 5 | 0.72 | 163 | 0.74 | 0.69 | 153 | 1.0 |
| 6 | 0.80 | 140 | 0.64 | 0.59 | 146 | 0.8 |
| 7 | 1.11 | 81 | 0.37 | 0.34 | 129 | 0.5 |

* Electric, gas-fired, and oil-fired water heating based on water heater efficiencies of 100 percent for electric, 75 percent for gas, and 81 percent for oil.

† Standby annual energy use based on a dishwasher cycle length of one hour. Thus, Standby hours = 8766 hours − 215 × 1 hour = 8551 hours.

Whirlpool and EEI stated that DOE must account for the effects of pre-washing when establishing dishwasher energy use. EEI stated that DOE should account for pre-washing in estimating the baseline energy use of dishwashers.

[24] 68 FR 51887 (August 29, 2003).

Whirlpool stated that increasing the efficiency of dishwashers too far may result in wash performance being compromised, thereby forcing consumers to pre-wash more and resulting in increased energy and water consumption. (Whirlpool, No. 10 at p. 2; EEI, No. 7 at p. 5) EEI also stated that the analysis should capture the effects of reduced household cooking product usage on dishwasher usage. (EEI, No. 7 at p. 3) Because DOE could not identify sources of data showing whether the amount of pre-washing is impacted by dishwasher efficiency, DOE conducted its analysis by assuming that hand- or pre-washing habits are not affected by product efficiency. But because increased diswasher energy efficiency may require future designs to utlize less water, DOE recognizes the possibility that more efficient dishwashers may degrade wash performance. Therefore, DOE seeks feedback on whether more efficient dishwasher designs will lead to increased hand- or pre-washing and, if so, what increase in energy and water use can be expected. This is identified as Issue 7 under ''Issues on Which DOE Seeks Comment'' in section IV.E of this ANOPR. Considering the effects of reduced household cooking product use on dishwasher usage, and because DOE's dishwasher use assumptions are based on relatively recent survey data collected by ADL, DOE believes that any impacts from reduced cooking are captured in the updated use value of 215 cycles per year.

As previously stated, of the more than 4,800 households in RECS, almost 2,500 have dishwashers. As will be described later in section II.G on the LCC and PBP analysis, DOE used the RECS household samples with their associated baseline annual energy consumption to conduct the LCC and PBP analyses. Additional detail on the energy and water use characterization of dishwashers can be found in Chapter 6 of the TSD.

2. Dehumidifiers

The ANSI/AHAM Standard DH–1–2003, ''Dehumidifiers,'' for energy consumption measurements during capacity-rating tests, and CAN/CSA–C749–94, ''Performance of Dehumidifiers,'' for energy factor calculations, that DOE codified under EPCA in a final rule for dehumidifiers provide a method for determining the product's rated efficiency in liters/kWh—but provide no method for establishing annual energy consumption (71 FR 71340 (December 8, 2006); 10 CFR 430.23(z)). DOE determined the annual energy consumption of dehumidifiers by first dividing the capacity (in pints per day) by the unit efficiency (in liters per kWh) and then multiplying it by the usage in hours per year.

Both AHAM and Whirlpool commented on the difficulty of determining the energy consumption of dehumidifiers. Whirlpool stated that energy consumption varies considerably depending on geographic location and that average energy consumption is likely lower than the energy use DOE suggested in its Framework Document. In consultation with manufacturers and others familiar with that type of product, AHAM estimated that dehumidifier use is between 875 and 1,315 hours per year, and it recommended that DOE use the mid-point (1,095 hours) as the norm (with sensitivity analyses at 875 and 1,315 hours/year). AHAM also stated that many dehumidifiers shut off automatically once their condensation buckets are full, and the organization argued that such feature reduces use, because it is assumed that consumers do not regularly empty the bucket. (AHAM, No. 14 at p. 10; Whirlpool, No. 10 at p. 9) Because the AHAM data were developed based on the experience of manufacturers, DOE believes that the AHAM data are the most representative of actual use. Therefore, DOE relied on the data AHAM provided, but DOE did consider other sources of data for estimating annual energy consumption. In comparison with AHAM's recommendation that DOE use 1,095 operating hours per year as the norm, other literature sources from ADL, Energy Star, and LBNL, provide higher use values of 1,620, 2,851, and 4,320 hours/year, respectively. Therefore, although DOE relied on AHAM's estimate of 1,095 hours to calculate a dehumidifier's average energy consumption, DOE used the higher use values from the above sources to demonstrate how they would impact annual energy consumption.

DOE specifically seeks feedback on whether AHAM's estimate of 1,095 hours per year is representative, on average, of dehumidifier use. This is identified as Issue 8 under ''Issues on Which DOE Seeks Comment'' in section IV.E of this ANOPR.

For the six product classes of dehumidifiers, DOE calculated the baseline annual energy consumption (*i.e.*, the consumption corresponding to the standards for each product class that take effect in 2007), based on the annual use assumptions presented in Table II.36 below. As shown in the table, the calculated annual energy use has an extensive range based on the capacity and efficiency of the dehumidifier and the hours of operation.

TABLE II.36.—DEHUMIDIFIER ANNUAL ENERGY CONSUMPTION DERIVED FROM HOURLY USE

| Product class | Average size | | EF | Annual energy use (kWh/year) | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | | | AHAM | | | ADL | Energy Star | LBNL-high |
| Pints/day | Pints/day | Liters/day | Liters/kWh | Low | Mid | High | | | |
| ≤25.00 | 20.0 | 9.5 | 1.0 | 345 | 432 | 519 | 639 | 1124 | 1703 |
| 25.01–35.00 | 30.0 | 14.2 | 1.2 | 431 | 540 | 648 | 798 | 1405 | 2129 |
| 35.01–45.00 | 40.0 | 18.9 | 1.3 | 531 | 664 | 798 | 983 | 1730 | 2621 |
| 45.01–54.00 | 50.0 | 23.7 | 1.3 | 664 | 830 | 997 | 1228 | 2162 | 3276 |
| 54.01–74.99 | 64.5 | 30.5 | 1.5 | 742 | 928 | 1115 | 1373 | 2417 | 3662 |
| ≥75.00 | 85.0 | 40.2 | 2.25 | 652 | 816 | 979 | 1207 | 2123 | 3218 |

Table II.37 presents the annual energy consumption by candidate standard level for the predominant dehumidifier product class, 25.0–35.00 pints/day. The annual energy consumption reflects an annual use corresponding to AHAM's mid-estimate of annual hourly operation (*i.e.*, 1,095 hours per year). Refer to Chapter 6 of the TSD for the annual energy consumption by candidate standard level for the other five dehumidifier product classes.

TABLE II.37 25.01.—35.00 PINTS/DAY DEHUMIDIFIERS: ANNUAL ENERGY USE BY CANDIDATE STANDARD LEVEL

| Candidate standard level | Efficiency | Annual energy use |
|---|---|---|
| | liters/kWh | *kWh/year* |
| Baseline | 1.20 | 540 |
| 1 | 1.25 | 518 |
| 2 | 1.30 | 498 |
| 3 | 1.35 | 480 |
| 4 | 1.40 | 463 |
| 5 | 1.45 | 447 |

Unlike dishwashers, RECS does not have any data that indicate the use or annual energy consumption of dehumidifiers. Therefore, DOE did not use RECS to determine the variability of annual energy consumption. Rather, DOE relied exclusively on the data that AHAM provided (see Table II.37) to characterize the variability in annual energy consumption. As discussed previously, DOE used AHAM's estimate of 1,095 hours to calculate the average annual energy consumption. To characterize the variability of use, DOE used a triangular probability distribution that had an average value of 1,095 hours per year, ranging from a minimum value of 875 hours to a maximum value of 1,315 hours. As will be described later in section II.G on the LCC and PBP analysis, DOE employed use variability in calculating annual energy consumption when it conducted the LCC and PBP analyses. Additional detail on the energy use characterization of dehumidifiers can be found in Chapter 6 of the TSD.

3. Cooking Products

a. Cooktops and Ovens

The annual energy consumption of electric and gas ranges (*i.e.*, cooktops and ovens) has been in continual decline since the late 1970s. DOE's prior rulemaking on residential cooking products identified several studies that estimated the annual energy consumption of electric and gas ranges.[25] The studies that covered the time period of 1977–1992 showed a steady decline in the annual energy consumption. Based on these studies, DOE published revisions to its test procedure as a final rule in 1997, which included a reduction in the annual useful cooking energy output and a reduction in the number of self-cleaning oven cycles per year.[26] The annual useful cooking energy output relates the energy factor of the cooking appliance to the annual energy consumption. Therefore, the lower the annual useful cooking energy output, the lower the annual energy consumption of the cooking appliance.

Whirlpool and EEI stated that the annual energy consumption of cooking products is very likely lower than it was in the mid-1990s due to changes in consumer eating habits (*i.e.*, people eating out more often). (Whirlpool, No. 10 at p. 10; EEI, No. 7 at p. 3) Based on more recent studies of cooking annual energy use, DOE confirmed that cooking energy consumption has continued to decline since the mid-1990s. Research results from the 2004 California Residential Appliance Saturation Study (CA RASS)[27] and the Florida Solar Energy Center (FSEC)[28] show that the annual energy consumption for most electric and gas cooktops and ovens is roughly 40 percent less than the energy use during the mid-1990s.

Based on the more recent annual energy use data, DOE established the annual energy consumption for cooktops and ovens by candidate standard level. Tables II.38 through II.40 show the annual energy consumption by candidate standard level for the electric coil, electric smooth, and gas cooktop product classes, respectively. Tables II.41 through II.44 show the annual energy consumption by candidate standard level for the electric standard, electric self-cleaning, gas standard, and gas self-cleaning oven product classes, respectively. For gas standard ovens (Table II.43), candidate standard level 1 (globar or hot surface ignition) and candidate standard level 1a (spark ignition) are addressed separately because the technologies have different energy use characteristics. Although both technologies are used for the same purpose (*i.e.*, to eliminate the need for a standing pilot), hot surface ignition uses a significant amount of electrical energy while spark ignition uses a negligible amount of electricity. The use of a globar ignition device is the technology most commonly used to eliminate the need for a standing pilot in gas ovens. Therefore, in the case of gas standard ovens, efficiency levels two through six follow efficiency level '1' (globar ignition) rather than level '1a' (spark ignition), and in the case of gas self-cleaning ovens, the baseline efficiency level is based on the use of a globar ignition device. For more details on how DOE developed the annual energy consumption for each product class, refer to Chapter 6 of the TSD.

TABLE II.38.—ELECTRIC COIL COOKTOPS: ANNUAL ENERGY CONSUMPTION BY CANDIDATE STANDARD LEVEL

| Candidate standard level | Energy factor | Annual energy consumption |
|---|---|---|
| | | *kWh/year* |
| Baseline | 0.737 | 128.2 |
| 1 | 0.769 | 122.9 |

TABLE II.39.—ELECTRIC SMOOTH COOKTOPS: ANNUAL ENERGY CONSUMPTION BY CANDIDATE STANDARD LEVEL

| Candidate standard level | Energy factor | Annual energy consumption |
|---|---|---|
| | | *kWh/year* |
| Baseline | 0.742 | 128.2 |
| 1 | 0.753 | 126.3 |

[25] U.S. Department of Energy-Office of Codes and Standards. Technical Support Document for Residential Cooking Products, Volume 2: Potential Impact of Alternative Efficiency Levels for Residential Cooking Products, April, 1996. Prepared for the U.S. DOE by Lawrence Berkeley National Laboratory, Berkeley, CA. Appendix A. Available online at: *http://www.eere.energy.gov/buildings/appliance_standards/residential/cooking_products_0998_r.html.*

[26] 62 FR 51976 (Oct. 3, 1997).

[27] California Energy Commission. *California Statewide Residential Appliance Saturation Study,* June 2004. (Prepared for the CEC by KEMA–XNERGY, Itron, and RoperASW. Contract No. 400–04–009). Available online at: *http://www.energy.ca.gov/appliances/rass/index.html.*

[28] Parker, D. S. Research Highlights from a Large Scale Residential Monitoring Study in a Hot Climate. *Proceedings of International Symposium on Highly Efficient Use of Energy and Reduction of its Environmental Impact,* January 2002. Japan Society for the Promotion of Science Research for the Future Program, Osaka, Japan. JPS-RFTF97P01002: pp. 108–116. Also published as FSEC–PF369–02, Florida Solar Energy Center, Cocoa, FL. Available online at: *http://www.fsec.ucf.edu/en/publications/html/FSEC–PF–369–02/index.htm*

TABLE II.40.—GAS COOKTOPS: ANNUAL ENERGY CONSUMPTION BY CANDIDATE STANDARD LEVEL

| Candidate standard level | Energy factor | Cooking efficiency (percent) | Cooking | Pilot | Total |
|---|---|---|---|---|---|
| | | | *MMBtu/year* | *MMBtu/year* | *MMBtu/year* |
| Baseline | 0.156 | 39.9 | 0.72 | 2.01 | 2.74 |
| 1 | 0.399 | 39.9 | 0.72 | ..... | 0.72 |
| 2 | 0.420 | 42.0 | 0.69 | ..... | 0.69 |

TABLE II.41.—ELECTRIC STANDARD OVENS: ANNUAL ENERGY CONSUMPTION BY CANDIDATE STANDARD LEVEL

| Candidate standard level | Energy factor | Cooking efficiency (percent) | Cooking | Clock | Total |
|---|---|---|---|---|---|
| | | | *kWh/year* | *kWh/year* | *kWh/year* |
| Baseline | 0.1066 | 12.2 | 132.4 | 34.2 | 166.5 |
| 1 | 0.1113 | 12.8 | 125.9 | 34.2 | 160.1 |
| 2 | 0.1163 | 13.4 | 119.7 | 34.2 | 153.9 |
| 3 | 0.1181 | 13.7 | 117.6 | 34.2 | 151.8 |
| 4 | 0.1206 | 14.0 | 70.7 | 34.2 | 149.0 |
| 5 | 0.1209 | 14.1 | 70.6 | 34.2 | 148.6 |

TABLE II.42.—ELECTRIC SELF-CLEANING OVENS: ANNUAL ENERGY CONSUMPTION BY CANDIDATE STANDARD LEVEL

| Candidate standard level | Energy factor | Cooking efficiency (percent) | Cooking | Self-clean | Clock | Total |
|---|---|---|---|---|---|---|
| | | | *kWh/year* | *kWh/year* | *kWh/year* | *kWh/year* |
| Baseline | 0.1099 | 13.8 | 116.6 | 21.1 | 33.3 | 171.0 |
| 1 | 0.1102 | 13.8 | 116.2 | 21.1 | 33.3 | 170.6 |
| 2 | 0.1123 | 14.2 | 113.5 | 21.1 | 33.3 | 167.9 |

TABLE II.43.—GAS STANDARD OVENS: ANNUAL ENERGY CONSUMPTION BY CANDIDATE STANDARD LEVEL

| Candidate standard level | Energy factor | Cooking efficiency (percent) | Cooking | | Ignition | | Total | |
|---|---|---|---|---|---|---|---|---|
| | | | *MMBtu/yr* | *kWh/yr* | *MMBtu/yr* | *kWh/yr* | *MMBtu/yr* | *kWh/yr* |
| Baseline | 0.0298 | 5.9 | 0.82 | ..... | 1.01 | ..... | 1.83 | 0.0 |
| 1* | 0.0536 | 5.8 | 0.84 | ..... | ..... | 21.1 | 0.84 | 21.1 |
| 2 | 0.0566 | 6.1 | 0.80 | ..... | ..... | 21.1 | 0.80 | 21.1 |
| 3 | 0.0572 | 6.2 | 0.79 | ..... | ..... | 21.1 | 0.79 | 21.1 |
| 4 | 0.0593 | 6.5 | 0.75 | 1.8 | ..... | 21.1 | 0.75 | 22.9 |
| 5 | 0.0596 | 6.5 | 0.75 | 1.8 | ..... | 21.1 | 0.75 | 22.9 |
| 6 | 0.0600 | 6.6 | 0.74 | 1.8 | ..... | 21.1 | 0.74 | 22.9 |
| 1a* | 0.0583 | 5.8 | 0.84 | ..... | ..... | ..... | 0.84 | 0.0 |

* Candidate standard levels 1 and 1a correspond to designs that are utilized for the same purpose—eliminate the need for a standing pilot—but the technologies for each design are different. Candidate standard level 1 is a hot surface ignition device while candidate standard level 1a is a spark ignition device. Candidate standard level 1a is presented at the end of the table because candidate standard levels 2 through 6 are derived from candidate standard level 1.

TABLE II.44.—GAS SELF-CLEANING OVENS: ANNUAL ENERGY CONSUMPTION BY CANDIDATE STANDARD LEVEL

| Candidate standard level | Energy factor | Cooking effc'y (percent) | Cooking | | Self-clean | | Ignition | Clock | Total | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | *MMBtu/yr* | *kWh/yr* | *MMBtu/yr* | *kWh/yr* | *kWh/yr* | *kWh/yr* | *MMBtu/yr* | *kWh/yr* |
| Baseline | 0.0540 | 7.1 | 0.68 | ..... | 0.17 | 0.7 | 21.1 | 31.5 | 0.86 | 53.3 |
| 1 | 0.0625 | 8.8 | 0.56 | 1.8 | 0.17 | 0.7 | 21.1 | 31.5 | 0.73 | 55.1 |
| 2 | 0.0627 | 8.8 | 0.55 | 1.8 | 0.17 | 0.7 | 21.1 | 31.5 | 0.73 | 55.1 |
| 3 | 0.0632 | 8.9 | 0.55 | 1.8 | 0.17 | 0.7 | 21.1 | 31.5 | 0.72 | 55.1 |

DOE used 2001 RECS data to establish the variability of annual cooking energy consumption for cooktops and ovens. RECS indicates which households in the survey of 4,822 households use electric and gas ranges, ovens, and cooktops. With regard to electric cooking products, 2,895 household records have cooktops; 1,159 household records have standard ovens, and 1,601 household records have self-cleaning ovens. With regard to gas cooking products, 1,597 household records have cooktops either in electric ranges or as stand-alone units; 959 household records have standard ovens, and 494 household records have self-cleaning ovens. The above totals represent cooktops and ovens in households either as a stand-alone unit or as part of a range.

Although RECS does not provide the annual energy consumption of the cooking product for each household record, it does provide the frequency of cooking use. Thus, DOE used the

frequency of use to define the variability of the annual energy consumption. Conducting the analysis in this manner captured the observed variability in annual energy consumption while maintaining the average annual energy consumption shown above in Tables II.38 through II.44. To determine the variability of cooking product energy consumption, DOE first equated the weighted-average cooking frequency from RECS with the average energy use values reported in Tables II.38 through II.44. DOE then varied the annual energy consumption for each RECS household based on its reported cooking frequency.

For more details on cooking frequency variability and its impact on the variability of annual energy consumption, as well as additional detail on the energy use characterization of kitchen ranges and ovens, refer to Chapter 6 of the TSD. As will be described later in section II.G on the LCC and PBP analyses, DOE used the RECS household samples with their associated baseline annual energy consumption to conduct the LCC and PBP analyses.

b. Microwave Ovens

After an increase since the late 1970s, the annual energy consumption of microwave ovens has remained relatively steady since the late 1980s. DOE's previous rulemaking on residential cooking products identified studies that estimated the annual energy consumption of microwave ovens.[29] With the exception of one study based on the use of conditional demand analysis,[30] the studies, which covered the time period 1988–1994, showed that annual energy consumption was no more than 200 kWh/year. Based on these studies, DOE published revisions to its test procedure as a final rule in 1997 that included an increase in the annual useful cooking energy output that more than doubled the test procedure's original value from the late 1970s (62 FR 51976 (October 3, 1997)). The annual useful cooking energy output relates the energy factor of the microwave oven to the annual energy consumption. Therefore, the higher the annual useful cooking energy output, the higher the annual energy consumption.

A more recent study from the 2004 CA RASS is roughly in line with the average result from the previous studies showing that annual energy consumption has declined 15 percent since the mid-1990s. Based on the CA RASS study, DOE established the annual energy consumption for microwave ovens by candidate standard level as shown in Table II.45. For more details on how DOE developed the annual energy consumption for microwave ovens, refer to Chapter 6 of the TSD.

TABLE II.45.—MICROWAVE OVENS: ANNUAL ENERGY CONSUMPTION BY CANDIDATE STANDARD LEVEL

| Candidate standard level | Energy factor | Cooking efficiency (percent) | Total |
|---|---|---|---|
| | | | *kWh/year* |
| Baseline | 0.557 | 55.7 | 131.0 |
| 1 | 0.586 | 58.6 | 124.5 |
| 2 | 0.588 | 58.8 | 124.1 |
| 3 | 0.597 | 59.7 | 122.2 |
| 4 | 0.602 | 60.2 | 121.2 |

In its Framework Document, DOE requested energy use data for the individual components of the microwave oven (*e.g.*, magnetron filament, magnetron power supply, and fan and motor). Sharp stated that the measurement methods in the DOE test procedure require the establishment of only the total input power of the oven and not the input power associated with individual components. Therefore, Sharp argued that if the oven is being tested in accordance with the DOE test procedure, disaggregated energy use data is neither apposite nor readily available. (Public Meeting Transcript, No. 5 at p. 108) DOE agrees that its test procedure only requires the measurement of total energy use, so, for purposes of this analysis, DOE has decided to only consider the total energy consumption of the product.

With regard to the variability of annual cooking energy consumption, as it did for cooktops and ovens, DOE used RECS to establish microwave oven use variability. The 2001 RECS indicates that 4,149 of the 4,822 households in the survey use microwave ovens. Similar to electric and gas cooktops and ovens, although RECS does not provide the annual energy consumption of microwave ovens for each household record, it does provide the frequency of cooking use. Thus, DOE used the frequency of microwave use to define the variability of the annual energy consumption. Conducting the analysis in this manner captured the observed variability in annual energy consumption while maintaining the average annual energy consumption shown above in Table II.45. To determine the variability of cooking product energy consumption, DOE first equated the weighted-average cooking frequency from RECS with the average energy use values reported above in Table II.45. DOE then varied the annual energy consumption for each RECS household based on its reported cooking frequency.

For more details on cooking frequency variability and its impact on the variability of annual energy consumption, as well as additional detail on the energy use characterization of microwave ovens, refer to Chapter 6 of the TSD. As will be described later in section II.G on the LCC and PBP analyses, DOE used the RECS household samples with their associated baseline annual energy consumption to conduct the LCC and PBP analyses.

4. Commercial Clothes Washers

DOE determined the annual energy and water consumption of CCWs by multiplying the per-cycle energy and water use by the number of cycles per year. CCW per-cycle energy consumption has three components: (1)

[29] U.S. Department of Energy—Office of Codes and Standards. *Technical Support Document for Residential Cooking Products, Volume 2: Potential Impact of Alternative Efficiency Levels for Residential Cooking Products,* April, 1996. Prepared for the U.S. DOE by Lawrence Berkeley National Laboratory, Berkeley, CA. Appendix A. Available online at: *http://www.eere.energy.gov/buildings/appliance_standards/residential/cooking_products_0998_r.html*

[30] Electric Power Research Institute. *Residential End-Use Energy Consumption: A Survey of Conditional Demand Estimates,* October 1989. Palo Alto, CA. CU–6487. Available online at: *http://my.epri.com/portal/server.pt?space=CommunityPage&cached=true&parentname=ObjMgr&parentid=2&control=SetCommunity&CommunityID=221&PageIDqueryComId=0*

Water-heating energy; (2) machine energy; and (3) drying energy. The machine energy is comprised of the motor energy for turning an agitator or rotating a drum.

The test procedures DOE recently codified at 10 CFR 431.154 are based on measuring the performance of residential clothes washers, and, therefore, the cycles-per-year values only indirectly reflect CCW usage through comparison with their residential counterparts (71 FR 71340). However, both ALS and EEI stated that CCW use is highly variable. ALS stated that CCW use varies based on the clothes washer market (*e.g.*, laundry and multi-housing). ALS recommended contacting the MLA, the CLA, and route operators to obtain relevant use data. (Public Meeting Transcript, No. 5 at pp. 156–157; EEI, No. 7 at p. 6) As discussed in more detail below, DOE has relied on several studies including research sponsored by the MLA and the CLA (trade associations representing the commercial laundry industry) to establish typical use cycles for CCWs.

As shown in Table II.46, DOE analyzed the energy and water use for specific candidate standard levels for CCWs. GE commented that because clothes container volume (capacity) may change with product efficiency, DOE should not use a constant capacity when determining the energy and water consumption of CCWs. GE suggested that DOE evaluate energy consumption on a per-cubic-foot basis. (Public Meeting Transcript, No. 5 at p. 158) DOE agrees that capacity does impact product efficiency, but no data were provided or identified on how capacity may change with increased efficiency. Therefore, DOE maintained a constant capacity in its analysis of annual energy consumption by candidate standard level. However, DOE invites additional comments and data regarding the relationship between CCW capacity and efficiency.

EEI requested clarification as to whether the energy consumption analysis for CCWs would capture reduced dryer energy consumption as a result of higher clothes washer efficiencies. (Pubic Meeting Transcript, No. 5 at p. 154) In response, we note that CCWs are rated with an MEF, and inherent in the determination of the MEF is the energy required to dry clothes. Therefore, DOE did capture the impact of higher efficiencies on dryer energy use.

Table II.46 shows the candidate standard levels for CCWs and their corresponding per-cycle energy and water use. DOE determined the per-cycle clothes-drying energy use by first establishing the remaining moisture content (RMC) based on the relationship between RMC and the MEF, and then using the DOE test procedure equation that determines the per-cycle energy consumption for the removal of moisture. DOE took the per-cycle machine energy use from its 2000 TSD for residential clothes washers.[31] In the 2000 TSD, for MEFs up to 1.40, machine energy is 0.133 kWh/cycle. For MEFs greater than 1.40, machine energy is 0.114 kWh/cycle. With the per-cycle clothes-drying and machine energy known, DOE determined the per-cycle water-heating energy use by first determining the total per-cycle energy use (the clothes container volume divided by the MEF) and then subtracting from it the per-cycle clothes-drying and machine energy.

DOE specifically seeks stakeholder feedback on whether the residential clothes washer per-cycle energy consumption values for clothes-drying and machine use taken from its 2000 TSD are representative of CCWs. This is identified as Issue 9 under ''Issues on Which DOE Seeks Comment'' in section IV.E of this ANOPR.

EEI commented that detergents formulated for cold-water washes are now available. Because no hot water will be required if these detergents are used, the baseline energy consumption will be impacted. (EEI, No. 7 at p. 4) However, DOE cannot assume that consumers will routinely use cold-water detergents. Thus, although cold-water detergents may be available, DOE determined the water-heating energy use using the specifications set forth in the DOE test procedure. The per-cycle water-heating energy use in Table II.46 below depicts the use of an electric water heater and a 2.8 $ft^3$ clothes container volume. DOE determined the per-cycle hot water use by dividing the per-cycle water-heating energy use by a temperature rise of 75 °F (21 °C) and a specific heat of 0.0024 kWh/gal × °F (4.186 joule/gram × °C). DOE determined the total water use by multiplying the WF by the clothes container volume.

TABLE II.46.—COMMERCIAL CLOTHES WASHERS: PER-CYCLE ENERGY AND WATER USE BY CANDIDATE STANDARD LEVEL

| Candidate standard level | MEF | WF | RMC (percent) | Energy use | | | Water use | |
|---|---|---|---|---|---|---|---|---|
| | | | | Machine | Dryer | Water Heat | Hot | Total |
| | *cu.ft./kWh/cyc* | *gal/cu.ft.* | | *kWh/cyc* | *kWh/cyc* | *kWh/cyc* | *gal/cyc* | *gal/cyc* |
| Baseline | 1.26 | 9.50 | 53.7 | 0.133 | 1.27 | 0.82 | 4.5 | 26.6 |
| 1 | 1.42 | 9.50 | 51.2 | 0.133 | 1.21 | 0.63 | 3.5 | 26.6 |
| 2 | 1.60 | 8.50 | 48.4 | 0.114 | 1.13 | 0.50 | 2.8 | 23.8 |
| 3 | 1.72 | 8.00 | 46.5 | 0.114 | 1.09 | 0.43 | 2.4 | 22.4 |
| 4 | 1.80 | 7.50 | 45.3 | 0.114 | 1.06 | 0.39 | 2.1 | 21.0 |
| 5 | 2.00 | 5.50 | 42.2 | 0.114 | 0.98 | 0.31 | 1.7 | 15.4 |
| 6 | 2.20 | 5.10 | 39.0 | 0.114 | 0.90 | 0.26 | 1.5 | 14.3 |

DOE determined the average annual energy and water consumption for CCWs by multiplying the per-cycle energy and water consumption by the number of cycles per year. Because the predominant applications of CCWs are in multi-family buildings and laundromats, DOE focused only on these two building applications to determine the appropriate number of CCW cycles per year. Other applications include lodging establishments (*e.g.*, hotels and motels), in-patient health care facilities, and nursing homes. Relative to multi-family buildings and laundromats, these other applications are a small segment of the market. Therefore, DOE believes it is not critical to the analysis to accurately characterize CCW usage for these applications. As mentioned above, DOE relied on several

[31] U.S. Department of Energy. *Final Rule Technical Support Document (TSD): Energy Efficiency Standards for Consumer Products: Clothes Washers*, December 2000. Washington, DC. Chapter 4, Table 4.1. Available online at: *http://www.eere.energy.gov/buildings/appliance_standards/residential/clothes_washers.html.*

studies including research sponsored by the MLA and the CLA to establish typical use cycles for CCWs. Of the studies on CCW usage, seven focused on multi-family buildings demonstrating that usage ranged from one to almost eleven cycles per day.[32] The sparse data for laundromats from three studies showed a variation between three to eight cycles per day.[33]

Tables II.47 and II.48 show the annual energy and water consumption for multi-family buildings and laundromats, respectively. The energy and water consumption values provided below are based on average use cycles of 3.4 cycles per day for multi-family buildings and 6 cycles per day for laundromats. For details on the studies reviewed by DOE to develop the average use cycles of CCWs, refer to Chapter 6 of the TSD. In the tables below, the annual water-heating and clothes-drying energy consumption reflects the use of both an electric or a gas water heater and dryer.

