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FEDERAL REGISTER

Vol. 76 Thursday,
No. 77 April 21, 2011

Pages 22293–22602

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

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WHEN: Tuesday, May 10, 2011
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

5 CFR Chapter LXX

[CSOSA–0009–P]

RIN 3209–AA15 and 3225–AA07

Supplemental Standards of Ethical Conduct for Employees of the Court Services and Offender Supervision Agency for the District of Columbia

AGENCY: Court Services and Offender Supervision Agency for the District of Columbia.

ACTION: Interim rule with request for comments.

SUMMARY: The Court Services and Offender Supervision Agency for the District of Columbia (CSOSA or Agency), with the concurrence of the Office of Government Ethics (OGE), is issuing interim regulations for employees of CSOSA and for employees of the District of Columbia Pretrial Services Agency (PSA), an independent entity within CSOSA, that supplement the Standards of Ethical Conduct (Standards) for Employees of the Executive Branch issued by OGE. CSOSA's supplemental regulations address requirements for outside employment. These requirements are necessary to address ethical conduct standards pertinent to an agency with a criminal justice mission.

DATES: This interim rule is effective April 21, 2011. Written comments must be received by May 23, 2011.

ADDRESSES: You may submit comments, identified by RIN numbers 3209–AA15 and 3225–AA07, by any of the following methods:

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

2. E-mail to *generalcounsel.helpdesk@csosa.gov.* Include RIN numbers 3209–AA15 and 3225–AA07 in the subject line of the message.

3. Mail to Theresa A. Rowell, Assistant General Counsel, Office of the General Counsel, Court Services and Offender Supervision Agency, Room 1378, 633 Indiana Avenue, NW., Washington, DC 20004.

4. Hand Delivery or Courier to Theresa A. Rowell, Assistant General Counsel, Office of the General Counsel, Court Services and Offender Supervision Agency, Room 1378, 633 Indiana Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Theresa A. Rowell, Assistant General Counsel, Office of General Counsel, telephone: (202) 220–5364; e-mail: *theresa.rowell@csosa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 2635.105 of the Standards authorizes executive branch agencies to publish, with the concurrence of OGE, agency-specific supplemental regulations that are necessary to implement their respective ethics programs. Accordingly, CSOSA, with the concurrence of OGE, has determined that the following supplemental regulation is necessary for the success of its ethical program.

II. Analysis of the Regulations

Section 8001.101 General

Section 8001.101 explains that these regulations supplement the executive-wide Standards and remind CSOSA and PSA employees that they remain subject to the Standards and to executive branch-wide financial disclosure regulations.

Section 8001.102 Prior Approval for Outside Employment

Where it is determined to be necessary or desirable for the purpose of administering an agency's ethics program, 5 CFR 2635.803 authorizes an agency to issue supplemental regulations requiring agency employees to obtain prior approval before engaging in outside employment. Given the nature of its criminal justice mission, CSOSA and PSA have determined that it is necessary to monitor the outside employment of CSOSA and PSA employees, to ensure public confidence in the impartiality and objectivity with which CSOSA and PSA carry out their mission, and to avoid any appearance of misuse of position. CSOSA provides supervision, through qualified supervision officers, to offenders on probation, parole, and supervised release for violation of District of Columbia Code offenses. Accordingly, CSOSA supervises all offenders placed on probation by the Superior Court of the District of Columbia (Superior Court), and all individuals on parole pursuant to the District of Columbia Code. CSOSA provides supervision to offenders from other jurisdictions in accordance with the provisions of the Interstate Parole and Probation Compact. PSA is responsible for securing pertinent data and providing for any judicial officer in the District of Columbia or any officer or member of the Metropolitan Police Department issuing citations, reports containing verified information concerning any individual with respect to whom a bail or citation determination is to be made. PSA supervises defendants released from custody by the Superior Court and by the United States District Court during the pretrial period by monitoring compliance with conditions of release and by assuring that they appear for scheduled court hearings. PSA also provides courtesy supervision of defendants for other Federal and State pretrial agencies. An employee's outside employment may conflict with the employee's official duties or create the appearance that the employee is violating the law or ethical standards due to contacts with offenders/defendants, their families and/or close associates during the course of such employment.

Section 8001.102(a) requires CSOSA and PSA employees to obtain prior written approval from the employee's immediate supervisor and the Designated Agency Ethics Official (DAEO) before engaging in outside employment. The approval requirement will help to ensure that potential ethical problems are identified and resolved before employees begin outside employment that could involve a violation of applicable statutes and standards of conduct.

Section 8001.102(b) defines employment to cover any form of non-Federal employment, business relationship, or activity involving the provision of personal services by the

employee, whether or not for compensation. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher, or speaker. It includes writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization, unless the participation involves the provision of professional services or advice for compensation other than reimbursement for actual expenses, the organization's activities are devoted substantially to matters relating to the employee's official duties, or involves conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and paragraph (c) of this section.

Section 8001.102(c) establishes the standard to be used in approving requests for outside employment. Approval shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635. The employee's immediate supervisor and the DAEO will approve or deny the employee's request within seven (7) calendar days of receiving sufficient information from the employee to make such determination.

Section 8001.102(d) states the scope of the approval, which will be for a period of three years. At the end of three years, the employee shall submit a renewed request for approval in accordance with this section. However, where there is a significant change in the nature or scope of the outside employment or in the employee's official position within the Agency prior to the three-year period, the employee must, within ten (10) calendar days, submit a renewed request for approval.

Section 8001.102(e) sets out the procedures for requesting prior approval to engage in outside employment. The employee shall submit the request, through the employee's immediate supervisor, to the DAEO. The employee shall complete a form provided by the DAEO that will set forth, at the minimum, the description of the employee's current position; information on the prospective employment, including the nature of the service to be performed, the anticipated date, and number of hours of work per week; whether the prospective employer has any contractual relationship with the Federal government; whether the employee will come in contact with defendants, offenders, family members, or their representatives in the course of the outside employment; whether the prospective employment involves any criminal justice matters; whether the employee will be required to testify as an expert witness in any matter related to the prospective employment; and whether the prospective employment involves solicitation or advertising services. The request must be submitted not less than ten (10) calendar days prior to the date the proposed employment will begin, in order to allow completion of the review before the anticipated start of the outside employment.

Section 8001.102(f) describes the appeal process if the request is denied by the DAEO. The employee may appeal to the Agency Director if the request is denied.

Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b) and (d)(3), CSOSA has found good cause for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking, the opportunity for advanced public comment, and the 30-day delay in effectiveness as to this interim rule. The reason for this determination is based on the fact that (1) the rulemaking is related to the internal organization, procedure, and practice of the Agency; and (2) the rulemaking pertains to Agency management and personnel. Nonetheless, this is an interim rulemaking with provision for a 30-day public comment period. The Agency will review all comments received during the comment period and will consider any modifications that appear appropriate in adopting these rules as final, with the concurrence and co-signature of the Office of Government Ethics.

Executive Order 12866

Because this rule relates to CSOSA and PSA personnel, it is exempt from the provisions of Executive Order No. 12866.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, CSOSA has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

CSOSA, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule and by approving it certifies that this rule will not have a significant economic impact upon a substantial number of small entities. This rule pertains to Agency management, and its economic impact is limited to the Agency's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, CSOSA has determined that no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by sec. 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. chapter 35, does not apply because this rulemaking does not contain information collection requirements subject to the approval of the Office of Management and Budget.

Congressional Review Act

CSOSA has determined that this rule is not a rule as defined in 5 U.S.C. 804, and thus, does not require review by Congress.

Plain Language Instructions

We want to make CSOSA's documents easy to read and understand. If you have suggestions on how to improve the clarity of these regulations, write, e-mail, or call the Office of General Counsel at the address or telephone number given above in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** captions.

List of Subjects in 5 CFR Part 8001

Conflict of interests, Government employees.

Accordingly, for the reasons set for in the preamble, the Court Services and Offender Supervision Agency for the District of Columbia, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations by adding a new chapter LXX, consisting of part 8001, to read as follows.

CHAPTER LXX—COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

PART 8001—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE COURT SERVICES AND OFFENDER SUPERVISION AGENCY

Sec.
8001.101 General.
8001.102 Prior approval for outside employment.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.801, 2635.802, 2635.803.

§ 8001.101 General.

(a) *Purpose.* In accordance with 5 CFR 2635.105, the regulations in this part apply to the employees of the Court Services and Offender Supervision Agency (CSOSA or Agency), and the employees of the Pretrial Services Agency (PSA or Agency), an independent entity within CSOSA. The regulations in this part supplement the Standards of Conduct for Employees of the Executive Branch contained in 5 CFR part 2635.

(b) *Cross-references.* In addition to 5 CFR part 2635 and this part, CSOSA and PSA employees are subject to the executive branch financial disclosure regulations at 5 CFR part 2634, the regulations concerning executive branch financial interest contained in 5 CFR part 2640, and the regulations concerning executive branch employee responsibilities and conduct contained in 5 CFR part 735.

§ 8001.102 Prior approval for outside employment.

(a) *Prior approval requirement.* An employee, other than a special Government employee, must obtain written approval from the employee's immediate supervisor and the Designated Agency Ethics Official (DAEO) before engaging in any outside employment, whether or not for compensation.

(b) *Definition of employment.* For purposes of this section, "employment" means any form of non-Federal employment, business relationship or activity involving the provision of personal services by the employee, whether or not for compensation. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher, or speaker. It includes writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization, unless the participation involves the provision of professional services or advice for compensation other than reimbursement for actual expenses, the organization's activities are devoted substantially to matters relating to the employee's official duties, or involves conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and paragraph (c) of this section.

(c) *Standard of approval.* Approval shall be granted only upon a determination that the outside employment or activity is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635. The employee's immediate supervisor and the DAEO shall approve or deny the employee's request for prior approval of outside employment within seven (7) calendar days of receiving from the employee complete information necessary to make such a determination.

(d) *Scope of approval.* Approval will be for a period of three years, after which the employee must request renewed approval in accordance with this section. If during the approved three-year period there is a significant change in the nature or scope of the outside employment or in the employee's Agency position or duties, the employee shall submit a renewed request for approval within ten (10) calendar days of the change.

(e) *Submission of application.* The employee shall submit the request on a form provided by the DAEO through the employee's immediate supervisor. The request must be submitted not less than ten (10) calendar days prior to the date the proposed employment will begin, in order to allow for completion of the review before the anticipated start of the outside employment. The form shall set forth at the minimum the description of the employee's current position; information on the prospective employment, including the nature of the service to be performed, the anticipated date, and number of hours of work per week; whether the prospective employer has any contractual relationship with the Federal government; whether the employee will come in contact with defendants, offenders, family members, or their representatives in the course of the outside employment; whether the prospective employment involves any criminal justice matters; whether the employee will be required to testify as an expert witness in any matter related to the prospective employment; and whether the prospective employment involves solicitation or advertising services.

(f) *Appeal.* If the Designated Agency Ethics Official denied the request, the employee may appeal that decision to the Agency Director.

Adrienne Poteat,

Deputy Director, Court Services and Offender Supervision Agency.

Robert I. Cusick,

Director, Office of Government Ethics.

[FR Doc. 2011–9027 Filed 4–20–11; 8:45 am]

BILLING CODE 3129–04–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection

9 CFR Part 145

[Docket No. APHIS–2009–0031]

RIN 0579–AD21

National Poultry Improvement Plan and Auxiliary Provisions

Correction

In rule document 2011–6539 appearing on pages 15791–15798 in the issue of Tuesday, March 22, 2011, make the following corrections:

§ 145.52 [Corrected]

On page 15794, in the first column, immediately following the text of § 145.52, add the following asterisks:

* * * * *

[FR Doc. C1–2011–6539 Filed 4–20–11; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1308; Directorate Identifier 2009–NM–069–AD] Amendment 39–16661; AD 2011–08–11]

RIN 2120–AA64

Airworthiness Directives; BAE SYSTEMS (OPERATIONS) LIMITED Model BAe 146 Airplanes, and Model Avro 146–RJ Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) that applies to the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

During the period 2001/2002, skin cracking was found adjacent to the butt joint forward of frame 19 * * *. The cracks emanated from chemically-etched pockets on the internal surface of the skin. * * * [C]racking in multiple adjacent bays * * * could compromise the structural integrity of the fuselage in the event that the multiple cracks joined into a single crack. * * *

During 2008, a further report was received at BAE Systems of a 13.78 inch crack in an AVRO 146–RJ that occurred 514 flight cycles (FC) short of the next 4 000–FC repetitive inspection interval. * * *

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective May 26, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 26, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of August 2, 2005 (70 FR 37022, June 28, 2005).

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on January 13, 2011 (76 FR 2281), and proposed to supersede AD 2005–13–19, Amendment 39–14156 (70 FR 37022, June 28, 2005). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

During the period 2001/2002, skin cracking was found adjacent to the butt joint forward of frame 19 when unrelated in-service maintenance inspections of the forward fuselage structure were being completed. The cracks emanated from chemically-etched pockets on the internal surface of the skin. The then current MRB [maintenance review board] inspection requirements were not adequate to address cracking in multiple adjacent bays, which could compromise the structural integrity of the fuselage in the event that the multiple cracks joined into a single crack. Investigations resulted in the publication of BAE Systems (Operations) Limited Inspection Service Bulletin (ISB).53–167 in June [27,] 2003, which was made mandatory by CAA UK AD 007–06–2003. The ISB was subsequently re-issued at Revision 1 during 2004 [May 18, 2004] to clarify the inspection requirements and provide an improved inspection procedure. CAA UK AD G–2005–0002 [which corresponds to FAA AD 2005–13–19] (EASA approval number 2005–313) was issued to require accomplishment of the improved inspections.

During 2008, a further report was received at BAE Systems of a 13.78 inch crack in an AVRO 146–RJ that occurred 514 flight cycles (FC) short of the next 4 000–FC repetitive inspection interval. A reassessment of ISB instructions and its supporting data concluded that these original inspection periods were too long, and the method for defining the areas requiring inspection could be open to misinterpretation. In response, BAE Systems has updated the ISB to Revision 2 [dated December 12, 2008] to reduce the inspection intervals, introducing different inspection intervals associated with specific areas of the forward fuselage skins and instructions to inspect additional areas of the forward fuselage skin.

For the reasons described above, this AD retains the requirements of CAA UK AD G–2005–0002, which is superseded, and requires the implementation of revised repetitive inspections, including inspection of additional areas of the forward fuselage skin panels for cracking and follow-on repair action(s), depending on findings.

This AD is [further] revised to acknowledge the issuance of BAE Systems (Operations) Limited ISB.53–167 Revision 3, [dated June 17, 2009] which allows the repetitive inspection intervals to be extended and introduces grace periods to carry out the initial inspections. In addition, this AD at Revision 1 [EASA AD 2009–0070R1, dated July 2, 2010] acknowledges the issuance of BAE Systems ISB.53–167 Revision 4 [dated June 10, 2010] which corrects the grace period for the initial inspections on BAe 146 aeroplane types.

You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 1 product of U.S. registry.

The actions that are required by AD 2005–13–19 and retained in this AD take 40 work-hours per product, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the currently required actions is $3,400 per product.

We estimate that it will take about 32 work-hours per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the AD on U.S. operators to be $2,720, or $2,720 per product.

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 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 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.

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 the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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 FAA amends § 39.13 by removing Amendment 39–14156 (70 FR 37022, June 28, 2005) and adding the following new AD:

2011–08–11 BAE SYSTEMS (OPERATIONS) LIMITED: Amendment 39–16661; Docket No. FAA–2010–1308; Directorate Identifier 2009–NM–069–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 26, 2011.

Affected ADs

(b) This AD supersedes AD 2005–13–19, Amendment 39–14156.

Applicability

(c) This AD applies to all BAE SYSTEMS (OPERATIONS) LIMITED Model BAe 146–100A, −200A, and −300A airplanes; and Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

During the period 2001/2002, skin cracking was found adjacent to the butt joint forward of frame 19 * * *. The cracks emanated from chemically-etched pockets on the internal surface of the skin. * * * [C]racking in multiple adjacent bays * * * could compromise the structural integrity of the fuselage in the event that the multiple cracks joined into a single crack. * * *

During 2008, a further report was received at BAE Systems of a 13.78 inch crack in an AVRO 146–RJ that occurred 514 flight cycles (FC) short of the next 4 000–FC repetitive inspection interval. * * *

* * * * *

Compliance

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

Restatement of Requirements of AD 2005–13–19

Inspections and Repair

(g) Within the applicable compliance time specified in paragraph (g)(1) or (g)(2) of this AD, perform an external eddy current inspection of the forward fuselage skin to detect cracking, in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Modification Service Bulletin ISB.53–167, including Appendix 2, Revision 1, dated May 18, 2004. Doing the inspection required by paragraph (j) of this AD terminates the requirements of this paragraph of this AD.

(1) For Model BAe 146 series airplanes: Inspect before the accumulation of 16,000 total landings, or within 4,000 landings after the August 2, 2005 (the effective date of AD 2005–13–19), whichever is later.

(i) For areas where no crack is found, repeat the inspection at intervals not to exceed 8,000 landings.

(ii) For areas where any crack is found, before further flight, perform repairs in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, the Civil Aviation Authority (CAA) (or its delegated agent), or EASA (or its delegated agent). No further inspection of any repaired area is required by paragraph (g) of this AD.

(2) For Model Avro 146–RJ series airplanes: Inspect before the accumulation of 10,000 total landings, or within 2,000 landings after August 2, 2005, whichever is later.

(i) For areas where no crack is found, repeat the inspection at intervals not to exceed 4,000 landings.

(ii) For areas where any crack is found, before further flight, perform repairs in accordance with a method approved by the Manager, International Branch, ANM–116, the CAA (or its delegated agent), or EASA (or its delegated agent). No further inspection of any repaired area is required by paragraph (g) of this AD.

Inspections Accomplished According to Previous Issue of Service Bulletin

(h) Inspections accomplished before August 2, 2005, in accordance with BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–167, including Appendices 2 and 3, all dated June 27, 2003, are considered acceptable for compliance with the corresponding action specified in paragraph (g) of this AD.

No Reporting Requirement for AD 2005–13–19

(i) Although BAE Systems (Operations) Limited Modification Service Bulletin ISB.53–167, including Appendix 2, Revision 1, dated May 18, 2004, specifies to submit Appendix 1 of that service bulletin with certain information to the manufacturer, this AD does not include that requirement.

New Requirements of This AD

Inspection and Repair—Expanded Area of Forward Fuselage Skin and Reduced Inspection Intervals

(j) For Model BAe 146 airplanes: At the latest of the times specified in paragraphs (j)(1), (j)(2), and (j)(3) of this AD, do an external eddy current inspection of the forward fuselage skin to detect cracking, in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–167, including Appendix 2, Revision 4, dated June 10, 2010. Repeat the inspection thereafter at intervals not to exceed 3,600 flight cycles for areas specified in Drawings

2, 3, 4, 5, and 7 of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–167, including Appendix 2, Revision 4, dated June 10, 2010, and at intervals not to exceed 4,600 flight cycles for areas specified in Drawings 1, 6, 8, and 9 of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–167, including Appendix 2, Revision 4, dated June 10, 2010. Doing the inspection required by this paragraph terminates the requirements of paragraph (g) of this AD for that airplane.

(1) Before the accumulation of 16,000 total flight cycles.

(2) Within 2,000 flight cycles after the effective date of this AD.

(3) Within the applicable times specified in paragraphs (j)(3)(i) and (j)(3)(ii) of this AD.

(i) For areas specified in Drawings 2, 3, 4, 5, and 7 of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–167, including Appendix 2, Revision 4, dated June 10, 2010: Within 3,600 flight cycles after the last inspection done in accordance with paragraph (g) of this AD.

(ii) For areas specified in Drawings 1, 6, 8, and 9 of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–167, including Appendix 2, Revision 4, dated June 10, 2010: Within 4,600 flight cycles after the last inspection done in accordance with paragraph (g) of this AD.

(k) For Model Avro 146–RJ airplanes: At the latest of the times specified in paragraph (k)(1), (k)(2), and (k)(3) of this AD, do an external eddy current inspection of the forward fuselage skin to detect cracking, in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–167, including Appendix 2, Revision 4, dated June 10, 2010. Repeat the inspection thereafter at intervals not to exceed 2,400 flight cycles for areas specified in Drawings 2, 3, 4, 5, and 7 of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–167, including Appendix 2, Revision 4, dated June 10, 2010, and 3,000 flight cycles for areas specified in Drawings 1, 6, 8, and 9 of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–167, including Appendix 2, Revision 4, dated June 10, 2010. Doing the inspection required by this paragraph terminates the requirements of paragraph (g) of this AD for that airplane.

(1) Before the accumulation of 10,000 total flight cycles.

(2) Within 1,000 flight cycles after the effective date of this AD.

(3) Within the applicable times specified in paragraphs (k)(3)(i) and (k)(3)(ii) of this AD.

(i) For areas specified in Drawings 2, 3, 4, 5, and 7 of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–167, including Appendix 2, Revision 4, dated June 10, 2010: Within 3,600 flight cycles after the last inspection done in accordance with paragraph (g) of this AD.

(ii) For areas specified in Drawings 1, 6, 8, and 9 of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–167, including Appendix 2, Revision 4, dated June 10, 2010: Within 4,600 flight cycles after the last inspection done in accordance with paragraph (g) of this AD.

(l) If any cracking is found during any inspection required by paragraph (j) or (k) of this AD, before further flight, accomplish the repair in accordance with a method approved by the FAA or EASA (or its delegated agent). Repair of an airplane in accordance with the requirements of this paragraph of this AD does not constitute terminating action for the inspection requirements of this AD.

Credit for Actions Accomplished in Accordance With Previous Service Information

(m) Inspections done before the effective date of this AD in accordance with BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–167, including Appendix 2, Revision 2, dated November 17, 2008; or Revision 3, dated June 17, 2009; are acceptable for compliance with the corresponding requirements of paragraphs (j) and (k) of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(n) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to *Attn:* Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

Related Information

(o) Refer to MCAI EASA Airworthiness Directive 2009–0070R1, dated July 2, 2010; BAE Systems (Operations) Limited Modification Service Bulletin ISB.53–167, including Appendix 2, Revision 1, dated May 18, 2004; and BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–167, including Appendix 2, Revision 4, dated June 10, 2010; for related information.

Material Incorporated by Reference

(p) You must use BAE Systems (Operations) Limited Modification Service Bulletin ISB.53–167, including Appendix 2, Revision 1, dated May 18, 2004; and BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–167, including Appendix 2, Revision 4, dated June 10, 2010; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of BAE Systems (Operations) Limited Modification Service Bulletin ISB.53–167, including Appendix 2, Revision 4, dated June 10, 2010, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The Director of the Federal Register previously approved the incorporation by reference of BAE Systems (Operations) Limited Modification Service Bulletin ISB.53–167, including Appendix 2, Revision 1, dated May 18, 2004, on August 2, 2005 (70 FR 37022, June 28, 2005).

(3) For service information identified in this AD, contact BAE SYSTEMS (OPERATIONS) LIMITED, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; e-mail *RApublications@baesystems.com*; Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm*.

(4) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may also review copies of the service information that is incorporated by reference 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/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on April 4, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–8667 Filed 4–20–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1243; Directorate Identifier 2010–CE–058–AD; Amendment 39–16626; AD 2011–06–02]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company (Cessna) Model 172 Airplanes Modified by Supplemental Type Certificate (STC) SA01303WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires installing a full authority digital engine control (FADEC) backup battery, replacing the supplement pilot's operating handbook and FAA approved airplane flight manual, and replacing the FADEC backup battery every 12 calendar months. This AD was prompted by an incident where an airplane experienced an in-flight engine shutdown caused by a momentary loss of electrical power to the FADEC. We are issuing this AD to prevent interruption of electrical power to the FADEC, which could result in an uncommanded engine shutdown. This failure could lead to a loss of engine power.