TABLE II.47.—COMMERCIAL CLOTHES WASHERS, MULTI-FAMILY APPLICATION: ANNUAL ENERGY AND WATER USE BY EFFICIENCY LEVEL

| Candidate standard level | MEF | WF | Annual energy use | | | | | Annual water use |
|---|---|---|---|---|---|---|---|---|
| | | | Water heating | | Drying | | Machine | |
| | | | Electric | Gas | Electric | Gas | | |
| | *cu.ft./kWh/cyc* | *gal/cu.ft.* | *kWh/yr* | *MMBtu/yr* | *kWh/yr* | *MMBtu/yr* | *kWh/yr* | *1000 gal/year* |
| Baseline | 1.26 | 9.50 | 1020 | 4.64 | 1583 | 6.05 | 166 | 33.1 |
| 1 | 1.42 | 9.50 | 788 | 3.58 | 1503 | 5.74 | 166 | 33.1 |
| 2 | 1.60 | 8.50 | 625 | 2.84 | 1414 | 5.40 | 142 | 29.7 |
| 3 | 1.72 | 8.00 | 532 | 2.42 | 1354 | 5.18 | 142 | 27.9 |
| 4 | 1.80 | 7.50 | 482 | 2.19 | 1315 | 5.02 | 142 | 26.2 |
| 5 | 2.00 | 5.50 | 387 | 1.76 | 1215 | 4.64 | 142 | 19.2 |
| 6 | 2.20 | 5.10 | 328 | 1.49 | 1116 | 4.26 | 142 | 17.8 |

TABLE II.48.—COMMERCIAL CLOTHES WASHERS, LAUNDROMAT APPLICATION: ANNUAL ENERGY AND WATER USE BY CANDIDATE STANDARD LEVEL

| Candidate standard level | MEF | WF | Annual Energy Use | | | | | Annual water use |
|---|---|---|---|---|---|---|---|---|
| | | | Water heating | | Drying | | Machine | |
| | | | Electric | Gas | Electric | Gas | | |
| | *cu.ft./kWh/cyc* | *gal/cu.ft.* | *kWh/yr* | *MMBtu/yr* | *kWh/yr* | *MMBtu/yr* | *kWh/yr* | *1000 gal/year* |
| Baseline | 1.26 | 9.50 | 1793 | 8.16 | 2782 | 10.63 | 291 | 58.3 |
| 1 | 1.42 | 9.50 | 1385 | 6.30 | 2642 | 10.10 | 291 | 58.3 |
| 2 | 1.60 | 8.50 | 1098 | 4.99 | 2485 | 9.50 | 250 | 52.1 |
| 3 | 1.72 | 8.00 | 935 | 4.25 | 2380 | 9.10 | 250 | 49.1 |
| 4 | 1.80 | 7.50 | 847 | 3.85 | 2310 | 8.83 | 250 | 46.0 |
| 5 | 2.00 | 5.50 | 680 | 3.10 | 2136 | 8.16 | 250 | 33.7 |
| 6 | 2.20 | 5.10 | 576 | 2.62 | 1961 | 7.49 | 250 | 31.3 |

DOE determined the variability in annual energy and water consumption based on usage data from the several CCW studies cited above. The studies DOE identified provided eight average use values for multi-family buildings ranging from a low of 1.5 cycles per day to a high of 6.4 cycles per day. For laundromats, the low and high values are three and eight cycles per day, respectively. DOE weighted the usage from each study to vary the annual energy and water consumption of CCWs when it conducted the LCC and PBP analyses. To reflect the usage patterns reported in the various studies, DOE weighted the use studies equally for multi-family applications. For laundromats, DOE used a triangular distribution that ranged from three to eight cycles per day and skewed it to yield an average value of six cycles per day. This range was based solely on data from the CLA. Of the three studies that DOE used to establish usage, only the CLA study provided a range. Because the two other studies, one from Equipoise Consulting and the other from CEE, provided an average use of six cycles per day, DOE skewed the triangular distribution to yield an average value of six cycles per day.

As will be described later in section II.G on the LCC and PBP analyses, DOE used the usage variability to vary the annual energy and water consumption for multi-family and laundromat applications when it conducted the LCC and PBP analyses. Additional detail on the energy and water use characterization of CCWs can be found in Chapter 6 of the TSD.

*E. Markups To Determine Equipment Price*

This section explains how DOE developed the markups to equipment prices that it used to derive total installed cost for the four appliance products (see Chapter 7 of the TSD). The total installed cost is the sum of the consumer equipment price and the installation cost. DOE multiplied the manufacturing costs developed from the

[32] The seven studies were conducted or commissioned by the following organizations: (1) City of Toronto (1999); (2) Federal Energy Management Program (2000); (3),Southern California Edison (2000); (4) MLA (2002); (5) Wisconsin Focus on Energy (2004); (6) Equipoise Consulting (2004); and (7) CEE.

[33] The three studies were conducted or commissioned by the following organizations: (1) Equipoise Counsulting (2004); (2) CEE; and (3) the CLA.

engineering analysis by the supply-chain markups it developed (along with sales taxes) to arrive at the consumer equipment prices, and added to them the installation costs to arrive at the final, installed prices for baseline products, as well as higher-efficiency products.

1. Distribution Channels

Before it could develop markups, DOE needed to identify distribution channels (*i.e.*, how the product is distributed from the manufacturer to the consumer). AHAM's 2003 Fact Book shows that over 93 percent of residential appliances (including dishwashers, dehumidifiers, and cooking products) are distributed from the manufacturer directly to a retailer. Thus, DOE analyzed markups for residential dishwasher, dehumidifier, and cooking product sales on the premise that these appliances are sold based on a manufacturer-to-retailer distribution channel. Wolf commented that for commercial-style cooking products, distributors are also involved in the distribution of the equipment. (Public Meeting Transcript, No. 5 at p. 177). For its analysis of cooking products, DOE designated commercial-style equipment as a separate product class that was exempted from the analysis due to the lack of available data for determining efficiency characteristics. Therefore, DOE did not consider the distribution channels for commercial-style equipment.

For CCWs, the consumer is usually a commercial establishment. EEI and ALS both commented on the distribution channels for this product. EEI stated that national accounts may be applicable if users (*e.g.*, hotels) are purchasing units in bulk from dealers. ALS stated that the distribution channels DOE identified during its Framework workshop were correct and added that laundromat owners generally go through distributors to purchase their clothes washers, whereas multi-housing owners generally go through route operators. (Public Meeting Transcript, No. 5 at pp. 175–176).

DOE developed the distribution channels for this analysis of CCWs after reviewing data that CEE developed.[34] The CEE data indicate that the relevant portions of the commercial, family-sized clothes washer market can be divided into three areas: (1) Laundromats; (2) private multi-family housing; and (3) large institutions (*e.g.*, military barracks, universities, housing authorities, lodging establishments, and health care facilities). For these three market areas, the CEE data indicate that an overwhelming majority of CCWs are sold through either distributors or route operators. Consistent with ALS's comment, the CEE data show that laundromats generally purchase their equipment through distributors, whereas multi-family housing and large institutions generally lease their equipment from route operators. Because the CEE data do not indicate that national accounts are a significant distribution channel, DOE did not consider them in its analysis. Thus, for purposes of developing the markups for CCWs, DOE based its calculations on the distribution channel that involves only distributors. DOE estimated that the markups and the resulting consumer equipment prices for the distribution channel involving distributors would be representative of the prices paid by consumers acquiring their equipment from route operators.

DOE specifically seeks feedback on whether determining CCW consumer prices based solely on the distribution channel that includes distributors will result in representative equipment prices for all CCW consumers. This is identified as Issue 10 under ''Issues on Which DOE Seeks Comment'' in section IV.E of this ANOPR.

2. Approach for Manufacturer Markups

DOE developed an average manufacturer markup by examining the annual Securities and Exchange Commission (SEC) 10–K reports filed by four publicly-traded manufacturers primarily engaged in appliance manufacturing and whose combined product range includes residential dishwashers, dehumidifiers, and cooking products and commercial clothes washers.[35] The four manufacturers represent a nearly 50 percent market share for core appliances. Because these companies are typically diversified, producing a range of different appliances, an industry average markup was assumed by DOE to be representative for the manufacture of each type of appliance. DOE evaluated markups for the years between 2002 and 2005, inclusive.

3. Approach for Retailer and Distributor Markups

DOE based the retailer markups (for residential products) and distributor markups (for CCWs) on financial data from the U.S. Census Business Expenditure Survey (BES).[36] DOE organized the financial data into balance sheets that break down cost components incurred by firms that sell the products.

DOE developed baseline and incremental markups to transform the manufacturer sales price into a consumer equipment price. DOE used the baseline markups, which cover all of a retailer's or distributor's costs, to determine the sales price of baseline models (equipment sold under existing market conditions). The baseline markup relates the manufacturer sales price to the retailer sales price (in the case of residential products) or distributor sales price (in the case of CCWs). Incremental markups cover only those costs that scale with a change in the manufacturer's sales price. Incremental markups are coefficients that relate the change in the manufacturer sales price of higher efficiency models (equipment sold under market conditions with new efficiency standards) to the change in the retailer or distributor sales price.

DOE used financial data from the BES, in the ''Household Appliance Stores'' category, to calculate markups used by retailers that apply to residential dishwashers, cooking products, and dehumidifiers. It used financial data from the BES for the category ''Machinery, Equipment, and Supplies Merchant Wholesalers'' to calculate markups used by distributors for CCWs. Using these markups, DOE generated retail prices for each potential standard level, assuming that each level would represent a new minimum efficiency standard.

For CCWs, DOE undertook efforts to validate the retail prices that it generated through the use of distributor markups. Both the Seattle Public Utilities (SPU) and ALS suggested sources for establishing the retail price of CCWs. SPU stated that it may have relevant data that it obtained through one of its rebate incentive programs. ALS suggested that DOE contact the MLA, route operators, and property owners. (Public Meeting Transcription, No. 5 at pp. 174 and 176) DOE contacted several national distributors of commercial laundry equipment to collect CCW retail price data. DOE also identified a few company Web sites that provided retail price information. DOE did obtain the price data offered by SPU, but because all of the data corresponded to high-efficiency, front-

[34] Consortium for Energy Efficiency, *Commercial Family-Sized Washers: An Initiative Description of the Consortium for Energy Efficiency,* 1998. Available online at: *http://www.cee1.org/com/cwsh/cwsh-main.php3*

[35] Security Exchange Commission, SEC 10–K Reports, Various dates, 2002–2005, Security Exchange Commission. Available online at: *http://www.sec.gov/*

[36] U.S. Census Bureau. *1997 Economic Census, Business Expense Survey, Retail Trade, Household Appliance Stores and Merchant Wholesalers, Machinery, Equipment, and Supplies,* 1997. Washington, DC Available online at: *http://www.census.gov/csd/bes/bes97.htm*

loading, horizontal-axis washers, the data were not useful for identifying the price differential between baseline and more-efficient products. With the price data it did collect, DOE attempted to develop a retail price-versus-efficiency curve. However, most of the price data collected from distributors and Web sites did not provide the necessary information to establish the efficiency of these commercial clothes washers. Therefore, DOE was only able to establish the retail price differential between a typical top-loading, vertical-axis machine and a front-loading, horizontal-axis machine. The retail price difference (approximately $500) is very close to the retail price DOE generated through the use of markups. Therefore, for the price difference between a typical top-loading machine and a typical front-loading machine, DOE confirmed that its retail price increment for achieving CCW efficiencies in the range of 1.72 to 2.20 MEF were reasonable. Chapter 3 of the TSD provides details on DOE's CCW retail price data collection effort.

4. Sales Taxes

The sales tax component of the DOE mark-up analysis represents State and local sales taxes that are applied to the consumer appliance price. It is a multiplicative factor that increases the consumer appliance price. DOE derived State and local taxes from data provided by the Sales Tax Clearinghouse.[37] These data represent weighted averages that include county and city rates. DOE then derived population-weighted average tax values for each Census division and large State.

5. Summary of Markups

Table II.49 summarizes each product's markups at each stage in the distribution channel and the overall baseline and incremental markups, as well as sales taxes. AHAM questioned what the typical overall markup is for home appliances and stated that, for residential clothes washers, a prior standards rulemaking analysis established an overall markup of approximately 2.0. (Public Meeting Transcript, No. 5 at p. 177) As shown in Table II.49, the overall baseline markup is approximately 2.0 for all products, almost the same as the markup DOE used in its residential clothes washer standard rulemaking. The overall incremental markup, which DOE applied to an incremental change in manufacturing costs to develop an incremental change in retail price, is approximately 1.60. Additional detail on markups can be found in Chapter 7 of the TSD.

TABLE II.49.—SUMMARY OF MARKUPS

| Markup | Dishwashers | | Dehumidifiers | | Cooking products | | Commercial clothes washers | |
|---|---|---|---|---|---|---|---|---|
| | Baseline | Incr. | Baseline | Incr. | Baseline | Incr. | Baseline | Incr. |
| Manufacturer | 1.26 | | 1.26 | | 1.26 | | 1.26 | |
| Retailer | 1.45 | 1.15 | 1.45 | 1.15 | 1.45 | 1.15 | | |
| Distributor | | | | | | | 1.43 | 1.18 |
| Sales Tax | 1.068 | | 1.065 | | 1.069* | | 1.068 | |
| Overall | 1.95 | 1.55 | 1.95 | 1.54 | 1.95 | 1.55 | 1.93 | 1.59 |

• Represents average of all seven product classes of cooking products.

*F. Rebuttable Presumption Payback Periods*

A more energy efficient device will usually cost more to buy than a device of standard energy efficiency. However, the more efficient device will usually cost less to operate due to reductions in operating costs (*i.e.*, lower energy bills). The PBP is the time (usually expressed in years) it takes to recover the additional installed cost of the more efficient device (*i.e.*, the incremental cost) through energy cost savings. EPCA establishes a rebuttable presumption that a standard for any of the four appliance products is economically justified ''[i]f the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy * * * savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure * * * '' (42 U.S.C. 6295(o)(2)(B)(iii) and 6316(a))

To evaluate the rebuttable presumption, DOE estimated the additional cost of purchasing a more efficient, standard-compliant product, and compared this cost to the value of the energy saved during the first year of operation of the product. DOE understands that the increased cost of purchasing a standard-compliant product includes the cost of installing the product for use by the purchaser. DOE calculated the rebuttable presumption PBP (rebuttable PBP), as the ratio of the value of the increased installed price above the baseline efficiency level to the first year's energy cost savings. When this PBP is less than three years, the rebuttable presumption is satisfied. When this PBP is equal to or more than three years, the rebuttable presumption is not satisfied. In such case, the Secretary must take such information into account when determining whether a standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(iii))

Inputs to the PBP calculation are the first seven inputs shown in Table II.57 found in section II.G.2 of this ANOPR. The rebuttable PBPs differ from the other PBPs calculated in the LCC analysis, in that the calculation of rebuttable PBP uses discrete values (rather than distributions) for inputs. Other than the use of single-point values, the most notable difference between the distribution PBP and the rebuttable PBP is the latter's reliance on the DOE test procedure to determine a product's annual energy (and water) consumption. The distribution PBP is based on the annual energy and water consumption data described in section II.D, which are characterized with a range of values as opposed to the discrete single-point value that is used for the rebuttable PBP.

[37] Sales Tax Clearinghouse, Inc. State sales tax rates along with combined average city and county rates, 2006. Available online at: *http://thestc.com/STrates.com.*

For dishwashers, DOE based the annual energy and water consumption values that it used to determine the rebuttable PBP on the number of cycles per year specified in the DOE test procedure. The number of cycles from the DOE test procedure, 215 cycles per year, is equal to the average number of cycles that DOE used in its determination of distribution PBPs. Thus, on average, the rebuttable PBP for dishwashers is virtually the same as the average distribution PBP.

For dehumidifiers, the DOE test procedure does not provide a method for determining the product's annual energy consumption. As a result, the DOE test procedure does not offer a basis for determining the rebuttable PBP. Therefore, for its determination of rebuttable PBP, DOE decided to use the same average operational use estimate of 1,095 hours that it used in its determination of distribution PBPs. Thus, the rebuttable PBP for dehumidifiers is virtually the same as the average distribution PBP.

For cooking products, DOE determined the rebuttable PBP based on DOE test-procedure-derived annual energy consumption values which are, on average, greater than the annual energy use that DOE used to determine the distribution PBPs. Thus, the rebuttable PBPs for cooking products are shorter than the distribution PBPs. Because the distribution PBPs are based on more recent data that more accurately reflects the current energy consumption of cooking products, the distribution PBPs are more reflective of actual PBPs than the rebuttable PBPs.

For CCWs, DOE based the annual energy and water consumption values that it used to determine the rebuttable PBP on the number of cycles per year specified in the DOE test procedure. The CCW test procedure cites the residential clothes washer test procedure to establish efficiency ratings as well as annual energy and water consumption. As a result, the annual number of use cycles, 392 cycles per year, for determining the annual energy and water consumption of CCWs, is representative of residential use, not commercial use. Because residential use is significantly lower than the average usage for commercial applications—1,241 cycles per year in multi-family buildings and 2,190 cycles per year in laundromats—the average annual energy and water consumption DOE used to determine rebuttable PBP is significantly less than the consumption expected to be associated with actual usage. As a result, the rebuttable PBP is significantly longer than the distribution PBPs for both multi-family and laundromat applications. To emphasize, DOE calculated the rebuttable PBPs based on residential use to comply with the requirements of EPCA, namely, to calculate the rebuttable PBP under the applicable test procedure. DOE understands that the distribution PBP, which is based on commercial use, reflects the actual PBP of CCW.

DOE calculated rebuttable PBPs for each standard level relative to the distribution of product efficiencies that were used for the base case. Section II.G.2.d of this ANOPR provides details on the base case efficiency distributions for each of the four appliance products.

Tables II.50 through II.56 show the nationally-averaged, rebuttable PBPs calculated for all product classes and candidate standard levels for each considered product.

TABLE II.50.—STANDARD-SIZED DISHWASHERS: REBUTTABLE PAYBACK PERIODS

| Candidate standard level | EF | PBP *years* |
|---|---|---|
| Baseline | 0.46 | ..... |
| 1 | 0.58 | 0.7 |
| 2 | 0.62 | 2.1 |
| 3 | 0.65 | 4.6 |
| 4 | 0.68 | 9.5 |
| 5 | 0.72 | 17.9 |
| 6 | 0.80 | 21.8 |
| 7 | 1.11 | 16.6 |

TABLE II.51.—DEHUMIDIFIERS: REBUTTABLE PAYBACK PERIODS

| 0–35.00 pints/day* | | | 35.01–45.00 pints/day | | | 54.01–74.99 pints/day | | |
|---|---|---|---|---|---|---|---|---|
| Candidate Standard Level | EF | PBP *years* | Level | EF | PBP *years* | Level | EF | PBP *years* |
| Baseline | 1.20 | ..... | Baseline | 1.30 | ..... | Baseline | 1.50 | ..... |
| 1 | 1.25 | 2.4 | 1 | 1.35 | 4.0 | 1 | 1.55 | 2.3 |
| 2 | 1.30 | 1.7 | 2 | 1.40 | 5.5 | 2 | 1.60 | 2.2 |
| 3 | 1.35 | 3.0 | 3 | 1.45 | 5.8 | 3 | 1.65 | 2.6 |
| 4 | 1.40 | 4.3 | 4 | 1.50 | 6.5 | 4 | 1.70 | 4.7 |
| 5 | 1.45 | 5.7 | 5 | 1.74 | 8.0 | 5 | 1.80 | 4.2 |

* PBP based on the annual energy consumption and operating cost associated with the 25.01–35.00 pints/day class.

TABLE II.52.—COOKTOPS: REBUTTABLE PAYBACK PERIODS

| Electric coil | | | Electric smooth | | | Gas | | |
|---|---|---|---|---|---|---|---|---|
| Candidate standard level | EF | PBP *years* | Level | EF | PBP *years* | Level | EF | PBP *years* |
| Baseline | 0.737 | ..... | Baseline | 0.742 | ..... | Baseline | 0.156 | |
| 1 | 0.769 | 3.7 | 1 | 0.753 | 410 | 1 | 0.399 | 1.3 |
| | | | | | | 2 | 0.420 | 34 |

TABLE II.53. OVENS: REBUTTABLE PAYBACK PERIODS

| Electric standard | | | Electric self-clean | | | Gas standard | | | Gas self-clean | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Candidate standard level | EF | PBP *years* | Level | EF | PBP *years* | Level | EF | PBP *years* | Level | EF | PBP *years* |
| Baseline | 0.1066 | ..... | Baseline | 0.1099 | ..... | Baseline | 0.0298 | ..... | Baseline | 0.0540 | ..... |

TABLE II.53. OVENS: REBUTTABLE PAYBACK PERIODS—Continued

| Electric standard | | | Electric self-clean | | | Gas standard | | | Gas self-clean | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Candidate standard level | EF | PBP *years* | Level | EF | PBP *years* | Level | EF | PBP *years* | Level | EF | PBP *years* |
| 1 | 0.1113 | 2.2 | 1 | 0.1102 | 88.6 | 1* | 0.0536 | 4.2 | 1 | 0.0625 | 6.5 |
| 2 | 0.1163 | 3.3 | 2 | 0.1123 | 120.2 | 2 | 0.0566 | 4.8 | 2 | 0.0627 | 8.8 |
| 3 | 0.1181 | 5.1 | | | | 3 | 0.0572 | 5.2 | 3 | 0.0632 | 9.0 |
| 4 | 0.1206 | 24.0 | | | | 4 | 0.0593 | 20.0 | | | |
| 5 | 0.1209 | 25.2 | | | | 5 | 0.0596 | 20.3 | | | |
| | | | | | | 6 | 0.0600 | 21.4 | | | |
| | | | | | | 1a* | 0.0583 | 1.4 | | | |

* For gas standard ovens, candidate standard levels 1 and 1a correspond to designs that are utilized for the same purpose—eliminate the need for a standing pilot—but the technologies for each design are different. Candidate standard level 1 is a hot surface ignition device while candidate standard level 1a is a spark ignition device. Candidate standard level 1a is presented at the end of the table because candidate standard levels 2 through 6 are derived from candidate standard level 1.

TABLE II.54.—MICROWAVE OVENS: REBUTTABLE PAYBACK PERIODS

| Candidate standard level | EF | PBP *years* |
|---|---|---|
| Baseline | 0.557 | |
| 1 | 0.586 | 18.9 |
| 2 | 0.588 | 36.8 |
| 3 | 0.597 | 52.5 |
| 4 | 0.602 | 73.9 |

TABLE II.55.—COMMERCIAL CLOTHES WASHERS, MULTI-FAMILY APPLICATION: REBUTTABLE PAYBACK PERIODS

| Candidate standard level | MEF | WF | PBP *years* |
|---|---|---|---|
| Baseline | 1.26 | 9.50 | |
| 1 | 1.42 | 9.50 | 24.0 |
| 2 | 1.60 | 8.50 | 34.2 |
| 3 | 1.72 | 8.00 | 25.6 |
| 4 | 1.80 | 7.50 | 21.2 |
| 5 | 2.00 | 5.50 | 13.6 |
| 6 | 2.20 | 5.10 | 9.6 |

TABLE II.56.—COMMERCIAL CLOTHES WASHERS, LAUNDROMAT APPLICATION: REBUTTABLE PAYBACK PERIODS

| Candidate standard level | MEF | WF | PBP *years* |
|---|---|---|---|
| Baseline | 1.26 | 9.50 | |
| 1 | 1.42 | 9.50 | 29.8 |
| 2 | 1.60 | 8.50 | 39.1 |
| 3 | 1.72 | 8.00 | 29.1 |
| 4 | 1.80 | 7.50 | 24.0 |
| 5 | 2.00 | 5.50 | 15.0 |
| 6 | 2.20 | 5.10 | 10.7 |

Some of the candidate standard levels appear to satisfy the rebuttable presumption test, but others do not. However, PBPs calculated based on energy consumption in actual field conditions are generally more accurate than, and may differ significantly from, the PBPs calculated under the rebuttable presumption test, which are based on energy consumption under the DOE test procedure. Therefore, in the LCC and PBP analyses described in the following section, DOE evaluated the candidate standard levels for the considered products using conditions that reflect normal use of the equipment.

While DOE has examined the rebuttable presumption PBPs, DOE does not expect to determine the economic justification for any of the standard levels analyzed based on the ANOPR rebuttable presumption analysis. DOE's decision on standard levels will take into account the more detailed analysis of the economic impacts of increased efficiency pursuant to section 325(o)(2)(B)(i) of EPCA. (42 U.S.C. 6295(o)(2)(B)(i))

*G. Life-Cycle Cost and Payback Period Analyses*

The LCC and PBP analyses determine the economic impact of potential standards on consumers. The effects of standards on individual consumers—or commercial consumers in the case of CCWs—include changes in operating expenses (usually lower) and changes in total installed cost (usually higher). DOE analyzed the net effect of these changes for the four appliance products, first, by calculating the changes in consumers' LCCs likely to result from candidate standard levels as compared to a base case (no new standards). The LCC calculation considers total installed cost (which includes manufacturer selling price, sales taxes, distribution channel markups, and installation cost), operating expenses (energy, repair, and maintenance costs), equipment lifetime, and discount rate. DOE performed the LCC analysis from the perspective of the consumer of each product.

DOE also analyzed the effect of changes in operating expenses and installed costs by calculating the PBP of potential standards relative to a base case. The PBP estimates the amount of time it would take the individual or commercial consumer to recover the assumed higher purchase expense of more energy efficient equipment through lower operating costs. Similar to the LCC, the PBP is based on the total installed cost and the operating expenses. However, unlike in the LCC, DOE considers only the first year's operating expenses in the calculation of the PBP. Because the PBP does not account for changes in operating expense over time or the time value of money, it is also referred to as a simple PBP. DOE utilizes the simple PBP because of its simplicity, transparency, and clarity. The simple PBP is a good approximation of more complex metrics that are based on operating expenses that do not change significantly from year to year. For purposes of capturing the annual change in operating expenses, DOE uses the LCC which accounts for the lifetime operating expenses of the product. For more detail on the LCC and PBP analyses, refer to Chapter 8 of the TSD.

1. Approach

During the Framework workshop, DOE considered conducting the LCC and PBP analyses using an approach that characterized inputs to the analysis with average values and handling any uncertainties or variability in the inputs through the use of scenarios that analyzed the effect of high and low values on the results. In recent standards rulemakings for other products (*e.g.*, residential furnaces and boilers and distribution transformers), DOE conducted the LCC and PBP analyses by modeling both the uncertainty and variability in the inputs using Monte Carlo simulation and probability distributions. Although more extensive than the aforementioned approach based on the use of average inputs, the Monte Carlo approach provides additional information, specifically the percentage of consumers benefiting from and being burdened by

a prospective standard. The Joint Comment supported DOE's retention of Monte Carlo-based LCC and PBP analyses for this rulemaking, as long as the additional work required to perform the analyses over a simpler approach is not extensive. The Joint Comment stated that the Monte Carlo approach provides useful information on the percentage of consumers benefiting from and being burdened by an efficiency standard. (Joint Comment, No. 9 at p. 3) EEI and NWPCC also urged DOE to retain the Monte Carlo approach due to the additional information it provides over a simpler analysis. (EEI, No. 7 at p. 5; Public Meeting Transcription, No. 5 at p. 228) DOE agrees with the comments that the benefits of conducting the LCC and PBP with a Monte Carlo approach outweigh the extra effort it takes to implement it. Therefore, DOE developed its LCC and PBP spreadsheet models incorporating both Monte Carlo simulation and probability distributions by using Microsoft Excel spreadsheets combined with Crystal Ball (a commercially available add-in program).

In addition to characterizing several of the inputs to the analysis with probability distributions, in the case of residential dishwashers, dehumidifiers, and cooking products, DOE also developed a sample of individual households that use each of the appliances. The household sample sizes for these residential products are: 2,476 household records from dishwashers; 578 for dehumidifiers; 2,895 for electric cooktops; 1,159 for electric standard ovens; 1,601 for electric self-cleaning ovens; 1,597 for gas cooktops; 959 for gas standard ovens; and 494 for gas self-cleaning ovens. By developing household samples, DOE was able to perform the LCC and PBP calculations for each household to account for the variability in energy (and water) consumption and/or energy price associated with each household. DOE used EIA's 2001 RECS to develop household samples for each of the above three sets of products. The 2001 RECS is a national sample survey of housing units that collects statistical information on the consumption of and expenditures for energy in housing units along with data on energy-related characteristics of the housing units and occupants. The 2001 RECS consists of for 4,822 housing units and was constructed by EIA to be a national representation of the household population in the U.S. Of the household sub-samples used in the LCC and PBP analysis, only two (for dehumidifiers and gas self-cleaning ovens) have a size which is less than 20 percent of the total 2001 RECS housing unit size. Even so, the potential errors associated with these smaller sub-sample sizes are not anticipated to be so large as to affect the validity of the results. Specifically, the standard error of a sample of size 'n' is the sample's standard deviation divided by the square root of 'n'. For the full 2001 RECS sample the associated standard error is the sample's standard deviation multiplied by 1.5 percent. For the dehumidifier and gas self-cleaning oven sub-samples, the associated standard error is the sub-sample's standard deviation multiplied by 4.5 percent. Although the standard error of the sub-samples is three times the size of the entire 2001 RECS, it is still less than five percent. DOE believes a standard error of less than five percent is still small enough to yield meaningful results. Therefore, DOE believes the results generated from the household samples for dishwashers, dehumidifiers, and cooking products are representative of U.S. households using these appliances.

For dishwashers and cooking products, DOE used EIA's 2001 RECS to establish the variability in annual energy use and energy pricing. (DOE also established the variability of annual water use and water pricing for dishwashers using the 2001 RECS.) Note, as discussed previously in section II.D on the energy and water use of the four appliance products, DOE characterized the average energy use of dishwashers and cooking products on relatively recent studies (for dishwashers, a 2001 study performed by ADL, and for cooking products, studies from the 2004 CA RASS and the FSEC). Therefore, to emphasize, DOE used RECS to establish the variability in annual energy use of dishwashers and cooking products, not the average consumption. For dehumidifiers, DOE used RECS to establish only the variability in electricity pricing. By using RECS, DOE was able to assign a unique annual energy use and/or energy price to each household in the sample. Due to the large sample of households considered in the LCC and PBP analyses, the range of annual energy use and/or energy prices is quite large. Thus, although the annual energy use and/or energy pricing are not uncertain for any particular household, their variability across all households contributes to the range of LCCs and PBPs calculated for any particular candidate standard level.

For CCWs, DOE was unable to develop a consumer sample, since neither RECS nor EIA's Commercial Building Energy Consumption Survey (CBECS) provide the necessary data to develop one. As a result, DOE was not able to use a consumer sample to establish the variability in energy use (and water use) and energy pricing (and water pricing) for CCWs. Instead, DOE established the variability and uncertainty in energy and water use for CCWs by defining the uncertainty and variability in the use (cycles per day) of the equipment. The variability and uncertainty in energy and water pricing are characterized by regional differences in energy and water prices.

2. Life-Cycle Cost Inputs

For each efficiency level analyzed, the LCC analysis requires input data for the total installed cost of the equipment, the operating cost, and the discount rate. Table II.57 summarizes the inputs and key assumptions DOE used to calculate the customer economic impacts of various candidate standard levels for each product. A more detailed discussion of the inputs follows.

TABLE II.57.—SUMMARY OF INPUTS AND KEY ASSUMPTIONS USED IN THE LIFE-CYCLE COST ANALYSES

| Input | Description |
|---|---|
| Baseline Manufacturer Cost | The baseline manufacturer cost is the cost incurred by the manufacturer to produce equipment meeting existing minimum efficiency standards. |
| Standard-Level Manufacturer Cost Increases. | Standard-level manufacturer cost increases are the incremental change in manufacturer cost associated with producing equipment at a standard level. |
| Markups and Sales Tax | Markups and sales tax convert the manufacturer cost to a consumer equipment price. |
| Installation Cost | The installation cost is the cost to the consumer of installing the equipment and represents all costs required to install the equipment other than the marked-up consumer equipment price. The installation cost includes labor, overhead, and any miscellaneous materials and parts. |

TABLE II.57.—SUMMARY OF INPUTS AND KEY ASSUMPTIONS USED IN THE LIFE-CYCLE COST ANALYSES—Continued

| Input | Description |
|---|---|
| Annual Energy (and Water) Consumption. | The annual energy consumption is the site energy use associated with operating the equipment. The annual water consumption, which is applicable to dishwashers and CCWs, is the site water use associated with operating the equipment. The annual energy (and water) consumption vary with the product efficiency. |
| Energy and Water Prices | Energy and water prices are the prices paid by consumers for energy (*i.e.*, electricity, gas, or oil) and water. Multiplying the annual energy and water consumption by the energy and water prices yields the annual energy cost and water cost, respectively. |
| Repair and Maintenance Costs | Repair costs are associated with repairing or replacing components that have failed. Maintenance costs are associated with maintaining the operation of the equipment. |
| Energy and Water Price Trends | DOE uses energy and water price trends to forecast energy and water prices into the future and, along with the product lifetime and discount rate, to establish the lifetime energy and water costs. |
| Product Lifetime | The product lifetime is the age at which the equipment is retired from service. |
| Discount Rate | The discount rate is the rate at which DOE discounts future expenditures to establish their present value. |

a. Total Installed Cost Inputs

The inputs to calculate total installed cost are as follows. ''Baseline manufacturer cost'' is the cost incurred by the manufacturer to produce equipment meeting existing minimum efficiency standards. ''Standard-level manufacturer cost increases'' are the change in manufacturer cost associated with producing equipment to meet a particular energy efficiency level (*i.e.*, the incremental cost). Markups and sales tax convert the manufacturer cost to a consumer equipment price. The installation cost is the cost to the consumer of installing the equipment and represents all costs required to install the equipment other than the marked-up consumer equipment price. Thus, the total installed cost equals the consumer equipment price plus the installation cost. For a complete discussion on manufacturer costs refer back to section II.C in this ANOPR. For details on markups and sales taxes, refer back to section II.E in this ANOPR.

More specifically, installation costs include labor, overhead, and any miscellaneous materials and parts. DOE determined installation costs for dishwashers, cooktops and ovens, and CCWs based on data in the *RS Means Plumbing Cost Data, 2005.*[38] *RS Means* provides estimates on the labor required to install each of above three products.

For dishwashers, DOE based its installation cost for baseline equipment on the nationally representative average cost associated with the installation of a four-or-more-cycle dishwasher as provided by *RS Means.* In addition, DOE determined that installation costs would not be impacted by increased standard levels. In reference to a design requiring a reduction in the inlet water temperature, Whirlpool stated that because it would require a cold water line to be plumbed to the dishwasher in addition to the hot water line, this design would incur greater installation costs than a baseline dishwasher. (Public Meeting Transcript, No. 5 at p. 204) DOE agrees with Whirlpool, but in its development of the manufacturing cost-versus-efficiency relationship, DOE did not believe that any of the standard levels would require a reduction in inlet water temperature. Thus, DOE did not alter its decision to keep the installation cost constant for more efficient designs.

For cooktops and ovens, DOE based its installation cost for baseline equipment on the nationally representative average cost associated with the installation of 30-inch, free-standing cooking ranges as provided by *RS Means.* DOE estimated that the costs of installing a range are also representative of the costs of installing either a cooktop or an oven. However, Whirlpool suggested that DOE should assess whether more efficient cooking products incur increased installation costs. (Whirlpool, No. 10 at p. 10) As a basis for assessing whether installation costs vary with product efficiency, DOE used its own supplemental analysis to the previous rulemaking's TSD. In the supplemental analysis, DOE determined that only gas cooktops and ovens with electronic ignition devices would incur added installation costs.[39] Because DOE did not receive any information to the contrary, DOE retained this determination for its current analysis. For gas cooktops and ovens, the previous analysis estimated, as an upper bound, that 20 percent of households using gas cooktops and ovens that do not require electricity to operate would require the installation of an electrical outlet in the kitchen to bring electrical service to the product. DOE used data from *RS Means* to estimate the installation cost of an electrical outlet.

For CCWs, GE stated that because CCWs are more difficult to install than typical residential clothes washers, the installation costs associated with residential washers should not be used as a basis for establishing CCW installation costs. (Public Meeting Transcript, No. 5 at p. 46) DOE agrees with GE and based its installation cost for baseline equipment on the nationally representative average costs associated with the installation of a four-cycle, coin operating CCW as provided by *RS Means.* DOE determined that installation costs would not be impacted by increased standard levels because none of the CCWs currently on the market differ from each other in terms of installation requirements despite existing variations in their level of efficiency. All CCW have similar connections for electrical power, incoming water, and drains. In addition to these basic connections, CCW may require some additional cabling for vending systems and monitoring. However, neither vending systems nor system monitoring enhances CCW energy efficiency.

Lastly, for dehumidifiers and microwave ovens, DOE determined that there are no costs associated with the installation of these products as a function of energy efficiency. Both types of products only require an available outlet to begin operating. Some dehumidifiers may require some additional work to allow condensate to drain directly into a drain. However, this product functionality is not related to energy efficiency—it simply relieves the user from having to drain the condensate bucket from time to time.

Additional details on the development of installation costs can be found in Chapter 8 of the TSD.

[38] RS Means. *Plumbing Cost Data, 28th Edition,* 2005. Kingston, MA. p. 97. Available online for purchase at: *http://www.remeans.com/.*

[39] U.S. Department of Energy. *Technical Support Document Energy Conservation Standards for Consumer Products Cooking Products, Supplemental Chapter 4—Life Cycle Cost and Payback Periods,* Washington, DC. Available online at: *http://www.eere.energy.gov/buildings/appliance_standards/residential/cooking_products_0998_r.html.*

b. Operating Cost Inputs

The operating cost inputs are as follows. Annual energy consumption is the site energy use associated with operating an appliance product. Annual water consumption, which is applicable to dishwashers and CCWs, is the site water use associated with operating an appliance product. Energy and water prices are the prices paid by consumers for energy (*i.e.*, electricity, gas, or oil) and water. DOE used energy and water price trends to forecast energy and water prices into the future. Multiplying the annual energy and water consumption by the energy and water prices yields the annual energy cost and water cost, respectively. Repair costs are associated with repairing or replacing components that have failed. Maintenance costs are associated with maintaining the operation of the equipment. The product lifetime is the age at which the equipment is retired from service. The discount rate is the rate at which DOE discounted future expenditures to establish their present value. The inputs for estimating annual energy (and water) consumption are discussed in section II.D.

With regard to energy prices, DOE derived average prices for 13 geographic areas consisting of the nine U.S. Census divisions, with four large States (New York, Florida, Texas, and California) treated separately. For Census divisions containing one of these large States, DOE calculated the regional average values leaving out data for the large State—for example, the Pacific region average does not include California, and the West South Central does not include Texas. EEI stated that DOE should use commercial energy prices to conduct the LCC and PBP analyses of CCWs and residential prices to conduct the analyses for the residential products. (EEI, No. 7 at p. 4) DOE agreed with EEI's suggestion, and as described below, DOE developed residential energy prices for its analysis of dishwashers, dehumidifiers, and cooking products, and commercial energy prices for CCWs.

With regard to water prices, DOE derived average prices for the four Census regions. As described below, DOE used survey data survey covering approximately 300 water utilities and 200 wastewater utilities to develop water and wastewater prices. Because a sample of 200–300 utilities is not large enough to calculate regional prices for all U.S. Census divisions and large States (for comparison, DOE used electricity price data form more than 3000 utilities), DOE calculated regional values at the Census region level (Northeast, South, Midwest, and West). Using these energy and water price data, DOE analyzed their variability at the regional level for each of the four appliance products.

For the three residential products (*i.e.*, dishwashers, dehumidifiers, and cooking products), DOE used 2001 RECS data to develop a sample of individual households that use each of the appliances. By developing household samples, DOE was able to perform the LCC and PBP calculations for each household to account for the regional variability in energy and water prices associated with each household. Because households use either electric, gas, or oil water heaters, DOE had to develop residential electricity, natural gas, and oil prices for its analysis of dishwashers. For dehumidifiers, DOE used only residential electricity prices because this product runs strictly using electricity. Since cooking products consist of electric and gas equipment, DOE had to use both residential electricity and natural gas prices in its analysis.

For CCWs, DOE was unable to develop a consumer sample, since neither RECS nor EIA's CBECS provide the necessary data to develop one. Thus, DOE characterized energy and water price regional variability with probability distributions. It based the probability associated with each regional energy and water price on the population weight of each region. Because commercial laundry establishments use either electric or gas water heaters and dryers, DOE developed both commercial electricity and natural gas prices for its analysis of CCWs.

DOE estimated residential and commercial electricity prices for each of the 13 geographic areas based on data from EIA Form 861, *Annual Electric Power Industry Report.* These data are published annually and include annual electricity sales in kWh, revenues from electricity sales, and number of consumers, for the residential, commercial, and industrial sectors, for every utility serving final consumers. DOE calculated an average residential electricity price by first estimating an average residential price for each utility—by dividing the residential revenues by residential sales—and then calculating a regional average price by weighting each utility with customers in a region by the number of residential consumers served in that region. The calculation methodology uses recently available EIA data from 2004. The calculation methodology of an average commercial electricity price is identical to that for residential price, except that DOE used commercial sector data.

DOE estimated residential and commercial natural gas prices in each of the 13 geographic areas based on data from the EIA publication *Natural Gas Monthly.*[40] This publication includes a compilation of monthly natural gas delivery volumes and average consumer prices by State, for residential, commercial, and industrial customers. Specifically, DOE used the complete annual data for 2005 to calculate an average summer and winter price for each area. It calculated seasonal prices because, for some end uses, seasonal variation in energy consumption is significant. DOE defined summer as the months May through September, with all other months defined as winter. DOE calculated an average natural gas price by first calculating the summer and winter prices for each State, using a simple average over the appropriate months, and then calculating a regional price by weighting each State in a region by its population. This method differs from the method used to calculate electricity prices, because EIA does not provide consumer-level or utility-level data on gas consumption and prices. The calculation methodology of an average commercial natural gas price is identical to that for residential price, except that DOE used commercial sector data.

DOE estimated residential oil prices in each of the 13 geographic areas based on data from EIA's *Petroleum Navigator.*[41] From this Web site, available data include a compilation of monthly oil delivery volumes and average consumer prices by State, for residential, commercial, and industrial customers. Specifically, DOE used the complete annual data for 2005 to calculate an average oil price. It first calculated the prices for each State using simple averages and then calculated a regional price, weighting each State in a region by its population.

DOE obtained residential water and wastewater price data from the 2004 *Water and Wastewater Rate Survey* conducted by Raftelis Financial Consultants and the American Water Works Association.[42] The survey covers approximately 300 water utilities and

[40] DOE-Energy Information Administration, *Natural Gas Monthly*, available online at: *http://www.eia.doe.gov/oil_gas/natural_gas/data_publications/natural_gas_monthly/ngm.htm.*

[41] DOE Energy Information Administration, *Petroleum Navigator*, available online at: *http://tonto.eia.doe.gov/dnav/pet/pet_pri_top.asp.*

[42] Raftelis Financial Consultants, Inc. 2004 RFC/AWWA Water and Wastewater Rate Survey, 2004. Charlotte, NC, Kansas City, MO, and Pasadena, CA. Available online at: *http://www.raftelis.com/ratessurvey.html.*

200 wastewater utilities, with each industry analyzed separately. The water survey includes, for each utility, the cost to consumers of purchasing a given volume of water. In this case, the data include a division of the total consumer cost into fixed and volumetric charges. Pacific Gas & Electric Company (PG&E) suggested that DOE determine the marginal price of water and wastewater for its analysis. PG&E claimed that the marginal cost of improving wastewater treatment plants to comply with State and Federal regulations is very high. Because higher marginal costs translate into higher marginal prices, PG&E states that the marginal price would be a more accurate representation of the economic savings due to reduced water consumption. (Public Meeting Transcript, No. 5 at p. 190) As PG&E suggested, DOE calculated only the volumetric charge to determine water prices, since only this charge would be affected by a change in water consumption. Including the fixed charge in the average water price would lead to a slightly higher water price. For wastewater utilities, the format is similar, but the cost refers to the cost of treating a given volume of wastewater.

EEI stated that price of water and wastewater is highly variable depending on consumer use or volume and geographic location. (Public Meeting Transcript, No. 5 at p. 192) DOE agrees with EEI in determining regional water and wastewater prices. However, a sample of 200–300 utilities is not large enough to calculate regional prices for all U.S. Census divisions and large States (for comparison, the EIA Form 861 data include more than 3,000 utilities). For this reason, DOE calculated regional values at the Census-region level (Northeast, South, Midwest, and West). DOE calculated average per-unit-volume prices by first calculating the per-unit-volume price for each utility by dividing the total volumetric cost by the volume delivered, then calculating a State-level average price by weighting each utility in a given State by the number of consumers it serves (either residential or commercial), and finally arriving at a regional average by combining the State-level averages, weighting each by the population of that State. This third step helps reduce any bias in the sample that may occur due to relative under-sampling of large States.

For further details of the methodology that DOE used for deriving energy and water prices, see Chapter 8 of the TSD.

In terms of trends, DOE used price forecasts by the EIA to estimate the trends in natural gas, oil, and electricity prices. The Joint Comment stated that current EIA energy price forecasts are too low and will likely be revised upwards over the next few years. The Joint Comment requested that DOE use the latest available price forecasts from EIA to conduct their analyses. (Joint Comment, No. 9 at p. 2) To estimate future energy prices, DOE used EIA's *Annual Energy Outlook (AEO) 2007,* containing the latest available price forecasts from EIA.[43] To arrive at prices in future years, DOE multiplied the average prices described in the preceding section by the forecast of annual average price changes in *AEO 2007.* Because *AEO 2007* forecasts prices to 2030, DOE followed past guidelines provided to the Federal Energy Management Program (FEMP) by EIA and used the average rate of change during 2020–2030 for electricity and the average rate of change during 2015–2020 for natural gas and oil to estimate the price trends after 2030. More recent guidelines to FEMP suggest that a 10-year rather than a 15-year historical time period be used to extrapolate natural gas and oil prices. DOE intends to use the more recent guidelines to extrapolate gas and oil prices for the NOPR. For the analyses to be conducted for the NOPR and Final Rule, DOE intends to update its energy price forecasts at those stages of the rulemaking based on the latest available *AEO.*

NWPCC commented that energy rate caps will be coming off in the next few years for many States in the U.S. and asked whether EIA's energy price forecasts take this into account. (Public Meeting Transcript, No. 5 at p. 193) In response, we note that EIA conducts an annual review of changes in energy prices by supply region and State in developing its *AEO.* In estimating future energy prices, EIA determines which regions of the country are regulated (*i.e.*, with rate caps) and which are competitive or will become competitive soon (*i.e.*, without rate caps). In past *AEOs,* EIA assumed that prices in fully competitive regions would reflect spot market prices and would be passed on to consumers immediately. EIA expects that the end of price reductions and caps in many States will push competitive regions closer to that representation of competition; however, EIA anticipates that most customers in fully competitive regions will not experience price changes immediately in response to changes in market generation costs. Consequently, for *AEO 2007,* EIA built lags into the calculation of competitive energy prices to simulate the delay from the time suppliers experience cost changes to the time consumers experience price changes as a result of the length of fixed-price contracts for standard-offer service (*i.e.*, rates typically provided by regulated utilities) and competitive retail service.

National Consumer Law Council (NCLC) asked how DOE will account for the variability in future electricity prices in the analyses. (Public Meeting Transcript, No. 5 at p. 188) In response, we note that DOE addressed future variability in electricity prices by incorporating three separate projections from *AEO 2007* into the spreadsheet models for calculating LCC and PBP: (1) Reference Case; (2) Low Economic Growth Case; and (3) High Economic Growth Case. These three cases reflect the uncertainty of economic growth in the forecast period. The high and low growth cases show the projected effects of alternative growth assumptions on energy markets.

To estimate the future trend for water and wastewater prices, DOE used data on the historic trend in the national water price index (U.S. city average) from 1970 through 2005 provided by the Bureau of Labor Statistics. DOE extrapolated a future trend based on the linear growth over the 1970–2005 time period.

For further details on DOE's method for forecasting energy and water prices, see Chapter 8 of the TSD.

With respect to repair and maintenance costs, DOE assumed that small, incremental changes in products related to efficiency result in either no or only very small changes in repair and maintenance costs, as compared to baseline products. DOE acknowledges there is a greater probability that equipment with efficiencies that are significantly greater than the baseline will incur some level of increased repair and maintenance costs because such equipment is more likely to incorporate technologies that are not widely available.

On this point, Whirlpool stated that, in general, more-efficient products use more sophisticated components and controls, thereby increasing repair and maintenance costs. (Whirlpool, No. 10 at p. 10) Whirlpool also stated, in regard to cooking products, that repair and maintenance costs for more-efficient products will be higher than these types of costs for current baseline products. For example, Whirlpool cited two design options—bi-radiant ovens and electronic controls—as technologies that would incur higher repair and maintenance costs. Whirlpool suggested that DOE should obtain data on repair

[43] U.S. Department of Energy-Energy Information Administration. Annual Energy Outlook 2007 with Projections to 2030, February, 2007. Washington, DC. DOE/EIA–0383 (2007).

and maintenance costs during the course of its data collection for the engineering analysis (similar comment provided by AHAM). (Whirlpool, No. 10 at p. 10; Public Meeting Transcript, No. 5 at pp. 199–200; AHAM, No. 14 at p. 5) With respect to CCWs, ALS stated that repair and maintenance costs for front-loading washers are much higher than for top-loading washers. (Public Meeting Transcript, No. 5 at p. 201) DOE requested that manufacturers and other stakeholders provide information regarding appropriate repair and maintenance costs if stakeholders believe such estimates are necessary. However, DOE did not receive any input, and, therefore, did not include any changes in repair and maintenance costs for products more efficient than baseline products in this ANOPR.

DOE specifically seeks feedback on its assumption that increases in product energy efficiency would not have a significant impact on the repair and maintenance costs for the four appliance products covered by this rulemaking. This is identified as Issue 11 under ''Issues on Which DOE Seeks Comment'' in section IV.E of this ANOPR.

With regard to appliance product lifetimes, DOE received several comments on the appropriate sources for establishing their length. For dishwashers, ACEEE stated that some sources indicate that dishwasher lifetime is 14 years, while Whirlpool commented that *Appliance Magazine's* estimate of nine years for dishwasher lifetime is reasonable and the most representative of actual consumer behavior. (Public Meeting Transcript, No. 5 at p. 206; Whirlpool, No. 10 at p 10) For dehumidifiers, the Joint Comment estimated a product lifetime of 15 years based on discussions with manufacturers and other sources. The Joint Comment stated that *Appliance Magazine* generally provides shorter lifetimes as compared to other sources. In contrast, Whirlpool commented that *Appliance Magazine's* estimate of eight years for dehumidifier lifetime is reasonable and the most consistent with actual consumer behavior. (Joint Comment, No. 9 at p. 5; Whirlpool, No. 10 at p 10) For cooking products, both AHAM and Whirlpool stated that the best source for cooking product lifetimes is *Appliance Magazine,* as they believe it provides estimated lifetimes which are consistent with actual consumer behavior. (AHAM, No. 14 at p. 5; Whirlpool, No. 10 at p. 10) Finally, for CCWs, ALS stated that because CCWs are typically used more often than residential clothes washers, CCW lifetime will be significantly shorter than the lifetime of residential machines. It suggested that the best sources for CCW product lifetime data are the MLA and route operators. (Public Meeting Transcript, No. 5 at p. 206)

To estimate the lifetime for each product covered by this rulemaking, DOE used only primary sources of data. For example, the Federal government's Energy Star Web site [44] provides lifetime estimates for dishwashers and dehumidifiers, but the estimates are actually based on data from *Appliance Magazine.* Because, in this case, *Appliance Magazine* is the primary source of data, DOE did not use the Energy Star Web site as a primary source to estimate product lifetimes. DOE used a variety of sources to establish the lifetime of each of the considered products, including *Appliance Magazine.* Using the primary sources of data, DOE characterized product lifetimes with uniform probability distributions ranging from a minimum to a maximum value. Microwave ovens were the exception, since DOE used a triangular probability distribution for these products instead. DOE determined the average product lifetime by calculating the average value from the applicable primary sources of data. To establish the minimum and maximum product lifetime, DOE generally used the high and low values from these sources for each of the four appliance products. See Chapter 8 of the TSD for more details.

To establish discount rates for the residential products (*i.e.*, dishwashers, dehumidifiers, and cooking products), DOE derived estimates of the finance cost of purchasing the considered products. Following financial theory, the finance cost of raising funds to purchase appliances can be interpreted as: (1) The financial cost of any debt incurred to purchase equipment, or (2) the opportunity cost of any equity used to purchase equipment. For the residential products, the purchase of equipment for new homes entails different finance costs for consumers than the purchase of replacement equipment. Thus, DOE used different discount rates for new construction and replacement installations. NCLC questioned how DOE would evaluate the cost of household equity and debt to develop discount rates for residential products. (Public Meeting Transcript, No. 5 at p. 196) As described below, DOE used the Federal Reserve Board's Survey of Consumer Finances (SCF) for the years 1989, 1992, 1995, 1998, 2001, and 2004 as the basis for using household equity and debt to calculate discount rates for residential products.[45] The SCF defines the shares of various equity and debt classes held by U.S. households, thereby allowing DOE to properly weight the equity and debt holdings to derive residential discount rates. EEI commented that because interest rates have been rising since 2003, making the cost of capital higher for residential and commercial consumers, DOE should take into account the most recent financial data when developing discount rates. (EEI, No. 7 at p. 4) As described below, DOE used the most recent data available, including data from the SCF to establish appropriate residential discount rates, and data from Damodaran Online to establish commercial discount rates.[46]

New equipment is often purchased as part of the purchase of a home, which is almost always financed with a mortgage loan. DOE estimated discount rates for new-housing equipment using the effective real (after-inflation) mortgage rate for homebuyers. This rate corresponds to the interest rate after deduction of mortgage interest for income tax purposes and after adjusting for inflation. The data sources DOE used for mortgage interest rates are the SCFs in 1989, 1992, 1995, 1998, 2001, and 2004. After adjusting for inflation and interest tax deduction, effective real interest rates on mortgages across the six surveys averaged 3.2 percent.

For residential replacement equipment, DOE's approach for deriving discount rate involved identifying all possible debt or asset classes that might be used to purchase replacement equipment, including household assets that might be affected indirectly. DOE did not include debt from primary mortgages and equity of assets considered non-liquid (such as retirement accounts), since these would likely not be affected by replacement equipment purchases. DOE estimated the average shares of the various debt and equity classes in the average U.S. household equity and debt portfolios using SCF data for 1989, 1992, 1995, 1998, 2001, and 2004. DOE used the mean share of each class across the six sample years as a basis for estimating the effective financing rate for replacement equipment. DOE estimated

[44] Energy Star Web site: *http://www.energystar.gov/.*

[45] The Federal Reserve Board. *1989, 1992, 1995, 1998, 2001, 2004 Survey of Consumer Finances,* 1989, 1992, 1995, 1998, 2001, 2004. Available online at: *http://www.federalreserve.gov/pubs/oss/oss2/scfindex.html.*

[46] Damodaran Online is a widely used source of information about company debt and equity financing for most types of firms, and was the source of data for this analysis on educational services, hotels, and real estate investment trusts. *See http://pages.stern.nyu.edu/adamodar/.*

interest or return rates associated with each type of equity and debt using SCF data and other sources. The mean real effective rate across all types of household debt and equity, weighted by the shares of each class, is 5.6 percent.

For CCWs, DOE derived the discount rate from the cost of capital of publicly-traded firms in the sectors that purchase CCWs. These companies typically finance equipment purchases through debt and equity capital. DOE estimated the cost of capital of these firms as the weighted average of the cost of equity financing and the cost of debt financing. The costs of debt and equity financing are usually obtainable from publicly available data concerning the major types of companies in the sectors that purchase CCWs. Damodaran Online is a widely used source of information about company debt and equity financing for most types of firms, and it was the source of data for this analysis on educational services, hotels, and real estate investment trusts. Since Damodaran Online does not include data for firms in the personal services sector (Standard Industrial Classification 7200), DOE used data from Ibbotson's Associates [47] for this sector.

DOE estimated the cost of equity using the capital asset pricing model (CAPM). The CAPM assumes that the cost of equity for a particular company is proportional to the systematic risk faced by that company, where high risk is associated with a high cost of equity and low risk is associated with a low cost of equity. The systematic risk facing a firm is determined by several variables: (1) The risk coefficient of the firm; (2) the expected return on risk-free assets; and (3) the equity risk premium (ERP). The risk coefficient of the firm indicates the risk associated with that firm relative to the price variability in the stock market. The expected return on risk-free assets is defined by the yield on long-term government bonds. The ERP represents the difference between the expected stock market return and the risk-free rate.

The cost of debt financing is the interest rate paid on money borrowed by a company. The cost of debt is estimated by adding a risk adjustment factor to the risk-free rate. This risk adjustment factor depends on the variability of stock returns represented by standard deviations in stock prices.

DOE estimated the weighted-average cost of capital (WACC) using the respective shares of equity and debt financing for each of the sectors that purchase CCWs. It calculated the real WACC by adjusting the cost of capital by the expected rate of inflation. To obtain an average discount rate value, DOE used additional data from the CEE on the number of CCWs in use in various sectors. Weighting each sector by its market share, DOE estimated the average discount rate for companies that purchase CCWs to be 5.7 percent, using an inflation rate of 2.5 percent (the average of inflation rates over the 2001–2005 time period). For further details on DOE's method for estimating discount rates, see Chapter 8 of the TSD.

One additional issue pertaining to the LCC operating cost inputs concerns the potential ''split incentives'' that exist in the CCW market. Several organizations commented that under a split incentive situation, the party purchasing more-efficient and more-expensive equipment may not realize the operating cost savings from the more-efficient equipment. For example, commenters asserted that under new energy efficiency standards, route operators would incur the burden of higher purchase prices due to more-efficient equipment; property owners would realize the benefits of operating cost savings, and end-users may incur the burden of increased costs to use the washers. (Public Meeting Transcript, No. 5 at p. 239; EEI, No. 7 at p. 4; MLA, No. 8 at p. 2; Whirlpool, No. 10 at p. 13; Multiple Water Organizations, No. 11 at p. 2) In its LCC and PBP analyses, DOE did not explicitly consider the potential of split incentives in the CCW market, because it believes that the probability of such a split incentive was very low. The actual consumers of this product (primarily property-owners of multi-family buildings and laundromats) realize both the burden of increased purchase prices and the benefit of reduced operating cost savings. Any split incentive that would occur for end-users in the form of increased vending prices is likely to be very low due to the competitive nature of the market. For example, if end-users feel as though they are paying excessively high prices to use a service, they will seek out cheaper options to obtain the service, thereby forcing providers to adjust their prices in accordance with what is a reasonable return on their investment. Due to the checks and balances that occur in the marketplace, DOE believes it is unnecessary to explicitly account for the possible inequities to end-users that may arise from a split incentive.

c. Effective Date

The effective date is the future date when a new standard becomes effective. Based on DOE's implementation report for energy conservation standards activities submitted under Section 141 of EPACT 2005, a final rule for the four appliance products being considered for this standards rulemaking is scheduled for completion in March 2009. The effective date of any new energy efficiency standards for these products will be three years after the final rule is published in the **Federal Register** (*i.e.*, March 2012). DOE calculated the LCC for all consumers as if they each would purchase a new piece of equipment in the year the standard takes effect.

d. Equipment Assignment for the Base Case

For purposes of conducting the LCC analysis, DOE analyzed candidate standard levels relative to a baseline efficiency level. However, some consumers already purchase products with efficiencies greater than the baseline levels. Thus, to accurately estimate the percentage of consumers that would be affected by a particular standard level, DOE took into account the distribution of product efficiencies currently in the marketplace. In other words, DOE conducted the analysis by taking into account the full breadth of product efficiencies that consumers already purchase under the base case (*i.e.*, the case without new energy efficiency standards).

DOE's approach for conducting the LCC analysis for residential products (*i.e.*, dishwashers, dehumidifiers, cooking products) relied on developing samples of households that use each of the products. DOE used a Monte Carlo simulation technique to perform the LCC calculations on the households in the sample. Using the current distribution of product efficiencies, DOE assigned each household in the sample a specific product efficiency. Because it performed the LCC calculations on a household-by-household basis, DOE based the LCC for a particular standard level on the efficiency of the product in the given household. For example, if a household was assigned a product efficiency that is greater than or equal to the efficiency of the standard level under consideration, the LCC calculation would reveal that this household is not impacted by an increase in product efficiency that is equal to the standard level.

For dishwashers, DOE characterized base case market shares based on data that AHAM provided that show the distribution of standard-sized

[47] Ibbotson Associates is a leading authority on asset allocation with expertise in capital market expectations and portfolio implementation. *See* Ibbotson's Associates Statistics for SIC 72, available online at: *http://www.ibbotson.com*

dishwasher efficiencies sold in 2005. Table II.58 presents the market shares of the candidate standard levels in the base case for standard-sized dishwashers. The market shares in Table II.58 represent the products that households would have been anticipated to purchase in the year 2012 in the absence of new standards.

TABLE II.58.—STANDARD-SIZED DISHWASHERS: BASE CASE MARKET SHARES

| Candidate standard level | EF | Market share (percent) |
|---|---|---|
| Baseline | 0.46 | 3.0 |
| * | 0.50 | 2.0 |
| * | 0.54 | 2.0 |
| 1 | 0.58 | 43.0 |
| * | 0.60 | 17.0 |
| 2 | 0.62 | 22.0 |
| 3 | 0.65 | 8.0 |
| 4 | 0.68 | 2.5 |
| 5 | 0.72 | 0.2 |
| 6 | 0.80 | 0.2 |
| 7 | 1.11 | 0.2 |

* Intermediate efficiency level.