DATES: This AD is effective May 26, 2011.

Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of May 26, 2011.

ADDRESSES: For service information identified in this AD, contact Thielert Aircraft Engines Service GmbH, Platanenstraße 14, D–09350 Lichtenstein, Deutschland; *telephone:* +49 (37204) 696–1474; *fax:* +49 (37204) 696–1910; *Internet: http://www.thielert.com/.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

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 (*phone:* 800–647–5527) is 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: Richard Rejniak, Aerospace Engineer, Wichita Aircraft Certification Office (ACO), FAA, 1801 Airport Road, Room 100; *phone:* (316) 946–4128; *fax:* (316) 946–4107; *e-mail: richard.rejniak@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That NPRM published in the **Federal Register** on December 15, 2010 (75 FR 78177). That NPRM proposed to require installing a FADEC backup battery, replacing the supplement pilot's operating handbook and FAA approved airplane flight manual, and replacing the FADEC backup battery every 12 calendar months.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comment received on the proposal and the FAA's response to the comment.

Request

Rob van den Bosch, Thielert Aircraft Engines GmbH, when referring to the airplane maintenance manual (AMM) and airplane flight manual (AFM) supplement, recommended adding "or later approved issue or revision." The commenter reasoned that future changes to the AMM or AFM would require additional work by the FAA to update the AD.

We disagree with the recommendation. If we would include such language, it would violate regulation, specifically 1 CFR 51.1, paragraph (f), which states "Incorporation by reference of a publication is limited to the edition of the publication that is approved. Future amendments or revisions of the publication are not included.". Service information that we incorporate by reference in an AD is often revised after we issue the AD. We can approve later revisions of service information as an alternative method of compliance (AMOC).

The FAA is not changing this AD as a result of this comment.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD affects 14 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
For airplanes with a 14-volt battery system; installation of a 14-volt FADEC backup battery.	24 work-hours × $85 per hour = $2,040.	$820	$2,860	$14,300
For airplanes with a 28-volt battery system; installation of a 28-volt FADEC backup battery.	24 work-hours × $85 per hour = $2,040.	1,160	3,200	28,800

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.

Regulatory Findings

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),

(3) Will not affect intrastate aviation in Alaska, and

(4) 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.

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 FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2011–06–02 Cessna Aircraft Company: Amendment 39–16626; Docket No. FAA–2010–1243; Directorate Identifier 2010–CE–058–AD.

Effective Date

(a) This AD is effective May 26, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all serial numbers of the following airplanes, certified in any category, that are modified by Supplemental Type Certificate (STC) SA01303WI, as identified in Table 1 of this AD:

TABLE 1

Model	Engine	Group
(1) 172F, 172G, 172H, 172I, 172K, 172L, 172M, F172F, F172G, F172H, F172K, F172L, and F172M	TAE 125–01	1
(2) 172F, 172G, 172H, 172I, 172K, 172L, 172M, F172F, F172G, F172H, F172K, F172L, and F172M	TAE 125–02–99	2
(3) 172N, 172P, F172N, and F172P	TAE 125–01	3
(4) 172N, 172P, F172N, and F172P	TAE 125–02–99	4
(5) 172R and 172S	TAE 125–01	5
(6) 172R and 172S	TAE 125–02–99	6

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 72: Engine.

Unsafe Condition

(e) This AD was prompted by an incident where an airplane experienced an in-flight engine shutdown caused by a momentary loss of electrical power to the FADEC. We are issuing this AD to prevent interruption of electrical power to the FADEC, which could result in an uncommanded engine shutdown. This failure could lead to a loss of engine power.

Compliance

(f) Comply with this AD within the compliance times specified, unless already done.

Actions	Compliance	Procedures
(1) *For all airplanes:* Modify the engine electrical system by installing a backup battery system and associated wiring and circuitry.	Within the next 100 hours time-in-service after May 26, 2011 (the effective date of this AD) or within 30 days after May 26, 2011 (the effective date of this AD), whichever occurs first.	(i) *For groups 1, 3, and 5 airplanes:* Follow Thielert Aircraft Engines GmbH Service Bulletin TM TAE 601–0007, Revision 8, dated October 14, 2010. (ii) *For groups 2, 4, and 6 airplanes:* Follow Thielert Aircraft Engines GmbH Service Bulletin TM TAE 601–1001 P1, Revision 8, dated October 14, 2010.
(2) *For all airplanes:* Replace the FADEC backup battery.	Within 12 calendar months after doing the modification required in paragraph (f)(1) of this AD and repetitively thereafter within 12 calendar months after the previous replacement.	(i) *For groups 1, 3, and 5 airplanes:* Follow Page 8, Revison 2, dated October 8, 2010, from Chapter 24 "Electrical Power" (Chapter 20–AMM–24–01–US) of Thielert Aircraft Engines GmbH Supplement Airplane Maintenance Manual Cessna 172 & Reims F172 TAE 125–01, Doc. No.: AMM–20–01 (US–Version) Version: 2/4. (ii) *For groups 2, 4, and 6 airplanes:* Follow page 7, Revision 1, dated October 8, 2010, from Chapter 24 "Electrical Power" (Chapter 20–AMM–24–02–US) of Thielert Aircraft Engines GmbH Supplement Airplane Maintenance Manual Cessna 172 & Reims F172 CENTURION 2.0 (TAE 125–02–99), Doc. No.: AMM–20–02 (US–Version) Version: 1/1.

Actions	Compliance	Procedures
(3) *For groups 1 and 2 airplanes:* Incorporate Thielert Aircraft Engines GmbH "Supplemental Airplane Flight Manual or Pilot's Operating Handbook and FAA Approved Airplane Flight Manual Supplement (as applicable) for the Cessna 172 F, G, H, I, K, L, M, Reims Cessna F172 F, G, H, K, L, M, Equipped with TAE 125–01 or TAE 125–02–99 Installation," Issue 2–1, TAE–Nr.: 20–0310–21042, dated October 4, 2010, into the pilot's operating handbook.	Before further flight after doing the modification required in paragraph (f)(1) of this AD.	Not applicable.
(4) *For groups 3 and 4 airplanes:* Incorporate Thielert Aircraft Engines GmbH "Supplemental Airplane Flight Manual or Pilot's Operating Handbook and FAA Approved Airplane Flight Manual Supplement (as applicable) for the Cessna 172 N & P, Reims Cessna F172 N & P, Equipped with TAE 125–01 or TAE 125–02–99 Installation," Issue 2–1, TAE–Nr.: 20–0310–20042, dated October 4, 2010, into the pilot's operating handbook.	Before further flight after doing the modification required in paragraph (f)(1) of this AD.	Not applicable.
(5) *For groups 5 and 6 airplanes:* Incorporate Thielert Aircraft Engines GmbH "Supplemental Pilot's Operating Handbook and FAA Approved Airplane Flight Manual Supplement for the Cessna 172 R & S, Equipped with TAE 125–01 or TAE 125–02–99 Installation," Issue 2–1, TAE–Nr.: 20–0310–22042, dated October 4, 2010, into the pilot's operating handbook.	Before further flight after doing the modification required in paragraph (f)(1) of this AD.	Not applicable.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Wichita Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

(2) Before using any approved AMOC, notify your Principal Maintenance Inspector or Principal Avionics Inspector, as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

Related Information

(h) For more information about this AD, contact Richard Rejniak, Aerospace Engineer, Wichita ACO, FAA, 1801 Airport Road, Room 100; *phone:* (316) 946–4128; *fax:* (316) 946–4107; *e-mail: richard.rejniak@faa.gov.*

Material Incorporated by Reference

(i) You must use the following information to do the actions required by this AD, unless the AD specifies otherwise:

(1) Thielert Aircraft Engines GmbH Service Bulletin TM TAE 601–0007, Revision 8, dated October 14, 2010;

(2) Thielert Aircraft Engines GmbH Service Bulletin TM TAE 601–1001 P1, Revision 8, dated October 14, 2010;

(3) Chapter 24 "Electrical Power" (Chapter 20–AMM–24–01–US), Issue 2, Revision No.: 2, dated October 8, 2010, of Thielert Aircraft Engines GmbH Supplement Airplane Maintenance Manual Cessna 172 & Reims F172 TAE 125–01, Doc. No.: AMM–20–01 (US–Version) Version: 2/4;

(4) Chapter 24 "Electrical Power" (Chapter 20–AMM–24–02–US), Issue: 1, Rev. No: 1, dated October 8, 2010, of Thielert Aircraft Engines GmbH Supplement Airplane Maintenance Manual Cessna 172 & Reims F172 CENTURION 2.0 (TAE 125–02–99), Doc. No.: AMM–20–02 (US–Version) Version: 1/1;

(5) Thielert Aircraft Engines GmbH "Supplemental Airplane Flight Manual or Pilot's Operating Handbook and FAA Approved Airplane Flight Manual Supplement (as applicable) for the Cessna 172 F, G, H, I, K, L, M, Reims Cessna F172 F, G, H, K, L, M, Equipped with TAE 125–01 or TAE 125–02–99 Installation," Issue 2–1, TAE–Nr.: 20–0310–21042, dated October 4, 2010; and

(6) Thielert Aircraft Engines GmbH "Supplemental Airplane Flight Manual or Pilot's Operating Handbook and FAA Approved Airplane Flight Manual Supplement (as applicable) for the Cessna 172 N & P, Reims Cessna F172 N & P, Equipped with TAE 125–01 or TAE 125–02–99 Installation," Issue 2–1, TAE–Nr.: 20–0310–20042, dated October 4, 2010; and

(7) Thielert Aircraft Engines GmbH "Supplemental Pilot's Operating Handbook and FAA Approved Airplane Flight Manual Supplement for the Cessna 172 R & S, Equipped with TAE 125–01 or TAE 125–02–99 Installation," Issue 2–1, TAE–Nr.: 20–0310–22042, dated October 4, 2010.

(j) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(3) For service information identified in this AD, contact Thielert Aircraft Engines Service GmbH, Platanenstraße 14, D–09350 Lichtenstein, Deutschland; *telephone:* +49 (37204) 696–1474; *fax:* +49 (37204) 696–1910; *Internet: http://www.thielert.com/.*

(4) You may review copies of the service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

(5) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri, on April 5, 2011.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–8564 Filed 4–20–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0803; Directorate Identifier 2010–NM–124–AD; Amendment 39–16655; AD 2011–08–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes; and Model A300 B4–600, A300 B4–600R, A300 F4–600R Series Airplanes, and Model A300 C4–605R Variant F Airplanes (Collectively Called A300–600 Series Airplanes)

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

The ball screw nut assemblies of the first 70 Trimmable Horizontal Stabilizer Actuators (THSA) manufactured by Goodrich were fitted with an upper attachment gimbal having a thickness of 58 mm (2.28 in), which is different from the design of the final production standard. The gimbal installed on the subsequent THSAs (final production standard) is more robust, having a thickness of 70mm (2.76 in).

During the fatigue life demonstration of the THSA upper attachment primary load path elements, only a gimbal having a thickness of 70mm (2.76 in) was used. Thereafter, no additional justification work to demonstrate the robustness of the upper attachment fitted with a gimbal of 58 mm was accomplished. In case of failure of this gimbal, the THSA upper attachment primary load path would be lost and the THSA upper attachment secondary load path would engage.

Because the upper attachment secondary load path will only withstand the loads for a limited period of time, the condition where it would be engaged and not detected could lead to failure of the secondary load path, which would likely result in loss of control of the aeroplane.

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective May 26, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of May 26, 2011.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on August 23, 2010 (75 FR 51698). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

The ball screw nut assemblies of the first 70 Trimmable Horizontal Stabilizer Actuators (THSA) manufactured by Goodrich were fitted with an upper attachment gimbal having a thickness of 58 mm (2.28 in), which is different from the design of the final production standard. The gimbal installed on the subsequent THSAs (final production standard) is more robust, having a thickness of 70mm (2.76 in).

During the fatigue life demonstration of the THSA upper attachment primary load path elements, only a gimbal having a thickness of 70mm (2.76 in) was used. Thereafter, no additional justification work to demonstrate the robustness of the upper attachment fitted with a gimbal of 58 mm was accomplished.

In case of failure of this gimbal, the THSA upper attachment primary load path would be lost and the THSA upper attachment secondary load path would engage.

Because the upper attachment secondary load path will only withstand the loads for a limited period of time, the condition where it would be engaged and not detected could lead to failure of the secondary load path, which would likely result in loss of control of the aeroplane.

As the affected ball screw nut assemblies (including the gimbal) could have been moved from one THSA to another during maintenance operation and because the change from the old design to the final production standard design is not identified through a dedicated THSA Part Number, a gimbal with thickness of 58 mm (2.28 in) can be fitted on any A310 or A300–600 aeroplane.

For the reasons described above, this AD requires the identification of the THSA which have a 58 mm (2.28 in) gimbal installed, repetitive [general visual] inspections to check whether there is engagement of the secondary load path and, depending on findings, associated corrective action(s). Corrective actions include contacting Airbus for repair instructions and doing the repair. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Request To Add Notation to Tolerance Measurements

FedEx requested that we add the "+/−" notation to the tolerance measurements in paragraphs (g)(1) and (g)(2) of the proposed NPRM.

We verified that the NPRM published in the **Federal Register** includes those notations, as does this final rule. No change has been made to the AD in this regard.

Request for Terminating Action

FedEx requested that we consider terminating the repetitive inspections if the THSA gimbal is "thick" (70mm (2.75 in.) +/− 5mm (0.20 in)). FedEx stated that when they removed "thin" (58 mm (2.28 in.)) THSA gimbals from four of their airplanes, they replaced them with "thick" gimbals. FedEx also stated that Airbus Mandatory Service Bulletins A310–27A2104 and A300–27A6067, both Revision 01, both dated May 12, 2010, do not include a terminating action for the repetitive inspections when the "thick" THSA gimbal is installed.

We agree that the repetitive inspections need to be terminated when a "thick" THSA gimbal is installed. Paragraph (i) has been added to this AD accordingly. Also, the Cost of Compliance paragraph has been updated to include the on-condition cost of replacing the gimbal.

Request for Change of Compliance Time

FedEx and UPS requested that we change the interval of the repetitive inspections to 130 flight cycles, 650 flight hours, or 6 months, whichever occurs later. FedEx stated that they are unaware of any failures of the THSA primary load path on the A300–600, A310–200, or A310–300 airplanes. UPS stated that they do a detailed visual inspection of the THSA every 30 months, and have not experienced a single instance of primary load path failure. FedEx stated that since the FAA mandates inspections of these THSA on a regular basis, and FedEx has never experienced a primary load path failure, the compliance time for the repetitive inspections should be extended.

We disagree. We are not currently in a position to assess the robustness of the

primary load path of the THSA fitted with a "thin" gimbal. Without more data on the robustness of the THSA primary load path, we can only rely on the THSA secondary load path (SLP). Tests of the THSA SLP demonstrated that an engaged SLP had a low durability. The inspection interval was determined from the THSA SLP test results. As it was not possible to determine if the wear rate was mainly driven by the flight cycles or by the flight hours, it was decided to use a double compliance time for the inspection threshold and interval. No change has been made to the AD in this regard. However, operators may request an alternative method of compliance (AMOC) in accordance with the requirements of paragraph (m) of this AD.

Request To Include Latest Revision of Service Information

UPS requested that we include the latest revision of the service information in this AD.

We agree. Airbus has issued Mandatory Service Bulletins A310–27A2104 and A300–27A6067, both Revision 02, both including Appendix 01, both dated October 18, 2010. These service bulletins were revised for minor changes such as deleting THS zeroing in job set-up and deleting the THSA functional test in close-up. Changes have been made to reference Airbus Mandatory Service Bulletins A310–27A2104 and A300–27A6067, both Revision 02, both including Appendix 01, both dated October 18, 2010. Paragraph (j) of this AD has also been revised to give credit for Airbus Mandatory Service Bulletins A310–27A2104 and A300–27A6067, both Revision 01, both dated May 12, 2010.

Request To Exempt Certain THSAs From Inspections

UPS requested that inspections be exempt on any THSAs outside the first 70 serial number range provided that the THSAs have not been repaired, reworked or overhauled. UPS stated that since those were the oldest THSAs, they most likely have been removed due to the existing THSA life limit. UPS stated that none of these THSAs were delivered on UPS airplanes. Additionally, UPS stated that the only way this suspect gimbal could be on another unit is if it was swapped from one unit to another in the shop.

We disagree with excluding certain THSAs from the inspection required in this AD. It is essential that all the fleet is inspected. Airbus could not determine precisely that the affected THSAs were conclusively on the first 70 airplanes manufactured, and it is likely that additional THSAs may have the same configuration. Also, once in service, some THSAs may have been swapped from one airplane to another and reliable documentation for the equipment swapping is not always available. No change has been made to the AD in this regard.

Request To Re-Identify Compliant THSAs

UPS requested a requirement to re-identify the compliant THSAs. UPS stated that without the requested requirement it is difficult to ensure continued compliance, especially dealing with spares, loans, or even new purchases.

We disagree. Although there is presently no requirement to re-identify the compliant THSAs, compliance is maintained by the warning introduced in the aircraft maintenance manual. The warning states that "before installation of the THS Actuator, make sure that the gimbal is not 58mm +/ − 5mm." No change has been made to the AD in this regard.

Conclusion

We 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 determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 170 products of U.S. registry. We also estimate that it will take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $28,900, or $170 per product.

In addition, we estimate that any necessary follow-on actions would take about 60 work-hours and require parts costing $50,000, for a cost of $55,100 per product. We have no way of determining the number of products that may need these actions.

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 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 this 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. 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.

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 the NPRM, the regulatory evaluation, any comments received, and other information. The street address for

the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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 FAA amends § 39.13 by adding the following new AD:

2011–08–05 Airbus: Amendment 39–16655. Docket No. FAA–2010–0803; Directorate Identifier 2010–NM–124–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 26, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, and F4–622R airplanes; Model A300 C4–605R Variant F airplanes; and Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes; certificated in any category, all certified models, all manufacturer serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 27: Flight controls.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

The ball screw nut assemblies of the first 70 Trimmable Horizontal Stabilizer Actuators (THSA) manufactured by Goodrich were fitted with an upper attachment gimbal having a thickness of 58 mm (2.28 in), which is different from the design of the final production standard. The gimbal installed on the subsequent THSAs (final production standard) is more robust, having a thickness of 70mm (2.76 in).

During the fatigue life demonstration of the THSA upper attachment primary load path elements, only a gimbal having a thickness of 70mm (2.76 in) was used. Thereafter, no additional justification work to demonstrate the robustness of the upper attachment fitted with a gimbal of 58 mm was accomplished.

In case of failure of this gimbal, the THSA upper attachment primary load path would be lost and the THSA upper attachment secondary load path would engage.

Because the upper attachment secondary load path will only withstand the loads for a limited period of time, the condition where it would be engaged and not detected could lead to failure of the secondary load path, which would likely result in loss of control of the aeroplane.

* * * * *

Compliance

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

Actions

(g) Within 130 flight cycles or 650 flight hours after the effective date of this AD, whichever occurs first, measure the thickness of the THSA upper attachment gimbal, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–27A6067, Revision 02, dated October 18, 2010 (for Model A300–600 series airplanes); or A310–27A2104, Revision 02, dated October 18, 2010 (for Model A310 series airplanes).

(1) If, during the measurement required by paragraph (g) of this AD, the gimbal thickness is 58 mm (2.28 in.) +/− 5 mm (0.20 in.), before further flight, do a general visual inspection of the THSA upper attachment to determine if the THSA upper attachment secondary load path is engaged, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–27A6067, Revision 02, dated October 18, 2010 (for Model A300–600 series airplanes); or A310–27A2104, Revision 02, dated October 18, 2010 (for Model A310 series airplanes). Repeat the inspection thereafter at intervals not to exceed 130 flight cycles or 650 flight hours, whichever occurs first, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–27A6067, Revision 02, dated October 18, 2010 (for Model A300–600 series airplanes); or A310–27A2104, Revision 02, dated October 18, 2010 (for Model A310 series airplanes).

(2) If, during the measurement required by paragraph (g) of this AD, the gimbal thickness is not 58 mm (2.28 in.) +/− 5 mm (0.20 in.), except for the requirements of paragraph (l) of this AD, no further action is required of this AD.

(h) If, during any inspection required by paragraph (g)(1) of this AD, the THSA upper attachment secondary load path is found to be engaged, before further flight, contact Airbus for repair instructions and do the repair.

Optional Terminating Action

(i) Replacing the gimbal with a "thick" gimbal (70 mm (2.75 in.) +/− 5mm (0.20 in)), in accordance with Goodrich Actuation Systems Component Maintenance Manual with Illustrated Parts List, Horizontal Stabilizer Actuator P/N 47142 Series, Document 27–44–13, Revision 8, dated December 12, 2008, is a terminating action for the requirements of paragraph (g)(1) of this AD, except as required by paragraph (l) of this AD.

Actions Accomplished in Accordance With Previous Issue of Service Bulletin

(j) Actions accomplished before the effective date of this AD, in accordance with the applicable service bulletins specified in Table 1 of this AD, are considered acceptable for compliance with the corresponding action specified in this AD.

TABLE 1—CREDIT SERVICE BULLETINS

Airbus Mandatory Service Bulletin—	Revision—	Dated—
A300–27A6067 (for Model A300–600 series airplanes)	Original	May 6, 2010.
A300–27A6067 (for Model A300–600 series airplanes)	01	May 12, 2010.
A310–27A2104 (for Model A310 series airplanes)	Original	May 6, 2010.
A310–27A2104 (for Model A310 series airplanes)	01	May 12, 2010.

Reporting Requirement

(k) Submit a report of the findings (both positive and negative) of the measurement required by paragraph (g) of this AD to Airbus, as identified in Appendix 01 of Airbus Mandatory Service Bulletin A300–27A6067, Revision 02, dated October 18, 2010 (for Model A300–600 series airplanes); or A310–27A2104, Revision 02, dated October 18, 2010 (for Model A310 series airplanes); at the applicable time specified in paragraph (k)(1) or (k)(2) of this AD. The report must include the information specified in Appendix 01 of Airbus Mandatory Service Bulletin A300–27A6067, Revision 02, dated October 18, 2010 (for Model A300–600 series airplanes); or A310–27A2104, Revision 02, dated October 18, 2010 (for Model A310 series airplanes).

(1) If the measurement was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the measurement was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Parts Installation

(l) As of the effective date of this AD, no person may install, on any airplane, a THSA, unless it is in compliance with the requirements of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: The MCAI does not include a reporting requirement; however, the service bulletin recommends reporting. Paragraph (k) of this AD specifies a reporting requirement.

Other FAA AD Provisions

(m) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave., SW., Washington, DC 20591, *Attn:* Information Collection Clearance Officer, AES–200.

Related Information

(n) Refer to MCAI EASA Airworthiness Directive 2010–0092, dated May 21, 2010; Airbus Mandatory Service Bulletin A300–27A6067, Revision 02, including Appendix 01, dated October 18, 2010; Airbus Mandatory Service Bulletin A310–27A2104, Revision 02, including Appendix 01, dated October 18, 2010; and Goodrich Actuation Systems Component Maintenance Manual with Illustrated Parts List, Horizontal Stabilizer Actuator, P/N 47142 Series, Document 27–44–13, Revision 8, dated December 12, 2008, for related information.