For dehumidifiers, DOE characterized base case market shares based on data that AHAM provided that show the distribution of dehumidifier efficiencies in 2005 for two of the six product classes: 35.01–45.00 pints/day and 54.01–74.99 pints/day. Because DOE conducted the engineering and LCC and PBP analyses on the combined product class of 0–35.00 pints/day product class as well as these two classes, DOE had to estimate the market share data for the combined 0–35.00 pints/day product class. Without any data provided by either AHAM or manufacturers or available from other sources, DOE assumed that the market shares for the combined 0–35.00 pints/day class were equivalent to the market shares for the closest product class—the 35.01–45.00 pint/day product class. For purposes of conducting the NIA, DOE estimated that the market share data for the 35.01–45.00 pints/day and 54.01–74.99 pints/day classes could be used to characterize the base case market shares for the 45.01–54.00 pints/day and 75 pints/day and greater product classes, respectively. Table II.59 presents the market shares of the efficiency levels in the base case for the three classes of dehumidifiers that DOE used to conduct the LCC analysis. The market shares in Table II.59 represent the equipment that households would have been anticipated to purchase in the year 2012 in the absence of new standards.

TABLE II.59.—DEHUMIDIFIERS: BASE CASE MARKET SHARES

| 0–35.00 pints/day | | | 35.01–45.00 pints/day | | | 54.01–74.99 pints/day | | |
|---|---|---|---|---|---|---|---|---|
| Level | EF | Market share (percent) | Level | EF | Market share (percent) | Level | EF | Market share (percent) |
| Baseline | 1.20 | 27 | Baseline | 1.30 | 27 | Baseline | 1.50 | 31 |
| 1 | 1.25 | 35 | 1 | 1.35 | 35 | 1 | 1.55 | 0 |
| 2 | 1.30 | 0 | 2 | 1.40 | 0 | 2 | 1.60 | 57 |
| 3 | 1.35 | 0 | 3 | 1.45 | 0 | 3 | 1.65 | 12 |
| 4 | 1.40 | 38 | 4 | 1.50 | 38 | 4 | 1.70 | 0 |
| 5 | 1.45 | 0 | 5 | 1.74 | 0 | 5 | 1.80 | 0 |

Because DOE currently does not regulate cooking product efficiency with an energy efficiency descriptor, very little is known regarding the distribution of product efficiencies that consumers in the United States currently purchase. Therefore, for all electric cooking products, including microwave ovens, and gas self-cleaning ovens, DOE estimated that 100 percent of the market existed at the baseline efficiency levels. For gas cooktops and gas standard ovens, data are available, both from DOE's previous rulemaking analysis and the Appliance Recycling Information Center, to indicate the historical percentage of products shipped with standing pilots. Therefore, DOE was able to estimate the percentage of the gas cooktop and gas standard oven market that is still sold with standing pilot lights. Table II.60 presents the market shares of the efficiency levels in the base case for gas cooktops and gas standard ovens. In the table, candidate standard level 1 represents products without standing pilot light ignition systems. The market shares in Table II.60 represent the equipment that households would have been anticipated to purchase in the year 2012 in the absence of new energy conservation standards.

TABLE II.60.—GAS COOKTOPS AND GAS STANDARD OVENS: BASE CASE MARKET SHARES

| Gas cooktops | | | Gas standard ovens | | |
|---|---|---|---|---|---|
| Candidate standard level | EF | Market share (percent) | Candidate standard level | EF | Market share (percent) |
| Baseline | 0.156 | 6.8 | Baseline | 0.0298 | 17.6 |
| 1 | 0.399 | 93.2 | 1* | 0.0536 | 82.4 |
| 2 | 0.420 | 0 | 2 | 0.0566 | 0 |
| | | | 3 | 0.0572 | 0 |
| | | | 4 | 0.0593 | 0 |
| | | | 5 | 0.0596 | 0 |
| | | | 6 | 0.0600 | 0 |

TABLE II.60.—GAS COOKTOPS AND GAS STANDARD OVENS: BASE CASE MARKET SHARES—Continued

| Gas cooktops | | | Gas standard ovens | | |
|---|---|---|---|---|---|
| Candidate standard level | EF | Market share (percent) | Candidate standard level | EF | Market share (percent) |
| | | | 1a* | 0.0583 | 0 |

*For gas standard ovens, candidate standard levels 1 and 1a correspond to designs that are utilized for the same purpose—eliminate the need for a standing pilot—but the technologies for each design are different. Candidate standard level 1 is a hot surface ignition device while candidate standard level 1a is a spark ignition device. Candidate standard level 1a is presented at the end of the table because candidate standard levels 2 through 6 are derived from candidate standard level 1.

For CCWs, DOE was unable to develop a consumer sample. However, it took into account the base case mix of CCW efficiencies by characterizing the current mix of product efficiencies as a probability distribution. In other words, as DOE performed the Monte Carlo simulation, it evaluated each standard level analyzed against the distribution of product efficiencies in the base case.

DOE derived its base case market share data for CCWs based on shipment-weighted efficiency data that AHAM provided. Table II.61 presents the market shares of the candidate standard levels in the base case for standard-sized dishwashers. The market shares in Table II.61 represent the products that households would have been anticipated to purchase in the year 2012 in the absence of new energy conservation standards.

TABLE II.61.—COMMERCIAL CLOTHES WASHERS: BASE CASE MARKET SHARES

| Level | MEF | WF | Market share (percent) |
|---|---|---|---|
| Baseline | 1.26 | 9.50 | 79.7 |
| 1 | 1.42 | 9.50 | 0.0 |
| 2 | 1.60 | 8.50 | 0.0 |
| 3 | 1.72 | 8.00 | 0.0 |
| 4 | 1.80 | 7.50 | 0.0 |
| 5 | 2.00 | 5.50 | 20.3 |
| 6 | 2.20 | 5.10 | 0.0 |

For more details on how DOE developed the base case product efficiency distributions for the four appliance products in the LCC analysis, refer to Chapter 8 of the TSD.

DOE specifically seeks feedback on its methodology and data sources for developing the base case product efficiency distributions for the four appliance products. This is identified as Issue 12 under ''Issues on Which DOE Seeks Comment'' in section IV.E of this ANOPR.

3. Payback Period Inputs

As described above, the PBP is the amount of time it takes the consumer to recover the additional installed cost of more-efficient equipment through energy (and water) cost savings, as compared to baseline equipment. Simple payback period does not take into account changes in operating expense over time or the time value of money. Payback periods are expressed in years. Payback periods greater than the life of the product mean that the increased total installed cost is not recovered in reduced operating expenses.

The inputs to the calculation of the PBP are the total installed cost of the equipment to the customer for each efficiency level and the annual (first-year) operating expenditures for each efficiency level. The PBP calculation uses the same inputs as the LCC analysis, except that energy (and water) price trends and discount rates are not needed. The calculation needs energy prices only for the year in which a new standard is expected to take effect, in this case the year 2012.

4. Life-Cycle Cost and Payback Period Results

DOE calculated the LCC and PBP results relative to the base case forecast for each product class. As mentioned above, the base case consists of the projected pattern of equipment purchases that would occur in the absence of new efficiency standards.

The following tables (Table II.62 through Table II.75) present the findings from the LCC and PBP analyses DOE performed for this ANOPR. DOE determined the values at each candidate standard level by excluding the percentage of households not impacted by the standard (*i.e.*, those who, in base case, already purchase a unit at or above the given efficiency level). Figures showing the distribution of LCCs, LCC impacts, and PBPs with their corresponding probability of occurrence are presented in Chapter 8 of the TSD.

Table II.62 shows the LCC and PBP results for standard-sized dishwashers. For example, candidate standard level 3 (0.65 EF) shows an average LCC savings of $17. Note that for standard level 3, 10.6 percent of the housing units in 2012 are shown to have already purchased a dishwasher at standard level 3 in the base case and, thus, have zero savings due to the standard. If one compares the LCC of the baseline at 0.46 EF ($1124) to the standards case at 0.65 EF ($1025), then the difference in the LCCs is $99. However, since the base case includes a significant number of households that are not impacted by the standard, the average savings over all of the households is actually $17, not $99. With regard to the PBPs shown below, DOE determined the median and average values by excluding the percentage of households not impacted by the standard. For example, in the case of standard level 3, 10.6 percent of the households did not factor into the calculation of the median and average PBP.

TABLE II.62.—STANDARD-SIZED DISHWASHERS: LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS

| Candidate standard level | EF | Life-cycle cost | | | Life-cycle cost savings | | | | Payback period (years) | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | Average installed price | Average operating cost | Average LCC | Average savings | Households with | | | Median | Average |
| | | | | | | Net cost (percent) | No impact (percent) | Net benefit (percent) | | |
| Baseline | 0.46 | $700 | $424 | $1,124 | | | | | | |
| 1 ..... | 0.58 | 706 | 339 | 1,045 | $4 | 0.1 | 92.8 | 7.1 | 0.9 | 1.5 |
| 2 ..... | 0.62 | 712 | 318 | 1,029 | 13 | 11.3 | 32.8 | 56.0 | 2.8 | 5.1 |
| 3 ..... | 0.65 | 722 | 303 | 1,025 | 17 | 32.6 | 10.6 | 56.8 | 5.9 | 10.9 |
| 4 ..... | 0.68 | 747 | 291 | 1,038 | 5 | 58.6 | 3.1 | 38.4 | 11.9 | 22.2 |
| 5 ..... | 0.72 | 811 | 275 | 1,086 | −43 | 82.9 | 0.6 | 16.5 | 22.5 | 42.3 |
| 6 ..... | 0.80 | 900 | 249 | 1,149 | −106 | 90.1 | 0.4 | 9.5 | 28.3 | 51.5 |
| 7 ..... | 1.11 | 980 | 183 | 1,162 | −119 | 83.3 | 0.3 | 16.4 | 21.9 | 39.3 |

Tables II.63, II.64, and II.65 show the LCC and PBP results for dehumidifiers. For example, in the case of the 35.01–45.00 pints/day class, candidate standard level 3 (1.45 EF) shows an average LCC savings of $8. Note that for standard level 3, 38.2 percent of the housing units in 2012 are shown to have already purchased a dehumidifier at standard level 3 in the base case and, thus, have zero savings due to the standard. If one compares the LCC of the base case at 1.30 EF ($676) to the standards case at 1.45 EF ($657), then the difference in the LCCs is $19. However, since the base case includes a significant number of households that are not impacted by the standard, the average savings over all of the households is actually $8, not $19. With regard to the PBPs shown below, DOE determined the median and average values by excluding the percentage of households not impacted by the standard. For example, in the case of standard level 3 for the 35.01–45.00 pints/day class, 38.2 percent of the households did not factor into the calculation of the median and average PBP.

TABLE II.63.—DEHUMIDIFIERS, 0–35.00 PINTS/DAY: LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS

| Candidate standard level | Efficiency *liters/kWh* | Life-cycle cost * | | | Life-cycle cost savings * | | | | Payback period (years) * | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | Average installed price | Average operating cost | Average LCC | Average savings | Households with | | | Median | Average |
| | | | | | | Net cost (percent) | No impact (percent) | Net benefit (percent) | | |
| Baseline | 1.20 | $137 | $422 | $558 | ..... | ..... | ..... | ..... | ..... | ..... |
| 1 ..... | 1.25 | 142 | 405 | 546 | $3 | 0.0 | 73.1 | 26.9 | 2.6 | 2.5 |
| 2 ..... | 1.30 | 142 | 389 | 533 | 11 | 0.0 | 38.4 | 61.6 | 1.7 | 1.8 |
| 3 ..... | 1.35 | 153 | 375 | 528 | 15 | 0.2 | 38.4 | 61.4 | 3.2 | 3.1 |
| 4 ..... | 1.40 | 166 | 361 | 527 | 15 | 5.5 | 38.4 | 56.2 | 4.6 | 4.5 |
| 5 ..... | 1.45 | 176 | 349 | 525 | 17 | 25.9 | 0.0 | 74.1 | 5.7 | 5.9 |

* LCC, LCC savings, and PBP based on the annual energy consumption and operating cost associated with the 25.01–35.00 pints/day product class.

TABLE II.64.—DEHUMIDIFIERS, 35.01–45.00 PINTS/DAY: LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS

| Candidate standard level | Efficiency *liters/kWh* | Life-cycle cost | | | Life-cycle cost savings | | | | Payback period (years) | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | Average installed price | Average operating cost | Average LCC | Average savings | Households with | | | Median | Average |
| | | | | | | Net cost (percent) | No impact (percent) | Net benefit (percent) | | |
| Baseline | 1.30 | $157 | $519 | $676 | ..... | ..... | ..... | ..... | ..... | ..... |
| 1 ..... | 1.35 | 167 | 500 | 666 | $3 | 1.5 | 73.1 | 25.5 | 4.4 | 4.2 |
| 2 ..... | 1.40 | 167 | 482 | 661 | 6 | 15.2 | 38.2 | 46.6 | 5.9 | 5.8 |
| 3 ..... | 1.45 | 192 | 465 | 657 | 8 | 17.5 | 38.2 | 44.3 | 6.2 | 6.1 |
| 4 ..... | 1.50 | 208 | 450 | 658 | 8 | 22.7 | 38.2 | 39.1 | 7.0 | 6.8 |
| 5 ..... | 1.74 | 272 | 388 | 660 | 5 | 54.1 | 0.0 | 45.9 | 8.5 | 8.3 |

TABLE II.65.—DEHUMIDIFIERS, 54.01–74.99 PINTS/DAY: LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS

| Candidate standard level | Efficiency *liters/kWh* | Life-cycle cost | | | Life-cycle cost savings | | | | Payback period (years) | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | Average installed price | Average operating cost | Average LCC | Average savings | Households with | | | Median | Average |
| | | | | | | Net cost (percent) | No impact (percent) | Net benefit (percent) | | |
| Baseline | 1.50 | $189 | $725 | $914 | ..... | ..... | ..... | ..... | ..... | ..... |

TABLE II.65.—DEHUMIDIFIERS, 54.01–74.99 PINTS/DAY: LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS—Continued

| Candidate standard level | Efficiency *liters/kWh* | Life-cycle cost | | | Life-cycle cost savings | | | | Payback period (years) | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | Average installed price | Average operating cost | Average LCC | Average savings | Households with | | | Median | Average |
| | | | | | | Net cost (percent) | No impact (percent) | Net benefit (percent) | | |
| 1 ..... | 1.55 | 195 | 702 | 897 | $5 | 0.0 | 68.5 | 31.5 | 2.5 | 2.4 |
| 2 ..... | 1.60 | 195 | 680 | 881 | 10 | 0.0 | 68.5 | 31.5 | 2.4 | 2.4 |
| 3 ..... | 1.65 | 208 | 659 | 867 | 22 | 0.0 | 12.3 | 87.7 | 2.8 | 2.7 |
| 4 ..... | 1.70 | 224 | 640 | 864 | 25 | 14.1 | 0.0 | 85.9 | 4.8 | 4.9 |
| 5 ..... | 1.80 | 241 | 604 | 845 | 44 | 7.8 | 0.0 | 92.2 | 4.4 | 4.4 |

Tables II.66, II.67, and II.68 show the LCC and PBP results for cooktops. For example, in the case of gas cooktops, candidate standard level 1 (pilotless ignition with an efficiency of 0.399 EF) shows an average LCC savings of $19. Note that for standard level 1, 93.4 percent of the housing units in 2012 are shown to have already purchased a gas cooktop with pilotless ignition in the base case and, thus, have zero savings due to the standard. If one compares the LCC of the baseline at 0.106 EF ($716) to the standards case at 0.399 EF ($435), then the difference in the LCCs is $281. However, since the base case includes a significant number of households that are not impacted by the standard, the average savings over all of the households is actually $19, not $281. With regard to the PBPs shown below, DOE determined the median and average values by excluding the percentage of households not impacted by the standard. For example, in the case of standard level 1 for gas cooktops, 93.4 percent of the households did not factor into the calculation of the median and average PBP.

TABLE II.66.—ELECTRIC COIL COOKTOPS: LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS

| Candidate standard level | EF | Life-cycle cost | | | Life-cycle cost savings | | | | Payback period (years) | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | Average installed price | Average operating cost | Average LCC | Average savings | Households with | | | Median | Average |
| | | | | | | Net cost | No impact | Net benefit | | |
| Baseline | 0.737 | $251 | $150 | $401 | ..... | ..... | ..... | ..... | ..... | ..... |
| 1 ..... | 0.769 | 255 | 144 | 399 | $3 | 35.0% | 0.0% | 65.0% | 8.1 | 18.6 |

TABLE II.67.—ELECTRIC SMOOTH COOKTOPS: LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS

| Candidate standard level | EF | Life-cycle cost | | | Life-cycle cost savings | | | | Payback period (years) | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | Average installed price | Average operating cost | Average LCC | Average savings | Households with | | | Median | Average |
| | | | | | | Net cost | No impact | Net benefit | | |
| Baseline | 0.742 | $288 | $150 | $438 | ..... | ..... | ..... | ..... | ..... | ..... |
| 1 ..... | 0.753 | 528 | 148 | 676 | −$238 | 100.0% | 0.0% | 0.0% | 1,685.2 | 4,266.3 |

TABLE II.68.—GAS COOKTOPS: LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS

| Candidate standard level | EF | Life-cycle cost | | | Life-cycle cost savings | | | | Payback period (years) | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | Average installed price | Average operating cost | Average LCC | Average savings | Households with | | | Median | Average |
| | | | | | | Net cost (percent) | No impact (percent) | Net benefit (percent) | | |
| Baseline | 0.106 | $289 | $428 | $716 | ..... | ..... | ..... | ..... | ..... | ..... |
| 1 ..... | 0.399 | 322 | 113 | 435 | $19 | 0.0 | 93.4 | 6.7 | 1.3 | 1.4 |
| 2 ..... | 0.420 | 351 | 107 | 458 | −5 | 93.2 | 0.0 | 6.8 | 75.3 | 195.1 |

Tables II.69 through II.72 show the LCC and PBP results for ovens. For example, in the case of gas standard ovens, candidate standard level 1 (pilotless ignition with an efficiency of 0.058 EF) shows an average LCC savings of $16. Note that for standard level 1, 83 percent of the housing units in 2012 are shown to have already purchased a gas standard oven with pilotless ignition in the base case and, thus, have zero savings due to the standard. If one compares the LCC of the base case at 0.030 EF ($697) to the standards case at 0.058 EF ($603), then the difference in the LCCs is $94. However, since the base case includes a significant number of households that are not impacted by the standard, the average savings over all of the households is actually $16, not $94. With regard to the PBPs shown below, DOE determined the median and average values by excluding the percentage of households not impacted by the standard. For example, in the case of standard level 1 for gas standard ovens, 83 percent of the households did

not factor into the calculation of the median and average PBP. Also of note regarding PBPs, the large difference in the average and median values for electric self-cleaning ovens and standard level 5 for gas standard ovens are due to outliers in the distribution of results. The Monte Carlo simulation for electric self-cleaning ovens and standard level 5 for gas ovens yielded a few results with PBPs in excess of one million years. A limited number of excessively long PBPs produce an average PBP that is very long. Therefore, in these cases, the median PBP is a more representative value to gauge the length of the PBP.

TABLE II.69.—ELECTRIC STANDARD OVENS: LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS

| Candidate standard level | EF | Life-cycle cost | | | Life-cycle cost savings | | | | Payback period (years) | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | Average installed price | Average operating cost | Average LCC | Average savings | Households with | | | Median | Average |
| | | | | | | Net cost (percent) | No impact (percent) | Net benefit (percent) | | |
| Baseline | 0.1066 | $392 | $189 | $581 | ..... | ..... | ..... | ..... | ..... | ..... |
| 1 ..... | 0.1113 | 395 | 182 | 576 | $5 | 38.3 | 0.0 | 61.8 | 6.0 | 45.6 |
| 2 ..... | 0.1163 | 399 | 175 | 574 | 7 | 46.5 | 0.0 | 53.5 | 9.1 | 68.7 |
| 3 ..... | 0.1181 | 405 | 172 | 577 | 4 | 54.5 | 0.0 | 45.5 | 13.8 | 103.9 |
| 4 ..... | 0.1206 | 462 | 169 | 631 | −50 | 96.4 | 0.0 | 3.6 | 65.5 | 493.6 |
| 5 ..... | 0.1209 | 467 | 169 | 636 | −55 | 97.1 | 0.0 | 2.9 | 68.7 | 517.9 |

TABLE II.70.—ELECTRIC SELF-CLEANING OVENS: LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS

| Candidate standard level | EF | Life-cycle cost | | | Life-cycle cost savings | | | | Payback period (years) | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | Average installed price | Average operating cost | Average LCC | Average savings | Households with | | | Median | Average |
| | | | | | | Net cost (percent) | No impact (percent) | No benefit (percent) | | |
| Baseline | 0.1099 | $463 | $200 | $663 | ..... | ..... | ..... | ..... | ..... | ..... |
| 1 ..... | 0.1102 | 469 | 199 | 669 | −$88 | 74.6 | 0.0 | 25.4 | 196.7 | 1,071.7 |
| 2 ..... | 0.1123 | 527 | 196 | 723 | −142 | 81.9 | 0.0 | 18.1 | 266.7 | 1,453.0 |

TABLE II.71.—GAS STANDARD OVENS: LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS

| Candidate standard level | EF | Life-cycle cost | | | Life-cycle cost savings | | | | Payback period (years) | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | Average installed price | Average operating cost | Average LCC | Average savings | Households with | | | Median | Average |
| | | | | | | Net cost (percent) | No impact (percent) | No benefit (percent) | | |
| Baseline | 0.0298 | $409 | $288 | $697 | ..... | ..... | ..... | ..... | ..... | ..... |
| 1* ..... | 0.0536 | 442 | 162 | 603 | $16 | 0.0 | 83.0 | 17.0 | 3.3 | 3.4 |
| 2 ..... | 0.0566 | 447 | 154 | 601 | 18 | 46.1 | 0.0 | 53.9 | 8.4 | 136.1 |
| 3 ..... | 0.0572 | 448 | 153 | 601 | 18 | 47.9 | 0.0 | 52.1 | 9.4 | 152.3 |
| 4 ..... | 0.0593 | 481 | 149 | 630 | −11 | 77.4 | 0.0 | 22.6 | 27.2 | 460.1 |
| 5 ..... | 0.0596 | 483 | 148 | 632 | −12 | 77.9 | 0.0 | 22.1 | 27.9 | 1,907.4 |
| 6 ..... | 0.0600 | 488 | 148 | 636 | −17 | 79.5 | 0.0 | 20.5 | 30.1 | 426.3 |
| 1a* ..... | 0.0583 | 446 | 134 | 580 | 39 | 0.0 | 0.0 | 100.0 | 2.2 | 2.2 |

*Candidate standard levels 1 and 1a correspond to designs that are utilized for the same purpose—eliminate the need for a standing pilot—but the technologies for each design are different. Candidate standard level 1 is a hot surface ignition device while candidate standard level 1a is a spark ignition device. Candidate standard level 1a is presented at the end of the table because candidate standard levels 2 through 6 are derived from candidate standard level 1.

TABLE II.72.—GAS SELF-CLEANING OVENS: LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS

| Candidate standard level | EF | Life-cycle cost | | | Life-cycle cost savings | | | | Payback period (years) | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | Average installed price | Average operating cost | Average LCC | Average savings | Households with | | | Median | Average |
| | | | | | | Net cost (percent) | No impact (percent) | No benefit (percent) | | |
| Baseline | 0.0540 | $529 | $200 | $729 | ..... | ..... | ..... | ..... | ..... | ..... |
| 1 ..... | 0.0625 | 545 | 183 | 727 | $1 | 58.3 | 0.0 | 41.7 | 11.8 | 158.0 |
| 2 ..... | 0.0627 | 551 | 182 | 733 | −5 | 67.3 | 0.0 | 32.7 | 16.1 | 235.3 |
| 3 ..... | 0.0632 | 553 | 182 | 734 | −6 | 68.4 | 0.0 | 31.6 | 16.7 | 149.0 |

Table II.73 shows the LCC and PBP results for microwave ovens. For example, candidate standard level 4 (0.602 EF) shows an average LCC cost increase of $68. The median and average PBPs for standard level 4 are 132.2 and 327.5 years, respectively.

TABLE II.73.—MICROWAVE OVENS: LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS

| Candidate standard level | EF | Life-cycle cost | | | Life-cycle cost savings | | | | Payback period (years) | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | Average installed price | Average operating cost | Average LCC | Average savings | Households with | | | Median | Average |
| | | | | | | Net cost (percent) | No impact (percent) | Net benefit (percent) | | |
| Baseline | 0.557 | $219 | $89 | $308 | ..... | ..... | ..... | ..... | ..... | ..... |
| 1 ..... | 0.586 | 232 | 84 | 316 | −8 | 93.0 | 0.0 | 7.0 | 33.9 | 84.0 |
| 2 ..... | 0.588 | 246 | 84 | 329 | −21 | 98.6 | 0.0 | 1.4 | 65.8 | 163.1 |
| 3 ..... | 0.597 | 267 | 83 | 349 | −41 | 99.6 | 0.0 | 0.4 | 93.9 | 232.5 |
| 4 ..... | 0.602 | 294 | 82 | 376 | −68 | 99.9 | 0.0 | 0.1 | 132.2 | 327.5 |

Tables II.74 and II.75 show the LCC and PBP results for both product applications of CCWs. For example, in the case of the multi-family application, candidate standard level 5 (2.00 MEF/5.50 WF) shows an average LCC savings of $404. Note that for standard level 5, 20.9 percent of consumers in 2012 are assumed to already be using a CCW in the base case at standard level 5 and, thus, have zero savings due to the standard. If one compares the LCC of the base case at 1.26 MEF/9.50 WF ($3303) to the standards case at 2.00 MEF/5.50 WF ($2794), then the difference in the LCCs is $509. However, since the base case includes a significant number of consumers that are not impacted by the standard, the average savings over all of the consumers is actually $404, not $509. With regard to the PBPs shown below, DOE determined the median and average values by excluding the percentage of households not impacted by the standard. For example, in the case of standard level 5, 20.9 percent of the consumers did not factor into the calculation of the median and average PBP.

TABLE II.74.—COMMERCIAL CLOTHES WASHERS, MULTI-FAMILY APPLICATION: LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS

| Candidate standard level | MEF/WF | Life-cycle cost | | | Life-cycle cost savings | | | | Payback period (years) | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | Average installed price | Average operating cost | Average LCC | Average savings | Households with | | | Median | Average |
| | | | | | | Net cost (percent) | No impact (percent) | Net benefit (percent) | | |
| Baseline ..... | 1.26/9.50 | $722 | $2,581 | $3,303 | ..... | ..... | ..... | ..... | ..... | ..... |
| 1 ..... | 1.42/9.50 | 840 | 2,454 | 3,294 | 7 | 42.0 | 20.9 | 37.1 | 8.4 | 8.9 |
| 2 ..... | 1.60/8.50 | 1,224 | 2,189 | 3,413 | −86 | 61.5 | 20.9 | 17.6 | 11.9 | 12.8 |
| 3 ..... | 1.72/8.00 | 1,224 | 2,053 | 3,277 | 21 | 43.3 | 20.9 | 35.9 | 8.8 | 9.5 |
| 4 ..... | 1.80/7.50 | 1,224 | 1,943 | 3,167 | 109 | 30.4 | 20.9 | 48.8 | 7.3 | 7.9 |
| 5 ..... | 2.00/5.50 | 1,224 | 1,571 | 2,794 | 404 | 9.3 | 20.9 | 69.9 | 4.6 | 5.1 |
| 6 ..... | 2.20/5.10 | 1,224 | 1,446 | 2,670 | 529 | 6.3 | 0.0 | 93.7 | 3.8 | 3.6 |

TABLE II.75.—COMMERCIAL CLOTHES WASHERS, LAUNDROMAT APPLICATION: LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS

| Candidate standard level | MEF/WF | Life-cycle cost | | | Life-cycle cost savings | | | | Payback period (years) | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | Average installed price | Average operating cost | Average LCC | Average savings | Households with | | | Median | Average |
| | | | | | | Net cost (percent) | No impact (percent) | Net benefit (percent) | | |
| Baseline ..... | 1.26/9.50 | $722 | $2,772 | $3,494 | ..... | ..... | ..... | ..... | ..... | ..... |
| 1 ..... | 1.42/9.50 | 840 | 2,647 | 3,487 | 5 | 35.9 | 20.9 | 43.2 | 5.3 | 5.6 |
| 2 ..... | 1.60/8.50 | 1,224 | 2,354 | 3,577 | −66 | 61.5 | 20.9 | 17.7 | 6.9 | 7.3 |
| 3 ..... | 1.72/8.00 | 1,224 | 2,207 | 3,431 | 50 | 29.2 | 20.9 | 50.0 | 5.1 | 5.4 |
| 4 ..... | 1.80/7.50 | 1,224 | 2,085 | 3,308 | 147 | 13.6 | 20.9 | 65.5 | 4.3 | 4.5 |
| 5 ..... | 2.00/5.50 | 1,224 | 1,661 | 2,885 | 482 | 0.7 | 20.9 | 78.5 | 2.7 | 2.8 |
| 6 ..... | 2.20/5.10 | 1,224 | 1,532 | 2,755 | 612 | 0.2 | 0.0 | 99.8 | 2.2 | 2.0 |

DOE presents these findings to facilitate stakeholder review of the LCC and PBP analyses. DOE seeks information and comments relevant to the assumptions, methodology, and results for these analyses. See Chapter 8 of the TSD for additional detail on the LCC and PBP analyses.

*H. Shipments Analysis*

This section presents DOE's shipments analysis, which is an input into the NIA (section II.I). DOE will also

use shipments estimates as input to the MIA, which is discussed in section II.K. DOE will undertake the MIA after the ANOPR is published, and will report the MIA findings in the NOPR.

As indicated above and in the discussion below of the NIA, for each product, DOE has developed a base case forecast to depict what would happen to energy and water use, and to consumer costs for purchase and operation of the product, if DOE does not adopt new energy conservation standards. To evaluate the impacts of such new standards, DOE compares these base case forecasts to forecasts of what would happen if DOE adopts new standards at various higher efficiency levels. One element of both types of forecasts is product shipments. In determining the base case, DOE considered historical shipments, the mix of efficiencies sold in the absence of standards, and how that mix might change over time.

1. Shipments Model

DOE estimated shipments for each of the four appliance products using a separate Shipments Model. Furthermore, in the case of cooking products, DOE developed two separate Shipments Models—one for cooktops and ovens and another for microwave ovens. Therefore, DOE developed a total of five separate Shipments Models (*i.e.*, two for cooking products and one each for dishwashers, dehumidifiers, and CCWs). Each Shipments Model was calibrated against historical shipments. For purposes of estimating the impacts of prospective candidate standard levels on product shipments, each Shipments Model accounts for the combined effects of changes in purchase price, annual operating cost, and household income on the consumer purchase decision.

In overview, each Shipments Model considers specific market segments, the results for which are then aggregated to estimate total product shipments. In the case of all of the four appliance products (with the exception of dehumidifiers), DOE accounted for at least two market segments: (1) New construction and (2) existing buildings (*i.e.*, replacing failed equipment). For dehumidifiers, DOE did not consider the new construction market since this product, unlike most major household appliances, is not standard equipment for new households. Instead, in addition to accounting for replacements, DOE accounted for the market of existing households acquiring new dehumidifiers for the first time. Furthermore, for the following products, DOE accounted for a third market segment: Cooking products (early replacements); dishwashers (existing households acquiring the equipment for the first time); and CCWs (retired units not replaced).

With regard to the market of existing households purchasing dehumidifiers, Whirlpool commented that shipments to existing households that do not already own a dehumidifier are likely very low for two reasons. First, Whirlpool stated that historical data indicate that annual dehumidifier shipments have been relatively constant, and second, the most significant new housing growth has been in the Southern and Western regions of the U.S. where central air conditioning (as opposed to dehumidifiers) is used to condition the space. (Whirlpool, No. 10 at p. 12) Contrary to Whirlpool's claim, based on historical data, DOE found that shipments have more than doubled since 1990, with an increase of nearly 50 percent over the 2003–2005 time period. In allocating shipments to existing households with a dehumidifier, DOE used the historical data to estimate which portion of the shipments went to these existing households. DOE first determined that portion of the shipments that served as replacements and then allocated the remaining portion to existing households without a dehumidifier. As a result of this calculation, DOE estimated that 0.6 percent of existing households without a dehumidifier would annually purchase this product over the period 2005–2042.

With regard to the estimation of forecasted commercial clothes washer shipments, ALS stated that the market for CCWs is already saturated and may decline in the future. ALS believes that the trend in multi-housing is to install in-apartment washers rather than provide common area commercial laundry. Both ALS and MLA stated that approximately 200,000 to 230,000 commercial washers are shipped per year. Whirlpool stated that a saturation-based Shipments Model could be developed to forecast shipments. However, because historical industry shipments have been constant, Whirlpool suggested that DOE either hold future product saturations constant or allow them to decline. (Public Meeting Transcript, No. 5 at pp. 213 and 219; MLA, No. 8 at p. 1; Whirlpool, No. 10 at p. 12)

DOE confirmed that over the period of 1988–1998, annual shipments of clothes washers stayed roughly in the range between 200,000 to 230,000 units per year. But based on data provided by AHAM, shipments dropped to approximately 180,000 units for the year 2005. DOE confirmed this shipments drop (from a peak of 265,000 units in 1998) using commercial laundry quantity index data from the U.S. Census Bureau.[48] For purposes of calibrating its Shipments Model, DOE attributed this drop to non-replacements (*i.e.*, a portion of CCWs that were retired from service over the period 1999–2005 were not replaced). Because DOE tied its CCW shipments estimates to forecasts of new multi-family construction as provided by EIA's *AEO 2007*, and because *AEO 2007* forecasts modest growth in multi-family construction starts, DOE's Shipments Model projected that shipments would recover and gradually increase after the drop witnessed over the 1999–2005 period.

Due to the dramatic drop in shipments seen in the historical data, DOE specifically seeks feedback on its assumptions regarding the shipments forecasts for CCWs. This is identified as Issue 13 under ''Issues on Which DOE Seeks Comment'' in section IV.E of this ANOPR.

In principle, each market segment and each product class responds differently to both the base case demographic and economic trends and to the implementation of standards. Furthermore, retirements, early replacements, and efficiency trends are dynamic and can vary among product classes. Rather than simply extrapolating a current shipments trend, the base case shipments analysis uses driver input variables, such as construction forecasts and product lifetime distributions, to forecast sales in each market segment.

DOE's Shipments Models take an accounting approach, by tracking market shares of each product class, the vintage of units in the existing stock, and expected construction trends. The Models estimate shipments due to replacements using sales in previous years and assumptions about the life of the equipment. Therefore, estimated sales due to replacements in a given year are equal to the total stock of the appliance minus the sum of the appliances sold in previous years that still remain in the stock. DOE must determine the useful service life of the appliance to determine how long the appliance is likely to remain in stock.

2. Data Inputs

As discussed above, shipments are driven primarily by two market

[48] U.S. Department of Commerce-Bureau of Economic Analysis. *Industry Economic Accounts, Gross-Domestic-Product-(GDP)-by-Industry-Data, 1998– NAICS data: GDPbyInd_SHIP_NAICS and SIC Data: GDPhyind_SHIP_SIC*, Commercial Laundry Quantity Index Data, NAICS code 333312. Washington, DC. Available online at: *http://preview.bea.gov/industry/gdpbyind_data.htm.*

segments: (1) New construction and (2) replacements.

New housing forecasts and market saturation data comprised the two primary inputs for DOE's estimates of new construction shipments. ''New housing'' includes newly-constructed single-family and multi-family units (referred to as ''new housing completions'') and mobile home placements. As noted above for CCWs, DOE's Shipments Model used only newly-constructed multi-family units, as DOE estimated shipments are driven solely by multi-family construction starts. For new housing completions and mobile home placements, DOE used actual data through 2005, and adopted the projections from EIA's *AEO 2007* for the period of 2006–2030.[49] To determine new construction shipments for each of the four appliance products (except dehumidifiers), DOE used forecasts of housing starts coupled with the product market saturation data for new housing. DOE used the 2001 RECS to establish dishwasher and cooktop market saturations for new housing. For commercial clothes washers, DOE relied on the new construction market saturation data from CEE.[50]

In the specific case of dehumidifiers, EEI stated that DOE should account for the market saturation of dehumidifying equipment integrated into central space-conditioning systems when evaluating the overall dehumidifier market saturation. (Public Meeting Transcript, No. 5 at p. 220) In response, we note that DOE's Shipments Model for dehumidifiers takes into consideration saturation data pertaining only to dehumidifiers manufactured as independent units. Although growth in central space-conditioning systems with fully-integrated dehumidifying equipment may have an impact on forecasted dehumidifier shipments, DOE was unable to obtain any data that indicate the growth of these systems and their impact on the overall dehumidifier market.

In general, DOE estimated replacements using product retirement functions that it developed from product lifetimes. For all of the four appliance products (with the exception of microwave ovens), DOE based the retirement function on a uniform probability distribution for the product lifetime. The Shipments Models assume that no units are retired below a minimum product lifetime and that all units are retired before exceeding a maximum product lifetime. NWPCC noted that DOE should calibrate the Shipments Models to historical shipments data to ensure that the estimates of product lifetimes are reasonable. (Public Meeting Transcript, No. 5 at p. 215) As noted previously, DOE calibrated each Shipments Model against historical shipments. In its calibrations, which entailed estimating which portion of shipments are replacements, DOE used the product lifetimes that it established for the LCC analysis (refer to section II.G.2.b for more details). DOE found that the product lifetimes provided reasonable estimates of overall shipments for each of the products.

3. Shipments Forecasts

Table II.76 shows the results of the shipments analysis for the base case for each of the products. Of the products listed in Table II.76, dehumidifiers, gas cooktops and ovens, and electric cooktops and ovens are comprised of several product classes. Specifically, dehumidifiers consist of six product classes; gas cooktops and ovens consist of three classes, and electric cooktops and ovens consist of four classes. For each of these products (with each product consisting of more than one product class, except CCW) DOE's analysis estimated the aggregate shipments. Once it had established the aggregate shipments estimate, DOE then allocated the shipments to each product class based on historical market share data. Chapter 9 of the TSD provides details on the product class market shares for dehumidifiers, gas cooktops and ovens, and electric cooktops and ovens.

TABLE II.76.—FORECASTED SHIPMENTS FOR HOME APPLIANCES, 2012–2042, BASE CASE (MILLION UNITS)

| Product | 2012 | 2015 | 2020 | 2025 | 2030 | 2035 | 2040 | 2042 | Cumulative |
|---|---|---|---|---|---|---|---|---|---|
| Dishwashers | 8.12 | 8.73 | 9.62 | 10.36 | 11.17 | 11.76 | 12.28 | 12.48 | 328 |
| Dehumidifiers | 1.82 | 1.99 | 2.39 | 2.65 | 2.98 | 3.30 | 3.59 | 3.71 | 86 |
| Gas cooktops and ovens | 3.80 | 3.82 | 4.05 | 4.26 | 4.43 | 4.57 | 4.75 | 4.82 | 133 |
| Electric cooktops and ovens | 6.24 | 6.41 | 7.03 | 7.52 | 7.88 | 8.26 | 8.72 | 8.91 | 235 |
| Microwave ovens | 16.11 | 15.41 | 17.54 | 17.67 | 19.61 | 20.01 | 21.50 | 21.53 | 578 |
| Commercial clothes washers | 0.24 | 0.24 | 0.27 | 0.29 | 0.32 | 0.34 | 0.37 | 0.38 | 9.4 |

To estimate the combined effects on product shipments from increases in equipment purchase price and decreases in equipment operating costs due to new efficiency standards, DOE conducted a literature review and a statistical analysis on a limited set of appliance price, efficiency, and shipments data.

In the literature, DOE found only a few studies of appliance markets that are relevant to this rulemaking analysis, and identified no studies that use time-series of equipment price and shipments data after 1980. The information that DOE summarized from the literature suggests that the demand for appliances is price inelastic.

DOE did not find enough equipment purchase price and operating cost data to perform a complex analysis of dynamic changes in the appliance market. Rather, DOE used purchase price and efficiency data specific to residential refrigerators, clothes washers, and dishwashers over the period 1980–2002 to evaluate broad market trends and to conduct simple regression analyses. These data indicate that there has been a rise in appliance shipments and a decline in appliance purchase price and operating costs over the time period. Household income has also risen during this time. DOE combined the available economic information into one variable, termed the ''relative price,'' which is the sum of the purchase price and the present value of operating cost savings divided by household income, and used this variable to conduct a regression analysis. DOE's regression analysis suggested that the relative price elasticity of demand, averaged over the three appliances, is $-0.34$. For example,

[49] 49 U.S. Department of Energy-Energy Information Administration. *Annual Energy Outlook 2007 with Projections to 2030*, February, 2007. Washington, DC. DOE/EIA–0383 (2007). Available online at: *http://www.eia.doe.gov/oiaf/aeo/index.html*

[50] Consortium for Energy Efficiency. *Commercial Family-Sized Washers: An Initiative Description of the Consortium for Energy Efficiency*, 1998. Boston, MA. Available online at: *http://www.cee1.org/com/cwsh/cwsh-main.php3.*

for a relative price increase of 10 percent, shipments decrease by 3.4 percent. Note that because the relative price elasticity incorporates the impacts from three effects (*i.e.*, purchase price, operating cost, and household income), the impact from any single effect is mitigated by changes from the other two effects. The relative price elasticity of −0.34 is consistent with estimates in the literature. Nevertheless, DOE stresses that the measure is based on a small data set, using simple statistical analysis. More important, the measure is based on the premise that economic variables (including purchase price, operating costs, and household income) explain most of the trend in appliances per household in the U.S. since 1980. Changes in appliance quality and consumer preferences may have occurred during this period, but DOE did not account for them in this analysis. Despite these uncertainties, DOE believes that its estimate of the relative price elasticity of demand provides a reasonable assessment of the impact that purchase price, operating cost, and household income have on product shipments.

Because DOE's forecasts of shipments and national impacts due to standards is over a 30-year time period, consideration must be given as to how the relative price elasticity is affected once a new standard takes effect. DOE considers the relative price elasticity of −0.34 to be a short-run value. DOE was unable to identify sources specific to household durable goods, such as appliances, to indicate how short-run and long-run price elasticities differ. Therefore, to estimate how the relative price elasticity changes over time, DOE relied on a study pertaining to automobiles showing that the automobile price elasticity of demand changes in the years following a purchase price change.[51] With increasing years after the purchase price change, the price elasticity becomes more inelastic until it reaches a terminal value around the tenth year after the price change. For its shipments analysis, DOE incorporated a relative price elasticity change that resulted in a terminal value of approximately one-third (−0.11) of the short-run elasticity (−0.34). In other words, consumer purchase decisions, in time, become less sensitive to the initial change in the product's relative price.

PG&E commented that consumers will replace failed equipment regardless of the increased purchase price due to efficiency standards. (Public Meeting Transcript, No. 5 at p. 224) In its regression analysis of appliance purchase price, efficiency, and shipments data, DOE did not attempt to quantify the shipments impacts to separate markets (*i.e.*, new construction and replacements). Because DOE's regression analysis focused on the impacts to aggregate shipments, it applied the sensitivity to purchase price, operating cost, and household income equally to all markets. DOE believes this level of precision is sufficient for capturing the effect that these three factors have on overall product shipments.

Additional detail on the shipments analysis can be found in Chapter 9 of the TSD.

*I. National Impact Analysis*

The NIA assesses cumulative NES and the cumulative national economic impacts of candidate standards levels. The analysis measures economic impacts using the NPV metric, which represents the net present value (*i.e.*, future amounts discounted to the present) of total customer costs and savings expected to result from new standards at specific efficiency levels. For a given candidate standard level, DOE calculated both the NPV and the NES as the difference between a base case forecast and the standards case. A summary of this analysis is provided below, but additional detail on the NIA for the four appliance products may be found in Chapter 10 of the TSD.

DOE determined national annual energy consumption as the product of the annual energy consumption per unit and the number of units of each vintage. This approach accounts for differences in per-unit energy consumption from year to year. Cumulative energy savings are the sum of the annual NES determined over a specified time period. DOE calculated net economic savings each year as the difference between total operating cost savings and increases in total installed costs. Cumulative savings are the sum of the annual NPV determined over a specified time period.

1. Approach

Over time, in the standards case, more-efficient products gradually replace less efficient products. This affects the calculation of the NES and NPV, which are both a function of the total number of units in use and their efficiencies, and, thus, are dependent on annual shipments and the lifetime of a product. Both calculations start by using the estimate of shipments and the quantity of units in service that DOE derived from the Shipments Model.

With regard to the estimation of NES, because more-efficient units of a product gradually replace less efficient ones, the per-unit energy consumption of the products in service gradually decreases in the standards case relative to the base case. To estimate the resulting total energy savings for each candidate efficiency level, DOE first calculated the national site-energy consumption for each of the four appliance products for each year, beginning with the expected effective date of the standards (2012), for the base case forecast and each standards case forecast. (Site energy is the energy directly consumed by the units of the product in operation.) Second, DOE determined the annual site-energy savings, consisting of the difference in site-energy consumption between the base case and the standards case. Third, DOE converted the annual site-energy savings into the annual amount of energy saved at the source of electricity generation or of natural gas production (the source energy) using site-to-source conversion factors. Finally, DOE summed the annual source-energy savings from 2012 to 2042 to calculate the total NES for that period. DOE performed these calculations for each candidate standard level.

To estimate NPV, DOE calculated the net impact each year as the difference between total operating cost savings (including gas and/or electricity and water, repair, and maintenance cost savings) and increases in total installed costs (which consist of the incremental increase in manufacturer selling price, sales taxes, distribution chain markups, and installation cost). DOE calculated the NPV of each candidate standard level over the life of the equipment, using the following three steps. First, DOE determined the difference between the equipment costs under the candidate standard level case and the base case, to get the net equipment cost increase resulting from the candidate standard level. Second, DOE determined the difference between the base case operating costs and the candidate standard level operating costs, to get the net operating cost savings resulting from the candidate standard level. Third, DOE determined the difference between the net operating cost savings and the net equipment cost increase to get the net savings (or expense) for each year. DOE then discounted the annual net savings (or expenses) to the year 2006 for products bought in or before 2042 and summed the discounted values to provide the NPV of a candidate standard

[51] S. Hymans. Consumer Durable Spending: Explanation and Prediction, *Brookings Papers on Economic Activity*, 1971. Vol. 1971, No. 1, pp. 234–239. Available for purchase online at: *http://links.jstor.org/sici?sici=0007–2303(1970)1970%3A2%3C173%3ACDSEAP%3E2.0.CO%3B2-S.*

level. An NPV greater than zero shows net savings (*i.e.*, the candidate standard level would reduce customer expenditures relative to the base case in present value terms). An NPV that is less than zero indicates that the candidate standard level would result in a net increase in customer expenditures in present value terms.

Another aspect of the NIA is the consideration of market-pull or voluntary programs that promote the adoption of more-efficient equipment. PG&E stated that market-pull programs do not necessarily diminish the impact of mandatory efficiency standards. Whirlpool stated that the effectiveness of one type of market-pull program (Energy Star) could be diminished if mandatory standards are set prematurely. Whirlpool argued that existing product efficiencies are approaching Energy Star levels, thereby diminishing the effectiveness of the program if mandatory standards are set too high. (Public Meeting Transcript, No. 5 at p. 223; Whirlpool, No. 10 at p. 11) In response, DOE notes that for some products, market-pull programs (*e.g.*, Energy Star) have likely increased the share of energy-efficient equipment both prior to and after the implementation date of any new standards. For example, in the case of dishwashers, the shipment-weighted efficiency has increased at an average annul rate of approximately 2.5 percent since mandatory efficiency standards came into effect in 1994. The Energy Star program, which came into effect for dishwashers in 1996, was likely responsible for at least some of the gain in dishwasher efficiency. Although DOE recognizes that market-pull programs such as Energy Star play a factor in increasing the energy efficiency of appliances, DOE was not able to obtain information that quantified precisely how such programs affect equipment efficiencies on a national basis. Consequently, DOE did not explicitly incorporate the impact of market-based initiatives that may be implemented in the future into the analysis.

2. Base Case and Standards Case Forecasted Efficiencies

A key component of DOE's estimates of NES and NPV are the energy efficiencies that it forecasts over time for the base case (without new standards) and each of the standards cases. The forecasted efficiencies represent the annual shipment-weighted energy efficiency of the products under consideration over the forecast period (*i.e.*, from the estimated effective date of a new standard to 30 years after the standard becomes effective). Because key inputs to the calculation of the NES and NPV are dependent on the estimated efficiencies, they are of great importance to the analysis. In the case of the NES, the per-unit annual energy (and water) consumption is a direct function of product efficiency. With regard to the NPV, two inputs (the per-unit total installed cost and the per-unit annual operating cost), both depend on efficiency. The per-unit total installed cost is a direct function of efficiency while the per-unit annual operating cost, because it is a direct function of the per-unit energy (and water) consumption, is indirectly dependent on product efficiency.

As first discussed in section II.G.2.d on the development of base case efficiencies, for each of the four appliance products, DOE, using data provided by AHAM, based its development of the product efficiencies in the base case on the assignment of equipment efficiencies in the year 2005. The year 2005 is the latest year for which AHAM provided product efficiency data. In other words, DOE determined the distribution of product efficiencies currently in the marketplace to develop a shipment-weighted energy efficiency for the year 2005. For dehumidifiers, it is important to reiterate that DOE estimated that the product efficiencies in the base case for the 25.00 pints/day and less, 25.01–35.00 pints/day, and the 45.01–54.00 pints/day product classes were equivalent to those developed for the 35.01–45.00 pints/day class. DOE also estimated the base case product efficiencies developed for the 54.01–74.99 product class could be applied to the 75.00 pints/day and greater product class.

Using the shipment-weighted efficiency for the year 2005 as a starting point, DOE developed base case forecasted efficiencies based on estimates of future efficiency growth. For the period spanning 2005–2012 (2012 being the estimated effective date of a new standard), DOE estimated that there would be no growth in shipment-weighted efficiency (*i.e.*, no change in the distribution of product efficiencies). With the exception of dishwashers (discussed below), because there are no historical data to indicate how product efficiencies have changed over time, DOE estimated that forecasted efficiencies would remain frozen at the 2012 efficiency level until the end of the forecast period (30 years after the effective date (*i.e.*, 2042)). Although DOE recognizes the possibility that product efficiencies may change over time, DOE is not in a position to speculate as to how these product efficiencies may change without historical information. DOE did forecast the market share of gas standard ranges equipped with standing pilot lights to estimate the impact of eliminating standing pilot lights for gas cooktops and gas standard ovens.

In the case of dishwashers, historical data show that shipment-weighted efficiencies have grown at an average annual rate of approximately two percent since 1980. As discussed earlier, some of this efficiency gain during the 1990s is likely attributable to the Energy Star program. However, historical data also show that the consumer dishwasher retail price has dropped considerably (almost 50 percent) over the same time period. Because the per-unit installed cost (or consumer retail price) is tied to efficiency, using an efficiency growth of two percent per year would be expected to result in ever-increasing dishwasher retail prices over time. However, since forecasting an increasing retail price is counter to the historical data, DOE believes that the most plausible assumption is that dishwasher efficiencies will remain frozen at the 2012 efficiency level until the end of the forecast period.

For its determination of standards-case forecasted efficiencies, DOE used a ''roll-up'' scenario to establish the shipment-weighted efficiency for the year that standards would become effective (*i.e.*, 2012). DOE believed that product efficiencies in the base case, which did not meet the standard level under consideration, would ''roll-up'' to meet the new standard level. Also, DOE believed that all product efficiencies in the base case that were above the standard level under consideration would not be affected. Using the shipment-weighted efficiency in the year 2012 as a starting point, DOE developed standards case forecasted efficiencies. For all of the four appliance products, DOE made the same estimates regarding forecasted standards-case efficiencies as for the base case, namely, that forecasted efficiencies remained frozen at the 2012 efficiency level until the end of the forecast period. By maintaining the same growth rate for forecasted efficiencies in the standards case as in the base case (*i.e.*, zero growth), DOE retained a constant efficiency difference or gap between the two cases over the length of the forecast period. Although frozen trends may not reflect what happens to base case and standards case product efficiencies in the future, DOE believes that maintaining a frozen efficiency difference between the base case and standards case provides a reasonable

estimate of the impact that standards have on product efficiency.

DOE specifically seeks feedback on its estimates of forecasted base-case and standards-case efficiencies and its view of how standards impact product efficiency distributions in the year that standards take effect. This is identified as Issue 14 under ''Issues on Which DOE Seeks Comment'' in section IV.E of this ANOPR.

3. National Impact Analysis Inputs

The inputs for the determination of NES are annual energy (and water) consumption per unit, shipments, equipment stock, national annual energy consumption, and site-to-source conversion factors.

Because the annual energy (and water) consumption per unit are directly dependent on efficiency, DOE used the SWEFs associated with the base case and each standards case, in combination with the annual energy (and water use) data, to estimate the shipment-weighted average annual per-unit energy (and water) consumption under the base case and standards cases.

The NIA uses forecasted shipments for the base case and all standards cases. As noted earlier, the increased total installed cost of more-efficient equipment causes some customers to forego equipment purchases. Consequently, shipments forecasted under the standards cases are lower than under the base case. For dehumidifiers and microwave ovens, to avoid the inclusion of savings due to displaced shipments, DOE used the standards-case shipments projection and the standards-case stock to calculate the annual energy consumption in the base case. However, in the case of dishwashers and CCWs, because DOE explicitly accounted for the energy and water consumption of the displaced shipments, DOE maintained the use of the base-case shipments to determine the annual energy consumption in the base case.

In the case of dishwashers, Whirlpool and AHAM commented that an increase in purchase price due to standards may result in some consumers foregoing dishwasher purchases. Any consumers who had to switch to hand washing would increase their energy and water consumption, since dishwashing is more energy and water efficient than hand washing. (Whirlpool, No. 10 at p. 10; AHAM, No. 14 at p. 9) DOE agrees with Whirlpool and AHAM. DOE envisioned in its analysis that consumers foregoing the purchase of a new unit due to an increase in the efficiency standard would hand wash their dishes, and accounted for the energy and water consumption associated with these consumers switching to hand washing. Based on the results of two recent European studies, DOE estimated that hand washing would use 140 percent more energy and 350 percent more water than dishwashing.[52] [53]

In the case of electric and gas cooking products, because the housing market is fully saturated (*i.e.*, all households have cooking appliances), available information suggested that standards would neither impact shipments nor cause shifts in electric and gas cooking product market shares. Therefore, DOE's standards case shipments for electric and gas cooking products were identical to its base case shipments.

With regard to CCWs, MLA stated some apartment builders would install in-apartment washers (*i.e.*, washers for each apartment unit) rather than common-area washers if the increase in CCW purchase prices caused by standards is too high. MLA commented that a market switch from common-area washers to in-apartment washers would result in increased energy and water consumption, since consumers would tend to use their in-apartment washers more frequently. (MLA, No. 8 at p. 3) DOE did account for the drop in CCW shipments caused by standards, but did not factor in that builders may install more in-apartment washers when faced with higher CCW purchase prices. Rather, because there is a significant used CCW market, DOE believes that establishments that forgo the purchase of a CCW due to standards would instead purchase a used clothes washer with an efficiency equal to the baseline level (*i.e.*, 1.26 MEF/9.5 WF). DOE believes that the option of purchasing used CCWs is more likely, as used CCWs are a less expensive option to builders than installing in-apartment washers.

An extensive description of the methodology for conducting and generating the shipments forecasts for each of the four appliance products can be found in Chapter 9 of the TSD.

The equipment stock in a given year is the number of products shipped and installed from earlier years and which survive in the given year. The NIA spreadsheet models keep track of the number of units shipped each year. DOE believes that the products have an increasing probability of retiring as they age.

The national energy consumption is the product of the annual energy consumption per unit and the number of units of each vintage. This calculation accounts for differences in unit energy consumption from year to year.

The site-to-source conversion factor is the multiplicative factor DOE uses for converting site energy consumption into primary or source energy consumption. In the analysis for today's ANOPR, DOE used annual site-to-source conversion factors based on the version of the National Energy Modeling System (NEMS) that corresponds to EIA's *AEO 2006*.[54] These conversion factors take into account natural gas losses from pipeline leakage and natural gas used for pumping energy and transportation fuel. For electricity, the conversion factors vary over time due to projected changes in generation sources (*i.e.*, the power plant types projected to provide electricity to the country). DOE estimated that conversion factors remain constant at 2030 values throughout the remainder of the forecast. EEI stated that mandated increases in renewable energy use throughout the country will affect the overall efficiency of electricity generation, thereby resulting in less primary energy being saved from energy savings realized at the site. (EEI, No. 7 at p. 4) In response, we note that *AEO 2006* provided a review of renewable energy programs that were in effect in 23 States at the end of 2005. Therefore, it is anticipated that the site-to-source conversion factors that DOE used in its analysis capture the effects of renewable energy use.

The Joint Comment stated that the NIA for dishwashers and CCWs should include energy saved as a result of reduced water use, including water savings in power generation, water pumping (particularly in the West), water treatment, and sewage treatment. (Joint Comment, No. 9 at pp. 3 and 5) Multiple Water Organizations also stated that DOE should account for the embedded energy in water supply and wastewater treatment when establishing the energy savings due to increases in

[52] R. Stamminger, Badura, R., Broil, G., Dorr, S., and Elschendroich, A., *A European Comparison of Cleaning Dishes by Hand,* 2004. University of Bonn, Germany. Available online at: *http://www.landtechnik.uni-bonn.de/ifl_research/ifl_research_project.php?sec=HT&no=1.*

[53] Market Transformation Programme—Briefing Note. *BNW16: A comparison of washing up by hand with a domestic dishwasher,* February 13, 2006. Market Transformation Programme, United Kingdom. Available online at: *http://www.mtprog.com/.*

[54] For the standards rulemakings, DOE will generally use the same economic growth and development assumptions that underlie the most current AEO published by EIA. For its determination of site-to-source conversion factors, DOE used the version of NEMS corresponding to *AEO 2006* for the ANOPR due to the unavailability of the *AEO 2007* version at the time DOE conducted the NIA. For its analyses for the NOPR and final rule, DOE is committed to using the latest available version of NEMS.

dishwasher and CCW efficiency. (Multiple Water Organizations, No. 11 at p. 2) To include the energy required for treatment and delivery of water in the NIA would require the development of new analytical tools. As just noted above, DOE currently takes savings in site energy consumption and uses EIA's NEMS to calculate source energy savings at the generation plant, using site-to-source conversion factors from NEMS that take into account the economic interactions between the energy sector and the rest of the economy. Proper accounting of embedded energy impacts at a national scale, including the embedded energy due to water savings, would require a new version of NEMS that analyzes spending and energy use in dozens, if not hundreds, of economic sectors. In addition, this version of NEMS would need to account for shifts in spending between these various sectors to account for the marginal embedded energy differences between these sectors. DOE currently does not have access to such a tool, nor does it have the capability to accurately estimate the source energy savings impacts of decreased water or wastewater consumption and expenditures. There are activites being conducted or initiated by the U.S. Geological Survey (USGS), EPA, and DOE to study water and wastewater issues. The USGS compiles national water data but not at the utility level. The EPA is sponsoring the WaterSense Program and programs to promote energy efficiency in water and wastewater treatment. Finally, DOE is in the midst of a National Energy-Water Roadmap Program that it initiated in 2005, as requested in congressional appropriations in FY 2005. However, none of these activites has yet provided the necessary sources of data or tools to allow calculation of the embedded energy in water. Although DOE cannot yet determine the embedded energy in water savings, both the LCC and PBP analyses and the NIA do include the economic savings from decreased water and wastewater charges. Such economic savings should include the economic value of any energy savings that may be included in the provision of consumer water and wastewater services.

The inputs to the NPV calculation are total installed cost per unit, annual operating cost savings per unit, total annual installed cost increases, total annual operating cost savings, discount factor, present value of increased installed costs, and present value of operating cost savings.

For each of the four appliance products, the NPV calculation uses the total installed cost per unit as a function of product efficiency. Because the per-unit total annual installed cost is directly dependent on efficiency, DOE used the base case and standards case SWEFs in combination with the total installed costs to estimate the shipment-weighted average annual per-unit total installed cost under the base case and standards cases.