Material Incorporated by Reference

(o) You must use Airbus Mandatory Service Bulletin A310–27A2104, Revision 02, including Appendix 01, dated October 18, 2010; and Airbus Mandatory Service Bulletin A300–27A6067, Revision 02, including Appendix 01, dated October 18, 2010; to do the actions required by this AD, unless the AD specifies otherwise. If you accomplish the optional terminating actions specified by this AD, you must use Goodrich Actuation Systems Component Maintenance Manual with Illustrated Parts List, Horizontal Stabilizer Actuator, P/N 47142 Series, Document 27–44–13, Revision 8, dated December 12, 2008, to perform those actions unless the AD specifies otherwise. (The LOEP in Goodrich Actuation Systems Component Maintenance Manual with Illustrated Parts List, Horizontal Stabilizer Actuator, P/N 47142 Series, Document 27–44–13, Revision 8, dated December 12, 2008, specifies that page 749 is placed after page 748a; the correct placement of page 749 is between pages 748 and 747a. The LOEP of this document identifies two pages for the Illustrated Parts List section; there is only one page for that section (page 1001–1). The date on page 1014–1 of this document is incorrect; the correct date is March 6, 1998.)

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For Airbus service information identified in this AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; *e-mail: account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

(3) For Goodrich service information identified in this AD, contact Goodrich Corporation Actuation Systems, Stafford Road, Fordhouses, Wolverhampton WV10 7EH, England; telephone +44 (0) 1902 624938; *fax:* +44 (0) 1902 788100; e-mail *techpubs.wolverhampton@goodrich.com;* Internet *http://www.goodrich.com/TechPubs.*

(4) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may also review copies of the service information that is incorporated by reference 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/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on March 23, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–8279 Filed 4–20–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1271; Directorate Identifier 2010–NM–187–AD; Amendment 39–16667; AD 2011–09–05]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 777–200, –300, and –300ER Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires installing an auto shutoff feature for the center override/jettison fuel pumps, and installing power control circuitry for the center override/jettison and main jettison fuel pumps. This AD also requires installing new software in the electrical load management system (ELMS) electronics units in certain power management panels; installing airplane information management system 2 (AIMS–2) software in the AIMS–2 hardware; and making certain wiring changes. This AD was prompted by results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent potential ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD is effective May 26, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of May 26, 2011.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail

me.boecom@boeing.com; Internet *https://www.myboeingfleet.com*. For GE Aviation service information identified in this AD, contact GE Aviation, Customer Services—Clearwater, P.O. Box 9013, Clearwater, Florida 33758; telephone 727–539–1631; fax 727–539–0680; e-mail *cs.support@ge.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

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 (*phone:* 800–647–5527) is 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: Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; *phone:* 425–917–6482; *fax:* 425–917–6590; *e-mail: Georgios.Roussos@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That NPRM published in the **Federal Register** on December 30, 2010 (75 FR 82337). That NPRM proposed to require installing an auto shutoff feature for the center override/jettison fuel pumps, and installing power control circuitry for the center override/jettison and main jettison fuel pumps. That NPRM also proposed to require installing new software in the electrical load management system (ELMS) electronics units in certain power management panels; installing airplane information management system 2 (AIMS–2) software in the AIMS–2 hardware; and making certain wiring changes.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and the FAA's response to each comment. Boeing supports the NPRM.

Request To Delay Issuance of AD To Specify Spring Washers Instead of Conical Springs

Japan Airlines (JAL) requested that we delay issuance of the AD until GE Aviation Service Bulletins 5000ELM–28–456 and 6000ELM–28–457, both Revision 1, both dated January 7, 2010, are revised to correct Figure 8. JAL stated that Figure 8 shows conical springs rather than spring washers in the diagram. JAL stated that without this change, operators will be required to request an alternate method of compliance (AMOC).

We disagree with delaying issuance of this AD. However, we agree that clarification is needed in regard to the use of spring washers. Certain airplanes may use spring washers in lieu of conical springs in their relay assembly. Both the conical springs and spring washers are retained from the existing relay assembly to be used with the new relay. Either one of them is considered acceptable for use. New paragraph (m) has been added to the AD to identify the use of spring washers as an acceptable method of compliance if they are part of the existing relay assembly.

Request To Delay Issuance of AD To Specify Label Installation

JAL requested that we delay the issuance of this AD until GE Aviation publishes new revisions to their service information (referenced in the NPRM) to add another procedure to install labels or separate the labels from the conversion kit. JAL explained that when it receives the labels as part of the conversion kit, the remaining shelf life of the labels is not adequate to allow the labels to be installed on the airplanes. JAL is concerned that, unless the service information is revised, these issues could delay incorporation of this AD or result in multiple AMOC requests.

We disagree with the request to delay this AD until GE Aviation issues revised service information. However, we agree with JAL's concerns about the shelf life of the labels possibly affecting operators' ability to comply with this AD within the required compliance times. This AD requires all actions, including labeling, in the Accomplishment Instructions of GE Aviation Service Bulletins 5000ELM–28–456 and 6000ELM–28–457, both Revision 1, both dated January 7, 2010, to be accomplished. We have added paragraph (n) to this AD to provide an optional method of labeling.

Conclusion

We reviewed the relevant data, considered 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:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 2 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Installation: Groups 1 and 2, Configuration 2.	149 work-hours × $85 per hour = $12,665	$15,719	$28,384	$56,768.
Installation: Groups 1 and 2, Configuration 1.	2 work-hours × $85 per hour = $170	15,719	$15,889	$31,778.
Concurrent requirement: Install ELMS software.	3 work-hours × $85 per hour = $255	0	$255	$510.
Concurrent requirement: Upgrade AIMS–2 software.	Up to 2 work-hours × $85 per hour = Up to $170	0	Up to $170	Up to $340.
Concurrent requirement: P110 wiring changes.	3 work-hours × $85 per hour = $255	$1,164	$1,419	$2,838.

ESTIMATED COSTS—Continued

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Concurrent requirement: P210 wiring changes.	3 work-hours × $85 per hour = $255	1,164	$1,419	$2,838.

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

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),

(3) Will not affect intrastate aviation in Alaska, and

(4) 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.

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 FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2011–09–05 The Boeing Company: Amendment 39–16667; Docket No. FAA–2010–1271; Directorate Identifier 2010–NM–187–AD.

Effective Date

(a) This AD is effective May 26, 2011.

Affected ADs

(b) None.

Applicability

(c) The Boeing Company Model 777–200, –300, and –300ER series airplanes; certificated in any category; as identified in Boeing Service Bulletin 777–28A0047, Revision 5, dated September 20, 2010.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 28, Fuel.

Unsafe Condition

(e) This AD was prompted by results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent potential ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

(f) Comply with this AD within the compliance times specified, unless already done.

Installation

(g) For airplanes in Groups 1 and 2, Configuration 2, as identified in Boeing Service Bulletin 777–28A0047, Revision 5, dated September 20, 2010: Within 36 months after the effective date of this AD, install a new P301 panel on the left side of the airplane, install a new P302 panel on the right side of the airplane, and change the wiring, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–28A0047, Revision 5, dated September 20, 2010, except as required by paragraphs (m) and (n) of this AD.

(h) For airplanes in Groups 1 and 2, Configuration 1, as identified in Boeing Service Bulletin 777–28A0047, Revision 5, dated September 20, 2010: Within 36 months after the effective date of this AD, perform bonding resistance measurements and rework the airplane installation as applicable, depending on airplane configuration, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–28A0047, Revision 5, dated September 20, 2010.

Concurrent Requirements

(i) Prior to or concurrently with accomplishing the requirements of paragraph (g) of this AD, do the actions specified in paragraphs (i)(1), (i)(2), (i)(3), and (i)(4) of this AD.

(1) Install new software in the electrical load management system (ELMS) electronics units in the P110, P210, and P310 power management panels, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–28A0040, Revision 1, dated March 18, 2010.

(2) Install airplane information management system 2 (AIMS–2) software in the AIMS–2 hardware, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–31–0097, Revision 3, dated February 22, 2007.

(3) Modify the P110 left power management panel by incorporating wiring changes, in accordance with the Accomplishment Instructions of GE Aviation Service Bulletin 5000ELM–28–456, Revision 1, dated January 7, 2010, except as provided by paragraphs (m) and (n) of this AD.

(4) Modify the P210 right power management panel by incorporating wiring changes, in accordance with the Accomplishment Instructions of GE Aviation Service Bulletin 6000ELM–28–457, Revision 1, dated January 7, 2010, except as provided by paragraphs (m) and (n) of this AD.

Credit for Actions Accomplished in Accordance With Previous Service Information

(j) Installations done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 777–28A0040, dated April 13, 2007, are acceptable for compliance with the requirements of paragraph (i)(1) of this AD.

(k) Installations done before the effective date of this AD in accordance with Boeing Service Bulletin 777–28A0047, Revision 3, dated June 11, 2009; or Revision 4, dated May 20, 2010; are acceptable for compliance with the requirements of paragraphs (g) and (h) of this AD.

(l) Installations done before the effective date of this AD in accordance with Boeing Special Attention Service Bulletin 777–31–0097, dated March 30, 2006; Revision 1, dated August 10, 2006; or Revision 2, dated October 26, 2006; are acceptable for

compliance with the requirements of paragraph (i)(2) of this AD.

Optional Methods of Compliance With Certain Actions

(m) Where paragraph 2.A.(16) and Figure 8 of GE Aviation Service Bulletins 5000ELM–28–456 and 6000ELM–28–457, both Revision 1, both dated January 7, 2010, identify the installation of conical springs for the relay to relay base fixing, installation of spring washers is an acceptable method of compliance when they are part of the existing relay assembly.

(n) Where paragraphs 2.A.(24) and 2.A.(25) of GE Aviation Service Bulletins 5000ELM–28–456 and 6000ELM–28–457, both Revision 1, both dated January 7, 2010, specify the installation of a label to identify work carried out and to identify the appropriate service bulletin, an acceptable method of compliance is to use a suitable method to indelibly mark the appropriate service bulletin number on the reworked panel. Boeing Standard BAC5307 may be used as an additional source of guidance for part marking.

Alternative Methods of Compliance (AMOCs)

(o)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

Related Information

(p) For more information about this AD, contact Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; *phone:* 425–917–6482; *fax:* 425–917–6590; *e-mail: Georgios.Roussos@faa.gov.*

Material Incorporated by Reference

(q) You must use the applicable service information contained in table 1 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

TABLE 1—ALL MATERIAL INCORPORATED BY REFERENCE

Document	Revision	Date
Boeing Service Bulletin 777–28A0047	5	September 20, 2010.
Boeing Service Bulletin 777–28A0040	1	March 18, 2010.
Boeing Special Attention Service Bulletin 777–31–0097	3	February 22, 2007.
GE Aviation Service Bulletin 5000ELM–28–456	1	January 7, 2010.
GE Aviation Service Bulletin 6000ELM–28–457	1	January 7, 2010.

(1) The Director of the Federal Register approved the incorporation by reference of the service information contained in Table 1 of this AD under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* For GE Aviation service information identified in this AD, contact GE Aviation, Customer Services—Clearwater, P.O. Box 9013, Clearwater, Florida 33758; telephone 727–539–1631; fax 727–539–0680; e-mail *cs.support@ge.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on April 12, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–9283 Filed 4–20–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0310; Directorate Identifier 2010–NM–133–AD; Amendment 39–16663; AD 2011–09–01]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A340–541 and –642 Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

* * * * *

* * * [S]ome Allowable Damage Limits and Repairs published in SRM Chapters 57–61–12 PB101 and 57–61–12 PB201 were de-validated starting from the SRM revision issued on January 2009. The terminology "De-validated SRM" used in this AD text refers to the SRM chapters mentioned above.

In order to prevent complete inner aileron split due to possible failure or disbonding of the repairs on the inner aileron panels performed as per "devalidated SRM", which may result in flutter coupling of the free aileron part, this AD requires a one time inspection of the inner aileron panels to identify the presence of "de-validated SRM" repairs and, if necessary, to apply the associated corrective actions [repair].

The flutter coupling of the free aileron part might result in separation of the aileron from the airplane, degradation of airplane control, and increased workload for the flight crew. This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective May 6, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of May 6, 2011.

We must receive comments on this AD by June 6, 2011.

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 W12–40, 1200 New Jersey

Avenue, SE., Washington, DC, between 9 a.m. and
5 p.m., Monday through Friday, except Federal holidays.

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 AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations 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: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone: 425–227–1138; fax: 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0056, dated March 29, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> Following a Structural Repair Manual (SRM) repair strength re-valuation, some Allowable Damage Limits (ADL) and Repairs of holes and delaminations in composite panels have been found to be no more compliant with certification requirements for A340–500/–600 inner aileron.
>
> Therefore, some Allowable Damage Limits and Repairs published in SRM Chapters 57–61–12 PB101 and 57–61–12 PB201 were de-validated starting from the SRM revision issued on January 2009. The terminology "De-validated SRM" used in this AD text refers to the SRM chapters mentioned above. In order to prevent complete inner aileron split due to possible failure or disbonding of the repairs on the inner aileron panels performed as per "devalidated SRM", which may result in flutter coupling of the free aileron part, this AD requires a one time inspection [tap test and detailed visual inspection or thermography inspection] of the inner aileron panels to identify the presence of "de-validated SRM" repairs and, if necessary, to apply the associated corrective actions [repair].

The flutter coupling of the free aileron part may result in separation of the aileron from the airplane, degradation of airplane control, and increased workload for the flight crew. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A340–57–5026, including Appendices 1 and 2, dated February 1, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Register in the future.

Differences Between the AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the AD.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0310; Directorate Identifier 2010–NM–133–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 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 this 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. 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.

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 FAA amends § 39.13 by adding the following new AD:

2011–09–01 Airbus: Amendment 39–16663. Docket No. FAA–2011–0310; Directorate Identifier 2010–NM–133–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 6, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A340–541, and –642 airplanes; certificated in any category; all serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

Reason

(e) The mandatory continued airworthiness information (MCAI) states:

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* * * [S]ome Allowable Damage Limits and Repairs published in SRM Chapters 57–61–12 PB101 and 57–61–12 PB201 were de-validated starting from the SRM revision issued on January 2009. The terminology "De-validated SRM" used in this AD text refers to the SRM chapters mentioned above.

In order to prevent complete inner aileron split due to possible failure or disbonding of the repairs on the inner aileron panels performed as per "devalidated SRM", which may result in flutter coupling of the free aileron part, this AD requires a one time inspection of the inner aileron panels to identify the presence of "de-validated SRM" repairs and, if necessary, to apply the associated corrective actions [repair].

The flutter coupling of the free aileron part may result in separation of the aileron from the airplane, degradation of airplane control, and increased workload for the flight crew.

Compliance

(f) 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

(g) Within 800 flight hours after the effective date of this AD, do a tap test and detailed inspection or a thermography inspection of the affected inner aileron panels at the left and right wings to detect any previously accomplished repairs performed in accordance with any de-validated structural repair manual (SRM) defined in Airbus Mandatory Service Bulletin A340–57–5026, dated February 1, 2010; do the actions in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–57–5026, dated February 1, 2010.

Note 1: For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required."

(h) A review of airplane maintenance records is acceptable in lieu of the inspection required by paragraph (g) of this AD if the repairs performed in accordance with de-validated SRM, defined in Airbus service bulletin A340–57–5026, dated February 1, 2010 (SRM revisions dated before January 2009), can be conclusively identified from that review.

Repair

(i) If any de-validated SRM repairs are found during any actions required by this AD, before further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM 116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (or its delegated agent).

Parts Installation

(j) As of the effective date of this AD, no person may install an inner aileron panel having a de-validated SRM repair as defined in Airbus Mandatory Service Bulletin A340–57–5026, dated February 1, 2010, unless it is inspected as specified in paragraph (g) of this AD and all applicable corrective actions are done.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(k) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to *Attn:* Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; *telephone:* 425–227–1138; *fax:* 425–227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

Related Information

(l) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2010–0056, dated March 29, 2010; and Airbus Mandatory Service Bulletin A340–57–5026, dated February 1, 2010; for related information.

Material Incorporated by Reference

(m) You must use Airbus Mandatory Service Bulletin A340–57–5026, excluding Appendix 1 and including Appendix 2, dated February 1, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; *telephone:* +33 5 61 93 36 96; *fax:* +33 5 61 93 45 80; *e-mail: airworthiness.A330-A340@airbus.com; Internet: http://www.airbus.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(4) You may also review copies of the service information that is incorporated by reference 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/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on April 8, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–9277 Filed 4–20–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0233; Directorate Identifier 2009–NM–014–AD; Amendment 39–16665; AD 2011–09–03]

RIN 2120–AA64

Airworthiness Directives; Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Model 382, 382B, 382E, 382F, and 382G Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Model 382, 382B, 382E, 382F, and 382G airplanes. This AD requires repetitive eddy current inspections to detect cracks in the center wing upper and lower rainbow fittings, and corrective actions if necessary; and repetitive replacements of rainbow fittings, which would extend the repetitive interval for the next inspection. This AD results from a report of fatigue cracking of the wing upper and lower rainbow fittings during durability testing and on in-service airplanes. Analysis of in-service cracking has shown that these rainbow fittings are susceptible to multiple site fatigue damage. We are issuing this AD to detect and correct such fatigue cracks, which could grow large and lead to the failure of the fitting and a catastrophic failure of the center wing.

DATES: This AD is effective May 26, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of May 26, 2011.

ADDRESSES: For service information identified in this AD, contact Lockheed Martin Corporation/Lockheed Martin Aeronautics Company, Airworthiness Office, Dept. 6A0M, Zone 0252, Column P–58, 86 S. Cobb Drive, Marietta, Georgia 30063; telephone 770–494–5444; fax 770–494–5445; e-mail *ams.portal@lmco.com;* Internet *http://www.lockheedmartin.com/ams/tools/TechPubs.html.*

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: Carl Gray, Aerospace Engineer, Airframe Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office (ACO), 1701 Columbia Avenue, College Park, Georgia 30337; *phone:* (404) 474–5554; *fax:* (404) 474–5606; *e-mail: Carl.W.Gray@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to all Model 382, 382B, 382E, 382F, and 382G airplanes. That NPRM was published in the **Federal Register** on March 23, 2010 (75 FR 13695). That NPRM proposed to require repetitive eddy current inspections to detect cracks in the center wing upper and lower rainbow fittings, and corrective actions if necessary; and repetitive replacements of rainbow fittings, which would extend the repetitive interval for the next inspection.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received from the three commenters.

Support for the NPRM

Lynden Air Cargo (LAC) stated that it concurs with the intent of the NPRM.

Request To Extend Comment Period

LAC requested that we allow at least 60 days for the comment period. LAC stated that Executive Order 12866 provides for comment periods of "not less than 60 days." LAC pointed out that the comment period for the NPRM closes 45 days after it was published. LAC stated that it does not see a justification for a reduced comment period because Lockheed Service Bulletin 382–57–82 was originally published on December 7, 2004, and because it was not an alert bulletin, and was approved by the FAA.

We do not agree with the commenter's request to extend the comment period. While Executive Order 12866 does not specifically require a 60-day comment period for AD actions, the FAA has established a standard 45-day comment period for AD actions issued as NPRMs. In addition, the Administrative Procedure Act does not prescribe a specific amount of time for comment periods. No change to the final rule is necessary in regard to this issue.

Request To Clarify Reporting Requirements

LAC requested that we clarify the reporting requirements. LAC stated that the NPRM would require sending the inspection results to Lockheed, but LAC stated that it could not find the requirement in the regulatory requirements of the NPRM.

We find that clarification is necessary. While this AD does not require reporting inspection results, operators are encouraged to report their findings to the manufacturer. We have not changed the final rule in regard to this issue.

Request To Clarify the Meaning of Interim Action

LAC requested that we clarify the meaning of interim action. LAC asked why the FAA considers the NPRM to be interim action and if any other requirements are under consideration that may override or change the proposed requirements.

We agree to provide clarification. We consider this final rule to be an interim action because no terminating action for the inspections exists at this time. If the rainbow fitting is replaced, that action zeros out the time for the requirements, but the initial and repetitive inspections are required on the new fitting. At this time, no terminating action exists. However, the manufacturer might redesign the rainbow fitting, which could extend the life of the fitting and change the inspection requirements, or provide a terminating action for the inspections. We have not changed the final rule in regard to this issue.

Request To Clarify Cracking in Paragraph (k) of the NPRM

LAC requested that we change "any crack" in paragraph (k) of the NPRM to "any crack is detected in the rainbow fitting." The commenter did not provide a reason for this request.

We agree with the commenter's request. During inspections required by this AD, cracks may be found in the surrounding structure (i.e., not in the rainbow fitting itself). Many of these cracks can be repaired and do not require replacing the rainbow fitting. However, as stated in paragraph (k) of the NPRM, only those cracks found in the rainbow fitting require replacing the rainbow fitting. We have changed paragraph (k) of the final rule to clarify that replacement is required only if

cracking is detected "in the rainbow fitting."

Request To Clarify Requirements for Repairing Cracking in Paragraphs (g) and (h) of the NPRM

LAC requested that we clarify the requirements for repairing cracking. LAC stated that if cracks are found on the rainbow fitting during the inspection required by paragraph (g) of the NPRM, then it believed that the rainbow fitting should be replaced as required by paragraph (k) of the NPRM, instead of paragraph (l) as stated in the NPRM. LAC also questioned the wording in paragraph (h) of the NPRM that states "Any cracks found during the inspections required by paragraph (h) of this AD must be repaired before further flight in accordance with the actions required by paragraph (l) of this AD." LAC stated that it believes that if cracks are found on the rainbow fitting then it should be replaced according to the requirements of paragraph (k) of the NPRM.

We agree that clarification is necessary. The commenter states correctly that if cracks are found in the rainbow fitting, the fitting must be replaced in accordance with paragraph (k) of this AD. Cracking in other areas must be repaired (i.e., "corrective actions" must be done), as required by paragraph (k) of this AD.

We corrected typographical errors in paragraphs (g) and (h) of the NPRM to refer to paragraph (k) of this AD, rather than paragraph (l) of this AD. We also changed the phrases referring to repairs in paragraphs (g) and (h) of this AD to instead refer to doing the actions required by paragraph (k) of the AD. In addition, we changed the header for paragraph (k) of this AD to clarify that the paragraph identifies the replacement, related investigative actions, and corrective actions.

Further, paragraph (l) of this final rule specifies an exception to paragraphs (i) and (k) of this AD. Paragraph (l) requires repairing certain conditions using a method approved by the Manager of the Atlanta Aircraft Certification Office (ACO). We added a reference to this exception in paragraph (i) of this AD.

Request To Extend Compliance Time

LAC and Safair Operations (Safair) requested that we extend the grace period of 600 flight hours for the initial inspection for airplanes that have accumulated more flight cycles than the 5,000-flight-cycle threshold. Any replacement, if necessary, must be done before further flight. LAC stated that 600 flight hours is not adequate to replace the rainbow fittings. LAC recommended that we revise the compliance time for the replacement to "before the accumulation of 30,000 flight hours on the fitting or within 3,000 flight hours after the effective date of the AD, whichever occurs later." LAC stated that this proposed compliance time would allow the rainbow fitting to be replaced at the next scheduled C-check, and would reduce unscheduled down time, and maximize maintenance, repair, and overhaul (MRO) efficiencies. LAC stated that its entire fleet of six Model 382G airplanes is already over the 30,000-flight-hour limit and will require rainbow fitting replacements.

Safair also stated that the 365-day or 600-flight-hour compliance time for the initial inspection is not sufficient to allow a phased-in scheduling of this inspection and potential replacement. Safair requested that the inspection and replacement be scheduled at the next 3- or 6-year structural check to allow for the most efficient use of planned downtime and least interruption to operational schedules. Safair stated that this revised compliance time would allow for the successful provisioning of the required materials and tools as the parts and specific fasteners have significant lead times. LAC also stated that it believes that only a limited number of MROs are capable of replacing the rainbow fittings with a limited number of slots available.

We do not agree with the request to extend the compliance time. We are aware that some operators use the Model 382 airplanes for aid and relief missions. We do not intend to interfere with these missions, and that is why we have provided a grace period of 600 flight hours to replace the rainbow fittings. We consider this safety issue resulting from the fatigue cracking in the area to be serious enough to require that replacement of the rainbow fittings be accomplished at the required time. We find that exceeding the limits required by this AD would not provide an adequate level of safety. We have not changed the final rule in regard to this issue.

Request To Justify the Requirement for the Manager of the Atlanta ACO to Approve Repairs

Lockheed Martin Aircraft and Logistic Centers (Lockheed Martin) requested that we provide justification for requiring repairs to be approved by the Manager, Atlanta ACO, as required by paragraph (l) of the NPRM. Lockheed Martin stated that this requirement creates an excessive regulatory burden for operators and the FAA, and it could result in excessive down time. Lockheed Martin stated that it accomplishes maintenance and repairs around the clock, using designated engineering representatives. Lockheed Martin also stated that this requirement would require operators to essentially work the same schedule as the ACO, which would result in loss of airplane availability and subsequent loss of revenue, and that would be an excessive regulatory burden.

We agree to explain the rationale for this requirement. Lockheed Service Bulletin 382–57–82, Revision 4, including Appendixes A, B, and C, dated May 20, 2009, specifies to contact the manufacturer for disposition of certain damage that exceeds certain repair limits. However, in such cases, requiring in an AD that operators contact the manufacturer for disposition of damage would be delegating our rulemaking authority to that manufacturer. Instead, we require that the action be done in accordance with a method approved by the FAA, as specified in paragraph (l) of this AD.

If operators notify the FAA immediately when a crack is found during an inspection, the FAA should have adequate time to respond. Operators also should contact Lockheed Martin with any finding, and work with it to develop a repair to support the request for approval of an alternative method of compliance (AMOC). The sooner the operator can provide us with the recommended repair, the sooner we can review it and approve it. If we find an issue with the proposed repair, we will notify the operator as soon as possible to resolve the issue and to limit potential airplane downtime. We have not changed the final rule in regard to this issue.

Request To Clarify Testing

Safair requested that we clarify the details of the durability testing that resulted in reports of fatigue cracking. Safair pointed out that the Summary paragraph of the NPRM states "the proposed AD results from a report of fatigue cracking of the upper and lower rainbow fittings during durability testing and on in-service airplanes." Safair stated that it is not aware of any durability testing carried out on civilian airplanes. Furthermore, Safair asked if the details of the testing and the results can be shared with industry. Safair noted some operational civilian airplanes have airframes that have accumulated more than 90,000 flight hours, so they have actually served as a real-time durability test.

We agree to provide clarification. Safair is correct that no durability testing was carried out on civilian airplanes. However, there was a full-

scale fatigue test performed on military airplanes based on military usage. The initial and recurring inspection intervals were based on a typical military transport usage and were referred to as "baseline usage." Recent analysis performed by Lockheed Martin on the commercial Model 382 airplane indicated that commercial operational usage has a severity relative to the baseline usage of approximately 1.0. We cannot share the details of the testing with industry because they are proprietary data of Lockheed Martin. We are aware that there are airplanes with over 90,000 flight hours still in service, but we also believe that these airplanes have already had the rainbow fittings replaced at least once. We have not changed the final rule in regard to this issue.

Request To Provide Rationale for Addressing Only Inboard Fittings

Safair requested that we provide rationale for addressing only the inboard fittings. Safair stated that it has experienced in-service cracking on upper and lower fittings, both inboard and outboard. Safair stated that it does not understand why the NPRM addresses only the inboard upper and lower fittings. Safair stated if the AD will address an unsafe condition, then all rainbow fittings need to be addressed.

We agree to provide clarification. The unsafe condition, which results from a design flaw, applies only to the inboard fitting. The same problem has not been observed on the outboard fittings, which is a different design. However, the outboard fitting should still be inspected in accordance with the maintenance program. If cracks exist in the inboard fitting that exceed the rework limits, the fitting must be replaced in accordance with this final rule. The outboard side does not exhibit the same cracking because the outboard fitting has been redesigned and refit. At this time, we have not received significant findings to warrant AD action on outboard fittings. We have not changed the final rule in regard to this issue.

Request To Explain Data Collection

Safair requested that we explain the data collection that justifies taking AD action. Safair stated that the cracks it observed in the past were not reported to Lockheed Martin and were not signs of multi-site fatigue damage, but rather isolated single instances of cracking, apparently brought on by poor installation or milling of nodes at previous assembly. Safair stated that, as Lockheed Martin did not have an FAA-approved method of rainbow fitting replacement, it has historically used Designated Engineering Representative (DER) approved repair schemes based on military procedures.

Safair stated that Lockheed Martin is not fully aware of all the historical events relating to rainbow fitting changes on the civilian fleet because no reporting requirement existed to provide this information back to Lockheed Martin. Safair stated that, as a result, the actual data related to civilian-operated Model 382 airplanes would appear to be contaminated by military data, and the military Model C–130 airplanes operate under a different flight regime and severity of operations.

Safair stated that the FAA's assertion that it has evaluated all relevant information is inaccurate because the full data of historical findings have not been available or collated by anyone in the industry. Safair stated the NPRM would require sending inspection results back to Lockheed Martin, and, as such, it is apparent that no historical requirement existed to send these data back to Lockheed Martin.

We find that clarification is necessary. Safair's assertion that this AD requires sending inspection results to Lockheed Martin is incorrect. As explained previously, this AD does not require reporting inspection results.

Most Model 382 operators contact Lockheed Martin for assistance when cracks are found in the rainbow fittings to request instructions for repair or replacement. Lockheed Martin maintains a database of this information. In addition, operators are required by section 121.703 of the Federal Aviation Regulations (14 CFR Part 121.703) to report the occurrence or detection of certain failures, malfunctions, or defects. Additionally, although data exist from military airplanes, significant data are collected on the civilian fleet.

Results of fatigue testing on the wings have identified this area as the location of multi-site fatigue damage. Such damage has not been identified on in-service airplanes because the single lead crack has been identified and addressed before widespread fatigue damage is detected. Once widespread fatigue damage occurs, the wing can no longer carry the limit load and can fail.

Lockheed Martin has a repair drawing, which is approved by the FAA, to replace the rainbow fitting. Safair is correct that the repair drawing that has been used in the past is DER-approved, which makes it FAA-approved. However, when it was determined that an AD was required, we required that Lockheed Martin include procedures for replacing the rainbow fitting in Lockheed Service Bulletin 382–57–82, which we approved.

No change to this AD is necessary in regard to this issue.

Request To Explain Benefit of Replacement Part

Safair requested that we explain the benefit of the replacement part. Safair also noted that it is also prudent to note that Lockheed Martin has developed an "improved" rainbow fitting, which is currently in process of military approval/release. Safair asked how use of this improved part will affect the proposed AD, as the proposed AD makes no reference to part numbers of rainbow fittings, and the referenced service bulletin covers only the unimproved rainbow fittings. Safair stated as the release of this part is imminent, and if the rainbow fitting issue is of sufficient concern to FAA, it would seem to make sense to work with Lockheed Martin to release the improved fitting and mandate its use under AD to ensure the best material be built into the civilian fleet. Safair asked if the FAA considered this as a way forward.

We agree to provide clarification. Lockheed Martin has informed us that there are released drawings for a hybrid rainbow fitting that incorporates as much of the Extended Service Life (ESL) rainbow fitting as possible into a configuration that would fit on a standard center wing. This fitting has not been completely analyzed or tested and the life of the hybrid part on commercial aircraft has not been evaluated. There are no parts available or in production. If Lockheed Martin chooses to make the parts available for sale then they will be evaluated and, if acceptable, we might consider additional rulemaking. The operator can also seek approval of an AMOC to install the new approved parts. We consider this a safety issue that must be addressed as soon as possible and cannot wait for Lockheed Martin to complete their evaluation and production of the new part. Lockheed Martin has informed us that it would be at least three years before the parts were available for sale if they started production today, and there is no plan to start production. We have not changed the final rule in regard to this issue.

Request To Clarify Requirements for Airplanes that Have Accumulated More Than 75,000 Flight Hours

Safair requested that we clarify the requirements for airplanes that have accumulated more than 75,000 flight

hours on the center wings. Safair asked if it is assumed that all airplanes that exceed the initial threshold for airframe flight hours are automatically assumed to have rainbow fittings exceeding the initial threshold. Safair stated that some airplanes which are in daily service have accumulated more than 75,000 flight hours on the center wings.

Safair stated that several of these airplanes have a long title and previous ownership line, and it is not known when and if the rainbow fittings were previously changed because they are not serialized; and no requirement has existed to track their lives to date. Safair pointed out that this raises the question as to how the proposed AD will be implemented on those airplanes that have accumulated a high number of flight hours. Safair asked if an "assumption" is being made that all airplanes exceeding the initial threshold for airframe flight hours automatically are assumed to have rainbow fittings exceeding the initial threshold.

We agree to provide clarification. If there is no record of the rainbow fitting being previously replaced and if the airplane has accumulated more than 30,000 total flight hours, then the rainbow fitting must be replaced within 600 flight hours after the effective date of the AD. If there is a record of the rainbow fitting being replaced but the time on the new rainbow fitting exceeds 30,000 flight hours, then it must be replaced within 600 flight hours, as required by paragraph (i) of this AD. If the rainbow fitting has accumulated less than 30,000 total flight hours, it must be inspected until 30,000 total flight hours are accumulated on the rainbow fitting, and then the rainbow fitting must be replaced, as required by paragraph (i) of this AD. We have not changed the final rule in regard to this issue.

Request To Update Service Information

Safair noted that Lockheed Service Bulletin 382–57–82, Revision 4, dated May 20, 2009, has been released and asked that the NPRM be revised to refer to the most current service information.

We agree. We have revised this final rule to refer to Lockheed Service Bulletin 382–57–82, Revision 4, including Appendixes A, B, and C, dated May 20, 2009. That service bulletin contains a change to the parts supply address, and does not require any additional work for any airplanes. We have added a new paragraph (m) to this final rule to provide credit for actions done before the effective date of this AD in accordance with Lockheed Service Bulletin 382–57–82, Revision 3, dated April 25, 2008.

Request To Clarify Repetitive Inspection Requirements

Safair requested that we clarify the repetitive inspection requirements. Safair stated that the repetitive inspection requirements in the NPRM are more lenient than Lockheed Martin's prescribed repeat inspection periods. Safair asked if the repeat criteria automatically apply.

We agree to provide clarification. The difference in the specified repetitive intervals is that Lockheed Service Bulletin 382–57–82, Revision 4, dated May 20, 2009, recommends a repetitive inspection at 2,000 flight hours after 30,000 flight hours has been accumulated on the fittings. Paragraph (h) of this AD requires that repetitive inspections be accomplished at intervals not to exceed 3,600 flight hours on the center wing until the rainbow fitting has accumulated 30,000 total flight hours. Paragraph (i) of this AD requires that the rainbow fitting be replaced before the accumulation of 30,000 flight hours or within 600 flight hours after the effective date of this AD, whichever is later. Where there are differences in the repetitive interval specified in the service bulletin and this AD, the interval specified in this AD prevails. However, operators may accomplish the actions specified in the AD earlier than required. We have not changed the final rule in regard to this issue.

Request To Clarify Lockheed Service Bulletin 382–57–82

Safair stated that Lockheed Service Bulletin 382–57–82, Revision 3, including Appendixes A and B, dated April 25, 2008, advises that Lockheed Martin inspection cards—SP–176 (upper fitting) and SP–257 (lower fitting)—cover the intent of the inspection of the service bulletin. Safair stated that on its Lockheed Martin-developed maintenance plan, which is current with Lockheed Martin recommended practices, these inspection cards have re-inspection periods at 2,500 and 2,700 flight hours respectively. Safair stated that the NPRM requires re-inspections at 3,600 hours. Safair asked if this means the less stringent conditions of the NPRM, if adopted as proposed, should now apply. If this is the case, Safair asked if Lockheed Martin will be required to amend the Standard Maintenance Program 515 callout periods.

We agree to provide clarification. The inspections in the AD are required, but they do not affect the inspections in the maintenance program. If the inspections are identical, they can be performed simultaneously as part of the maintenance program. However, the compliance times for the specified inspections cannot be extended beyond those specified in this AD. Where there is a conflict between the compliance time in this AD and any other service information, the compliance time in this AD prevails. This could allow doing the inspections during a heavy check rather than during a special visit on a line airplane. We have not changed the final rule in regard to this issue.

Request To Clarify Repairs of Rainbow Fittings

Safair requested that we clarify the repair requirements of the rainbow fittings. Safair pointed out that the second paragraph in the section titled "Differences Between the Proposed AD and the Service Bulletin" of the NPRM seems to allow repairs of rainbow fittings if cracks are found during visual inspections. Safair noted that the third paragraph in this section seems to require replacement for cracks found during nondestructive (NDT) inspections. Safair stated that this seems to be inconsistent.

We agree that clarification is necessary. As explained in the preamble of the NPRM, the general visual inspection is done on the wing faying structure. No corrective actions for findings during the general visual inspection are provided in Lockheed Service Bulletin 382–57–82, Revision 4, dated May 20, 2009; therefore, operators must repair any damage or cracking in accordance with a method approved by the FAA, as required by paragraph (l) of this AD.

However, eddy current inspections are done on the rainbow fitting and, if any cracking is found in the fitting, it must be replaced (as required by paragraph (k) of this AD). During any required replacement, an eddy current inspection must be done on all opened fitting attachment fastener holes in the upper and lower surface skin panel, stringers, splice, straps, and splice angles that are common to the rainbow fittings. As specified in the preamble of the NPRM, the corrective action for any findings in these other areas consists of repairing damage within certain limits, but damage outside those specified limits must be repaired in accordance with a method approved by the FAA. No change has been made to the final rule in this regard.

Request To Extend the Compliance Time

Safair stated that if the inspections currently mandated by Lockheed Martin's maintenance plan continue as required, and if there are positive

findings as a result of these inspections then the damaged rainbow fitting must be replaced prior to further flight. However, on airplanes where there are no crack findings as a result of the inspections, in the maintenance plan, Safair requests that the airplane may continue in service until the next 3- or 6-year structural check before the rainbow fittings are replaced even if the time on the fittings has exceeded the threshold.

We disagree. We have provided a grace period of 600 flight hours to replace the rainbow fittings. We consider this safety issue to result from the fatigue cracking in the area that is serious enough to require that the replacement of the rainbow fittings be accomplished at the required time. We have determined that exceeding the limits required by this final rule would not provide an adequate level of safety.

Further, we are aware of the limited resources available for replacing the rainbow fittings. Lockheed Martin has informed us that there are adequate supplies of rainbow fittings to support this AD. We are also aware that Lockheed Service Bulletin 382–57–82 applies to many Model C–130 airplanes operated by the military, but the rainbow fittings on most of these airplanes have already been replaced. We have not changed the final rule in regard to this issue.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Interim Action

We consider this AD interim action. If final action is later identified, we might consider further rulemaking then.

Costs of Compliance

We estimate that this AD affects 14 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD.

TABLE—ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection	20	$85	None	$1,700 per inspection cycle.	14	$23,800 per inspection cycle.
Fitting replacement	2,438	85	$40,000	$247,230	14	$3,461,220.

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

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 affect intrastate aviation in Alaska, and

(4) 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.

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 FAA amends § 39.13 by adding the following new AD:

2011–09–03 Lockheed Martin Corporation/Lockheed Martin Aeronautics Company: Amendment 39–16665. Docket No. FAA–2010–0233; Directorate Identifier 2009–NM–014–AD.

Effective Date

(a) This airworthiness directive (AD) is effective May 26, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Model 382, 382B, 382E, 382F, and 382G airplanes, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

Unsafe Condition

(e) This AD results from a report of fatigue cracking of the wing upper and lower rainbow fittings during durability testing and on in-service airplanes. Analysis of in-service cracking has shown that these rainbow fittings are susceptible to multiple site fatigue damage. The Federal Aviation Administration is issuing this AD to detect and correct such fatigue cracks, which could grow large and lead to the failure of the fitting and a catastrophic failure of the center wing.

Compliance

(f) 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 Inspections

(g) At the later of the times specified in paragraphs (g)(1) and (g)(2) of this AD: Do eddy current inspections to detect cracking of the center wing upper and lower rainbow fittings on the left and right side of the airplane. Do the actions in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 382–57–82, Revision 4, including Appendixes A and B, dated May 20, 2009. If any crack is found during the inspections required by paragraph (g) of this AD, before further flight, do the actions required by paragraph (k) of this AD.

(1) Before the accumulation of 15,000 total flight hours on the rainbow fitting.

(2) Within 365 days or 600 flight hours on the rainbow fitting after the effective date of this AD, whichever occurs first.

Repetitive Inspection Schedule

(h) Repeat the inspection required by paragraph (g) of this AD at intervals not to exceed 3,600 flight hours on the center wing, until the rainbow fitting has accumulated 30,000 total flight hours. If any crack is found during the inspections required by paragraph (h) of this AD, before further flight, do the actions required by paragraph (k) of this AD.

Rainbow Fitting Replacements

(i) Before the accumulation of 30,000 flight hours on the rainbow fitting, or within 600 flight hours after the effective date of this AD, whichever occurs later: Replace the rainbow fitting, do all related investigative actions, and do all applicable corrective actions, in accordance with paragraph 2.C. of the Accomplishment Instructions of Lockheed Service Bulletin 382–57–82, Revision 4, including Appendix C, dated May 20, 2009, except as required by paragraph (l) of this AD. Replace the rainbow fitting thereafter at intervals not to exceed 30,000 flight hours.

Post-Replacement Repetitive Inspections

(j) For upper and lower rainbow fittings replaced in accordance with paragraph (i) or (k) of this AD: Do the eddy current inspections specified in paragraph (g) of this AD within 15,000 flight hours after doing the replacement and repeat the eddy current inspections specified in paragraph (h) of this AD thereafter at intervals not to exceed 3,600 flight hours until the rainbow fittings are replaced in accordance with paragraph (i) or (k) of this AD.

Replacement, Related Investigative Actions, and Corrective Actions

(k) If, during any inspection required by paragraph (g) or (h) of this AD, any crack is detected in the rainbow fitting, before further flight, replace the rainbow fitting, do all related investigative actions, and do all applicable corrective actions, in accordance with Paragraph 2.C. of the Accomplishment Instructions of Lockheed Service Bulletin 382–57–82, Revision 4, including Appendix C, dated May 20, 2009, except as provided by paragraph (l) of this AD.

Exceptions to Service Bulletin

(l) Where Lockheed Service Bulletin 382–57–82, Revision 4, including Appendixes A, B, and C, dated May 20, 2009, specifies to contact the manufacturer for disposition of certain repair conditions or does not specify corrective actions if certain conditions are found, this AD requires repairing those conditions using a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. For a repair method to be approved by the Manager, Atlanta ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

Credit for Actions Accomplished in Accordance With Previous Service Information

(m) Actions accomplished before the effective date of this AD in accordance with Lockheed Service Bulletin 382–57–82, Revision 3, including Appendixes A, B, and C, dated April 25, 2008, are acceptable for compliance with the corresponding requirements of this AD.

Alternative Methods of Compliance (AMOCs)

(n)(1) The Manager, Atlanta ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Carl Gray, Aerospace Engineer, Airframe Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, Georgia 30337; telephone (404) 474–5554; fax (404 474–5606.

(2) Before using any approved AMOC, notify your appropriate principal inspector, the manager of the local flight standards district office/certificate holding district office.

Material Incorporated by Reference

(o) You must use Lockheed Service Bulletin 382–57–82, Revision 4, including Appendixes A, B, and C, dated May 20, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Lockheed Martin Corporation/Lockheed Martin Aeronautics Company, Airworthiness Office, Dept. 6A0M, Zone 0252, Column P–58, 86 S. Cobb Drive, Marietta, Georgia 30063; telephone 770–494–5444; fax 770–494–5445; e-mail *ams.portal@lmco.com;* Internet *http://www.lockheedmartin.com/ams/tools/TechPubs.html.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(4) You may also review copies of the service information that is incorporated by reference 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/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on April 12, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–9285 Filed 4–20–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0379; Directorate Identifier 2011–CE–007–AD; Amendment 39–16670; AD 2011–09–08]

RIN 2120–AA64

Airworthiness Directives; Pacific Aerospace Limited Model 750XL Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

This AD is prompted by a report from the manufacturer of finding cracks in rudder pedal assemblies at the quadrant attachment weld on early 750 XL aircraft.

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective May 2, 2011.

On May 2, 2011, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

We must receive comments on this AD by June 6, 2011.

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 Pacific Aerospace Limited, Hamilton Airport, Private Bag 3027 Hamilton 3240, New Zealand; *telephone:* +64 7 843 6144; *fax:* +64 7 843 6134; *e-mail: pacific@aerospace.co.nz; Internet: http://www.aerospace.co.nz/.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

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: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4146; *fax:* (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for New Zealand, has issued AD DCA/750XL/14, dated March 31, 2011, (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> This AD is prompted by a report from the manufacturer of finding cracks in rudder pedal assemblies at the quadrant attachment weld on early 750 XL aircraft.

The MCAI requires inspecting the left-hand and right-hand rudder pedal assemblies for cracks and incorporating a modification repair scheme if any cracks are found. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Pacific Aerospace Limited has issued Mandatory Service Bulletin PACSB/XL/050, Issue 1, dated December 15, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might have also required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the AD. These requirements take precedence over those copied from the MCAI.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because cracks in the rudder pedal assemblies could cause the rudder pedal assembly to fail, which could result in loss of control. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0379; Directorate Identifier 2011–CE–007–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.

Costs of Compliance

We estimate that this AD will affect 15 products of U.S. registry. We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts would cost about $1,269 per product.

Based on these figures, we estimate the cost of the AD on U.S. operators to be $24,135 or $1,609 per product.

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 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.

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 FAA amends § 39.13 by adding the following new AD:

2011–09–08 Pacific Aerospace Limited: Amendment 39–16670; Docket No. FAA–2011–0379; Directorate Identifier 2011–CE–007–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 2, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Pacific Aerospace Limited Model 750XL airplanes, all serial numbers through 111, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 27: Flight Controls.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

This AD is prompted by a report from the manufacturer of finding cracks in rudder pedal assemblies at the quadrant attachment weld on early 750 XL aircraft.

The MCAI requires inspecting the left-hand (LH) and right-hand (RH) rudder pedal assemblies for cracks and incorporating a modification repair scheme if any cracks are found. You may obtain further information by examining the MCAI in the AD docket.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) Inspect the quadrant welds in the LH rudder pedal assembly, part number (P/N) 11–45711–1, and the RH rudder pedal assembly, P/N 11–45713–1, for cracks at the following times following Pacific Aerospace Limited Mandatory Service Bulletin PACSB/XL/050, Issue 1, dated December 15, 2010:

(i) Initially before further flight after the effective date of this AD.

(ii) Repetitively thereafter at intervals not to exceed 300 hours time-in-service (TIS) until the modification repair scheme required in paragraph (f)(2) of this AD is incorporated.

(2) Incorporate modification repair scheme Pacific Aerospace Drawing Number 11–03221/22, dated December 3, 2010, as specified in Pacific Aerospace Limited Mandatory Service Bulletin PACSB/XL/050, Issue 1, dated December 15, 2010, at the following time:

(i) Before further flight after any inspection required in paragraphs (f)(1)(i) or (f)(1)(ii) of this AD if any cracks are found.

(ii) Within the next 1,200 hours TIS after the effective date of this AD or within the next 12 months after the effective date of this AD, whichever occurs first, if no cracks are found during any inspection required in paragraphs (f)(1)(i) or (f)(1)(ii) of this AD. Incorporating modification repair scheme Pacific Aerospace Drawing Number 11–03221/22, dated December 3, 2010, terminates the repetitive inspections required in paragraph (f)(1)(ii) of this AD.