As first discussed in the engineering analysis for dehumidifiers (see section II.C.2.b), total installed cost and efficiency relationships were defined for a subset of the six product classes. Therefore, for purposes of conducting the NIA for dehumidifiers, DOE applied the cost-efficiency data that were developed for this product class subset to those classes for which no cost-efficiency relationships were developed. Specifically, DOE applied the costs developed for the combined 0–35.00 pints/day class to the two individual classes that comprise the combined class—25.00 pints/day and less and 25.01–35.00 pints/day. Further, DOE applied the costs developed for the 35.01–45.00 pints/day and 54.01–74.99 pints/day product classes to the 45.01–54.00 pints/day and 75.00 pints/day and greater product classes, respectively. In its application of total installed costs to those product classes where no cost data were developed, DOE did not interpolate or extrapolate the cost data to account for product efficiency differences between the classes. For example, DOE utilized the exact same total installed costs that were developed for the baseline and standard levels for the 35.01–45.00 pints/day product class to characterize the baseline and standard level total installed costs for the 45.01–54.00 pints/day product class. Chapter 10 of the ANOPR provides additional details on DOE's approach for estimating the total installed costs for the dehumidifier product classes.

DOE specifically seeks feedback on its approach for characterizing the total installed costs for those dehumidifier product classes in which DOE was not able to develop cost-efficiency relationships. This is identified as Issue 15 under ''Issues on Which DOE Seeks Comment'' in section IV.E of this ANOPR.

The annual operating cost savings per unit includes changes in the energy, water, repair, and maintenance costs. DOE believed there would be no increase in maintenance and repair costs due to standards for the four appliance products. Therefore, for each of the products, DOE determined the per-unit annual operating cost savings based only on the energy (and water) cost savings due to a standard efficiency level. EEI suggested that DOE should include water and wastewater prices in the analysis. (Public Meeting Transcript, No. 5 at p. 231) In response, we note that DOE determined the per-unit annual operating cost savings by taking the per-unit annual energy (and water) consumption savings developed for each product and multiplying it by the appropriate energy (and water) price. As described previously, DOE forecasted the per-unit annual energy (and water) consumption for the base case and each standards case for all four appliance products by freezing the consumption at levels estimated for the year 2012. DOE forecasted energy prices based on EIA's *AEO 2007.* DOE forecasted water prices based on trends in the national water price index as provided by the BLS.[55]

The total annual installed cost increase is equal to the annual change in the per-unit total installed cost (difference between base case and standards case) multiplied by the shipments forecasted in the standards case. As with the calculation of the NES, DOE did not calculate total annual installed costs using base case shipments. Rather, to avoid the inclusion of savings due to displaced shipments in the case of dehumidifiers and microwave ovens, DOE used the standards case shipments projection and, in turn, the standards case stock, to calculate the costs. In the case of dishwashers, DOE believes that any consumers foregoing the purchase of a new unit due to standards would shift to hand washing. In the case of CCWs, DOE believes that any drop in shipments caused by standards would result in the purchase of used machines. Electric and gas cooking products are the notable exception. For electric and gas cooking products, because the market is fully saturated, DOE believed that standards would neither impact shipments nor cause shifts in electric and gas cooking product market shares. Therefore, for electric and gas cooking products, DOE used the base case shipments to determine costs for all standards cases.

The total annual operating cost savings are equal to the change in the annual operating costs (difference between base case and standards case) per unit multiplied by the shipments forecasted in the standards case. As noted above for the calculation of total annual installed costs, DOE did not

[55] U.S. Department of Labor—Bureau of Labor Statistics. *Consumer Price Indexes, Item: Water and sewerage maintenance, Series Id: CUUR0000SEHG01, U.S. city average (not seasonally adjusted),* 2006. Washington, DC. Available online at: *http://www.bls.gov/cpi/home.htm#data.*

necessarily calculate operating cost savings using the base case shipments.

DOE multiplies monetary values in future years by the discount factor to determine the present value. DOE estimated national impacts using both a three-percent and a seven-percent real discount rate as the average real rate of return on private investment in the U.S. economy. DOE uses these discount rates in accordance with guidance provided by the Office of Management and Budget (OMB) to Federal agencies on the development of regulatory analysis (OMB Circular A–4 (Sept. 17, 2003), particularly section E, ''Identifying and Measuring Benefits and Costs''). For the sake of these analyses, DOE defines the present year as 2007.

The present value of increased installed costs is the annual installed cost increase in each year (*i.e.*, the difference between the standards case and base case), discounted to the present, and summed for the time period over which DOE is considering the installation of equipment (*i.e.*, from the effective date of standards, 2012, to the year 2042). The increase in total installed cost refers to both the incremental equipment cost and the incremental installation cost associated with the higher energy efficiency of equipment purchased in the standards case compared to the base case.

The present value of operating cost savings is the annual operating cost savings (*i.e.*, the difference between the base case and standards case), discounted to the present, and summed over the period from the effective date (2012) to the time when the last unit installed in 2042 is retired from service. Savings are decreases in operating costs associated with the higher energy efficiency of equipment purchased in the standards case compared to the base case. Total annual operating cost savings is the savings per unit multiplied by the number of units of each vintage surviving in a particular year. Equipment consumes energy over its entire lifetime, and for units purchased in 2042, the consumption includes energy consumed until the unit is retired from service.

Table II.77 summarizes the NES and NPV inputs to the NIA spreadsheet model. For each input, the table gives a brief description of the data source. For details, see Chapter 10 of the TSD.

TABLE II.77.—NATIONAL ENERGY SAVINGS AND NET PRESENT VALUE INPUTS

| Input | Data description |
|---|---|
| Shipments | Annual shipments from Shipments Model. (See Chapter 9 of the TSD for more details.) |
| Effective Date of Standard | 2012. |
| Base-Case Forecasted Efficiencies | Shipment-weighted efficiency (SWEF) determined in the year 2005 for each of the four appliance products. SWEF held constant over forecast period of 2005–2042. (See Chapter 10 of the TSD for more details.) |
| Standards-Case Efficiencies | ''Roll-up'' scenario used for determining SWEF in the year 2012 for each standards case and for each of the four appliance products. SWEF held constant over forecast period of 2012–2042. (See Chapter 10 of the TSD for more details.) |
| Annual Energy Consumption per Unit | Annual weighted-average values are a function of SWEF. (See Chapter 10 of the TSD for more details.) |
| Total Installed Cost per Unit | Annual weighted-average values are a function of SWEF. (See Chapter 10 of the TSD for more details.) |
| Energy and Water Cost per Unit | Annual weighted-average values are a function of the annual energy consumption per unit and energy (and water) prices. (For more details on energy and water prices, see Chapter 8 of the TSD.) |
| Repair Cost and Maintenance Cost per Unit | No changes in repair and maintenance cost due to standards. |
| Escalation of Energy and Water Prices | Energy Prices: 2007 EIA *AEO* forecasts (to 2030) and extrapolation to 2042. (See Chapter 8 of the TSD for more details.) Water Prices: Linear extrapolation of historical trend in national water price index. (See Chapter 8 of the TSD for more details.) |
| Energy Site-to-Source Conversion | Conversion varies yearly and is generated by DOE/EIA's NEMS* program (a time-series conversion factor; includes electric generation, transmission, and distribution losses). |
| Discount Rate | 3 and 7 percent real. |
| Present Year | Future expenses are discounted to year 2007. |

*Chapter 13 on the utility impact analysis and the environmental assessment report of the TSD provide more details on NEMS.

4. National Impact Analysis Results

Below are the NES results (and national water savings results for dishwashers and CCWs) for the candidate standard levels analyzed for the four appliance products. NES results are cumulative to 2042 and are shown as primary energy savings in quads. National water savings (NWS) results are expressed in billions of gallons. DOE based the inputs to the NIA spreadsheet model on weighted-average values, yielding results that are discrete point values, rather than a distribution of values as in the LCC and PBP analyses. Chapter 10 of the TSD provides discounted NES and NWS results based on discount rates of three and seven percent.

Table II.78 shows the NES and NWS results for the candidate standard levels analyzed for standard-sized dishwashers.

TABLE II.78.—DISHWASHERS: CUMULATIVE NATIONAL ENERGY SAVINGS AND NATIONAL WATER SAVINGS RESULTS

| Candidate standard level | EF | NES *quads* | NWS *billion gallons* |
|---|---|---|---|
| 1 | 0.46 | 0.09 | 72 |
| 2 | 0.58 | 0.35 | 271 |
| 3 | 0.62 | 0.61 | 458 |
| 4 | 0.65 | 0.86 | 595 |
| 5 | 0.72 | 1.11 | 659 |
| 6 | 0.80 | 1.54 | 808 |

TABLE II.78.—DISHWASHERS: CUMULATIVE NATIONAL ENERGY SAVINGS AND NATIONAL WATER SAVINGS RESULTS—Continued

| Candidate standard level | EF | NES *quads* | NWS *billion gallons* |
|---|---|---|---|
| 7 | 1.11 | 2.77 | 1611 |

Table II.79 shows the NES results for the candidate standard levels analyzed for dehumidifiers.

TABLE II.79.—DEHUMIDIFIERS: CUMULATIVE NATIONAL ENERGY SAVINGS RESULTS

| Candidate standard level | ≤25.00 | | 25.01–35.00 | | 35.01–45.00 | | 45.01–54.00 | | 54.01–74.99 | | ≤75.00 | | ALL |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | EF | NES *quads* | EF | NES *quads* | EF | NES *quads* | EF | NES *quads* | EF | NES *quads* | EF | NES* *quads* | NES *quads* |
| 1 | 1.10 | 0.01 | 1.25 | 0.01 | 1.35 | 0.01 | 1.45 | 0.01 | 1.55 | 0.01 | 2.38 | 0.00 | 0.04 |
| 2 | 1.20 | 0.02 | 1.30 | 0.02 | 1.40 | 0.02 | 1.50 | 0.02 | 1.60 | 0.02 | 2.50 | 0.00 | 0.11 |
| 3 | 1.25 | 0.02 | 1.35 | 0.04 | 1.45 | 0.04 | 1.55 | 0.04 | 1.65 | 0.05 | 2.55 | 0.00 | 0.18 |
| 4 | 1.30 | 0.02 | 1.40 | 0.05 | 1.50 | 0.05 | 1.60 | 0.05 | 1.70 | 0.07 | 2.60 | 0.00 | 0.25 |
| 5 | 1.38 | 0.03 | 1.45 | 0.06 | 1.74 | 0.13 | 2.02 | 0.18 | 1.80 | 0.12 | 2.75 | 0.00 | 0.53 |

*NES greater than zero but less than 0.005 quads.

Tables II.80 and II.81 show the NES results for the candidate standard levels analyzed for cooktops and ovens, respectively.

TABLE II.80.—COOKTOPS: CUMULATIVE NATIONAL ENERGY SAVINGS RESULTS

| Candidate standard level | Electric coil | | Electric smooth | | Gas | |
|---|---|---|---|---|---|---|
| | EF | NES *quads* | EF | NES *quads* | EF | NES *quads* |
| 1 | 0.769 | 0.04 | 0.753 | 0.02 | 0.399 | 0.10 |
| 2 | ..... | ..... | ..... | ..... | 0.420 | 0.15 |

TABLE II.81.—OVENS: CUMULATIVE NATIONAL ENERGY SAVINGS RESULTS

| Candidate standard level | Elec standard | | Elec self-clean | | Gas standard | | Gas self-clean | |
|---|---|---|---|---|---|---|---|---|
| | EF | NES *quads* | EF | NES *quads* | EF | NES *quads* | EF | NES *quads* |
| 1* | 0.1113 | 0.03 | 0.1102 | 0.01 | 0.0536 | 0.04 | 0.0625 | 0.09 |
| 2 | 0.1163 | 0.05 | 0.1123 | 0.04 | 0.0566 | 0.07 | 0.0627 | 0.09 |
| 3 | 0.1181 | 0.06 | ..... | ..... | 0.0572 | 0.08 | 0.0632 | 0.10 |
| 4 | 0.1206 | 0.07 | ..... | ..... | 0.0593 | 0.09 | ..... | ..... |
| 5 | 0.1209 | 0.08 | ..... | ..... | 0.0596 | 0.09 | ..... | ..... |
| 6 | ..... | ..... | ..... | ..... | 0.0600 | 0.10 | ..... | ..... |
| 1a* | ..... | ..... | ..... | ..... | 0.0583 | 0.13 | ..... | ..... |

*For gas standard ovens, candidate standard levels 1 and 1a correspond to designs that are utilized for the same purpose—eliminate the need for a standing pilot—but the technologies for each design are different. Candidate standard level 1 is a hot surface ignition device while candidate standard level 1a is a spark ignition device. Candidate standard level 1a is presented at the end of the table because candidate standard levels 2 through 6 are derived from candidate standard level 1.

Table II.82 shows the NES results for the candidate standard levels analyzed for microwave ovens.

TABLE II.82.—MICROWAVE OVENS: CUMULATIVE NATIONAL ENERGY SAVINGS RESULTS

| Candidate standard level | EF | NES *quads* |
|---|---|---|
| 1 | 0.586 | 0.19 |

TABLE II.82.—MICROWAVE OVENS: CUMULATIVE NATIONAL ENERGY SAVINGS RESULTS—Continued

| Candidate standard level | EF | NES *quads* |
|---|---|---|
| 2 | 0.588 | 0.20 |
| 3 | 0.597 | 0.25 |
| 4 | 0.602 | 0.26 |

Table II.83 shows the NES and NWS results for the candidate standard levels analyzed for CCWs.

TABLE II.83.—COMMERCIAL CLOTHES WASHERS: CUMULATIVE NATIONAL ENERGY SAVINGS AND NATIONAL WATER SAVINGS RESULTS

| Candidate standard level | MEF/WF | NES *quads* | NWS *billion gallons* |
|---|---|---|---|
| 1 | 1.42/9.50 | 0.12 | 0 |
| 2 | 1.60/8.50 | 0.21 | 233 |
| 3 | 1.72/8.00 | 0.26 | 350 |
| 4 | 1.80/7.50 | 0.30 | 466 |
| 5 | 2.00/5.50 | 0.36 | 933 |
| 6 | 2.20/5.10 | 0.43 | 1050 |

Below are the NPV results for the candidate standard levels considered for the product classes of each of the four appliance products. Results are cumulative and are shown as the discounted value of these savings in dollar terms. The present value of increased total installed costs is the total installed cost increase (*i.e.*, the difference between the standards case and base case), discounted to the present, and summed over the time period in which DOE evaluates the impact of standards (*i.e.*, from the effective date of standards (2012) to the year 2042).

Savings are decreases in operating costs (including energy and water) associated with the higher energy efficiency of equipment purchased in the standards case compared to the base case. Total operating cost savings are the savings per unit multiplied by the number of units of each vintage (*i.e.*, the year of manufacture) surviving in a particular year. Equipment consumes energy and must be maintained over its entire lifetime. For units purchased in 2042, the operating cost includes energy and water consumed until the last unit is retired from service.

The tables below show the NPV results for the candidate standard levels analyzed for each of the four appliance products, based on discount rates of three and seven percent.

Table II.84 shows the NPV results for the candidate standard levels analyzed for standard-sized dishwashers.

TABLE II.84.—DISHWASHERS: CUMULATIVE NET PRESENT VALUE RESULTS BASED ON SEVEN-PERCENT AND THREE-PERCENT DISCOUNT RATES

| Candidate standard level | EF | NPV | |
|---|---|---|---|
| | | 7% Discount rate *billion 2006$* | 3% Discount rate *billion 2006$* |
| 1 | 0.46 | 0.38 | 0.94 |
| 2 | 0.58 | 1.29 | 3.29 |
| 3 | 0.62 | 1.73 | 4.72 |
| 4 | 0.65 | 0.90 | 3.61 |
| 5 | 0.72 | −2.75 | −2.94 |
| 6 | 0.80 | −7.25 | −10.77 |
| 7 | 1.11 | −7.28 | −8.16 |

Tables II.85 and II.86 show the NPV results for the candidate standard levels analyzed for dehumidifiers.

TABLE II.85.—DEHUMIDIFIERS: CUMULATIVE NET PRESENT VALUE RESULTS BASED ON A SEVEN-PERCENT DISCOUNT RATE

| Candidate standard level | ≤25.00 | | 25.01–35.00 | | 35.01–45.00 | | 45.01–54.00 | | 54.01–74.99 | | ≥75.00 | | ALL |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | EF | NPV @ 7% *billion 2006$* | EF | NPV @ 7% *billion 2006$* | EF | NPV @ 7% *billion 2006$* | EF | NPV @ 7% *billion 2006$* | EF | NPV @ 7% *billion 2006$* | EF | NPV * @ 7% *billion 2006$* | NPV @ 7% *billion 2006$* |
| 1 | 1.10 | 0.01 | 1.25 | 0.02 | 1.35 | 0.01 | 1.45 | 0.01 | 1.55 | 0.02 | 2.38 | 0.00 | 0.08 |
| 2 | 1.20 | 0.05 | 1.30 | 0.06 | 1.40 | 0.03 | 1.50 | 0.03 | 1.60 | 0.05 | 2.50 | 0.00 | 0.21 |
| 3 | 1.25 | 0.05 | 1.35 | 0.07 | 1.45 | 0.04 | 1.55 | 0.04 | 1.65 | 0.10 | 2.55 | 0.00 | 0.31 |
| 4 | 1.30 | 0.04 | 1.40 | 0.07 | 1.50 | 0.03 | 1.60 | 0.04 | 1.70 | 0.11 | 2.60 | 0.00 | 0.31 |
| 5 | 1.38 | 0.05 | 1.45 | 0.08 | 1.74 | 0.00 | 2.02 | 0.21 | 1.80 | 0.19 | 2.75 | 0.00 | 0.54 |

* NPV greater than zero but less than $0.005 billion.

TABLE II.86.—DEHUMIDIFIERS: CUMULATIVE NET PRESENT VALUE RESULTS BASED ON A THREE-PERCENT DISCOUNT RATE

| Candidate standard level | ≤25.00 | | 25.01–35.00 | | 35.01–45.00 | | 45.01–54.00 | | 54.01–74.99 | | ≥75.00 | | ALL |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | EF | NPV @ 3% *billion 2006$* | EF | NPV @ 3% *billion 2006$* | EF | NPV @ 3% *billion 2006$* | EF | NPV @ 3% *billion 2006$* | EF | NPV @ 7% *billion 2006$* | EF | NPV * @ 3% *billion 2006$* | NPV @ 3% *billion 2006$* |
| 1 | 1.10 | 0.04 | 1.25 | 0.04 | 1.35 | 0.04 | 1.45 | 0.04 | 1.55 | 0.06 | 2.38 | 0.00 | 0.22 |
| 2 | 1.20 | 0.11 | 1.30 | 0.14 | 1.40 | 0.09 | 1.50 | 0.09 | 1.60 | 0.12 | 2.50 | 0.01 | 0.57 |
| 3 | 1.25 | 0.13 | 1.35 | 0.20 | 1.45 | 0.13 | 1.55 | 0.14 | 1.65 | 0.27 | 2.55 | 0.01 | 0.87 |
| 4 | 1.30 | 0.12 | 1.40 | 0.21 | 1.50 | 0.14 | 1.60 | 0.16 | 1.70 | 0.32 | 2.60 | 0.01 | 0.96 |
| 5 | 1.38 | 0.15 | 1.45 | 0.25 | 1.74 | 0.19 | 2.02 | 0.66 | 1.80 | 0.55 | 2.75 | 0.01 | 1.81 |

Tables II.87 and II.88 show the NPV results for the candidate standard levels analyzed for cooktops and ovens, respectively.

TABLE II.87.—COOKTOPS: CUMULATIVE NET PRESENT VALUE RESULTS BASED ON SEVEN-PERCENT AND THREE-PERCENT DISCOUNT RATES

| Candidate standard level | Electric coil | | | Electric smooth | | | Gas | | |
|---|---|---|---|---|---|---|---|---|---|
| | EF | NPV @ *7% billion 2006$* | NPV @ *3% billion 2006$* | EF | NPV @ *7% billion 2006$* | NPV @ *3% billion 2006$* | EF | NPV @ *7% billion 2006$* | NPV @ *3% billion 2006$* |
| 1 | 0.769 | 0.05 | 0.18 | 0.753 | −7.48 | −14.28 | 0.399 | 0.29 | 0.67 |
| 2 | ..... | ..... | ..... | ..... | ..... | ..... | 0.420 | −0.65 | −0.98 |

TABLE II.88.—OVENS: CUMULATIVE NET PRESENT VALUE RESULTS BASED ON SEVEN-PERCENT AND THREE-PERCENT DISCOUNT RATES

| Candidate standard level | Elec standard | | | Elec self-clean | | | Gas standard | | | Gas self-clean | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | EF | NPV @ 7% *billion 2006$* | NPV @ 3% *billion 2006$* | EF | NPV @ 7% *billion 2006$* | NPV @ 3% *billion 2006$* | EF | NPV 2 @ 7% *billion 2006$* | NPV @ 35 *billion 2006$* | EF | NPV 2 @ 7% *billion 2006$* | NPV 2 @ 3% *billion 2006$* |
| 1* | 0.1113 | 0.06 | 0.17 | 0.1102 | −0.28 | −0.53 | 0.0536 | 0.10 | 0.24 | 0.0625 | −0.01 | 0.18 |
| 2 | 0.1163 | 0.08 | 0.27 | 0.1123 | −2.87 | −5.41 | 0.0566 | 0.11 | 0.34 | 0.0627 | −0.12 | 0.02 |
| 3 | 0.1181 | 0.03 | 0.19 | ..... | ..... | ..... | 0.0572 | 0.11 | 0.34 | 0.0632 | −0.14 | −0.05 |
| 4 | 0.1206 | −0.81 | −1.39 | ..... | ..... | ..... | 0.0593 | −0.33 | −0.45 | ..... | ..... | ..... |
| 5 | 0.1209 | −0.88 | −1.52 | ..... | ..... | ..... | 0.0596 | −0.36 | −0.50 | ..... | ..... | ..... |
| 6 | ..... | ..... | ..... | ..... | ..... | ..... | 0.0600 | −0.42 | −0.62 | ..... | ..... | ..... |
| 1a* | ..... | ..... | ..... | ..... | ..... | ..... | 0.0583 | 0.35 | 0.92 | ..... | ..... | ..... |

* For gas standard ovens, candidate standard levels 1 and 1a correspond to designs that are utilized for the same purpose—eliminate the need for a standing pilot—but the technologies for each design are different. Candidate standard level 1 is a hot surface ignition device while candidate standard level 1a is a spark ignition device. Candidate standard level 1a is presented at the end of the table because candidate standard levels 2 through 6 are derived from candidate standard level 1.

Tables II.89 shows the NPV results for the candidate standard levels analyzed for microwave ovens.

TABLE II.89.—MICROWAVE OVENS: CUMULATIVE NET PRESENT VALUE RESULTS BASED ON SEVEN-PERCENT AND THREE-PERCENT DISCOUNT RATES

| Candidate standard level | EF | NPV | |
|---|---|---|---|
| | | 7% Discount rate *billion 2006$* | 3% Discount rate *billion 2006$* |
| 1 | 0.586 | −1.40 | −2.48 |
| 2 | 0.588 | −3.52 | −6.51 |
| 3 | 0.597 | −6.58 | −12.28 |
| 4 | 0.602 | −10.35 | −19.40 |

Table II.90 shows the NPV results for the candidate standard levels analyzed for CCWs.

TABLE II.90.—COMMERCIAL CLOTHES WASHERS: CUMULATIVE NET PRESENT VALUE RESULTS BASED ON SEVEN-PERCENT AND THREE-PERCENT DISCOUNT RATES

| Candidate standard level | MEF/WF | NPV | |
|---|---|---|---|
| | | 7% Discount rate *billion 2006$* | 3% Discount rate *billion 2006$* |
| 1 | 1.42/9.50 | 0.04 | 0.20 |
| 2 | 1.60/8.50 | −0.09 | 0.22 |
| 3 | 1.72/8.00 | 0.23 | 0.99 |
| 4 | 1.80/7.50 | 0.49 | 1.64 |
| 5 | 2.00/5.50 | 1.41 | 3.87 |
| 6 | 2.20/5.10 | 1.77 | 4.74 |

*J. Life-Cycle Cost Subgroup Analysis*

The LCC subgroup analysis evaluates impacts of standards on identifiable groups of customers, such as different population groups of consumers or different business types, which may be disproportionately affected by any national energy efficiency standard level. In the NOPR phase of this rulemaking, DOE will analyze the LCCs and PBPs for customers that fall into such groups. The analysis will determine whether any particular group of consumers would be adversely affected by any of the trial standard levels.

Also, DOE plans to examine variations in energy prices and energy use that might affect the NPV of a standard for customer sub-populations. To the extent possible, DOE will obtain estimates of the variability of each input parameter and consider this variability in the calculation of customer impacts. Variations in energy use for a particular product depend on a number of factors, such as climate and type of user. DOE plans to perform sensitivity analyses to consider how differences in energy use will affect subgroups of customers.

DOE will determine the effect on customer subgroups using the LCC spreadsheet model. NWPCC stated that the Monte Carlo approach, if implemented in the LCC and PBP analyses, can be used to conduct the subgroup analysis. NWPCC stated that the Monte Carlo approach is suitable for identifying different subgroups, such as regional subgroups, that may be impacted differently by standards. (Public Meeting Transcript, No. 5 at p. 235) As described in section II.G on the LCC and PBP analyses, DOE used a Monte Carlo approach to conduct the LCC and PBP analyses. The spreadsheet model it used for the LCC analysis, which incorporates the use of Monte Carlo sampling, can be used with different data inputs. The standard LCC analysis includes various customer types that use the four appliance products. DOE can analyze the LCC for any subgroup, such as low-income consumers, by using the LCC spreadsheet model and sampling only that subgroup. Details of this model are explained in section II.G.

DOE received several comments as to which subgroups it should analyze. EEI suggested that DOE consider low-income and senior subgroups. It stated that low-income consumers are more likely to use CCWs, and that seniors tend to use dishwashers and cooking products less frequently than the overall population. (EEE, No. 7 at p. 6) For CCWs, ALS stated that DOE should consider low-income consumers and senior citizens, especially if standards cause an increase in vending prices. ALS stated that the resulting increase in vending price would lead to less available disposable income for low-income and senior consumers to use commercial laundry. MLA expressed the same concerns, but only for low-income consumers. (Public Meeting Transcript, No. 5 at p. 237; MLA, No. 8 at p. 2)

GE and PG&E suggested that DOE consider regional subgroups. GE stated that regional subgroups for dishwashers and cooking products would be appropriate because the regional saturations for both sets of products vary significantly. (Public Meeting Transcript, No. 5 at pp. 240–241) PG&E stated that DOE should consider regional subgroups for dehumidifiers. (Public Meeting Transcript, No. 5 at p. 237) Lastly, the EPA thought it would be

prudent to consider subgroups that are not served by water and sewer service providers, but by wells and septic systems. EPA believes that these consumers use less water than the overall population. (Public Meeting Transcript, No. 5 at p. 234)

DOE intends to analyze the impacts of candidate standards on low-income and senior subgroups. DOE also will evaluate whether regional variations are significant enough to warrant an analysis of regional subgroups for dishwashers, dehumidifiers, and cooking products. In its analysis of dishwashers and CCWs, DOE will also consider evaluating those consumer subgroups not served by water and sewer. In its analysis of subgroups, DOE will be especially sensitive to purchase price increases (''first-cost'' increases) to avoid negative impacts on identifiable population groups such as low-income households (in the case of residential products) or small businesses with low annual revenues (in the case of CCWs), which may not be able to afford a significant increase in product or equipment prices.

*K. Manufacturer Impact Analysis*

The purpose of the MIA is to identify the likely impacts of energy conservation standards on manufacturers. DOE has begun and will continue to conduct this analysis with input from manufacturers and other interested parties. DOE will subsequently apply a similar methodology to its evaluation of standards. During the MIA, DOE will consider financial impacts and a wide range of quantitative and qualitative industry impacts that might occur following the adoption of a standard. For example, if DOE adopts a particular standard level, it could require changes to manufacturing practices. DOE will identify and understand these impacts through interviews with manufacturers and other stakeholders during the NOPR stage of its analysis.

Recently, DOE announced changes to the MIA format through a report issued to Congress on January 31, 2006 (as required by section 141 of EPACT 2005), entitled ''Energy Conservation Standards Activities.'' Previously, DOE did not report any MIA results during the ANOPR phase of energy conservation standards rulemakings; however, under this new format, DOE has collected, evaluated, and reported some preliminary information and data in section II.K.6 of this ANOPR. For further information on the MIA process, the analysis, and the results, please refer to Chapter 12 of the TSD.

DOE conducts the MIA in three phases. In Phase I, DOE creates an industry profile to characterize the industry, and conducts a preliminary MIA to identify important issues that require consideration. Results of the Phase I analysis are presented in Chapter 12 of the TSD. In Phase II, DOE prepares an industry cash flow model and an interview questionnaire to guide subsequent discussions. In Phase III, DOE interviews manufacturers, and assesses the impacts of standards both quantitatively and qualitatively. It assesses industry and subgroup cash flow and net present value through use of the Government Regulatory Impact Model (GRIM). DOE then assesses impacts on competition, manufacturing capacity, employment, and regulatory burden based on manufacturer interview feedback and discussions. Results of the Phase II and Phase III analyses are presented in the NOPR TSD.

1. Sources of Information for the Manufacturer Impact Analysis

Many of the analyses described above provide important inputs to the MIA. Such inputs include manufacturing costs and prices from the engineering analysis, retail price forecasts, and shipments forecasts. DOE supplements this information with company financial data and other information gathered during interviews with manufacturers. As discussed below, this interview process plays a key role in the MIA because it allows interested parties to privately express their views on important issues. To preserve confidentiality, DOE aggregates these perspectives across manufacturers, creating a combined opinion or estimate for use in its analyses. This process enables DOE to incorporate sensitive information from manufacturers in the rulemaking process without specifying precisely which manufacturer provided a certain set of data.

DOE conducts detailed interviews with manufacturers to gain insight into the range of potential impacts of standards. During the interviews, DOE typically solicits both quantitative and qualitative information on the potential impacts of efficiency levels on sales, direct employment, capital assets, and industrial competitiveness. DOE prefers an interactive interview process, rather than a written response to a questionnaire, because it helps clarify responses and identify additional issues. Before each interview, DOE circulates a draft document showing its estimates of financial parameters based on publicly available information, such as filings with the SEC, articles in trade publications, etc. DOE subsequently solicits comments and suggestions on these estimates during the interviews.

DOE asks interview participants to identify any confidential information that they have provided, either orally or in writing. DOE considers all information collected, as appropriate, in its decision-making process. However, DOE does not make confidential information available in the public record. DOE also asks participants to identify all information that they wish to have included in the public record, but that they do not want to have associated with their interview or company; DOE incorporates such information into the public record, but reports it without attribution.

Finally, DOE collates the completed interview questionnaires and prepares a summary of the major issues. For more detail on the methodology used in the MIA, refer to Chapter 12 of the TSD.