(3) You may incorporate modification repair scheme Pacific Aerospace Drawing Number 11–03221/22, dated December 3, 2010, at any time after the initial inspection required in paragraph (f)(1)(i) of this AD but no later than the compliance time specified in paragraph (f)(2)(ii) of this AD as long as no cracks were found. As required in paragraph (f)(2)(i) of this AD, the modification repair scheme must be incorporated before further flight if cracks are found.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: The MCAI Civil Aviation Authority (CAA) AD DCA/750XL/14, dated March 31, 2011, and the applicable service bulletin specifies repair of the rudder pedal assembly if cracks are found exceeding certain limits and allows continued flight for a specified time if cracks are found in the rudder pedal assembly that do not exceed certain limits. This AD does not allow continued flight if any crack is found. The FAA policy is to disallow airplane operation when known cracks exist in primary structure, unless the ability to sustain ultimate load with these cracks is proven. The rudder pedal assembly is considered primary structure, and the FAA has not received any analysis to prove that ultimate load can be sustained with cracks in this area.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; fax: (816) 329–4090. 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.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave., SW., Washington, DC 20591, *Attn:* Information Collection Clearance Officer, AES–200.

Related Information

(h) Refer to MCAI Civil Aviation Authority (CAA) AD DCA/750XL/14, dated March 31, 2011, and Pacific Aerospace Limited Mandatory Service Bulletin PACSB/XL/050, Issue 1, dated December 15, 2010, for related information.

Material Incorporated by Reference

(i) You must use Pacific Aerospace Limited Mandatory Service Bulletin PACSB/XL/050, Issue 1, dated December 15, 2010, and Pacific Aerospace Drawing Number 11–03221/22, dated December 3, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Pacific Aerospace Limited, Hamilton Airport, Private Bag HN3027 Hamilton, New Zealand; *telephone:* 0064 7 843 6144; *fax:* 0064 7 843 6134; *Internet: http://www.aerospace.co.nz/.*

(3) You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

(4) You may also review copies of the service information incorporated by reference for this AD 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/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri on April 13, 2011.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–9429 Filed 4–20–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1309; Directorate Identifier 2010–NM–060–AD; Amendment 39–16662; AD 2011–08–12]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–300, A340–200, and A340–300 Series Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Surface defects were visually detected on the rudder of one Airbus A319 and one A321 in-service aeroplane. Investigation has determined that the defects reported on both rudders corresponded to areas that had been reworked in production. The investigation confirmed that the defects were the result of de-bonding between the skin and honeycomb core. Such reworks were also performed on some rudders fitted on A330–300 and A340–200/–300 aeroplanes.

An extended de-bonding, if not detected and corrected, may degrade the structural integrity of the rudder. The loss of the rudder leads to degradation of the handling qualities and reduces the controllability of the aeroplane.

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective May 26, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of May 26, 2011.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on January 13, 2011 (76 FR 2284). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Surface defects were visually detected on the rudder of one Airbus A319 and one A321 in-service aeroplane. Investigation has determined that the defects reported on both rudders corresponded to areas that had been reworked in production. The investigation confirmed that the defects were the result of de-bonding between the skin and honeycomb core. Such reworks were also performed on some rudders fitted on A330–300 and A340–200/–300 aeroplanes.

An extended de-bonding, if not detected and corrected, may degrade the structural integrity of the rudder. The loss of the rudder leads to degradation of the handling qualities and reduces the controllability of the aeroplane.

EASA AD 2009–0156 required inspections of specific areas and, depending on findings, the application of corrective actions for those rudders where production reworks have been identified.

This AD retains the requirements of EASA AD 2009–0156, which is superseded, and in addition requires for the vacuum loss hole restoration:

—A local ultrasonic inspection for reinforced area instead of the local thermography inspection, which is maintained for non-reinforced areas, and

—An additional work for aeroplanes on which this thermography inspection has been performed in the reinforced area.

The inspections include vacuum loss inspections and repetitive elasticity laminate checker inspections for defects including de-bonding between the skin and honeycomb core of the rudder, and ultrasonic inspections for defects on rudders on which temporary restoration with resin or permanent vacuum loss hole restoration has been performed. The corrective action is repair, if necessary. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

Currently, there are no affected airplanes on the U.S. Register. However, if an affected airplane is imported and placed on the U.S. Register in the future, the required actions would take about 21 work hours, at an average labor rate of $85 per work hour. Based on these figures, we estimate the cost of this AD to be $1,785 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 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 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.

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 the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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 FAA amends § 39.13 by adding the following new AD:

2011–08–12 Airbus: Amendment 39–16662. Docket No. FAA–2010–1309; Directorate Identifier 2010–NM–060–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 26, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes, Model A340–211, –212, and –213 airplanes; and Model A340–311, –312, and –313 airplanes; all manufacturer serial numbers; certificated in any category; equipped with carbon fiber reinforced plastic rudders having part numbers and serial numbers listed in table 1 of this AD.

TABLE 1—AFFECTED RUDDERS

Rudder Part No.	Rudder Serial No.
F554–70000–000–00	TS–2013
F554–70000–000–00	TS–2015
F554–70000–000–00	TS–2016
F554–70000–000–00	TS–2017
F554–70000–000–00	TS–2018
F554–70000–000–00	TS–2020
F554–70000–000–00	TS–2021
F554–70000–000–00	TS–2024
F554–70000–000–00	TS–2026
F554–70000–000–00	TS–2035
F554–70000–000–00	TS–2036
F554–70000–000–00	TS–2040
F554–70000–000–00	TS–2042
F554–70000–000–00	TS–2055
F554–70000–000–00	TS–2056
F554–70000–000–00	TS–2058
F554–70000–000–00	TS–2059
F554–70000–000–00	TS–2061
F554–70000–000–00	TS–2062
F554–70000–000–00	TS–2063
F554–70000–000–00	TS–2065
F554–70000–002–00	TS–2074
F554–71000–000–00	TS–3003
F554–71000–000–00	TS–3004
F554–71000–000–00	TS–3005
F554–71000–000–00	TS–3006
F554–71000–000–00	TS–3007
F554–71000–000–00	TS–3008
F554–71000–000–00	TS–3011
F554–71000–000–00	TS–3015
F554–71000–000–00	TS–3033
F554–71000–000–00	TS–3061
F554–71000–000–00	TS–3064
F554–71000–000–00	TS–3066
F554–71000–000–00	TS–3071
F554–71000–000–00	TS–3072
F554–71000–000–00	TS–3075
F554–71000–000–00	TS–3079
F554–71000–000–00	TS–3084
F554–71000–000–00	TS–3087
F554–70005–000–00	TS–3100
F554–70005–000–00	TS–3106
F554–70005–000–00	TS–3107
F554–70005–000–00	TS–3119
F554–70005–000–00	TS–3124

Subject

(d) Air Transport Association (ATA) of America Code 55: Stabilizers.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Surface defects were visually detected on the rudder of one Airbus A319 and one A321 in-service aeroplane. Investigation has determined that the defects reported on both rudders corresponded to areas that had been reworked in production. The investigation confirmed that the defects were the result of de-bonding between the skin and honeycomb core. Such reworks were also performed on some rudders fitted on A330–300 and A340–200/–300 aeroplanes.

An extended de-bonding, if not detected and corrected, may degrade the structural integrity of the rudder. The loss of the rudder leads to degradation of the handling qualities and reduces the controllability of the aeroplane.

* * * * *

Compliance

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

Actions

(g) Do the actions required by paragraphs (g)(1) through (g)(8) of this AD, in accordance with the Instructions of Airbus All Operators Telex (AOT) A330–55A3040 or A340–55A4036, both Revision 02, both dated September 30, 2009, as applicable.

(1) In the reinforced location of the rudder: Within 1,800 flight hours after the rudder has accumulated 13,000 total flight cycles since first installation, or within 1,800 flight hours after the effective date of this AD, whichever is later, do a vacuum loss inspection to detect defects, including de-bonding between the skin and honeycomb core of the rudder.

(2) In the trailing edge location of the rudder: Within 21 months after the rudder has accumulated 13,000 total flight cycles since first installation, or within 21 months after the effective date of this AD, whichever is later, do an elasticity laminate checker inspection to detect defects, including de-bonding between the skin and honeycomb core of the rudder. If no defects are found, repeat the inspection two times at intervals not to exceed 4,500 flight cycles, but not fewer than 4,000 flight cycles from the most recent inspection.

(3) In locations other than those identified in paragraphs (g)(1) and (g)(2) of this AD (e.g., lower rib, upper edge, leading edge, and other locations): Within 1,800 flight hours after the rudder has accumulated 13,000 total flight cycles since first installation, or within 1,800 flight hours after the effective date of this AD, whichever is later, do an elasticity laminate checker inspection to detect defects, including de-bonding between the skin and honeycomb core of the rudder. Repeat the inspection thereafter at intervals not to exceed 1,800 flight hours.

(4) If no defects are found during any inspection required by paragraph (g)(3) of this AD: Within 21 months after the rudder has accumulated 13,000 total flight cycles since first installation, or within 21 months after the effective date of this AD, whichever is later, do a vacuum loss inspection on the

other locations (e.g., lower rib, upper edge, leading edge, and other locations) to detect defects, including de-bonding between the skin and honeycomb core of the rudder.

(5) Accomplishment of the inspection required by paragraph (g)(4) of this AD terminates the initial and repetitive inspections required by paragraph (g)(3) of this AD.

(6) If any defect is found during any inspection required by this AD, before further flight, repair using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency Airworthiness (EASA) (or its delegated agent).

(7) If no defects are found during any inspection required by paragraphs (g)(1) and (g)(4) of this AD, before further flight, restore the vacuum loss holes by doing a temporary restoration with self-adhesive patches, a temporary restoration with resin, or a permanent restoration. Do the applicable actions specified in paragraph (g)(7)(i) or (g)(7)(ii) of this AD.

(i) For airplanes on which a temporary restoration with patch is done: Within 900 flight hours after the restoration, do a detailed inspection for defects of the restored area and repeat the inspection thereafter at intervals not to exceed 900 flight hours until the permanent restoration is done. Do the permanent restoration within 21 months after the temporary restoration.

(ii) For airplanes on which a temporary restoration with resin is done: Within 21 months after doing the temporary restoration, do the permanent restoration.

(8) If any defect is found during any initial inspection required by paragraphs (g)(1), (g)(3), and (g)(4) of this AD, at the applicable time in paragraph (g)(8)(i) or (g)(8)(ii) of this AD: Report the inspection results to Airbus SAS, SEER1/SEER2/SEER3, Customer Services, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; fax +33 (0) 5 61 93 28 73; or e-mail to *region1.StructureRepairSupport@airbus.com, region2.StructureRepairSupport@airbus.com,* or *region3.StructureRepairSupport@airbus.com.*

(i) Inspections done before the effective date of this AD: Within 30 days after the effective date of this AD.

(ii) Inspections done on or after the effective date of this AD: Within 30 days after accomplishment of the inspection.

Credit for Actions Accomplished in Accordance With Previous Service Information

(h) Actions accomplished before the effective date of this AD in accordance with the service information identified in table 2 of this AD, are considered acceptable for compliance with the corresponding actions specified in paragraphs (g)(1) through (g)(5) and paragraph (g)(7) of this AD for only the areas inspected. For all areas, the repetitive inspections required by this AD remain applicable.

TABLE 2—CREDIT SERVICE INFORMATION

Document	Revision	Date
Airbus AOT A330–55A3040	Original	May 27, 2009.
Airbus AOT A330–55A3040	01	July 8, 2009.
Airbus AOT A340–55A4036	Original	May 27, 2009.
Airbus AOT A340–55A4036	01	July 8, 2009.

(i) For rudders on which temporary vacuum loss hole restoration with resin or permanent vacuum loss hole restoration has been done, as required by paragraph (g)(7) of this AD, in accordance with the applicable AOT in table 2 of this AD before the effective date of this AD: Within 21 months after the restoration date, or within 3 months after the effective date of this AD, whichever occurs later, do an ultrasonic inspection for defects, including debonding of the reinforced area, in accordance with the Instructions of Airbus AOT A330–55A3040 or A340–55A4036, both Revision 02, both dated September 30, 2009, as applicable. If any defect is found, before further flight, repair using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA (or its delegated agent).

(j) As of the effective date of this AD, no person may install any rudder identified in table 1 of this AD on any airplane, unless the rudder has been inspected and all applicable corrective actions have been done in accordance with paragraph (g) or (i) of this AD, as applicable.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(k) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Information may be e-mailed to: *9–ANM–116–AMOC–REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, *Attn:* Information Collection Clearance Officer, AES–200.

Related Information

(l) Refer to MCAI EASA Airworthiness Directive 2010–0021, dated February 9, 2010; and Airbus AOTs A330–55A3040 and A340–55A4036, both Revision 02, both dated September 30, 2009; for related information.

Material Incorporated by Reference

(m) You must use Airbus All Operators Telex A330–55A3040, Revision 02, dated September 30, 2009, or Airbus All Operators Telex A340–55A4036, Revision 02, dated September 30, 2009; as applicable; to do the actions required by this AD, unless the AD specifies otherwise. (The document number, revision level, and date of these documents are indicated only on the first page of these documents.)

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; e-mail *airworthiness.A330–A340@airbus.com;* Internet *http://www.airbus.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(4) You may also review copies of the service information that is incorporated by reference 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/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on April 4, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–8668 Filed 4–20–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. FDA–2010–N–0026]

Medical Devices; Immunology and Microbiology Devices; Classification of Ovarian Adnexal Mass Assessment Score Test System; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of March 23, 2011 (76 FR 16292). The document announced the classifying of ovarian adnexal mass assessment score test system into class II (special controls). The document was published with an incorrect docket number. This document corrects that error.

DATES: *Effective:* April 22, 2011.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy, Planning and Budget, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 3208, Silver Spring, MD 20993–0002, 301–796–9148.

SUPPLEMENTARY INFORMATION: In FR Doc. 2011–6620, appearing on page 16292, in the **Federal Register** of Wednesday, March 23, 2011, the following correction is made:

1. On page 16292, in the first column, in the Docket No. heading, "[Docket No. FDA–2011–N–0026]" is corrected to read "[Docket No. FDA–2010–N–0026]."

Dated: April 13, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–9649 Filed 4–20–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final rule; change.

SUMMARY: The Department of the Navy (DoN) is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect the conversion of several Navy vessels from ballistic missile submarines (SSBN) to guided missile submarines (SSGN). The Deputy Assistant Judge Advocate General (DAJAG) (Admiralty and Maritime Law) has determined that certain vessels of the SSGN Class are vessels of the Navy which, due to their special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with their special function as naval ships. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective April 21, 2011 and is applicable beginning April 13, 2011.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jaewon Choi, JAGC, U.S. Navy, Admiralty Attorney, (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, *telephone number:* 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the DoN amends 32 CFR part 706.

This amendment provides notice that the DAJAG (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS OHIO (SSBN 726), USS MICHIGAN (SSBN 727), USS FLORIDA (SSBN 728), and USS GEROGIA (SSBN 729) are vessels of the Navy which, due to their special construction and purpose, cannot fully comply with specific provisions of 72 COLREGS without interfering with their special function as naval ships. The vessels have been converted from SSBN's to SSGN's and this amendment will edit the classification of the vessels to accurately reflect their new designation as SSGN's. This amendment does not change the vessels' previously noted deviations from 72 COLREGS. The DAJAG (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on previous and unchanged technical findings that the placement of lights on these vessels in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions. Furthermore, this amendment merely changes the classification of these vessels and does not reflect any changes to the placement of lights on any of these vessels.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

For the reasons set forth in the preamble, amend part 706 of title 32 of the CFR as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2 is amended as follows:

■ A. In Table One by amending, in alpha numerical order, by vessel number, the following entries for the SSBN Class; and

■ B. In Table Three, by amending, in alpha numerical order, by vessel number, the following entries for the SSBN Class:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

* * * * *

TABLE ONE

Vessel	Number	Distance in meters of forward masthead light below minimum required height 2(a)(i) Annex 1
USS OHIO	SSGN 726	3.70
USS MICHIGAN	SSGN 727	3.70
USS FLORIDA	SSGN 728	3.70
USS GEORGIA	SSGN 729	3.70

* * * * *

TABLE THREE

* * * * *

Vessel	Number	Masthead lights arc of visibility; rule 21(a)	Side lights arc of visibility; rule 21(b)	Stern light arc of visibility; rule 21(c)	Side lights distance inboard of ship's sides in meters: Section 3(b) annex 1	Stern light distance forward of stern in meters; rule 21(c)	Forward anchor light, height above hull in meters; Section 2(K) annex 1	Anchor lights relationship of aft light to forward light in meters; Section 2(K) annex 1
USS OHIO	SSGN 726	225°	112.5°	209°	5.3	9.0	3.8	4.0 below.
USS MICHIGAN	SSGN 727	225°	225°	209°	5.3	9.0	3.8	4.0 below.
USS FLORIDA	SSGN 728	.....	.....	209°	5.3	9.0	3.8	4.0 below.
USS GEORGIA	SSGN 729	225°	.....	209°	5.3	9.0	3.8	4.0 below.

* * * * *

Approved: April 13, 2011.

M. Robb Hyde,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).

Dated: April 14, 2011.

D.J. Werner,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2011–9668 Filed 4–20–11; 8:45 am]

BILLING CODE 3810–FF–P

Proposed Rules

Federal Register
Vol. 76, No. 77
Thursday, April 21, 2011

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

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EERE–2007–BT–STD–0010]

RIN 1904–AA89

Energy Conservation Program: Energy Conservation Standards for Residential Clothes Dryers and Room Air Conditioners

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

ACTION: Proposed rule.

SUMMARY: The Energy Policy and Conservation Act (EPCA) prescribes energy conservation standards for various consumer products and commercial and industrial equipment, including residential clothes dryers and room air conditioners. EPCA also requires the U.S. Department of Energy (DOE) to determine if amended standards for these products are technologically feasible and economically justified, and would save a significant amount of energy. In this proposed rule, DOE proposes energy efficiency standards for residential clothes dryers and room air conditioners identical to those set forth in a direct final rule published elsewhere in today's **Federal Register**. If DOE receives adverse comment and determines that such comment may provide a reasonable basis for withdrawing the direct final rule, DOE will publish a notice withdrawing the final rule and will proceed with this proposed rule.

DATES: DOE will accept comments, data, and information regarding the proposed standards no later than August 9, 2011.

ADDRESSES: See section III, "Public Participation," for details. If DOE withdraws the direct final rule published elsewhere in today's **Federal Register**, DOE will hold a public meeting to allow for additional comment on this proposed rule. DOE will publish notice of any meeting in the **Federal Register**.

Any comments submitted must identify the proposed rule for Energy Conservation Standards for Residential Clothes Dryers and Room Air Conditioners, and provide docket number EERE–2007–BT–STD–0010 and/or regulatory information number (RIN) number 1904–AA89. Comments may be submitted using any of the following methods:

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

2. *E-mail: home_appliance2.rulemaking@ee.doe.gov.* Include the docket number and/or RIN in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. If possible, please submit all items on a CD. It is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD. It is not necessary to include printed copies.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section III of this document (Public Participation).

Docket: The docket is available for review at regulations.gov, including **Federal Register** notices, framework documents, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the regulations.gov index. Not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure. A link to the docket Web page can be found at *http://www.regulations.gov.*

For further information on how to submit or review public comments or view hard copies of the docket in the Resource Room, contact Ms. Brenda Edwards at (202) 586–2945 or e-mail: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen L. Witkowski, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–7463, e-mail: *stephen.witkowski@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–7796, e-mail: *Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

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  B. Public Meeting
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V. Approval of the Office of the Secretary

I. Introduction and Legal Authority

Title III of EPCA sets forth a variety of provisions designed to improve energy efficiency. Part B of title III (42 U.S.C. 6291–6309) provides for the Energy Conservation Program for Consumer Products other than Automobiles.[1] The program covers consumer products and certain commercial equipment (referred to hereafter as "covered products"), including clothes dryers and room air conditioners (42 U.S.C. 6292(a)(2) and (8)), and EPCA prescribes energy conservation standards for certain clothes dryers (42 U.S.C. 6295(g)(3)) and for room air conditioners (42 U.S.C. 6295(c)(1)). EPCA further directs DOE to conduct two cycles of rulemakings to determine whether to amend these standards. (42 U.S.C. 6295(c)(2) and (g)(4)) This rulemaking represents the second round of amendments to both the clothes dryer and room air conditioner standards.

DOE notes that this rulemaking is one of the required agency actions in the consolidated Consent Decree in *State of New York, et al.* v. *Bodman et al.,* 05 Civ. 7807 (LAP), and *Natural Resources Defense Council, et al.* v. *Bodman, et al.,* 05 Civ. 7808 (LAP), DOE is required to

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

complete a final rule for amended energy conservation standards for room air conditioners and clothes dryers that must be sent to the **Federal Register** by June 30, 2011.

The Energy Independence and Security Act of 2007 (EISA 2007; Pub. L. 110–140) amended EPCA, in relevant part, to grant DOE authority to issue a final rule (hereinafter referred to as a "direct final rule") establishing an energy conservation standard for a covered product on receipt of a statement submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates) as determined by the Secretary, that contains recommendations with respect to an energy conservation standard that are in accordance with the provisions of 42 U.S.C. 6295(o). EPCA also requires that a notice of proposed rulemaking (NOPR) that proposes an identical energy efficiency standard be published simultaneously with the direct final rule, and DOE must provide a public comment period of at least 110 days on this proposal. (42 U.S.C. 6295(p)(4)) Not later than 120 days after issuance of the direct final rule, if one or more adverse comments or an alternative joint recommendation are received relating to the direct final rule, the Secretary must determine whether the comments or alternative recommendation may provide a reasonable basis for withdrawal under 42 U.S.C. 6295(o) or other applicable law. If the Secretary makes such a determination, DOE must withdraw the direct final rule and proceed with the simultaneously published notice of proposed rulemaking. DOE must also publish in the **Federal Register** the reason why the direct final rule was withdrawn. *Id.*

In response to the preliminary analysis conducted during DOE's consideration of amended standards for room air conditioners and clothes dryers, 75 FR 7987 (Feb. 23, 2010), DOE received the "Agreement on Minimum Federal Efficiency Standards, Smart Appliances, Federal Incentives and Related Matters for Specified Appliances" (hereinafter, the "Joint Petition") [2], a comment submitted by groups representing manufacturers (the Association of Home Appliance Manufacturers (AHAM), Whirlpool Corporation (Whirlpool), General Electric Company (GE), Electrolux, LG Electronics, Inc. (LG), BSH Home Appliances (BSH), Alliance Laundry Systems (ALS), Viking Range, Sub-Zero Wolf, Friedrich A/C, U–Line, Samsung, Sharp Electronics, Miele, Heat Controller, AGA Marvel, Brown Stove, Haier, Fagor America, Airwell Group, Arcelik, Fisher & Paykel, Scotsman Ice, Indesit, Kuppersbusch, Kelon, and DeLonghi); energy and environmental advocates (American Council for an Energy Efficient Economy (ACEEE), Appliance Standards Awareness Project (ASAP), Natural Resources Defense Council (NRDC), Alliance to Save Energy (ASE), Alliance for Water Efficiency (AWE), Northwest Power and Conservation Council (NPCC), and Northeast Energy Efficiency Partnerships (NEEP)); and consumer groups (Consumer Federation of America (CFA) and the National Consumer Law Center (NCLC)) (collectively, the "Joint Petitioners"). The Joint Petitioners recommended specific energy conservation standards for residential clothes dryers and room air conditioners that they believed would satisfy the EPCA requirements in 42 U.S.C. 6295(o).

DOE has considered the recommended energy conservation standards and believes that they meet the EPCA requirements for issuance of a direct final rule. As a result, DOE has published a direct final rule establishing energy conservation standards for clothes dryers and room air conditioners elsewhere in today's **Federal Register**. If DOE receives adverse comments that may provide a reasonable basis for withdrawal and withdraws the direct final rule, DOE will consider those comments and any other comments received in determining how to proceed with today's proposed rule.