2. Industry Cash Flow Analysis

The industry cash flow analysis relies primarily on the GRIM, which helps identify the effects of various efficiency regulations and other regulations on manufacturers. The basic structure of the GRIM is a standard annual cash flow analysis that uses price and volume information as an input, builds on fundamental base cost information, and accepts a set of regulatory conditions as changes in costs and investments. DOE uses the GRIM to analyze the financial impacts of more stringent energy conservation standards on the industry.

The GRIM analysis uses several factors to determine annual cash flows from a new standard: (1) Annual expected revenues; (2) manufacturer costs including cost of goods sold; (3) depreciation; (4) research and development; (5) selling, general, and administrative expenses; (6) taxes; and (7) conversion capital expenditures. DOE compares the results against base case projections that involve no new standards. The financial impact of new standards is the difference between the two sets of discounted annual cash flows. For more information on the industry cash flow analysis, refer to Chapter 12 of the TSD.

3. Manufacturer Subgroup Analysis

Industry cost estimates are not adequate to assess differential impacts among subgroups of manufacturers. For example, small and niche manufacturers, or manufacturers whose cost structure differs significantly from the industry average, could experience a disproportionate impact due to standards changes. Because DOE cannot consider the impact on every firm

individually, the results of the industry characterization are typically used to group manufacturers exhibiting similar characteristics.

During MIA interviews, DOE discusses the potential subgroups and subgroup members it has identified for the analysis. DOE encourages the manufacturers to recommend subgroups or characteristics that are appropriate for the subgroup analysis. For more detail on the manufacturer subgroup analysis, refer to Chapter 12 of the TSD.

4. Competitive Impacts Assessment

Another factor which DOE must consider in standard setting is whether a new standard is likely to reduce industry competition, and the Attorney General must determine the impacts, if any, of reduced competition. DOE makes a determined effort to gather and report firm-specific financial information and impacts. In particular, the competitive impacts assessment focuses on the impacts of new energy efficiency standards on smaller manufacturers. DOE bases this assessment on manufacturing cost data and on information collected from interviews with manufacturers. Hence, manufacturer interviews also focus on gathering information to help assess asymmetrical cost increases to some manufacturers, increased proportions of fixed costs that could increase business risks, and potential barriers to market entry (*e.g.*, proprietary technologies).

5. Cumulative Regulatory Burden

DOE recognizes and seeks to mitigate the overlapping effects on manufacturers of new or revised DOE standards and other regulatory actions affecting the same equipment. Thus, DOE analyzes and considers the impact on manufacturers of multiple, product-specific regulatory actions.

Based on its own research and discussions with manufacturers, DOE has identified several regulations relevant to dishwasher, dehumidifier, cooking product, and CCW manufacturers, including existing or new standards, the phase-out of hydrochlorofluorocarbon refrigerants, the prohibition of phosphate-containing detergents in some jurisdictions, standards for other products made by dishwasher, dehumidifier, cooking product, and CCW manufacturers, including State standards, and foreign energy conservation standards. (Although foreign standards do not directly affect products entering the U.S., they do impact manufacturer operations, in that they represent additional business expenses for manufacturers selling outside the U.S. market.)

DOE will study the potential impacts of these cumulative burdens in greater detail during the MIA conducted during the NOPR phase.

6. Preliminary Results for the Manufacturer Impact Analysis

DOE conducted a preliminary evaluation of the impact of potential new regulations for the products to be covered by this rulemaking on manufacturer financial performance, manufacturing capacity and employment levels, and product utility and innovation. A primary focus was to identify the cumulative burden that industry faces from the overlapping effect of new or recent energy conservation standards and/or other regulatory action affecting the same product or industry.

The primary sources of information for this analysis were telephone interviews with manufacturers of dishwashers, dehumidifiers, and CCWs carried out during the first quarter of FY 2007. To maintain confidentiality, DOE did not identify the individual manufacturers that disclosed information. Instead, the evaluation only reports aggregated information and does not disclose sensitive information or identify company-specific information. For the preliminary MIA, DOE conducted interviews with manufacturers primarily to identify key issues and gain insights into the qualitative impacts of energy conservation standards. For each product, DOE used an interview guide to gather responses from multiple manufacturers on several issues. All the interview guides covered the same general topic areas, but DOE adapted them, as appropriate, to address each product category. (Copies of the interview guides for CCW, dehumidifier, and dishwasher manufacturers are contained in Appendix B of the TSD.)

However, DOE did not interview cooking product manufacturers at this stage due to feedback from stakeholders such as AHAM and several cooking product manufacturers, suggesting that DOE limit its efforts to updating the extensive 1996 cooking product technical analysis; these stakeholders reasoned that such an update would properly represent prices, design options, and manufacturer issues for products covered by the present rulemaking. Thus, DOE updated the 1996 cooking products analysis and plans to interview manufacturers of cooking products during the NOPR stage of this rulemaking to get feedback on its analysis and results.

During the course of the preliminary MIA, DOE interviewed manufacturers representing over 80 percent of domestic dishwasher sales, 66 percent of domestic dehumidifier sales, and practically 100 percent of CCW sales. DOE used these same interviews to review the engineering analysis cost and performance data contained in chapter 5 of the TSD. However, during the course of the MIA interviews, focus of the discussion was shifted from technology-related topics to business-related topics. DOE's objective was to become familiar with each company's particular market approach and financial structure, and its concerns and issues related to new efficiency standards. Most of the information received from these meetings is protected by non-disclosure agreements and resides with DOE's contractors. Before each visit, DOE provided company representatives with an interview guide that included the topics that DOE hoped to cover. The topics included:

- Key issues—the most important things to consider in setting new standards from the perspective of manufacturers;
- Product mix—effects of potential standard levels on a manufacturer's product mix;
- Profitability—insights into market forces which could affect a manufacturer's profitability;
- Conversion costs—estimates of costs required to meet new standards;
- Manufacturing capacity and employment levels—decisions to upgrade, remodel, or relocate existing facilities and resulting changes in employment patterns resulting from new energy efficiency standards;
- Market share and industry consolidation—changes to competitive dynamics of the marketplace and the possible consequences for consumers;
- Product utility and innovation—effect of standards on product utility and innovation; and
- Cumulative burden—assessment of the level and timing of investments manufacturers are expecting to incur as a result of other regulations.

Additionally, DOE often introduced, entertained, and discussed other topics during the course of the interviews, such as the impact of various design options on energy efficiency, how testing standards and usage patterns vary by market, and performance issues.

Perhaps the most important aspect of the preliminary MIA was the opportunity it created for DOE to identify key manufacturer issues early in the development of new standards.

During the interviews, DOE engaged the manufacturers in a discussion of their perception of the key issues in the rulemaking. DOE then added these key issues to the list of questions and topics explored during the interviews.

The concerns that rose to the level of key issues in the opinion of dishwasher manufacturers included: (1) The potential elimination of entry-level dishwashers from the market; (2) a possible reduction in dishwasher washing performance; (3) the increased likelihood of consumers hand washing and pre-rinsing dishes; and (4) the potential relocation of production facilities overseas.

The key issues expressed by dehumidifier manufacturers included: (1) The ability to pass cost increases on to consumers; (2) increased pressure from foreign competition; and (3) the ability to maintain Energy Star product offerings.

The key issues for CCW manufacturers included: (1) The risk of eliminating vertical-axis washers from the market; (2) reduced product shipments due to a move away from central laundry facilities to in-unit residential laundry and prolonging the life of existing equipment; (3) reduced cleaning performance of some energy-saving design options; (4) the possible relocation of production facilities outside the country; and (5) the potential for industry consolidation and/or the elimination of the low-volume manufacturer.

For more preliminary results for the MIA, such as other impacts on financial performance, impacts on product utility and performance, and additional details on the impacts of cumulative regulatory burden, refer to Chapter 12 of the TSD.

*L. Utility Impact Analysis*

The utility impact analysis estimates the effects on the utility industry of reduced energy consumption due to improved appliance efficiency. The analysis compares modeling results for the base case with results for each candidate standards case. For each of the four appliance products, the analysis will consist of forecasted differences between the base and standards cases for electricity generation, installed capacity, sales, and prices. For CCWs, as well as residential dishwashers and cooking products, the analysis also will examine differences in sales of natural gas.

To estimate these effects of proposed standards on the electric and gas utility industries, DOE intends to use a variant of the EIA's NEMS.[56] EIA uses NEMS to produce its AEO. NEMS produces a widely recognized reference case forecast for the United States and is available in the public domain. DOE will use a variant known as NEMS-Building Technologies (BT) to provide key inputs to the analysis.

The use of NEMS for the utility impact analysis offers several advantages. As the official DOE energy forecasting model, NEMS relies on a set of premises that are transparent and have received wide exposure and commentary. NEMS allows an estimate of the interactions between the various energy supply and demand sectors and the economy as a whole. The utility impact analysis will determine the changes for electric utilities in installed capacity and in generation by fuel type produced by each candidate standard level, as well as changes in gas and electricity sales to the commercial sector (for CCWs) and the consumer sector (for residential dishwashers, dehumidifiers, and cooking products). (Because dehumidifiers neither operate on gas nor rely on water heated by gas, standards for this product do not affect gas sales.)

DOE plans to conduct the utility impact analysis as a variant of the NEMS used to produce the *AEO 2007,* applying the same basic set of premises. For example, the utility impact analysis uses the operating characteristics (*e.g.*, energy conversion efficiency, emissions rates) of future electricity generating plants and the prospects for natural gas supply as specified in the *AEO* reference case.

DOE will also explore deviations from some of the *AEO 2007* reference case premises to represent alternative futures. Two alternative scenarios use the high- and low-economic-growth cases of *AEO 2007.* (The reference case corresponds to medium growth.) The high-economic-growth case uses higher projected growth rates for population, labor force, and labor productivity, resulting in lower predicted inflation and interest rates relative to the reference case. The opposite is true for the low-growth case. Starting in 2012, the high-growth case predicts growth in per capita gross domestic product of 3.4 percent per year, compared with 2.9 percent per year in the reference case and 2.2 percent per year in the low-growth case. As part of varying supply-side growth determinants in these cases, *AEO 2007* also varies the forecasted energy prices for all three economic growth cases. Different economic growth cases affect the rate of growth of electricity demand.

The electric utility industry analysis will consist of NEMS–BT forecasts for generation, installed capacity, sales, and prices. The gas utility industry analysis will consist of NEMS–BT forecasts of sales and prices. The NEMS–BT provides reference case load shapes for several end uses, including residential dishwashing and cooking, but does not provide load shapes[57] specifically for dehumidifiers and CCWs. Because most of the energy consumed by clothes washers is expended on water heating, DOE intends to use NEMS–BT's commercial water-heating load shapes to characterize CCWs. For dehumidifiers, because this end use is operated in a similar manner to air-conditioning equipment, DOE intends to use NEMS–BT residential space-cooling load shapes to characterize it. For electrical end uses, NEMS–BT uses predicted growth in demand for each end use to build up a projection of the total electrical system load growth for each region, which it uses in turn to predict the necessary additions to capacity. For both electrical and gas end uses, NEMS–BT accounts for the implementation of efficiency standards by decrementing the appropriate reference case load shape. DOE will determine the size of the decrement using data for the per-unit energy savings developed in the LCC and PBP analyses (see Chapter 8 of the TSD) and the forecast of shipments developed for the NIA (see Chapter 9 of the TSD). For more information on the utility impact analysis, refer to Chapter 13 of the TSD.

EEI commented that an accurate assessment of electric utility impacts requires an evaluation of the type of load of the appliance (*i.e.*, whether the load is primarily during system peak demand or off-peak). (Public Meeting Transcript, No. 5 at p. 264) In response, we note that in 2001, EIA conducted a review of its end-use load shapes and updated them to better reflect actual end use behavior.[58] As a result, DOE has

[56] For more information on NEMS, please refer to the U.S. Department of Energy, Energy Information Administration documentation. A useful summary is *National Energy Modeling System: An Overview 2003,* DOE/EIA–0581(2003), March 2003. DOE/EIA approves use of the name NEMS to describe only an official version of the model without any modification to code or data. Because this analysis entails some minor code modifications and the model is run under various policy scenarios that are variations on DOE/EIA assumptions, in this analysis, DOE refers to it by the name NEMS–BT.

[57] The ''load shape'' defines how the product uses energy on an hourly basis over the course of the day.

[58] *Alternative Sectoral Load Shapes for NEMS,* Department of Energy—Energy Information Administration, Washington, DC, August 2001.

Continued

confidence that the NEMS–BT provides a good representation of the type of loads exhibited by its end uses.

With regard to gas utility impacts, the AGA commented that NEMS–BT does not address these impacts in a meaningful way. AGA suggested that DOE should conduct a workshop on proposed modeling approaches to analyzing gas utility impacts. (AGA, No. 12 at p. 3) As noted above, NEMS–BT allows for the determination of changes in gas sales due to efficiency standards. Therefore, DOE's gas utility impact analysis goes no further than assessing the impact on gas sales.

Since the *AEO 2007* version of NEMS forecasts only to the year 2030, DOE would be required to extrapolate results for such forecasts to 2042. DOE conducts an extrapolation to 2042 to be consistent with the analysis period being used by DOE in the NIA. However, DOE has determined that it will not be feasible to extend the forecast period of NEMS–BT for the purposes of this analysis, in part because EIA does not have an approved method for extrapolation of many outputs beyond 2030. While it might seem reasonable in general to make simple linear extrapolations of results, in practice this is not advisable because outputs could be contradictory. For example, changes in the fuel mix implied by extrapolations of those outputs could be inconsistent with the extrapolation of marginal emissions factors. An analysis of various trends is not necessary and would involve a great deal of uncertainty. Therefore, for all extrapolations beyond 2030, DOE intends to use simple replications of year 2030 results. While these may seem unreasonable in some instances, in this way results are guaranteed to be consistent. As with the *AEO* reference case in general, the implicit premise is that the regulatory environment does not deviate from the current known situation during the extrapolation period. Only changes that have been announced with date-certain introduction are included in NEMS–BT.

Both EEI and SPU stated that DOE should factor impacts to water and wastewater utilities into the utility impact analysis. SPU claimed that, in some areas of the country, water is becoming a limited commodity and should be assessed in the context of a utility impact analysis. (EEI, No. 7 at p. 6; Public Meeting Transcript, No. 5 at p. 263) Although NEMS–BT provides estimates of changes in electrical utility infrastructure requirements as a function of end-use energy savings, it does not currently have the capability of calculating similar results for water and wastewater utilities. The water utility sector is more complicated than either the electric utility or gas utility sectors, with a high degree of geographic variability produced by a large diversity of water resource availability, institutional history, and regulatory context. DOE currently does not have access to tools that analyze water utility impacts. There are activites being conducted or initiated by the USGS, EPA, and DOE to study water and wastewater issues. However, these activites have yet to provide the necessary sources of data or tools to enable a water utility impact analysis comparable to what can be done on electric and gas utilities using NEMS. Therefore, conducting a credible water and wastewater utility analysis is beyond DOE's existing analysis capabilities.

*M. Employment Impact Analysis*

The Process Rule includes employment impacts among the factors to be considered in selecting a proposed standard, and it provides guidance for consideration of the impact (both direct and indirect) of candidate standard levels on employment. The Process Rule states a general presumption against any candidate standard level that would directly cause plant closures or significant loss of domestic employment, unless specifically identified expected benefits of the standard would outweigh the adverse effects. *See* the Process Rule, 10 CFR Part 430, Subpart C, Appendix A, sections 4(d)(7)(ii) and (vi), and 5(e)(3)(i)(B).

DOE estimates the impacts of standards on employment for equipment manufacturers, relevant service industries, energy suppliers, and the economy in general. Both indirect and direct employment impacts are covered. Direct employment impacts would result if standards led to a change in the number of employees at the factories that produce the four appliance products and related supply and service firms. Direct impact estimates are covered in the MIA.

Indirect employment impacts are impacts on the national economy other than in the manufacturing sector being regulated. Indirect impacts may result both from expenditures shifting among goods (substitution effect) and changes in income that lead to a change in overall expenditure levels (income effect). DOE defines indirect employment impacts from standards as net jobs created or eliminated in the general economy as a result of increased spending driven by the increased equipment prices and reduced spending on energy.

DOE expects new standards for the four appliance products to increase the total installed cost of equipment, which includes manufacturer selling price, sales taxes, distribution chain markups, and installation cost. DOE also expects the new standards to decrease energy consumption, and thus expenditures on energy. Over time, increased total installed cost is paid back through energy savings. The savings in energy expenditures may be spent on new commercial investment and other items.

Using an input/output model of the U.S. economy, this analysis seeks to estimate the effects on different sectors and the net impact on jobs. DOE will estimate national employment impacts for major sectors of the U.S. economy in the NOPR, using public and commercially available data sources and software. DOE will make all methods and documentation available for review in the TSD for the NOPR.

In overview, DOE developed Impact of Sector Energy Technologies (ImSET), a spreadsheet model of the U.S. economy that focuses on 188 sectors most relevant to industrial, commercial, and residential building energy use.[59] ImSET is a special-purpose version of the U.S. Benchmark National Input-Output (I–O) model, which has been designed to estimate the national employment and income effects of energy saving technologies that are deployed by DOE's Office of Energy Efficiency and Renewable Energy. In comparison with the previous versions of the model used in earlier rulemakings, this version allows for more complete and automated analysis of the essential features of energy efficiency investments in buildings, industry, transportation, and the electric power sectors. The ImSET software includes a computer-based I–O model with structural coefficients to characterize economic flows among the 188 sectors. ImSET's national economic I–O structure is based on the 1997 Benchmark U.S. table (Lawson, *et al.* 2002),[60] specially aggregated to 188 sectors.

Standards for the four appliance products may reduce energy

Available online at: *http://www.onlocationinc.com/LoadShapesAlternative2001.pdf.*

[59] Roop, J.M., M.J. Scott, and R.W. Schultz. 2005. *ImSET: Impact of Sector Energy Technologies.* PNNL–15273. Pacific Northwest National Laboratory, Richland, WA.

[60] Lawson, Ann M., Kurt S. Bersani, Mahnaz Fahim-Nader, and Jiemin Guo. 2002. ''Benchmark Input-Output Accounts of the U. S. Economy, 1997,'' *Survey of Current Business,* December, pp. 19–117.

expenditures and increase equipment prices in the commercial sector. These expenditure changes are likely to reduce commercial and energy sector employment. At the same time, these equipment standards may increase commercial sector investment, and increase employment in other sectors of the economy. DOE designed the employment impact analysis to estimate the year-to-year net employment effect of these different expenditure flows.

Although DOE intends to use ImSET for its analysis of employment impacts, it welcomes input on other tools and factors it might consider. For more information on the employment impact analysis, refer to Chapter 14 of the TSD.

*N. Environmental Assessment*

The primary environmental effect of energy conservation standards for the four appliance products would be reduced power plant emissions resulting from reduced consumption of electricity. DOE will assess these environmental effects by using NEMS–BT to provide key inputs to its analysis. The environmental assessment produces results in a manner similar to those provided in the *AEO.* In addition to electrical power, the operation of three of the four appliance products—CCWs, dishwashers, and cooking products—also requires use of fossil fuels, and results in emissions of carbon dioxide ($CO_2$), nitrogen oxides ($NO_X$), and sulfur dioxide ($SO_2$) at the sites where the appliances are installed. Southern California Gas Company (SoCal Gas) and PG&E questioned how DOE will evaluate the emissions from gas-fired appliances. (Public Meeting Transcript, No. 5 at pp. 271–272) In response, we note that NEMS–BT provides no means for estimating such site emissions. Therefore, DOE will calculate, and the environmental assessment will include, separate estimates of the effect of the proposed standard on site emissions of $CO_2$, $NO_X$, and $SO_2$, based on simple emissions factors derived from the literature.[61]

The intent of the environmental assessment is to provide emissions results estimates and to properly quantify and consider the environmental effects of all new Federal rules. The portion of the environmental assessment that will be produced by NEMS–BT considers only three pollutants, $SO_2$, $NO_X$, and mercury, and one other emission (carbon). The only form of carbon the NEMS–BT model tracks is $CO_2$. Therefore, the carbon discussed in this analysis is only in the form of $CO_2$. For each of the trial standard levels, DOE will calculate total undiscounted and discounted power plant emissions using NEMS–BT, and will use other methods to calculate site emissions.

Although DOE plans to consider only $SO_2$, $NO_X$, mercury, and $CO_2$ in its environmental assessment, there are other air pollutants which are of concern. Specifically, the Clean Air Act requires EPA to set National Ambient Air Quality Standards for the following six common air pollutants, also know as ''criteria pollutants'': (1) Ozone, (2) particulate matter (PM), (3) carbon monoxide (CO), (4) nitrogen dioxide, (5) $SO_2$, and (6) lead. [62] EPA recently added mercury to this list. But none of the ''criteria pollutants'' not considered in the environmental assessment (*i.e.*, ozone, PM, CO, and lead) are driven significantly by either electric utility power plants or fuel-fired appliances. Therefore, DOE does not intend on addressing them in the environmental assessment. In the case of ozone and PM, other pollutants are precursors to their formation, and atmospheric conditions are the driver behind their formation. Also, $SO_2$ and $NO_X$, are the primary precursors to ozone and PM, respectively, and will already be addressed by the environmental assessment. In the case of CO, electric utilities and fuel-fired appliances are not significant sources. For electric power plants, almost all carbon emissions come out in the form of CO2 as the combustion process is lean enough not to yield CO in significant amounts. For fuel-fired appliances, proper appliance maintenance, installation, and use can prevent dangerous levels of CO. A well-designed and properly functioning heating or cooking appliance should not produce toxic or lethal levels of CO, as, most often, CO poisoning occurs in the home as a result of malfunctioning appliances. Finally, with regard to lead, the ban on the use of leaded gasoline has resulted in a dramatic decrease in lead emissions since the mid-1970s. Today, industrial processes (not electric utilities), particularly primary and secondary lead smelters and battery manufacturers, are responsible for most of lead emissions and all violations of the lead air quality standards.

As to power plant emissions, DOE will conduct each environmental assessment performed as part of this rulemaking as an incremental policy impact (*i.e.*, a standard for the product under evaluation) on the *AEO 2007* forecast, applying the same basic set of assumptions used in *AEO 2007.* For example, the emissions characteristics of an electricity generating plant will be exactly those used in *AEO 2007.* Also, forecasts conducted with NEMS–BT consider the supply-side and demand-side effects on the electric utility industry. Thus, DOE's analysis will account for any factors affecting the type of electricity generation and, in turn, the type and amount of airborne emissions generated by the utility industry.

The NEMS–BT model tracks carbon emissions with a specialized carbon emissions estimation subroutine, producing reasonably accurate results due to the broad coverage of all sectors and inclusion of interactive effects. Past experience with carbon results from NEMS suggests that emissions estimates are somewhat lower than emissions based on simple average factors. One of the reasons for this divergence is that NEMS tends to predict that conservation displaces generating capacity in future years. On the whole, NEMS–BT provides carbon emissions results of reasonable accuracy, at a level consistent with other Federal published results.

NEMS–BT also reports $SO_2$, $NO_X$, and mercury, which DOE has reported in past analyses. The Clean Air Act Amendments of 1990 set an $SO_2$ emissions cap on all power generation.[63] The attainment of this aggregate limit, however, is flexible among generators of emissions, due to the availability of emissions allowances and tradable permits. Although NEMS includes a module for $SO_2$ allowance trading and delivers a forecast of $SO_2$ allowance prices, accurate simulation of $SO_2$ trading implies that the effect of efficiency standards on physical emissions will be zero because emissions will always be at or near the ceiling. However, there may be an $SO_2$ benefit from energy conservation, in the form of a lower $SO_2$ allowance price. Since the impact of any one standard on the allowance price is likely small and highly uncertain, DOE does not plan to monetize any potential $SO_2$ benefit.

NEMS–BT also has an algorithm for estimating $NO_X$ emissions from power generation. The impact of these emissions, however, will be affected by the Clean Air Interstate Rule (CAIR), which the EPA published on May 12, 2005. CAIR will permanently cap

[61] U.S. Environmental Protection Agency. *Compilation of Air Pollutant Emission Factors, AP–42, Fifth Edition, Volume 1: Stationary Point and Area Sources.* 1998. Available online at: *http://www. epa.gov/ttn/chief/ap42.html.*

[62] U.S. Environmental Protection Agency. *Six Common Air Pollutants.* Washington, DC. Available online at: *http://www.epa.gov/air/urbanair/.*

[63] See 40 CFR part 50. (*See* also U.S. Environmental Protection Agency Web site at: *http://www.epa.gov/air/caa/*).

emissions of $NO_X$ in 28 eastern States and the District of Columbia. 70 FR 25162 (May 12, 2005). As with $SO_2$ emissions, a cap on $NO_X$ emissions means that equipment efficiency standards may have no physical effect on these emissions. When $NO_X$ emissions are subject to emissions caps, DOE's emissions reduction estimate corresponds to incremental changes in the prices of emissions allowances in cap-and-trade emissions markets rather than physical emissions reductions. Therefore, while the emissions cap may mean that physical emissions reductions will not result from standards, standards could produce an economic benefit in the form of lower prices for emissions allowance credits. However, as with $SO_2$ allowance prices, DOE does not plan to monetize this benefit because the impact on the $NO_X$ allowance price from any single energy conservation standard is likely small and highly uncertain.

EEI stated that new rules pertaining to power plant $SO_2$ and $NO_X$ emissions will limit the impact that standards can have on reducing these emissions. (EEI, No. 7 at p. 4) As noted above, NEMS–BT accounts for the most recent regulations pertaining to power plant $SO_2$ and $NO_X$ emissions and expects that appliance efficiency standards will not have any physical effect on these emissions.

With regard to mercury emissions, NEMS has an algorithm for estimating these emissions from power generation. However, the impact on mercury emissions will be affected by the Clean Air Mercury Rule (CAMR), which the EPA published on May 18, 2005. 70 FR 28606. CAMR will permanently cap emissions of mercury for new and existing coal-fired plants in all States. As with $SO_2$ and $NO_X$ emissions, a cap on mercury emissions means that appliance efficiency standards may have no physical effect on these emissions. When mercury emissions are subject to emissions caps, DOE's emissions reduction estimate corresponds to incremental changes in the prices of emissions allowances in cap-and-trade emissions markets rather than physical emissions reductions. Therefore, while the emissions cap may mean that physical emissions reductions will not result from standards, standards could produce an economic benefit in the form of lower prices for emissions allowance credits. However, as with $SO_2$ and $NO_X$ allowance prices, DOE does not plan to monetize this benefit because the impact on the mercury allowance price from any single energy conservation standard is likely small and highly uncertain.

The Joint Comment stated that DOE should evaluate mercury and particulate emissions as part of the environmental assessment due to their impact on public health. (Joint Comment, No. 9 at p. 3) In response, as noted above, NEMS–BT accounts for the most recent regulations pertaining to power plant mercury emissions and expects that standards will not have any physical effect on the level of these emissions. With regard to particulates, these emissions are a special case because they arise not only from direct emissions, but also from complex atmospheric chemical reactions that result from $NO_X$ and $SO_2$ emissions. Because of the highly complex and uncertain relationship between particulate emissions and particulate concentrations that impact air quality, DOE does not plan on reporting particulate emissions.

Potomac and SPU urged DOE to evaluate wastewater discharge impacts due to increased efficiency standards. (Public Meeting Transcript, No. 5 at p. 269) DOE plans to conduct a separate analysis of wastewater discharge impacts as part of the environmental assessment. DOE intends to derive a simple national aggregate estimate of wastewater discharge impacts from proposed energy conservation standards, based on estimates of consumer water savings. It will first provide a simple estimate of the fraction of water savings that result in decreased wastewater discharges. Then, by applying this discharge fraction to the water savings estimate, DOE can provide an approximate wastewater discharge savings estimate.

The results for the environmental assessment are similar to a complete NEMS run as published in the *AEO 2007.* These results include power sector emissions for $SO_2$, $NO_X$, and carbon in five-year forecasted increments extrapolated to 2042. The outcome of the analysis for each candidate standard level is reported as a deviation from the *AEO 2007* reference (base) case.

For more detail on the environmental assessment, refer to the environmental assessment report in the TSD.

*O. Regulatory Impact Analysis*

DOE will prepare a draft regulatory impact analysis in compliance with Executive Order 12866, ''Regulatory Planning and Review,'' which will be subject to review by OMB's Office of Information and Regulatory Affairs (OIRA). 58 FR 51735 (October 4, 1993).

As part of the regulatory impact analysis, and as discussed in section II.K, ''Manufacturer Impact Analysis,'' DOE will identify and seek to mitigate the overlapping effects on manufacturers of new or revised DOE standards and other regulatory actions affecting the same products. Through manufacturer interviews and literature searches, DOE will compile information on burdens from existing and impending regulations affecting the four appliance products covered under this rulemaking. DOE also seeks input from stakeholders about relevant regulations whose impacts it should consider.

The regulatory impact analysis also will address the potential for non-regulatory approaches to supplant or augment energy conservation standards to improve the efficiency of the four appliance products. One such potential non-regulatory program is tax credits. In assessing the potential impacts from tax credits, EEI suggested that DOE should evaluate the long-term effects on market transformation to more-efficient products from short-term (*e.g.*, two-year) tax credits. (Public Meeting Transcript, No. 5 at p. 278) AHAM stated that recent Federal tax credits for dishwashers will have an effect on improving overall product efficiency and that DOE should consider such effect as part of analyzing the impact of tax credits. (Public Meeting Transcript, No. 5 at p. 277) In response, we noted that the NOPR will include a complete quantitative analysis of alternatives to the proposed energy conservation standards (including tax credits), and DOE will use the most recent information available to make its assessments. DOE will use the NES spreadsheet model (as discussed in section II.I, ''National Impact Analysis'') to calculate the NES and NPV for the alternatives to the proposed conservation standards. For more information on the regulatory impact analysis, refer to the regulatory impact analysis report in the TSD.

## III. Candidate Energy Conservation Standard Levels

The Process Rule states that DOE will specify candidate standard levels in the ANOPR, but will not propose a particular standard. 10 CFR Part 430, Subpart C, Appendix A, section 4(c)(1)(i). Section II.I.4, ''National Impact Analysis Results'' identifies the candidate standard levels for each of the four appliance products. Tables III.1 through III.4 repeat the candidate standard levels for each of the four appliance products.