For further background information on these proposed standards and the supporting analyses, please see the direct final rule published elsewhere in today's **Federal Register**. That document includes additional discussion on the EPCA requirements for promulgation of energy conservation standards, the current standards for room air conditioners and clothes dryers, and the history of the standards rulemakings establishing such standards, as well as information on the test procedures used to measure the energy efficiency of clothes dryers and room air conditioners. The document also contains an in-depth discussion of the analyses conducted in support of this rulemaking, the methodologies DOE used in conducting those analyses, and the analytical results.

II. Proposed Standards

When considering proposed standards, the new or amended energy conservation standard that DOE adopts for any type (or class) of covered product shall be designed to achieve the maximum improvement in energy efficiency that DOE determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In determining whether a standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens to the greatest extent practicable, in light of the seven statutory factors set forth in EPCA. (42 U.S.C. 6295(o)(2)(B)(i)) The new or amended standard must also result in a significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

The Department considered the impacts of standards at each trial standard level considered by DOE, beginning with maximum technologically feasible level, to determine whether that level was economically justified. Where the max-tech level was not economically justified, DOE then considered the next most efficient level and undertook the same evaluation until it reached the highest efficiency level that is both technologically feasible and economically justified and saves a significant amount of energy.

To aid the reader as DOE discusses the benefits and burdens of each trial standard level, DOE has included tables that present a summary of the results of DOE's quantitative analysis for each trial standard level (TSL). In addition to the quantitative results presented in the tables, DOE also considers other burdens and benefits that affect economic justification. These include the impacts on identifiable subgroups of consumers, such as low-income households and seniors, who may be disproportionately affected by a national standard. Section V.B.1 of the direct final rule published elsewhere in today's **Federal Register** presents the estimated impacts of each TSL for these subgroups.

A. Benefits and Burdens of TSLs Considered for Clothes Dryers

Table II.1 and Table II.2 present a summary of the quantitative impacts estimated for each TSL for clothes dryers. The efficiency levels contained in each TSL are described in section V.A of the direct final rule.

[2] DOE Docket No. EERE–2007–BT–STD–0010, Comment 35.

TABLE II.1—SUMMARY OF RESULTS FOR CLOTHES DRYER TRIAL STANDARD LEVELS: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
National Energy Savings (*quads*)	0.00	0.062	0.37	0.39	1.45	3.14
NPV of Consumer Benefits (*2009$ billion*):						
3% discount rate	0.00	0.62	3.00	3.01	0.22	(1.53)
7% discount rate	0.01	0.25	1.10	1.08	(2.60)	(6.72)
Cumulative Emissions Reduction:						
CO_2 (*million metric tons*)	0.119	2.99	17.75	18.67	70.47	186.6
NO_X (*thousand tons*)	0.097	2.41	14.26	15.14	57.26	151.3
Hg (*ton*)	0.000	0.009	0.053	0.051	0.188	0.569
Value of Emissions Reduction:						
CO_2 (*2009$ million*) *	1 to 10	15 to 239	88 to 1,417	93 to 1,490	351 to 5,626	929 to 14,902
NO_X—3% discount rate (*2009 million*)	0.031 to 0.314	0.759 to 7.8	4.49 to 46.2	4.77 to 49.0	18.0 to 185	47.6 to 490
NO_X—7% discount rate (*2009$ million*)	0.013 to 0.136	0.328 to 3.37	1.94 to 20.0	2.06 to 21.2	7.8 to 80.2	20.6 to 212
Generation Capacity Reduction (*GW*) **	0.002	0.060	0.358	0.345	1.27	2.27
Employment Impacts:						
Total Potential Change in Domestic Production Workers in 2014 (*thousands*)	0.00 to (3.96)	0.00 to (3.96)	0.41 to (3.96)	0.46 to (3.96)	1.08 to (3.96)	2.26 to (3.96)
Indirect Domestic Jobs (*thousands*) **	0.01	0.01	1.82	1.75	4.25	9.30

Parentheses indicate negative (−) values.
* Range of the economic value of CO_2 reductions is based on estimates of the global benefit of reduced CO_2 emissions.
** Changes in 2043.

TABLE II.2—SUMMARY OF RESULTS FOR CLOTHES DRYER TRIAL STANDARD LEVELS: CONSUMER AND MANUFACTURER IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Manufacturer Impacts						
Industry NPV (*2009$ million*)	(2.5) to (2.5)	(3.6) to (4.9)	(41.1) to (55.5)	(64.5) to (80.6)	(176.5) to (397.4)	(303.9) to (730.0)
Industry NPV (*% change*)	(0.3) to (0.3)	(0.4) to (0.5)	(4.1) to (5.5)	(6.4) to (8.0)	(17.6) to (39.6)	(30.3) to (72.7)
Consumer Mean LCC Savings * (2009$)						
Electric Standard	$0	$2	$14	$14	($30)	($146)
Compact 120V	$0	$14	$14	$14	($99)	($264)
Compact 240V	$0	$8	$8	$8	($99)	($246)
Gas	$0	$2	$2	$2	($100)	($100)
Ventless 240V	$0	$20	$20	$0	($42)	($177)
Ventless Combination Washer/Dryer	$0	$73	$73	$0	$73	($166)
Consumer Median PBP (years) **						
Electric Standard	3.9	0.2	5.3	5.3	19.1	22.1
Compact 120V	n/a	0.9	0.9	0.9	36.1	40.1
Compact 240V	0.0	0.9	0.9	0.9	45.1	38.2
Gas	2.2	0.5	0.5	11.7	49.5	49.5
Ventless 240V	n/a	0.9	0.9	n/a	25.3	26.9
Ventless Combination Washer/Dryer	n/a	5.3	5.3	n/a	5.3	22.4
Distribution of Consumer LCC Impacts						
Electric Standard:						
Net Cost (%)	1%	0%	19%	19%	75%	81%
No Impact (%)	98%	79%	25%	25%	1%	0%
Net Benefit (%)	2%	21%	56%	56%	24%	19%
Compact 120V:						
Net Cost (%)	0%	4%	4%	4%	95%	95%
No Impact (%)	100%	0%	0%	0%	0%	0%
Net Benefit (%)	0%	96%	96%	96%	5%	5%
Compact 240V:						
Net Cost (%)	0%	2%	2%	2%	93%	95%
No Impact (%)	100%	41%	41%	41%	4%	0%
Net Benefit (%)	0%	56%	56%	56%	3%	5%
Gas:						
Net Cost (%)	1%	0%	0%	32%	95%	95%
No Impact (%)	93%	85%	85%	42%	1%	1%

TABLE II.2—SUMMARY OF RESULTS FOR CLOTHES DRYER TRIAL STANDARD LEVELS: CONSUMER AND MANUFACTURER IMPACTS—Continued

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Net Benefit (%)	7%	15%	15%	26%	4%	4%
Ventless 240V:						
Net Cost (%)	0%	0%	0%	0%	92%	88%
No Impact (%)	100%	0%	0%	100%	0%	0%
Net Benefit (%)	0%	100%	100%	0%	8%	12%
Ventless Combination Washer/Dryer:						
Net Cost (%)	0%	21%	21%	0%	21%	82%
No Impact (%)	100%	0%	0%	100%	0%	0%
Net Benefit (%)	0%	79%	79%	0%	79%	18%

Parentheses indicate negative (−) values.
* For LCCs, a negative value means an increase in LCC by the amount indicated.
** In some cases the standard level is the same as the baseline efficiency level, so no consumers are impacted and therefore calculation of a payback period is not applicable.

DOE first considered TSL 6, which represents the max-tech efficiency levels. TSL 6 would save 3.14 quads of energy, an amount DOE considers significant. Under TSL 6, the NPV of consumer benefit would be −$6.72 billion, using a discount rate of 7 percent, and −$1.53 billion, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 6 are 186.6 Mt of CO_2, 151.3 thousand tons of NO_X, and 0.569 ton of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 6 ranges from $929 million to $14,902 million. Total generating capacity in 2043 is estimated to decrease by 2.27 GW under TSL 6.

At TSL 6, the average LCC impact is a cost (LCC increase) of $146 for electric standard clothes dryers, a cost of $264 for 120V compact clothes dryers, a cost of $246 for 240V compact clothes dryers, a cost of $100 for gas clothes dryers, a cost of $177 for ventless 240V clothes dryers, and a cost of $166 for combination washer/dryers. The median payback period is 22.1 years for electric standard clothes dryers, 40.1 years for 120V compact clothes dryers, 38.2 years for 240V compact clothes dryers, 49.5 years for gas clothes dryers, 26.9 years for ventless 240V clothes dryers, and 22.4 years for combination washer/dryers. The fraction of consumers experiencing an LCC benefit is 19 percent for electric standard clothes dryers, 5 percent for 120V compact clothes dryers, 5 percent for 240V compact clothes dryers, 4 percent for gas clothes dryers, 12 percent for ventless 240V clothes dryers, and 18 percent for combination washer/dryers. The fraction of consumers experiencing an LCC cost is 81 percent for electric standard clothes dryers, 95 percent for 120V compact clothes dryers, 95 percent for 240V compact clothes dryers, 95 percent for gas clothes dryers, 88 percent for ventless 240V clothes dryers, and 82 percent for combination washer/dryers.

At TSL 6, the projected change in INPV ranges from a decrease of $303.9 million to a decrease of $730.0 million. TSL 6 would effectively require heat pump clothes dryers for all electric clothes dryer product classes. Changing all electric models to use heat pump technology would be extremely disruptive to current manufacturing facilities and would require substantial product and capital conversion costs. In addition, the large cost increases would greatly harm manufacturer profitability if they were unable to earn additional operating profit on these additional costs. At TSL 6, DOE recognizes the risk of very large negative impacts if manufacturers' expectations concerning reduced profit margins and large conversion costs are realized. If the high end of the range of impacts is reached as DOE expects, TSL 6 could result in a net loss of 72.6 percent in INPV to clothes dryer manufacturers.

DOE concludes that at TSL 6 for residential clothes dryers, the benefits of energy savings, generating capacity reductions, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the negative NPV of consumer benefits, the economic burden on a significant fraction of consumers due to the large increases in product cost, and the conversion costs and profit margin impacts that could result in a very large reduction in INPV for the manufacturers. Consequently, the Secretary has concluded that TSL 6 is not economically justified.

DOE next considered TSL 5. TSL 5 would save 1.45 quads of energy, an amount DOE considers significant. Under TSL 5, the NPV of consumer benefit would be −$2.60 billion, using a discount rate of 7 percent, and $0.22 billion, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 5 are 70.47 Mt of CO_2, 57.26 thousand tons of NO_X, and 0.188 tons of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 5 ranges from $351 million to $5,626 million. Total generating capacity in 2043 is estimated to decrease by 1.27 GW under TSL 5.

At TSL 5, the average LCC impact is a cost (LCC increase) of $30 for electric standard clothes dryers, a cost of $99 for 120V compact clothes dryers, a cost of $99 for 240V compact clothes dryers, a cost of $100 for gas clothes dryers, a cost of $42 for ventless 240V clothes dryers, and a savings of $73 for combination washer/dryers. The median payback period is 19.1 years for electric standard clothes dryers, 36.1 years for 120V compact clothes dryers, 45.1 years for 240V compact clothes dryers, 49.5 years for gas clothes dryers, 25.3 years for ventless 240V clothes dryers, and 5.3 years for combination washer/dryers. The fraction of consumers experiencing an LCC benefit is 24 percent for electric standard clothes dryers, 5 percent for 120V compact clothes dryers, 3 percent for 240V compact clothes dryers, 4 percent for gas clothes dryers, 8 percent for ventless 240V clothes dryers, and 79 percent for combination washer/dryers. The fraction of consumers experiencing an LCC cost is 75 percent for electric standard clothes dryers, 95 percent for 120V compact clothes dryers, 93 percent for 240V compact clothes dryers, 95 percent for gas clothes dryers, 92 percent for ventless 240V clothes dryers, and 21 percent for combination washer/dryers.

At TSL 5, the projected change in INPV ranges from a decrease of $176.5 million to a decrease of $397.4 million. While most changes at TSL 5 could be made within existing product design, redesigning units to the most efficient technologies on the market today would take considerable capital and product

conversion costs. At TSL 5, DOE recognizes the risk of very large negative impacts if manufacturers are not able to earn additional operating profit from the additional production costs to reach TSL 5. If the high end of the range of impacts is reached as DOE expects, TSL 5 could result in a net loss of 39.6 percent in INPV to clothes dryer manufacturers.

The Secretary concludes that at TSL 5 for residential clothes dryers, the benefits of energy savings, generating capacity reductions, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the negative NPV of consumer benefits, the economic burden on a significant fraction of consumers due to the large increases in product cost, and the conversion costs and profit margin impacts that could result in a large reduction in INPV for the manufacturers. Consequently, the Secretary has concluded that TSL 5 is not economically justified.

DOE then considered TSL 4. TSL 4 would save 0.39 quads of energy, an amount DOE considers significant. Under TSL 4, the NPV of consumer benefit would be $1.08 billion, using a discount rate of 7 percent, and $3.01 billion, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 4 are 18.67 Mt of CO_2, 15.14 thousand tons of NO_X, and 0.051 ton of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 4 ranges from $93 million to $1,490 million. Total generating capacity in 2043 is estimated to decrease by 0.345 GW under TSL 4.

At TSL 4, DOE projects that the average LCC impact is a savings (LCC decrease) of $14 for electric standard clothes dryers, a savings of $14 for 120Vcompact clothes dryers, a savings of $8 for 240V compact clothes dryers, a savings of $2 for gas clothes dryers, and no change for ventless 240V clothes dryers and combination washer/dryers. The median payback period is 5.3 years for electric standard clothes dryers, 0.9 years for 120V compact clothes dryers, 0.9 years for 240V compact clothes dryers, 11.7 years for gas clothes dryers, and is not applicable for ventless 240V clothes dryers and combination washer/dryers.[3] The fraction of consumers experiencing an LCC benefit is 56 percent for electric standard clothes dryers, 96 percent for 120V compact clothes dryers, 56 percent for 240V compact clothes dryers, 26 percent for gas clothes dryers, zero percent for ventless 240V clothes dryers, and zero percent for combination washer/dryers. The fraction of consumers experiencing an LCC cost is 19 percent for electric standard clothes dryers, 4 percent for 120V compact clothes dryers, 2 percent for 240V compact clothes dryers, 32 percent for gas clothes dryers, zero percent for ventless 240V clothes dryers, and zero percent for combination washer/dryers.

At TSL 4, the projected change in INPV ranges from a decrease of $64.5 million to a decrease of $80.6 million. The design changes required at TSL 4 for the most common standard-size gas and electric products are incremental improvements that are well known in the industry but would still require moderate product and capital conversion costs to implement. At TSL 4, DOE recognizes the risk of negative impacts if manufacturers' expectations concerning reduced profit margins are realized. If the high end of the range of impacts is reached as DOE expects, TSL 4 could result in a net loss of 8.0 percent in INPV to clothes dryer manufacturers.

DOE concludes that at TSL 4 for residential clothes dryers, the benefits of energy savings, generating capacity reductions, emission reductions and the estimated monetary value of the CO_2 emissions reductions, and positive NPV of consumer benefits outweigh the economic burden on some consumers due to the increases in product cost and the profit margin impacts that could result in a reduction in INPV for the manufacturers.

In addition, the efficiency levels in TSL 4 correspond to the recommended levels in the consensus agreement, which DOE believes sets forth a statement by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates) and contains recommendations with respect to an energy conservation standard that are in accordance with 42 U.S.C. 6295(o). Moreover, DOE has encouraged the submission of consensus agreements as a way to get diverse stakeholders together, to develop an independent and probative analysis useful in DOE standard setting, and to expedite the rulemaking process. DOE also believes that standard levels recommended in the consensus agreement may increase the likelihood for regulatory compliance, while decreasing the risk of litigation.

After considering the analysis, comments on the preliminary TSD, and the benefits and burdens of TSL 4, DOE concludes that this trial standard level will offer the maximum improvement in efficiency that is technologically feasible and economically justified, and will result in the significant conservation of energy. Therefore, DOE today adopts TSL 4 for clothes dryers. The proposed energy conservation standards for clothes dryers, expressed as combined energy factor (CEF) in pounds (lb) per kilowatt-hour (kWh), are shown in Table II.3.

TABLE II.3—PROPOSED AMENDED ENERGY CONSERVATION STANDARDS FOR CLOTHES DRYERS

Residential clothes dryers	
Product class	Minimum CEF levels *lb/kWh*
1. Vented Electric, Standard (4.4 ft^3 or greater capacity)	3.73
2. Vented Electric, Compact (120 V) (less than 4.4 ft^3 capacity)	3.61
3. Vented Electric, Compact (240 V) (less than 4.4 ft^3 capacity)	3.27
4. Vented Gas	3.30
5. Ventless Electric, Compact (240 V) (less than 4.4 ft^3 capacity)	2.55
6. Ventless Electric Combination Washer/Dryer	2.08

[3] For these product classes, the efficiency level at TSL 4 is the same as the baseline efficiency level, so no consumers are impacted and therefore calculation of a payback period is not applicable.

B. Benefits and Burdens of TSLs Considered for Room Air Conditioners

Table II.4 and Table II.5 present a summary of the quantitative impacts estimated for each TSL for room air conditioners. The efficiency levels contained in each TSL are described in section V.A of the direct final rule.

TABLE II.4—SUMMARY OF RESULTS FOR ROOM AIR CONDITIONER TRIAL STANDARD LEVELS: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
National Energy Savings (*quads*)	0.105	0.205	0.218	0.305	0.477	0.665
NPV of Consumer Benefits (*2009$ billion*):						
3% discount rate	0.75	1.30	1.51	1.47	1.46	(5.62)
7% discount rate	0.35	0.57	0.71	0.57	0.33	(4.44)
Cumulative Emissions Reduction:						
CO_2 (*million metric tons*)	9.83	11.9	12.5	17.4	26.9	37.7
NO_X (*thousand tons*)	8.02	9.69	10.2	14.2	21.9	30.7
Hg (*ton*)	0.012	0.015	0.017	0.022	0.032	0.044
Value of Emissions Reduction:						
CO_2 (*2009$ million*) *	43 to 648	52 to 790	55 to 826	77 to 1164	118 to 1803	166 to 2541
NO_X—3% discount rate (*2009$ million*)	2.34 to 24.0	2.83 to 29.1	2.99 to 30.7	4.16 to 42.7	6.40 to 65.8	8.96 to 92.1
NO_X—7% discount rate (*2009$ million*)	1.25 to 12.9	1.50 to 15.4	1.61 to 16.6	2.2 to 22.6	3.35 to 34.4	4.64 to 47.7
Generation Capacity Reduction (*GW*) **	0.348	0.429	0.436	0.632	1.01	1.46
Employment Impacts:						
Total Potential Changes in Domestic Production Workers in 2014 (*thousands*)	N/A	N/A	N/A	N/A	N/A	N/A
Indirect Domestic Jobs (*thousands*) **	0.74	0.73	0.74	1.16	1.94	3.07

Parentheses indicate negative (−) values.
* Range of the economic value of CO_2 reductions is based on estimates of the global benefit of reduced CO_2 emissions.
** Changes in 2043.

TABLE II.5—SUMMARY OF RESULTS FOR ROOM AIR CONDITIONER TRIAL STANDARD LEVELS: CONSUMER AND MANUFACTURER IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Manufacturer Impacts						
Industry NPV (*2009$ million*)	(44.2) to (84.9)	(65.4) to (112.7)	(65.7) to (112.4)	(111.3) to (177.6)	(86.6) to (184.4)	(80.2) to (344.5)
Industry NPV (*% change*)	(4.6) to (8.9)	(6.8) to (11.8)	(6.9) to (11.8)	(11.6) to (18.6)	(9.1) to (19.3)	(8.4) to (36.0)
Consumer Mean LCC Savings * (2009$)						
< 6,000 Btu/h, with Louvers	$9	$11	$9	$7	$7	($58)
8,000–13,999 Btu/h, with Louvers	16	16	22	22	22	(38)
20,000–24,999 Btu/h, with Louvers	6	6	0	6	0	(214)
> 25,000 Btu/h, with Louvers	1	1	0	1	0	(227)
8,000–10,999 Btu/h, without Louvers	4	4	13	13	20	(66)
> 11,000 Btu/h, without Louvers	5	5	11	11	11	(64)
Consumer Median PBP (years) **						
< 6,000 Btu/h, with Louvers	4.1	5.8	4.1	8.6	8.6	20.9
8,000–13,999 Btu/h, with Louvers	0.0	0.0	2.8	2.8	7.1	14.7
20,000–24,999 Btu/h, with Louvers	4.3	4.3	n/a	4.3	n/a	73.8
> 25,000 Btu/h, with Louvers	10.3	10.3	n/a	10.1	n/a	107.7
8,000–10,999 Btu/h, without Louvers	1.5	1.5	2.1	2.1	4.9	25.2
> 11,000 Btu/h, without Louvers	2.6	2.6	3.7	3.7	3.7	25.9
Distribution of Consumer LCC Impacts						
< 6,000 Btu/h, with Louvers:						
Net Cost (%)	21%	33%	21%	65%	65%	90%
No Impact (%)	31%	31%	31%	1%	1%	0%
Net Benefit (%)	48%	37%	48%	34%	34%	10%
8,000–13,999 Btu/h, with Louvers:						
Net Cost (%)	9%	9%	34%	34%	56%	77%
No Impact (%)	60%	60%	2%	2%	1%	0%
Net Benefit (%)	30%	30%	64%	64%	43%	22%
20,000–24,999 Btu/h, with Louvers:						

TABLE II.5—SUMMARY OF RESULTS FOR ROOM AIR CONDITIONER TRIAL STANDARD LEVELS: CONSUMER AND MANUFACTURER IMPACTS—Continued

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Net Cost (%)	5%	5%	0%	5%	0%	98%
No Impact (%)	85%	85%	0%	85%	0%	2%
Net Benefit (%)	10%	10%	0%	10%	0%	0%
>25,000 Btu/h, with Louvers:						
Net Cost (%)	11%	11%	0%	9%	0%	100%
No Impact (%)	85%	85%	0%	88%	0%	0%
Net Benefit (%)	4%	4%	0%	4%	0%	0%
8,000–10,999 Btu/h, without Louvers:						
Net Cost (%)	1%	1%	12%	12%	38%	92%
No Impact (%)	90%	90%	25%	25%	6%	2%
Net Benefit (%)	9%	9%	62%	62%	56%	6%
>11,000 Btu/h, without Louvers:						
Net Cost (%)	2%	2%	23%	23%	23%	93%
No Impact (%)	90%	90%	31%	31%	31%	0%
Net Benefit (%)	8%	8%	47%	47%	47%	7%

Parentheses indicate negative (−) values.

* For LCCs, a negative value means an increase in LCC by the amount indicated.

** In some cases the standard level is the same as the baseline efficiency level, so no consumers are impacted and therefore calculation of a payback period is not applicable.

DOE first considered TSL 6, which represents the max-tech efficiency levels. TSL 6 would save 0.665 quads of energy, an amount DOE considers significant. Under TSL 6, the NPV of consumer benefit would be −$4.44 billion, using a discount rate of 7 percent, and −$5.62 billion, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 6 are 37.7 Mt of CO_2, 30.7 thousand tons of NO_X, and 0.044 tons of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 6 ranges from $166 million to $2,541 million. Total generating capacity in 2043 is estimated to decrease by 1.46 GW under TSL 6.

At TSL 6, the average LCC impact is a cost (LCC increase) of $58 for room air conditioners <6,000 Btu/h, with louvers; a cost of $38 for room air conditioners 8,000–13,999 Btu/h, with louvers; a cost of $214 for room air conditioners 20,000–24,999 Btu/h, with louvers; a cost of $227 for room air conditioners >25,000 Btu/h, with louvers; a cost of $66 for room air conditioners 8,000–10,999 Btu/h, without louvers; and a cost of $64 for room air conditioners >11,000 Btu/h, without louvers. The median payback period is 20.9 years for room air conditioners <6,000 Btu/h, with louvers; 14.7 years for room air conditioners 8,000–13,999 Btu/h, with louvers; 73.8 years for room air conditioners 20,000–24,999 Btu/h, with louvers; 107.7 years for room air conditioners >25,000 Btu/h, with louvers; 25.2 years for room air conditioners 8,000–10,999 Btu/h, without louvers; and 25.9 years for room air conditioners >11,000 Btu/h, without louvers. The fraction of consumers experiencing an LCC benefit is 10 percent for room air conditioners <6,000 Btu/h, with louvers; 22 percent for room air conditioners 8,000–13,999 Btu/h, with louvers; zero percent for room air conditioners 20,000–24,999 Btu/h, with louvers; zero percent for room air conditioners >25,000 Btu/h, with louvers; 6 percent for room air conditioners 8,000–10,999 Btu/h, without louvers; and 7 percent for room air conditioners >11,000 Btu/h, without louvers. The fraction of consumers experiencing an LCC cost is 90 percent for room air conditioners <6,000 Btu/h, with louvers; 77 percent for room air conditioners 8,000–13,999 Btu/h, with louvers; 98 percent for room air conditioners 20,000–24,999 Btu/h, with louvers; 100 percent for room air conditioners >25,000 Btu/h, with louvers; 92 percent for room air conditioners 8,000–10,999 Btu/h, without louvers; and 93 percent for room air conditioners >11,000 Btu/h, without louvers.

At TSL 6, the projected change in INPV ranges from a decrease of $80.2 million to a decrease of $344.5 million. At TSL 6, DOE recognizes the risk of large negative impacts if manufacturers' expectations concerning reduced profit margins are realized. If the high end of the range of impacts is reached as DOE expects, TSL 6 could result in a net loss of 36.0 percent in INPV to room air conditioner manufacturers.

The Secretary concludes that at TSL 6 for room air conditioners, the benefits of energy savings, generating capacity reductions, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the negative NPV of consumer benefits, the economic burden on a significant fraction of consumers due to the large increases in product cost, and the capital conversion costs and profit margin impacts that could result in a large reduction in INPV for the manufacturers. Consequently, the Secretary has concluded that TSL 6 is not economically justified.

DOE next considered TSL 5. TSL 5 would save 0.477 quads of energy, an amount DOE considers significant. Under TSL 5, the NPV of consumer benefit would be $0.33 billion, using a discount rate of 7 percent, and $1.46 billion, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 5 are 26.9 Mt of CO_2, 21.9 thousand tons of NO_X, and 0.032 ton of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 5 ranges from $118 million to $1,803 million. Total generating capacity in 2043 is estimated to decrease by 1.01 GW under TSL 5.

At TSL 5, the average LCC impact is a savings (LCC decrease) of $7 for room air conditioners <6,000 Btu/h, with louvers; a savings of $22 for room air conditioners 8,000–13,999 Btu/h, with louvers; a savings of $0 for room air conditioners 20,000–24,999 Btu/h, with louvers; a savings of $0 for room air conditioners >25,000 Btu/h, with louvers; a savings of $20 for room air conditioners 8,000–10,999 Btu/h, without louvers; and a savings of $11 for room air conditioners >11,000 Btu/h, without louvers. The median payback period is 8.6 years for room air conditioners <6,000 Btu/h, with louvers; 7.1 years for room air

conditioners 8,000–13,999 Btu/h, with louvers; not applicable for room air conditioners 20,000–24,999 Btu/h, with louvers or for room air conditioners > 25,000 Btu/h, with louvers; [4] 4.9 years for room air conditioners 8,000–10,999 Btu/h, without louvers; and 3.7 years for room air conditioners > 11,000 Btu/h, without louvers. The fraction of consumers experiencing an LCC benefit is 34 percent for room air conditioners < 6,000 Btu/h, with louvers; 43 percent for room air conditioners 8,000–13,999 Btu/h, with louvers; zero percent for room air conditioners 20,000–24,999 Btu/h, with louvers; zero percent for room air conditioners > 25,000 Btu/h, with louvers; 56 percent for room air conditioners 8,000–10,999 Btu/h, without louvers; and 47 percent for room air conditioners > 11,000 Btu/h, without louvers. The fraction of consumers experiencing an LCC cost is 65 percent for room air conditioners < 6,000 Btu/h, with louvers; 56 percent for room air conditioners 8,000–13,999 Btu/h, with louvers; zero percent for room air conditioners 20,000–24,999 Btu/h, with louvers; zero percent for room air conditioners > 25,000 Btu/h, with louvers; 38 percent for room air conditioners 8,000–10,999 Btu/h, without louvers; and 23 percent for room air conditioners > 11,000 Btu/h, without louvers.

At TSL 5, the projected change in INPV ranges from a decrease of $86.6 million to a decrease of $184.4 million. At TSL 5, DOE recognizes the risk of moderately negative impacts if manufacturers' expectations concerning reduced profit margins are realized. If the high end of the range of impacts is reached as DOE expects, TSL 5 could result in a net loss of 19.3 percent in INPV to room air conditioner manufacturers.

The Secretary concludes that at TSL 5 for room air conditioners, the benefits of energy savings, positive NPV of consumer benefits, generating capacity reductions, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the economic burden on a significant fraction of consumers in some product classes due to the large increases in product cost, and the capital conversion costs and profit margin impacts that could result in a moderate reduction in INPV for the manufacturers. In particular, the fraction of consumers experiencing an LCC cost is 56 percent for room air conditioners with 8,000–13,999 Btu/h, with louvers, which is the product class with the largest market share. Based on the above findings, the Secretary has concluded that TSL 5 is not economically justified.

DOE then considered TSL 4. TSL 4 would save 0.305 quads of energy, an amount DOE considers significant. Under TSL 4, the NPV of consumer benefit would be $0.57 billion, using a discount rate of 7 percent, and $1.47 billion, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 4 are 17.4 Mt of CO_2, 14.2 thousand tons of NO_X, and 0.022 ton of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 4 ranges from $77 million to $1,164 million. Total generating capacity in 2043 is estimated to decrease by 0.632 GW under TSL 4.

At TSL 4, DOE projects that the average LCC impact is a savings (LCC decrease) of $7 for room air conditioners < 6,000 Btu/h, with louvers; a savings of $22 for room air conditioners 8,000–13,999 Btu/h, with louvers; a savings of $6 for room air conditioners 20,000–24,999 Btu/h, with louvers; a savings of $1 for room air conditioners > 25,000 Btu/h, with louvers; a savings of $13 for room air conditioners 8,000–10,999 Btu/h, without louvers; and a savings of $11 for room air conditioners > 11,000 Btu/h, without louvers. The median payback period is 8.6 years for room air conditioners < 6,000 Btu/h, with louvers; 2.8 years for room air conditioners 8,000–13,999 Btu/h, with louvers; 4.3 years for room air conditioners 20,000–24,999 Btu/h, with louvers; 10.1 years for room air conditioners > 25,000 Btu/h, with louvers; 2.1 years for room air conditioners 8,000–10,999 Btu/h, without louvers; and 3.7 years for room air conditioners > 11,000 Btu/h, without louvers. The fraction of consumers experiencing an LCC benefit is 34 percent for room air conditioners < 6,000 Btu/h, with louvers; 64 percent for room air conditioners 8,000–13,999 Btu/h, with louvers; 10 percent for room air conditioners 20,000–24,999 Btu/h, with louvers; 4 percent for room air conditioners > 25,000 Btu/h, with louvers; 62 percent for room air conditioners 8,000–10,999 Btu/h, without louvers; and 47 percent for room air conditioners > 11,000 Btu/h, without louvers. The fraction of consumers experiencing an LCC cost is 65 percent for room air conditioners < 6,000 Btu/h, with louvers; 34 percent for room air conditioners 8,000–13,999 Btu/h, with louvers; 5 percent for room air conditioners 20,000–24,999 Btu/h, with louvers; 9 percent for room air conditioners > 25,000 Btu/h, with louvers; 12 percent for room air conditioners 8,000–10,999 Btu/h, without louvers; and 23 percent for room air conditioners > 11,000 Btu/h, without louvers.

At TSL 4, the projected change in INPV ranges from a decrease of $111.3 million to a decrease of $177.6 million. DOE recognizes the risk of moderately negative impacts if manufacturers' expectations concerning reduced profit margins are realized. If the high end of the range of impacts is reached as DOE expects, TSL 4 could result in a net loss of 18.6 percent in INPV to room air conditioner manufacturers.

The Secretary concludes that at TSL 4 for room air conditioners, the benefits of energy savings, generating capacity reductions, emission reductions and the estimated monetary value of the CO_2 emissions reductions, positive NPV of consumer benefits and positive average consumer LCC savings outweigh the economic burden on some consumers (a significant fraction for one product class but small to moderate fractions for the other product classes) due to the increases in product cost, and the capital conversion costs and profit margin impacts that could result in a moderate reduction in INPV for the manufacturers.

In addition, the efficiency levels in TSL 4 correspond to the recommended levels in the consensus agreement, which DOE believes sets forth a statement by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates) and contains recommendations with respect to an energy conservation standard that are in accordance with 42 U.S.C. 6295(o). Moreover, DOE has encouraged the submission of consensus agreements as a way to get diverse stakeholders together, to develop an independent and probative analysis useful in DOE standard setting, and to expedite the rulemaking process. DOE also believes that standard levels recommended in the consensus agreement may increase the likelihood for regulatory compliance, while decreasing the risk of litigation.

After considering the analysis, comments on the preliminary TSD, and the benefits and burdens of TSL 4, DOE concludes preliminarily that this trial standard level would offer the maximum improvement in efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy. Therefore, DOE proposes to

[4] In these cases the standard level is the same as the baseline efficiency level, so no consumers are impacted and therefore calculation of a payback period is not applicable.

adopt TSL 4 for room air conditioners. The proposed energy conservation standards for room air conditioners, expressed as combined energy efficiency ratio (CEER) in Btu per watt-hour (Wh), are shown in Table II.6.

TABLE II.6—PROPOSED AMENDED ENERGY CONSERVATION STANDARDS FOR ROOM AIR CONDITIONERS

Room air conditioners	
Product class	Minimum CEER levels *Btu/Wh*
1. Without reverse cycle, with louvered sides, and less than 6,000 Btu/h	11.0
2. Without reverse cycle, with louvered sides, and 6,000 to 7,999 Btu/h	11.0
3. Without reverse cycle, with louvered sides, and 8,000 to 13,999 Btu/h	10.9
4. Without reverse cycle, with louvered sides, and 14,000 to 19,999 Btu/h	10.7
5a. Without reverse cycle, with louvered sides, and 20,000 to 24,999 Btu/h	9.4
5b. Without reverse cycle, with louvered sides, and 25,000 Btu/h or more	9.0
6. Without reverse cycle, without louvered sides, and less than 6,000 Btu/h	10.0
7. Without reverse cycle, without louvered sides, and 6,000 to 7,999 Btu/h	10.0
8a. Without reverse cycle, without louvered sides, and 8,000 to 10,999 Btu/h	9.6
8b. Without reverse cycle, without louvered sides, and 11,000 to 13,999 Btu/h	9.5
9. Without reverse cycle, without louvered sides, and 14,000 to 19,999 Btu/h	9.3
10. Without reverse cycle, without louvered sides, and 20,000 Btu/h or more	9.4
11. With reverse cycle, with louvered sides, and less than 20,000 Btu/h	9.8
12. With reverse cycle, without louvered sides, and less than 14,000 Btu/h	9.3
13. With reverse cycle, with louvered sides, and 20,000 Btu/h or more	9.3
14. With reverse cycle, without louvered sides, and 14,000 Btu/h or more	8.7
15. Casement-only	9.5
16. Casement-slider	10.4

C. Summary of Benefits and Costs (Annualized) of the Standards

The benefits and costs of today's standards can also be expressed in terms of annualized values. The annualized monetary values are the sum of (1) the annualized national economic value, expressed in 2009$, of the benefits from operating products that meet the proposed standards (consisting primarily of operating cost savings from using less energy, minus increases in equipment purchase costs, which is another way of representing consumer NPV), and (2) the monetary value of the benefits of emission reductions, including CO_2 emission reductions.[5] The value of the CO_2 reductions, otherwise known as the Social Cost of Carbon (SCC), is calculated using a range of values per metric ton of CO_2 developed by a recent interagency process. The monetary costs and benefits of cumulative emissions reductions are reported in 2009$ to permit comparisons with the other costs and benefits in the same dollar units.

Although combining the values of operating savings and CO_2 reductions provides a useful perspective, two issues should be considered. First, the national operating savings are domestic U.S. consumer monetary savings that occur as a result of market transactions while the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and CO_2 savings are performed with different methods that use quite different time frames for analysis. The national operating cost savings is measured for the lifetime of products shipped in 2014–2043. The SCC values, on the other hand, reflect the present value of future climate-related impacts resulting from the emission of one ton of carbon dioxide in each year. These impacts go well beyond 2100.

Table II.7 and Table II.8 show the annualized values for clothes dryers and room air conditioners, respectively. Using a 7-percent discount rate and the SCC value of $22.1/ton in 2010 (in 2009$), the cost of the standards for clothes dryers in today's rule is $52.3 million per year in increased equipment costs, while the annualized benefits are $139.1 million per year in reduced equipment operating costs, $25.0 million in CO_2 reductions, and $0.9 million in reduced NO_X emissions. In this case, the net benefit amounts to $112.7 million per year. Using a 3-percent discount rate and the SCC value of $22.1/ton in 2010 (in 2009$), the cost of the standards for clothes dryers in today's rule is $55.4 million per year in increased equipment costs, while the benefits are $209.1 million per year in reduced operating costs, $25.0 million in CO_2 reductions, and $1.4 million in reduced NO_X emissions. In this case, the net benefit amounts to $180.1 million per year.

Using a 7-percent discount rate and the SCC value of $22.1/ton in 2010 (in 2009$), the cost of the standards for room air conditioners in today's rule is $107.7 million per year in increased equipment costs, while the annualized benefits are $153.7 million per year in reduced equipment operating costs, $19.5 million in CO_2 reductions, and $0.999 million in reduced NO_X emissions. In this case, the net benefit amounts to $66.4 million per year. Using a 3-percent discount rate and the SCC value of $22.1/ton in 2010 (in 2009$), the cost of the standards for room air conditioners in today's rule is $111.0 million per year in increased equipment costs, while the benefits are $186.2 million per year in reduced operating costs, $19.5 million in CO_2 reductions, and $1.20 million in reduced NO_X emissions. In this case, the net benefit amounts to $95.9 million per year.

[5] DOE used a two-step calculation process to convert the time-series of costs and benefits into annualized values. First, DOE calculated a present value in 2011, the year used for discounting the NPV of total consumer costs and savings, for the time-series of costs and benefits using discount rates of three and seven percent for all costs and benefits except for the value of CO_2 reductions. For the latter, DOE used a range of discount rates, as shown in Table II.7. From the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in 2011, that yields the same present value. The fixed annual payment is the annualized value. Although DOE calculated annualized values, this does not imply that the time-series of costs and benefits from which the annualized values were determined would be a steady stream of payments.

TABLE II.7—ANNUALIZED BENEFITS AND COSTS OF AMENDED STANDARDS (TSL 4) FOR CLOTHES DRYERS SOLD IN 2014–2043

	Discount rate	Monetized (*million 2009$/year*)		
		Primary estimate *	Low estimate *	High estimate *
Benefits				
Operating Cost Savings	7%	139.1	120.6	158.3
	3%	209.1	177.4	241.3
CO_2 Reduction at $4.9/t **	5%	6.0	6.0	6.0
CO_2 Reduction at $22.1/t **	3%	25.0	25.0	25.0
CO_2 Reduction at $36.3/t **	2.5%	39.8	39.8	39.8
CO_2 Reduction at $67.1/t **	3%	76.0	76.0	76.0
NO_X Reduction at $2,519/ton **	7%	0.9	0.9	0.9
	3%	1.4	1.4	1.4
Total †	7% plus CO_2 range	146.1 to 216.1	127.6 to 197.6	165.3 to 235.3
	7%	165.0	146.5	184.3
	3%	235.4	203.7	267.6
	3% plus CO_2 range	216.5 to 286.5	184.8 to 254.8	248.7 to 318.7
Costs				
Incremental Product Costs	7%	52.3	48.8	55.9
	3%	55.4	51.2	59.6
Total Net Benefits				
Total †	7% plus CO_2 range	93.7 to 163.7	78.7 to 148.7	109.4 to 179.4
	7%	112.7	97.7	128.3
	3%	180.1	152.5	208.1
	3% plus CO_2 range	161.1 to 231.1	133.6 to 203.6	189.1 to 259.1

* The Primary, Low, and High Estimates utilize forecasts of energy prices and housing starts from the *AEO2010* Reference case, Low Economic Growth case, and High Economic Growth case, respectively.

** The CO_2 values represent global values (in 2009$) of the social cost of CO_2 emissions in 2010 under several scenarios. The values of $4.9, $22.1, and $36.3 per ton are the averages of SCC distributions calculated using 5-percent, 3-percent, and 2.5-percent discount rates, respectively. The value of $67.1 per ton represents the 95th percentile of the SCC distribution calculated using a 3-percent discount rate. The value for NO_X (in 2009$) is the average of the low and high values used in DOE's analysis.

† Total Benefits for both the 3-percent and 7-percent cases are derived using the SCC value calculated at a 3-percent discount rate, which is $22.1/ton in 2010 (in 2009$). In the rows labeled as "7% plus CO_2 range" and "3% plus CO_2 range," the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

TABLE II.8—ANNUALIZED BENEFITS AND COSTS OF AMENDED STANDARDS (TSL 4) FOR ROOM AIR CONDITIONERS SOLD IN 2014–2043

	Discount rate	Monetized (*million 2009$/year*)		
		Primary estimate *	Low estimate *	High estimate *
Benefits				
Operating Cost Savings	7%	153.7	145.1	161.9
	3%	186.2	174.2	197.3
CO_2 Reduction at $4.9/t **	5%	5.0	5.0	5.0
CO_2 Reduction at $22.1/t **	3%	19.5	19.5	19.5
CO_2 Reduction at $36.3/t **	2.5%	30.7	30.7	30.7
CO_2 Reduction at $67.1/t **	3%	59.4	59.4	59.4
NO_X Reduction at $2,519/ton **	7%	0.999	0.999	0.999
	3%	1.197	1.197	1.197
Total †	7% plus CO_2 range	159.6 to 214.0	151.1 to 205.5	167.9 to 222.3
	7%	174.1	165.5	182.4
	3%	206.8	194.9	218.0
	3% plus CO_2 range	192.3 to 246.7	180.4 to 234.8	203.5 to 257.9
Costs				
Incremental Product Costs	7%	107.7	107.7	107.7
	3%	111.0	111.0	111.0
Total Net Benefits				
Total †	7% plus CO_2 range	51.9 to 106.3	43.4 to 97.8	60.2 to 114.6
	7%	66.4	57.8	74.7
	3%	95.9	83.9	107.0

TABLE II.8—ANNUALIZED BENEFITS AND COSTS OF AMENDED STANDARDS (TSL 4) FOR ROOM AIR CONDITIONERS SOLD IN 2014–2043—Continued

	Discount rate	Monetized (*million 2009$/year*)		
		Primary estimate *	Low estimate *	High estimate *
	3% plus CO_2 range	81.4 to 135.8	69.4 to 123.8	92.5 to 146.9

* The Primary, Low, and High Estimates utilize forecasts of energy prices and housing starts from the *AEO2010* Reference case, Low Economic Growth case, and High Economic Growth case, respectively.

** The CO_2 values represent global values (in 2009$) of the social cost of CO_2 emissions in 2010 under several scenarios. The values of $4.9, $22.1, and $36.3 per ton are the averages of SCC distributions calculated using 5-percent, 3-percent, and 2.5-percent discount rates, respectively. The value of $67.1 per ton represents the 95th percentile of the SCC distribution calculated using a 3-percent discount rate. The value for NO_X (in 2009$) is the average of the low and high values used in DOE's analysis.

† Total Benefits for both the 3-percent and 7-percent cases are derived using the SCC value calculated at a 3-percent discount rate, which is $22.1/ton in 2010 (in 2009$). In the rows labeled as "7% plus CO_2 range" and "3% plus CO_2 range," the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

III. Public Participation

A. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule until the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this notice.

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

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

Do not submit to *regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section below.

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

Submitting comments via e-mail, hand delivery/courier, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to *regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, e-mail address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. E-mail submissions are preferred. If you submit via mail or hand delivery/courier, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

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

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

Confidential business information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via e-mail, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via e-mail or on a CD, if feasible. 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.

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

B. Public Meeting

As stated previously, if DOE withdraws the direct final rule published elsewhere in today's **Federal Register** pursuant to 42 U.S.C. 6295(p)(4)(C), DOE will hold a public meeting to allow for additional comment on this proposed rule. DOE will publish notice of any meeting in the **Federal Register**.

IV. Procedural Issues and Regulatory Review

The regulatory reviews conducted for this proposed rule are identical to those conducted for the direct final rule published elsewhere in today's **Federal Register**. Please see the direct final rule for further details.

V. Approval of the Office of the Secretary

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

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Reporting and recordkeeping requirements, and Small businesses.

Issued in Washington, DC, on April 8, 2011.

Kathleen Hogan,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE proposes to amend chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

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

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

2. Revise § 430.32 paragraphs (b) and (h) to read as follows:

§ 430.32 Energy and water conservation standards and effective dates.

* * * * *

(b) *Room air conditioners.*

Product class	Energy efficiency ratio, effective from Oct. 1, 2000 to April 20, 2014	Combined energy efficiency ratio, effective as of April 21, 2014
1. Without reverse cycle, with louvered sides, and less than 6,000 Btu/h	9.7	11.0
2. Without reverse cycle, with louvered sides, and 6,000 to 7,999 Btu/h	9.7	11.0
3. Without reverse cycle, with louvered sides, and 8,000 to 13,999 Btu/h	9.8	10.9
4. Without reverse cycle, with louvered sides, and 14,000 to 19,999 Btu/h	9.7	10.7
5a. Without reverse cycle, with louvered sides, and 20,000 to 24,999 Btu/h	8.5	9.4
5b. Without reverse cycle, with louvered sides, and 25,000 Btu/h or more	.....	9.0
6. Without reverse cycle, without louvered sides, and less than 6,000 Btu/h	9.0	10.0
7. Without reverse cycle, without louvered sides, and 6,000 to 7,999 Btu/h	9.0	10.0
8a. Without reverse cycle, without louvered sides, and 8,000 to 10,999 Btu/h	8.5	9.6
8b. Without reverse cycle, without louvered sides, and 11,000 to 13,999 Btu/h	.....	9.5
9. Without reverse cycle, without louvered sides, and 14,000 to 19,999 Btu/h	8.5	9.3
10. Without reverse cycle, without louvered sides, and 20,000 Btu/h or more	8.5	9.4
11. With reverse cycle, with louvered sides, and less than 20,000 Btu/h	9.0	9.8
12. With reverse cycle, without louvered sides, and less than 14,000 Btu/h	8.5	9.3
13. With reverse cycle, with louvered sides, and 20,000 Btu/h or more	8.5	9.3
14. With reverse cycle, without louvered sides, and 14,000 Btu/h or more	8.0	8.7
15. Casement-Only	8.7	9.5
16. Casement-Slider	9.5	10.4

* * * * *

(h) *Clothes dryers.* (1) Gas clothes dryers manufactured after January 1, 1988 shall not be equipped with a constant burning pilot.