TABLE III.1.—STANDARD DISHWASHERS: CANDIDATE STANDARD LEVELS

| Candidate standard level | Energy factor |
|---|---|
| 1 | 0.46 |
| 2 | 0.58 |
| 3 | 0.62 |
| 4 | 0.65 |
| 5 | 0.72 |
| 6 | 0.80 |
| 7 | 1.11 |

TABLE III.2.—DEHUMIDIFIERS: CANDIDATE STANDARD LEVELS

| Candidate standard level | ≤25.00 | 25.01–35.00 | 35.01–45.00 | 45.01–54.00 | 54.01–74.99 | ≥75.00 |
|---|---|---|---|---|---|---|
| | EF | EF | EF | EF | EF | EF |
| 1 | 1.10 | 1.25 | 1.35 | 1.45 | 1.55 | 2.38 |
| 2 | 1.20 | 1.30 | 1.40 | 1.50 | 1.60 | 2.50 |
| 3 | 1.25 | 1.35 | 1.45 | 1.55 | 1.65 | 2.55 |
| 4 | 1.30 | 1.40 | 1.50 | 1.60 | 1.70 | 2.60 |
| 5 | 1.38 | 1.45 | 1.74 | 2.02 | 1.80 | 2.75 |

TABLE III.3.—COOKING PRODUCTS: CANDIDATE STANDARD LEVELS

| Candidate standard level | Cooktops | | | Ovens | | | | Microwave ovens |
|---|---|---|---|---|---|---|---|---|
| | Elec coil | Elec smooth | Gas | Elec standard | Elec self-clean | Gas standard | Gas self-clean | |
| | EF | EF | EF | EF | EF | EF | EF | EF |
| 1* | 0.769 | 0.752 | 0.399 | 0.1113 | 0.1102 | 0.0536 | 0.0625 | 0.586 |
| 2 | | | 0.420 | 0.1163 | 0.1123 | 0.0566 | 0.0627 | 0.588 |
| 3 | | | | 0.1181 | | 0.0572 | 0.0632 | 0.597 |
| 4 | | | | 0.1206 | | 0.0593 | | 0.602 |
| 5 | | | | 0.1209 | | 0.0596 | | |
| 6 | | | | | | 0.0600 | | |
| 1a* | | | | | | 0.0583 | | |

* For gas standard ovens, candidate standard levels 1 and 1a correspond to designs that are utilized for the same purpose—eliminate the need for a standing pilot-but the technologies for each design are different. Candidate standard level 1 is a hot surface ignition device while candidate standard level 1a is a spark ignition device. Candidate standard level 1a is presented at the end of the table because candidate standard levels 2 through 6 are derived from candidate standard level 1.

TABLE III.4.—COMMERCIAL CLOTHES WASHERS: CANDIDATE STANDARD LEVELS

| Candidate standard level | Modified energy factor/water factor |
|---|---|
| 1 | 1.42/9.50 |
| 2 | 1.60/8.50 |
| 3 | 1.72/8.00 |
| 4 | 1.80/7.50 |
| 5 | 2.00/5.50 |
| 6 | 2.20/5.10 |

DOE will review the public input it receives in response to this ANOPR and will update the analyses appropriately for each product class before issuing the NOPR. In addition, DOE will consider any comments it receives on the candidate standard levels set forth above for the four appliance products, and on whether alternative levels would satisfy EPCA criteria for DOE adoption of standards, for example:

- A moderate increase in the efficiency level at an earlier effective date (*e.g.*, an effective date two years after the publication of the final rule); or
- A larger increase in the efficiency level at a later effective date.

For the NOPR, DOE will develop trial standard levels (TSL) from the above candidate standard levels for each of the four appliance products. DOE will consider several criteria in developing the TSLs, including, but not limited to, which candidate standard level has the minimum LCC, maximum NPV, and maximum technologically feasible efficiency. From the list of TSLs developed, DOE will select one as its proposed standard for the NOPR, while explaining the other TSLs considered and the reasons for their elimination in deciding upon the level ultimately proposed.

For a given product consisting of several product classes (*e.g.*, dehumidifiers and cooking products), DOE will develop each TSL so that it is comprised of candidate standard levels from each class that exhibit similar characteristics. For example, in the case of dehumidifiers, one of the TSLs will likely consist of the candidate standard level from each of the six classes that has the minimum LCC.

DOE will also attempt to limit the number of TSLs considered for the NOPR by dropping from consideration candidate standard levels that do not exhibit significantly different economic and/or engineering characteristics from candidate standard levels already selected as a TSL. For example, in the case of dishwashers, the candidate standard level with the minimum LCC is candidate standard level 3 with an EF of 0.65. If the sole consideration for selecting TSLs was LCC, DOE would likely drop candidate standard level 4 with an EF of 0.68 as its LCC savings are lower and not significantly different than the value for candidate standard level 3.

DOE specifically seeks feedback on the criteria it should use for basing the selection of TSLs. This is identified as Issue 16 under ''Issues on Which DOE Seeks Comment'' in section IV.E of this ANOPR.

## IV. Public Participation

*A. Attendance at Public Meeting*

The time, date, and location of the public meeting are set forth in the **DATES** and **ADDRESSES** sections at the beginning of this document. Anyone who wishes to attend the public meeting must notify Ms. Brenda Edwards-Jones at (202) 586–2945.

*B. Procedure for Submitting Requests to Speak*

Any person who has an interest in today's notice, or who is a representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the public meeting. Please hand-deliver requests to speak to the address shown under the heading ''Hand Delivery/Courier'' in the **ADDRESSES** section of this notice, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Requests also may be sent by mail, to the address shown under the heading ''Postal Mail'' in the **ADDRESSES** section of this notice, or by e-mail to *Brenda.Edwards-Jones@ee.doe.gov*.

Persons requesting to speak should briefly describe the nature of their interest in this rulemaking and provide a telephone number for contact. DOE asks each person selected to be heard to submit a copy of his or her statement at least two weeks before the public meeting, either by hand delivery, mail, or e-mail as described in the preceding paragraph. Please include an electronic copy of your statement, on a computer diskette or CD when delivery is by mail or hand delivery. Electronic copies must be in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text in American Standard Code for Information Interchange (ASCII) file format. At its discretion, DOE may permit any person who cannot supply an advance copy of his or her statement to participate, if that person has made alternative arrangements with the Building Technologies Program. In such situations, the request to give an oral presentation should ask for alternative arrangements.

*C. Conduct of Public Meeting*

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with 5 U.S.C. 553 and section 336 of EPCA. (42 U.S.C. 6306) A court reporter will be present to record the transcript of the proceedings. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments on the proceedings and any other aspect of the rulemaking until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for presentations by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a prepared general statement (within time limits determined by DOE) before the discussion of specific topics. DOE will permit other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to the public meeting. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for proper conduct of the public meeting.

DOE will make the entire record of this proposed rulemaking, including the transcript from the public meeting, available for inspection at the U.S. Department of Energy, Forrestal Building, Room 1J–018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW, Washington, DC, (202) 586–9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Any person may buy a copy of the transcript from the transcribing reporter.

*D. Submission of Comments*

DOE will accept comments, data, and information regarding all aspects of this ANOPR before or after the public meeting, but no later than January 29, 2008. Please submit comments, data, and information electronically to the following e-mail address: *home_appliance.rulemaking@ee.doe.gov*. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format and avoid the use of special characters or any form of encryption. Comments in electronic format should be identified by the docket number EE–2006–STD–0127 and/or RIN 1904–AB49, and whenever possible carry the electronic signature of the author. Absent an electronic signature, comments submitted electronically must be followed and authenticated by submitting the signed original paper document. DOE will not accept any telefacsimiles (faxes).

Under 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies. One copy of the document shall include all the information believed to be confidential, and the other copy of the document shall have 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.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by, or available from, other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

*E. Issues on Which the Department of Energy Seeks Comment*

DOE is interested in receiving comments on all aspects of this ANOPR. DOE especially invites comments or data to improve DOE's analysis, including data or information that will respond to the following questions or concerns addressed in this ANOPR:

1. Microwave Oven Standby Power

For the NOPR, DOE is considering purchasing, testing, and analyzing microwave ovens to better understand the utility, cost, and cost implications of reducing standby power consumption. Addition of a standby power test to the existing test procedure would be necessary before standby power could be included in an efficiency standard. DOE is considering this approach for microwave ovens because data provided by AHAM suggests that there is an opportunity for significant energy

savings via the reduction of standby power levels. Therefore, DOE requests data and stakeholder feedback on how to conduct an analysis of standby power for microwave ovens. (See section I.D.4.b of this ANOPR for further details.)

2. Product Classes

In accordance with EPCA section 325(p)(1)(A), DOE identified the equipment classes covered under this rulemaking. (42 U.S.C. 6295(p)(1)(A)) Pursuant to EPCA section 325(p)(1)(B), DOE requests comments on these equipment classes and invites interested persons to submit written presentations of data, views, and arguments. (42 U.S.C. 6295(p)(1)(B)) (See section II.A.1 of this ANOPR for further details.)

3. Commercial Clothes Washer Horizontal-Axis Designs

The information available for CCWs suggests that an efficiency of 1.6 MEF and 8.5 WF will be based on horizontal-axis technology. As such, it appears that the incremental costs between 1.60 MEF/8.5 WF and 2.2 MEF/5.1 WF will be constant at the same value as those provided by AHAM for the level 2.0 MEF/5.5 WF. DOE particularly seeks comment on the validity of such an approach. DOE also seeks information about lower-cost alternatives to horizontal-axis designs for levels greater than 1.42 MEF/9.5 WF and lower than 2.0 MEF/5.5 WF. Additionally, DOE seeks information that would allow it to change the energy and water features of the 2.0 MEF/5.5 WF level to allow for manufacturer cost differentiation at the lower (and the higher) levels. Furthermore, DOE seeks comment on how to evaluate potential shifts from vertical-axis technologies to horizontal-axis. (See section II.C.4.d of this ANOPR for further details.)

4. Compact Dishwashers

DOE was unable to obtain incremental manufacturing cost information for compact dishwashers. Therefore, DOE did not analyze compact dishwashers for this ANOPR but expects to set standards for them. DOE requests feedback on how it can extend the results of the analysis for the standard class to compact dishwashers. (See section II.C.4 of this ANOPR for further details.)

5. Microwave Oven Design Options

For microwave ovens, the design options and efficiency levels that DOE analyzed are those identified in the previous rulemaking's analysis, with incremental manufacturing costs scaled by the PPI. DOE requests stakeholder feedback on the approach of analyzing additional design options that would result in a lowering of the energy consumption of non-cooking features (*e.g.*, standby power), even though the existing test procedure currently does not account for such usage in EF. (See section II.C.3 of this ANOPR for further details.)

6. Technologies Unable to be Analyzed and Exempted Product Classes

There are a number of technologies which DOE was unable to analyze for this ANOPR. Design options associated with these technologies for dehumidifiers, cooking products, and CCWs, while passing the screening analysis, were eliminated from further consideration prior to the ANOPR engineering analysis. In addition, certain product classes were exempted on a similar lack of efficiency data. DOE requests stakeholder input on (1) energy efficiency data for technologies and product classes for which such data does not exist; and (2) potential limitations of existing test procedures. The latter may include such issues as representative usage patterns, ambient conditions, and test equipment. (See sections II.A.1 and II.C.2 of this ANOPR for further details.)

7. Dishwasher Efficiency and its Impact on Cleaning Performance

DOE was not able to identify sources of data showing whether the amount of pre-washing is impacted by dishwasher efficiency. Therefore, DOE believes that, to date, hand-washing or pre-washing habits have not been affected by product efficiency. Because increased diswasher energy efficiency may require future designs to utlize less water, DOE recognizes the possibility that more efficient dishwashers may degrade wash performance. Therefore, DOE seeks feedback on whether more efficient dishwasher designs will affect cleaning performance, leading to increased hand-washing or pre-washing and, if so, what increase in energy and water use can be expected. (See section II.D.1 of this ANOPR for further details.)

8. Dehumidifier Use

DOE identified several sources of data for estimating the annual use of dehumidifiers. However, DOE gave more weight to data that AHAM provided because they were developed based on the experience of manufacturers. It appears that AHAM's average estimate of 1,095 operating hours per year is the most representative of actual use. DOE requests feedback on whether 1,095 hours per year best represents the use of dehumidifiers. (See section II.D.2 of this ANOPR for further details.)

9. Commercial Clothes Washer Per-Cycle Energy Consumption

DOE determined the per-cycle clothes drying energy use and the per-cycle machine energy use for CCWs from data in its *2000 TSD* for residential clothes washers. DOE requests feedback on whether these per-cycle energy use characteristics for residential clothes washers are also representative of CCW energy use. (See section II.D.4 of this ANOPR for further details.)

10. Commercial Clothes Washer Consumer Prices

DOE identified two distribution channels for CCWs to establish their price to consumers. One channel involved distributors that typically sell to Laundromats, and the other channel involved route operators that typically sell or lease to multi-family building property owners. For purposes of developing the markups and consumer equipment prices for CCWs, DOE based its calculations solely on a distribution channel that involves distributors. DOE believed that the markups and the resulting consumer equipment prices determined for this distribution channel also would be representative of the prices paid by consumers acquiring their equipment from route operators. DOE requests feedback on its views regarding its development of consumer prices for CCWs. (See section II.E.1 of this ANOPR for further details.)

11. Repair and Maintenance Costs

Primarily because it did not receive any specific data on the impacts that standards might have on repair and maintenance costs, DOE did not include any changes in repair and maintenance costs due to standards for any of the four appliance products. DOE requests feedback on its understanding of repair and maintenance costs. (See section II.G.2.b of this ANOPR for further details.)

12. Efficiency Distributions in the Base Case

To accurately estimate the percentage of consumers that would be affected by a particular energy conservation standard level, DOE took into account the distribution of product efficiencies currently in the marketplace. In other words, DOE conducted its LCC and PBP analyses by considering the full breadth of product efficiencies that consumers purchase under the base case (*i.e.*, the case without new energy efficiency standards) to account for those consumers who already purchase more

efficient products. DOE developed base case efficiency distributions for each of the four appliance products based on a combination of data sources and estimates. DOE requests feedback on the data sources and estimates it used for developing its base case product efficiency distributions. (See section II.G.2.d of this ANOPR for further details.)

13. Commercial Clothes Washer Shipments Forecasts

Based on historical data, CCW shipments dropped significantly between 1998 and 2005. Because DOE tied forecasted shipments to the growth in new multi-family construction, DOE forecasted a continued increase in clothes washer shipments over the analysis period (*i.e.*, 2012–2042). However, due to the dramatic drop in shipments seen in the historical data, DOE is uncertain as to whether shipments will continue to increase and requests feedback on the bases for its shipments forecasts for CCWs. (See section II.H.1 of this ANOPR for further details.)

14. Base-Case and Standards-Case Forecasted Efficiencies

Because key inputs to the calculation of the NES and NPV are dependent on the estimated efficiencies under the base case (without standards) and the standards case (with standards), forecasted efficiencies are of great importance to the analysis. DOE forecasted base-case and standards-case efficiencies, believing they remained frozen throughout the analysis period (*i.e.*, 2012–2042). DOE used a ''roll-up'' scenario to establish the shipment-weighted efficiency for the year that standards are estimated to become effective (*i.e.*, 2012). Under a roll-up scenario, DOE believed that product efficiencies in the base case that did not meet the standard level under consideration would roll up to meet the new standard level. DOE requests feedback on its methodologies for both forecasting efficiencies and estimating the impact that standards have on product efficiencies. (See section II.I.2 of this ANOPR for further details.)

15. Dehumidifier Cost and Efficiency Relationships

DOE defined total installed cost and efficiency relationships for a subset of the six dehumidifier product classes, For purposes of conducting its NIA, DOE applied the cost-efficiency data that were developed for these product classes to those classes for which DOE was unable to develop cost-efficiency relationships due to lack of data. Specifically, DOE applied the costs developed for the combined 0–35.00 pints/day class to the two individual classes that comprised the combined class—25.00 pints/day and less and 25.01–35.00 pints/day. Further, DOE applied the costs developed for the 35.01–45.00 pints/day and 54.01–74.99 pints/day product classes to the 45.01–54.00 pints/day and 75.00 pints/day and greater product classes, respectively. In its application of total installed costs to those product classes where no cost data were developed, DOE did not interpolate or extrapolate the cost data to account for product efficiency differences between the classes. For example, DOE utilized the exact same total installed costs that were developed for the baseline and standard levels for the 35.01–45.00 pints/day product class to characterize the baseline and standard level total installed costs for the 45.01–54.00 pints/day product class. DOE requests feedback on its approach for characterizing the total installed costs for those dehumidifier product classes in which it was not able to develop cost-efficiency relationships. (See section II.I.3 of this ANOPR for further details.)

16. Trial Standard Levels

For the NOPR, DOE will develop trial standard levels (TSL) from the candidate standard levels for each of the four appliance products. DOE will consider several criteria in developing the TSLs, including, but not limited to, which candidate standard level has the minimum LCC, maximum NPV, and maximum technologically feasible efficiency. From the list of TSLs developed, DOE will select one as its proposed standard for the NOPR. DOE requests feedback on the criteria it should use for basing the selection of TSLs. (See section III of this ANOPR for further details.)

## V. Regulatory Review and Procedural Requirements

DOE submitted this ANOPR for review to OMB under Executive Order 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (October 4, 1993). If DOE later proposes energy conservation standards for any of the four appliance products, and if the proposed rule constitutes a significant regulatory action, DOE would prepare and submit to OMB for review the assessment of costs and benefits required by section 6(a)(3) of the Executive Order. The Executive Order requires agencies to identify the specific market failure or other specific problem that it intends to address that warrants new agency action, as well as assess the significance of that problem, to enable assessment of whether any new regulation is warranted. (Executive Order 12866, section 1(b)(1)). DOE presumes that a perfectly functioning market would result in efficiency levels that maximize benefits to all affected persons. Consequently, without a market failure or other specific problem, a regulation would not be expected to result in net benefits to consumers and the nation. However, DOE also notes that whether it establishes standards for these products is determined by the statutory criteria expressed in EPCA. Even in the absence of a market failure or other specific problem, DOE nonetheless may be required to establish standards under existing law.

DOE's preliminary analysis for dishwashers, dehumidifiers, some gas cooking products, and commercial clothes washers explicitly accounts for the percentage of consumers that already purchase more efficient equipment and takes these consumers into account when determining the national energy savings associated with various candidate standard levels. The preliminary analysis suggests that accounting for the market value of energy savings alone (*i.e.*, excluding any possible ''externality'' benefits such as those noted below) would produce enough benefits to yield net benefits across a wide array of products and circumstances. With the exception of electric and some gas cooking products, these results quantify the percentage of consumers that do purchase more efficient products. DOE requests additional data (including the percentage of consumers purchasing more efficient cooking products and the extent to which consumers of all product types will continue to purchase more efficient equipment), for testing the existence and extent of these consumer actions.

DOE believes that there is a lack of consumer information and/or information processing capability about energy efficiency opportunities in the home appliance market. If this is in fact the case, DOE would expect the energy efficiency for home appliances to be randomly distributed across key variables such as energy prices and usage levels. Although, with the exception of cooking products, DOE has already identified the percentage of consumers that already purchase more efficient products, DOE does not correlate the consumer's usage pattern and energy price with the efficiency of the purchased product. Therefore, DOE seeks data on the efficiency levels of existing home appliances in use by how often it is utilized (*e.g.*, how many times

or hours the product is used) and its associated energy price (and/or geographic region of the country). DOE plans to use these data to test the extent to which purchasers of this equipment behave as if they are unaware of the costs associated with their energy consumption. Also, DOE seeks comment on additional knowledge of the Federal Energy Star program, and the program's potential as a resource for increasing knowledge of the availability and benefits of energy efficient appliances in the home appliance consumer market.

A related issue is the problem of asymmetric information (one party to a transaction has more and better information than the other) and/or high transactions costs (costs of gathering information and effecting exchanges of goods and services). In the case of appliances, in many instances the party responsible for the appliance purchase may not be the one who pays the cost to operate it. For example, home builders in large-scale developments often make decisions about appliances without input from home buyers, nor do they offer options to upgrade them. Also, apartment owners normally make decisions about appliances, but it may be the renters who pay the utility bills. If there were no transactions costs, it would be in the home builders' and apartment owners' interest to install appliances the buyers and renters would choose on their own. For example, a renter who knowingly faces higher utility bills from low-efficiency appliances would be willing to pay less in rent, and the apartment owner would indirectly bear the higher utility cost. However, this information is not costless, and it may not be in the interest of the renter to take the time to develop it, or, in the case of the landlord who installs a high-efficiency appliance, to convey that information to the renter.

To the extent that asymmetric information and/or high transactions costs are problems, one would expect to find certain outcomes with respect to appliance energy efficiency. For example, other things equal, one would not expect to see higher rents for apartments with high-efficiency appliances. Conversely, if there were symmetric information, one would expect appliances with higher energy efficiency in rental units where the rent includes utilities compared to those where the renter pays the utility bills separately. Similarly, for single-family homes, one would expect higher energy efficiency levels for replacement units than appliances installed in new construction. Within the new construction market, one would expect to see appliances with higher energy efficiency levels in custom-built homes (where the buyer has more say in appliance choices) than in comparable homes built in large-scale developments.

Of course, there are likely to be certain ''external'' benefits resulting from the improved efficiency of units that are not captured by the users of such equipment. These include both environmental and energy security-related externalities that are not already reflected in energy prices, such as reduced emissions of greenhouse gases and reduced use of natural gas and oil for electricity generation. DOE invites comments on the weight that should be given to these factors in DOE's determination of the maximum efficiency level at which the total benefits are likely to exceed the total costs resulting from a DOE standard.

As previously stated, DOE generally seeks data that might enable it to conduct tests of market failure for products under consideration for standard-setting. For example, given adequate data, there are ways to test for the extent of market failure for commercial clothes washers. One would expect the owners of commercial clothes washers who also pay for their energy and water consumption to purchase machines that exhibit higher energy efficiency and lower water usage compared to machines whose owners do not pay for the energy and water usage, other things equal. To test for this form of market failure, DOE needs data on energy efficiency and water consumption of such units and whether the owner of the equipment is also the operator. DOE is also interested in other potential tests of market failure and data that would enable such tests.

In addition, various other analyses and procedures may apply to such future rulemaking action, including those required by the National Environmental Policy Act (Pub. L. 91–190, 42 U.S.C. 4321 *et seq.*); the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4); the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*); the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*); and certain Executive Orders.

The draft of today's action and any other documents submitted to OMB for review are part of the rulemaking record and are available for public review at the U.S. Department of Energy, Forrestal Building, Room 1J–018, (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC, (202) 586–9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

## VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's ANOPR.

Issued in Washington, DC, on September 17, 2007.

**Alexander A. Karsner,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. E7–22040 Filed 11–14–07; 8:45 am]

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Federal Register

Thursday,
November 15, 2007

# Part V

# The President

## Executive Order 13450—Improving Government Program Performance

Federal Register
Vol. 72, No. 220
Thursday, November 15, 2007

# Presidential Documents

**Title 3—**

## The President

**Executive Order 13450 of November 13, 2007**

## Improving Government Program Performance

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 305 and 306 of title 5, sections 1115, 1116, and 9703 of title 31, and chapter 28 of title 39, United States Code, and to improve the effectiveness and efficiency of the Federal Government and promote greater accountability of that Government to the American people, it is hereby ordered as follows:

**Section 1.** *Policy*. It is the policy of the Federal Government to spend taxpayer dollars effectively, and more effectively each year. Agencies shall apply taxpayer resources efficiently in a manner that maximizes the effectiveness of Government programs in serving the American people.

**Sec. 2.** *Definitions*. As used in this order:

(a) ''agency'' means:

(i) an executive agency as defined in section 105 of title 5, United States Code, other than the Government Accountability Office; and

(ii) the United States Postal Service and the Postal Regulatory Commission;

(b) ''agency Performance Improvement Officer'' means an employee of an agency who is a member of the Senior Executive Service or equivalent service, and who is designated by the head of the agency to carry out the duties set forth in section 5 of this order.

**Sec. 3.** *Duties of Heads of Agencies*. To assist in implementing the policy set forth in section 1 of this order, the head of each agency shall, with respect to each program administered in whole or in part by the agency:

(a) approve for implementation:

(i) clear annual and long-term goals defined by objectively measurable outcomes; and

(ii) specific plans for achieving the goals, including:

(A) assignments to specified agency personnel of:

(1) the duties necessary to achieve the goals; and

(2) the authority and resources necessary to fulfill such duties;

(B) means to measure:

(1) progress toward achievement of the goals; and

(2) efficiency in use of resources in making that progress; and

(C) mechanisms for ensuring continuous accountability of the specified agency personnel to the head of the agency for achievement of the goals and efficiency in use of resources in achievement of the goals;

(b) assist the President, through the Director of the Office of Management and Budget (Director), in making recommendations to the Congress, including budget and appropriations recommendations, that are justified based on objective performance information and accurate estimates of the full costs of achieving the annual and long-term goals approved under subsection (a)(i) of this section; and

(c) ensure that agency Internet websites available to the public include regularly updated and accurate information on the performance of the agency and its programs, in a readily useable and searchable form, that sets forth the successes, shortfalls, and challenges of each program and describes the agency's efforts to improve the performance of the program.

**Sec. 4.** *Additional Duties of the Director of the Office of Management and Budget.* (a) To assist in implementing the policy set forth in section 1 of this order, the Director shall issue instructions to the heads of agencies concerning:

(i) the contents, and schedule for approval, of the goals and plans required by section 3 of this order; and

(ii) the availability to the public in readily accessible and comprehensible form on the agency's Internet website (or in the **Federal Register** for any agency that does not have such a website), of the information approved by the head of each agency under section 3 of this order and other information relating to agency performance.

(b) Instructions issued under subsection (a) of this section shall facilitate compliance with applicable law, presidential guidance, and Office of Management and Budget circulars and shall be designed to minimize duplication of effort and to assist in maximizing the efficiency and effectiveness of agencies and their programs.

**Sec. 5.** *Duties of Agency Performance Improvement Officers.* Subject to the direction of the head of the agency, each agency Performance Improvement Officer shall:

(a) supervise the performance management activities of the agency, including:

(i) development of the goals, specific plans, and estimates for which section 3 of this order provides; and

(ii) development of the agency's strategic plans, annual performance plans, and annual performance reports as required by law;

(b) advise the head of the agency, with respect to a program administered in whole or in part by the agency, whether:

(i) goals proposed for the approval of the head of the agency under section 3(a)(i) of this order are:

(A) sufficiently aggressive toward full achievement of the purposes of the program; and

(B) realistic in light of authority and resources assigned to the specified agency personnel referred to in section 3(a)(ii)(A) of this order with respect to that program; and

(ii) means for measurement of progress toward achievement of the goals are sufficiently rigorous and accurate;

(c) convene the specified agency personnel referred to in section 3(a)(ii)(A) of this order, or appropriate subgroups thereof, regularly throughout each year to:

(i) assess performance of each program administered in whole or in part by the agency; and

(ii) consider means to improve the performance and efficiency of such program;

(d) assist the head of the agency in the development and use within the agency of performance measures in personnel performance appraisals, and, as appropriate, other agency personnel and planning processes; and

(e) report to the head of the agency on the implementation within the agency of the policy set forth in section 1 of this order.

**Sec. 6.** *Establishment and Operation of Performance Improvement Council.* (a) The Director shall establish, within the Office of Management and Budget for administrative purposes only, a Performance Improvement Council (Council), consistent with this order.

(b) The Council shall consist exclusively of:

(i) the Deputy Director for Management of the Office of Management and Budget, who shall serve as Chair;

(ii) such agency Performance Improvement Officers, as determined by the Chair; and

(iii) such other full-time or permanent part-time employees of an agency, as determined by the Chair with the concurrence of the head of the agency concerned.

(c) The Chair or the Chair's designee, in implementing subsection (d) of this section, shall convene and preside at the meetings of the Council, determine its agenda, direct its work, and establish and direct subgroups of the Council, as appropriate to deal with particular subject matters, that shall consist exclusively of members of the Council.

(d) To assist in implementing the policy set forth in section 1 of this order, the Council shall:

(i) develop and submit to the Director, or when appropriate to the President through the Director, at times and in such formats as the Chair may specify, recommendations concerning:

(A) performance management policies and requirements; and

(B) criteria for evaluation of program performance;

(ii) facilitate the exchange among agencies of information on performance management, including strategic and annual planning and reporting, to accelerate improvements in program performance;

(iii) coordinate and monitor a continuous review by heads of agencies of the performance and management of all Federal programs that assesses the clarity of purpose, quality of strategic and performance planning and goals, management excellence, and results achieved for each agency's programs, with the results of these assessments and the evidence on which they are based made available to the public on or through the Internet website referred to in subsection (d)(iv);

(iv) to facilitate keeping the public informed, and with such assistance of heads of agencies as the Director may require, develop an Internet website that provides the public with information on how well each agency performs and that serves as a comprehensive source of information on:

(A) current program performance; and

(B) the status of program performance plans and agency Performance and Accountability Reports; and

(C) consistent with the direction of the head of the agency concerned after consultation with the Director, any publicly available reports by the agency's Inspector General concerning agency program performance;

(v) monitor implementation by agencies of the policy set forth in section 1 of this order and report thereon from time to time as appropriate to the Director, or when appropriate to the President through the Director, at such times and in such formats as the Chair may specify, together with any recommendations of the Council for more effective implementation of such policy;

(vi) at the request of the head of an agency, unless the Chair declines the request, promptly review and provide advice on a proposed action by that agency to implement the policy set forth in section 1 of this order; and

(vii) obtain information and advice, as appropriate, in a manner that seeks individual advice and does not involve collective judgment or consensus advice or deliberation, from:

(A) State, local, territorial, and tribal officials; and

(B) representatives of entities or other individuals.

(e)(i) To the extent permitted by law, the Office of Management and Budget shall provide the funding and administrative support the Council needs, as determined by the Director, to implement this section; and

(ii) the heads of agencies shall provide, as appropriate and to the extent permitted by law, such information and assistance as the Chair may request to implement this section.

**Sec. 7.** *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to an agency or the head thereof; or

(ii) functions of the Director relating to budget, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law (including laws and executive orders relating to the protection of information from disclosure) and subject to the availability of appropriations.

(c) In implementing this order, the Director of National Intelligence shall perform the functions assigned to the Director of National Intelligence by the National Security Act of 1947, as amended (50 U.S.C. 401 *et seq.*), consistent with section 1018 of the Intelligence Reform and Terrorism Prevention Act (Public Law 108–458), and other applicable laws.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
*November 13, 2007.*

[FR Doc. 07–5726
Filed 11–14–07; 10:44 am]
Billing code 3195–01–P

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**Federal Register**

Vol. 72, No. 220

Thursday, November 15, 2007

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- All States; published 11-15-07

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## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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**H.R. 2779/P.L. 110–115**

To recognize the Navy UDT-SEAL Museum in Fort Pierce, Florida, as the official national museum of Navy SEALS and their predecessors. (Nov. 13, 2007; 121 Stat. 1293)

**H.R. 3222/P.L. 110–116**

Making appropriations for the Department of Defense for the fiscal year ending September 30, 2008, and for other purposes. (Nov. 13, 2007; 121 Stat. 1295)

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