(2) Clothes dryers manufactured on or after May 14, 1994 and before [*DATE 3 YEARS AFTER FINAL RULE* ***FEDERAL REGISTER*** *PUBLICATION*], shall have an energy factor no less than:

Product class	Energy factor (lbs/kWh)
i. Electric, Standard (4.4 ft^3 or greater capacity)	3.01
ii. Electric, Compact (120V) (less than 4.4 ft^3 capacity)	3.13
iii. Electric, Compact (240V) (less than 4.4 ft^3 capacity)	2.90
iv. Gas	2.67

(3) Clothes dryers manufactured on or after [*DATE 3 YEARS AFTER FINAL RULE* ***FEDERAL REGISTER*** *PUBLICATION*], shall have a combined energy factor no less than:

Product class	Combined energy factor (lbs/kWh)
i. Vented Electric, Standard (4.4 ft^3 or greater capacity)	3.73
ii. Vented Electric, Compact (120V) (less than 4.4 ft^3 capacity)	3.61
iii. Vented Electric, Compact (240V) (less than 4.4 ft^3 capacity)	3.27
iv. Vented Gas	3.30
v. Ventless Electric, Compact (240V) (less than 4.4 ft^3 capacity)	2.55
vi. Ventless Electric, Combination Washer-Dryer	2.08

* * * * *

[FR Doc. 2011–9041 Filed 4–20–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–118761–09]

RIN 1545–BI92

Controlled Groups; Deferral of Losses

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance concerning the time for taking into account deferred losses on the sale or exchange of property between members of a controlled group. These proposed regulations affect members of a controlled group and their shareholders.

DATES: Written and electronic comments and requests for a public hearing must be received by July 20, 2011.

ADDRESSES: Send submissions to: CC: PA: LPD: PR (REG–118761–09), Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered to: CC:PA:LPD:PR Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–118761–09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–118761–09).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Bruce A. Decker (202) 622–7790; concerning submissions of comments and/or requests for a public hearing, *Richard.A.Hurst@irscounsel.treas.gov,* or (202) 622–7180.

SUPPLEMENTARY INFORMATION:

Background

This document provides guidance concerning the Federal income tax treatment of deferred losses on the sale or exchange of property between members of a controlled group, including transactions in which the member acquiring the property subsequently recognizes a corresponding gain with respect to the property.

Section 267(a)(1) provides that no deduction shall be allowed for any loss on the sale or exchange of property between certain related persons. Section 267(f)(2) contains an exception for a loss on the sale or exchange of property between members of a controlled group. For this purpose, "controlled group" has the meaning defined in section 1563(a) except that "more than 50 percent" is substituted for "at least 80 percent" each place it appears. In the case of a sale or exchange of loss property between members of a controlled group, the loss is deferred rather than disallowed. Under section 267(f)(2)(B), the loss is deferred until the property is transferred outside of the controlled group and there would be recognition of loss under consolidated return principles or until such other time as may be prescribed in regulations.

The regulations under section 267(f) provide that the timing principles for intercompany sales or exchanges between members of a consolidated group (see generally § 1.1502–13(c)(2)) apply to sales or exchanges of property at a loss between members of controlled group. See § 1.267(f)–1(a)(2). The attribute redetermination rules applicable to transactions between members of a consolidated group (see § 1.1502–13(c)(1)), however, do not apply to sales or exchanges between members of a controlled group. See § 1.267(f)–1(a)(2)(i)(B)). For example, if a member of a consolidated group (S) holds land for investment and sells the land at a loss to another member of its consolidated group (B), and B develops the land and sells developed lots to unrelated customers, S's intercompany loss will be taken into account when B sells the property to the unrelated person. Furthermore, S's loss will be recharacterized as an ordinary loss, even though S's loss would otherwise be a capital loss given its separate-entity status as holding the property for investment. See § 1.1502–13(c)(4)(i), (c)(7)(ii), Example 2. If B and S were members of a controlled group but not a consolidated group, S's loss would also be taken into account when B sells the parcel to an unrelated person, but S's loss would retain its character as a capital loss.

The attribute redetermination rule applicable to intercompany transactions between consolidated group members may have the effect of eliminating an intercompany loss with respect to a corporation's stock. For example, assume that S, a subsidiary in a consolidated group, owns 100 percent of the stock of T, a solvent corporation. S sells 30 percent of T's stock at a loss to B, the common parent of the consolidated group that includes S. In a subsequent, unrelated transaction (and before any change in the value of the T stock), T liquidates. The attribute redetermination rule of § 1.1502–13(c)(1) recharacterizes S's intercompany loss to produce the same results to the consolidated group as a whole as if S and B were divisions of a single corporation. Under these facts, the subsequent liquidation of T, tax-free under section 332, would cause S's intercompany loss to be treated as a noncapital nondeductible amount. See § 1.1502–13(f)(7), *Example 5(c).*

Although the attribute redetermination rule generally does not apply to sales or exchanges between members of a controlled group, § 1.267(f)–1(c)(1)(iv) contains a special rule with respect to losses that would have been redetermined to be a noncapital, nondeductible amount if the consolidated return attribute redetermination rule did apply. Under § 1.267(f)–1(c)(1)(iv), if an intercompany loss between members of a consolidated group would have been redetermined to be a noncapital, nondeductible amount as a result of the attribute redetermination rule applicable to consolidated groups, but is not redetermined because the sale or exchange occurred between members of a controlled group (to which the attribute redetermination rule does not apply), then the loss will be deferred until S and B are no longer in a controlled group relationship. Thus, if the facts in the example in the preceding paragraph were the same, except that B was the parent of a controlled group that included S, rather than a consolidated group, under the principles of section 267(f), the IRS and Treasury Department believe that S's loss on the sale or exchange of T stock should be deferred until S and B (and their successors) are no longer in a controlled group relationship.

Furthermore, assume S1 and S2, both members of a consolidated group, each own 50 percent of the stock of T. If the basis of the T stock is greater than its value, a liquidation of T would generally result in non-recognition of the loss through the application of § 1.1502–34 and section 332. In an attempt to avoid the non-recognition of the loss, either S1 or S2 may sell more than 20 percent of T's stock to a nonconsolidated, controlled group member in a transaction that is treated as a sale or exchange for Federal income tax purposes. Thereafter, T is liquidated in an attempt to recognize a loss on 100 percent of the subsidiary's stock. The IRS and Treasury Department believe that in these situations, the loss should similarly be deferred until the buying and selling members are no longer in a controlled group relationship.

In a controlled group setting, taxpayers have noted that the current regulations do not allow S to take into

account any amount of the intercompany loss when B recognizes a corresponding gain. For example, if S sells 30 percent of T's stock to B at a loss (in a transaction that is treated as a sale or exchange for federal income tax purposes) and T's stock appreciates between the time of the intercompany sale and a subsequent event that results in B's recognition of gain (that is T's liquidation), B would recognize a gain under section 331 at that time, but S's loss would remain deferred in its entirety. Accordingly, the IRS and the Treasury Department propose to modify the current regulations and allow S's intercompany loss to be taken into account to the extent that B recognizes a corresponding gain, in addition to the other events that result in acceleration.

Explanation of Provisions

These proposed regulations provide that, for purposes of determining whether a loss would be determined to be a noncapital, nondeductible amount under the principles of § 1.1502–13, stock held by the selling member, stock held by the buying member, and stock held by all members of the seller's consolidated group as well as stock held by any member of a controlled group of which the seller is a member that was acquired from a member of the seller's consolidated group must be taken into account. In addition, certain losses on the sale or exchange of property between members of a controlled group, which have been deferred, are taken into account upon the occurrence of either of two events. The deferred loss is taken into account to the extent of any corresponding gain that the member acquiring the property recognizes with respect to the property. Alternatively, the deferred loss is taken into account when the parties to the transaction cease to be in a controlled group relationship. In the example, under the proposed regulations, S's loss will be recognized to the extent of the amount of corresponding gain recognized by B upon the event that results in recognition of that gain (that is T's liquidation).

Proposed Effective/Applicability Date

These proposed regulations will apply to loss redetermination events that occur after the date the regulations are published as final regulations in the **Federal Register**.

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 is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations primarily affect controlled groups of corporations which tend to be larger businesses. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Small Business Administration for comment on its impact on small governmental jurisdictions.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments are available at *http://www.regulations.gov* or upon request. 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 Bruce A. Decker, Office of Associate Chief Counsel (Corporate), IRS. However, other personnel from the Treasury Department and the IRS 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 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.267(f)–1 is amended as follows:

1. Paragraph (c)(1)(iv) is revised.

2. Paragraph (l)(3) is redesignated as paragraph (l)(4) and paragraph (l)(3) is added.

The addition and revision read as follows:

§ 1.267(f)–1 Controlled groups.

* * * * *

(c) * * *

(1) * * *

(iv) *B's item is excluded from gross income or noncapital and nondeductible.* To the extent S's loss would be redetermined to be a noncapital, nondeductible amount under the principles of § 1.1502–13, but is not redetermined because of paragraph (c)(2) of this section (which generally renders the attribute redetermination rule inapplicable to sales between members of a controlled group), S's loss continues to be deferred. The preceding sentence does not apply, however, to the extent paragraph (c)(1)(iii) of this section applies as a result of a transfer of the property to certain related persons. If the loss is deferred, it is taken into account when S and B (including their successors) are no longer in a controlled group relationship or to the extent of any corresponding income or gain recognized by B with respect to the property, whichever occurs first. For example, if S sells all of the stock of corporation T to B at a loss (in a transaction that is treated as a sale or exchange for Federal income tax purposes), and T subsequently liquidates in an unrelated transaction that qualifies under section 332, S's loss is deferred until S and B are no longer in a controlled group relationship. Similarly, if S owns all of the T stock, sells 30 percent of T's stock to B at a loss (in a transaction that is treated as a sale or exchange for Federal income tax purposes), and T subsequently liquidates into S and B, S's loss on the sale is deferred until S and B (including their successors) are no longer in a controlled group relationship. If B recognizes any income or gain on amounts received in a distribution in complete liquidation of T, S will take into account its deferred loss on its sale of T stock to the extent of B's gain. For purposes of this paragraph, stock held by S, stock held by B, and stock held by all members of S's consolidated group as well as stock held by any member of a controlled group of which S is a member that was acquired from a member of S's consolidated group must be taken into account in determining whether a loss would be determined to be a noncapital, nondeductible amount under the principles of § 1.1502–13.

* * * * *

(l) * * *

* * * * *

(3) *Loss redetermination events.* Paragraph (c)(1)(iv) of this section applies to loss redetermination events occurring after the date these regulations are published as final regulations in the **Federal Register**.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2011–9606 Filed 4–20–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2011–0004; Notice No. 117; Re: Notice Nos. 34 and 42]

RIN 1513–AB44

Proposed Fort Ross-Seaview Viticultural Area; Comment Period Reopening

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking; comment period reopening.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau is reopening the comment period for Notice No. 34, which concerned the proposed establishment of the Fort Ross-Seaview viticultural area in western Sonoma County, California. Through this notice, TTB is soliciting comments on the establishment of the Fort Ross-Seaview viticultural area as proposed in Notice No. 34 and the issues raised in the public comments received in response to that notice, including a request to expand the proposed viticultural area. Given the conflicting evidence provided by the petitioner and by some commenters with respect to the distinguishing features and boundary of the proposed viticultural area, and the length of time that has passed since Notice No. 34 was published in 2005, TTB believes that the rulemaking record regarding the proposed Fort Ross-Seaview viticultural area should be reopened for public comment to ensure full public participation prior to any final regulatory action.

DATES: Written comments on the proposed Fort Ross-Seaview viticultural area are due on or before June 6, 2011.

ADDRESSES: You may send comments on Notice No. 34 to one of the following addresses:

- *http://www.regulations.gov:* Use the comment form for Notice No. 34 as posted within Docket No. TTB–2011–0004 on "Regulations.gov," the Federal e-rulemaking portal, to submit comments via the Internet;
- *Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.
- *Hand Delivery/Courier in Lieu of Mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20005.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of the petitions, supporting materials, published notices, and all public comments associated with this proposal within Docket No. TTB–2011–0004 at *http://www.regulations.gov.* You also may view copies of the petitions, supporting materials, published notices, and all public comments associated with this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. Please call 202–453–2270 to make an appointment.

FOR FURTHER INFORMATION CONTACT: Elisabeth C. Kann, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200E, Washington, DC 20220; phone 202–453–2002.

SUPPLEMENTARY INFORMATION:

Fort Ross-Seaview Rulemaking History

Original 2003 Petition and Notice No. 34

In 2003, Patrick Shabram, on his own behalf and on behalf of David Hirsch of Hirsch Vineyards, submitted a petition to establish the 27,500-acre "Fort Ross-Seaview" American viticultural area in western Sonoma County, California (hereinafter the "2003 petition"). The proposed Fort Ross-Seaview viticultural area is completely within the existing North Coast (27 CFR 9.30) and Sonoma Coast (27 CFR 9.116) viticultural areas. At the time of the 2003 petition, the Fort Ross-Seaview viticultural area contained 18 commercial vineyards, which covered approximately 506 acres.

In response to the 2003 petition, TTB published Notice No. 34, a notice of proposed rulemaking regarding the establishment of the Fort Ross-Seaview viticultural area, in the **Federal Register** of March 8, 2005 (70 FR 11174). In that notice, TTB requested comments by May 9, 2005, from all interested persons. In response to a request from a local wine industry member, TTB subsequently extended the comment period for Notice No. 34 until June 8, 2005 (see Notice No. 42, 70 FR 25000, May 12, 2005).

Comments Received in Response to Notice No. 34; Proposed Expansion Request

In response to Notice No. 34, TTB received seven comments concerning the proposed establishment of the Fort Ross-Seaview viticultural area. Two local wine industry members supported the petition without qualification; a third industry member supported the viticultural area's establishment while expressing concern about the potential effect of the proposed viticultural area on his "Fort Ross" brand names if "Fort Ross" alone were determined to be a term of viticultural significance.

Four commenters, all owners or operators of Sonoma County wineries and vineyards, opposed the establishment of the Fort Ross-Seaview viticultural area as outlined in Notice No. 34. Stating that their vineyards, all located to the north of the proposed Fort Ross-Seaview viticultural area, have the same viticultural characteristics as those found within the proposed area, these four commenters requested that TTB delay a final decision on the establishment of the Fort Ross-Seaview viticultural area so that they could gather additional evidence to support their contention that the proposed viticultural area should be expanded to include their properties.

In response, TTB advised the opposing commenters that evidence in support of a northern expansion of the proposed Fort Ross-Seaview viticultural area must be submitted to TTB in order for the agency to consider their request.

Subsequently, three of the opposing commenters submitted documentation to TTB in support of a 15,726-acre northern expansion of the Fort Ross-Seaview viticultural area proposed in Notice No. 34.

After submission of the commenters' documentation in support of a northern addition, TTB shared the documentation with the petitioner for the Fort Ross-Seaview viticultural area. In response, Patrick Shabram, the author of the 2003 Fort Ross-Seaview viticultural area petition and a professional geographer specializing in Sonoma County viticulture, submitted additional documentation to support the originally petitioned proposed Fort Ross-Seaview viticultural area name and boundary line.

Revision of Viticultural Area Regulations

On January 20, 2011, TTB issued a final rule revising certain sections of its

regulations related to petitions for and the establishment of viticultural areas as found in 27 CFR parts 4 and 9. These revisions are contained in T.D. TTB–90 (76 FR 3489). As such, references to parts 4 and 9 regulatory sections within Notice No. 34 may no longer be valid. For example, the regulation outlining the requirements that a proposed viticultural area petition must meet, formerly located in § 9.3, is now contained in § 9.12. To view T.D. TTB–90, go to *http://edocket.access.gpo.gov/2011/pdf/2011-1138.pdf;* to view 27 CFR parts 4 and 9 in their current form, go to the e-CFR at *http://www.gpoaccess.gov/ecfr/.*

Determination To Re-Open Public Comment Period

Given the conflicting evidence provided by the original petitioner and by some commenters with respect to the distinguishing features and boundary of the proposed viticultural area, and the length of time that has passed since TTB published Notice No. 34 and solicited public comments on the proposed establishment of the Fort Ross-Seaview viticultural area, TTB has determined that it would be appropriate to re-open the comment period before taking any final action concerning Notice No. 34. Therefore, TTB reopens the comment period for Notice No. 34 for an additional 45 days, and comments are thus due on or before June 6, 2011.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on whether or not the agency should establish the proposed "Fort Ross-Seaview" viticultural area in Sonoma County, California. TTB is especially interested in receiving comments on the sufficiency and accuracy of the proposed viticultural area's name, "Fort Ross-Seaview," on the name's applicability to the proposed northern expansion area, and on any alternative names for the proposed viticultural area and the northern expansion area. TTB also is especially interested in public comments on the appropriateness of the proposed viticultural area's boundaries—is the proposed viticultural area limited to the boundaries outlined in Notice No. 34 or does the area extend further to the north as stated by opposing commenters? Please provide specific information in support of your comments.

Copies of the original 2003 Fort Ross-Seaview petition, Notice No. 34, the original comments received in response to that notice, the documentation submitted in support of a 15,726-acre northern expansion of the proposed viticultural area, Mr. Shabram's response to the northern expansion documentation, and this notice are posted for public viewing within Docket No. TTB–2011–0004 on Regulations.gov, the Federal e-rulemaking portal, at *http://www.regulations.gov.* A link to the Regulations.gov search page is available under Notice No. 117 on the TTB Web site at *http://www.ttb.gov/wine/wine-rulemaking.shtml.*

Submitting Comments

When submitting your comment, it must reference Notice No. 34 and include your name and mailing address. You may submit comments on Notice No. 34 by using one of the following three methods:

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form linked to Notice No. 34 as posting within Docket No. TTB–2011–0004 on "Regulations.gov," the Federal e-rulemaking portal, at *http://www.regulations.gov.* Supplemental files may be attached to comments submitted via Regulations.gov. For information on how to use Regulations.gov, click on the site's Help or FAQ tabs.
- *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.
- *Hand Delivery/Courier:* You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20005.

Please submit your comments by the closing date shown above in this notice. Your comments must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments, and the Bureau considers all comments as originals.

If you are commenting on behalf of an association, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via Regulations.gov, please include the entity's name in the "Organization" blank of the comment form. If you comment via postal mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to public disclosure. Do not enclose any material in your comments that you consider to be confidential or that is inappropriate for public disclosure.

Public Disclosure

You may view copies of the petitions, supporting materials, published notices, and all public comments associated with this proposal within Docket No. TTB–2011–0004 at *http://www.regulations.gov.* You also may view copies of the petitions, supporting materials, published notices, and all public comments associated with this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. Please call 202–453–2270 to make an appointment. You may also obtain copies at 20 cents per 8.5 x 11-inch page. Contact the TTB information specialist at the above address or by telephone at 202–453–2270 to schedule an appointment or to request copies of comments or other materials.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including e-mail addresses. TTB may omit voluminous attachments or material that the Bureau considers unsuitable for posting.

Drafting Information

Michael Hoover of the Regulations and Rulings Division drafted this notice.

Signed: April 13, 2011.

John J. Manfreda,

Administrator.

[FR Doc. 2011–9635 Filed 4–20–11; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 538 and 560

Effectiveness of Licensing Procedures for Exportation of Agricultural Commodities, Medicine, and Medical Devices to Sudan and Iran; Comment Request

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Request for comments.

SUMMARY: The Office of Foreign Assets Control ("OFAC") of the U.S.

Department of the Treasury is soliciting comments on the effectiveness of OFAC's licensing procedures for the exportation of agricultural commodities, medicine, and medical devices to Sudan and Iran. Pursuant to section 906(c) of the Trade Sanctions Reform and Export Enhancement Act of 2000 (Title IX of Pub. L. 106–387, 22 U.S.C. 7201 *et seq.*) (the "Act"), OFAC is required to submit a biennial report to the Congress on the operation of licensing procedures for such exports.

DATES: Written comments should be received on or before May 23, 2011 to be assured of consideration.

ADDRESSES: You may submit comments by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Fax: Attn: Request for Comments (TSRA) (202) 622–0091.

Mail: Attn: Request for Comments (TSRA), Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information about these licensing procedures should be directed to the Licensing Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, *telephone:* (202) 622–2480 (not a toll free number). Additional information about these licensing procedures is also available under the heading "Other OFAC Sanctions Programs" via "Resources" at *http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx.*

SUPPLEMENTARY INFORMATION: The current procedures used by OFAC for authorizing the export of agricultural commodities, medicine, and medical devices to Sudan and Iran are set forth in 31 CFR 538.523–526 and 31 CFR 560.530–533. Under the provisions of section 906(c) of the Act, OFAC must submit a biennial report to the Congress on the operation, during the preceding two-year period, of the licensing procedures required by section 906 of the Act for the export of agricultural commodities, medicine, and medical devices to Sudan and Iran. This report is to include:

(1) The number and types of licenses applied for;

(2) The number and types of licenses approved;

(3) The average amount of time elapsed from the date of filing of a license application until the date of its approval;

(4) The extent to which the licensing procedures were effectively implemented; and

(5) A description of comments received from interested parties about the extent to which the licensing procedures were effective, after holding a public 30-day comment period.

This notice solicits comments from interested parties regarding the effectiveness of OFAC's licensing procedures for the export of agricultural commodities, medicine, and medical devices to Sudan and Iran for the time period of October 1, 2008–September 30, 2010. Interested parties submitting comments are asked to be as specific as possible. In the interest of accuracy and completeness, OFAC requires written comments. All comments received on or before May 23, 2011 will be considered by OFAC in developing the report to the Congress. Consideration of comments received after the end of the comment period cannot be assured.

All comments made will be a matter of public record. OFAC will not accept comments accompanied by a request that part or all of the comments be treated confidentially because of their business proprietary nature or for any other reason; OFAC will return such comments when submitted by regular mail to the person submitting the comments and will not consider them.

Copies of the public record concerning these regulations may be obtained from OFAC's Web site (*http://www.treasury.gov/ofac*). If that service is unavailable, written requests may be sent to: Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220, *Attn:* Andrea Gacki, Assistant Director for Licensing.

Note: On September 9, 2009, OFAC issued a general license authorizing most exports of agricultural commodities, medicine, and medical devices to the Specified Areas of Sudan as defined by 31 CFR 538.320. *See* 31 CFR 538.523(a)(2). Accordingly, specific licenses are no longer required for these exports.

Approved: April 8, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011–9568 Filed 4–20–11; 8:45 am]

BILLING CODE 4810–25–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 10–208; DA 11–702]

Further Inquiry Into Tribal Issues Relating to Establishment of a Mobility Fund

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks comment on particular issues for consideration by the Federal Communication Commission in connection with the proposed creation of a new Mobility Fund to make available one-time support to significantly improve coverage of current-generation or better mobile voice and Internet service for consumers in areas where such coverage is currently missing. Specifically, comment is sought on developing a more tailored approach that provides at least some Mobility Fund support for Tribal lands.

DATES: Comments are due on or before May 4, 2011.

ADDRESSES: You may submit comments, identified by WT Docket No. 10–208, by any of the following methods:

- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. 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.

• *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by *e-mail: FCC504@fcc.gov or telephone:* 202–418–0530 or TTY: 202–418–0432.

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* Scott Mackoul, Attorney Advisor, at (202) 418–7498.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Inquiry into Tribal Issues Relating to Establishment of a Mobility Fund Public Notice (*Tribal Issues for Mobility Fund Public Notice*) adopted and released on April 18, 2011, in WT Docket No. 10–208. The complete text of the *Tribal Issues for Mobility Fund Public Notice* is available for public inspection and copying from 8 a.m. to 4:30 p.m. ET Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Tribal Issues for Mobility Fund Public Notice* may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, fax 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI, please provide the appropriate FCC document number, for example, DA 11–702. The *Tribal Issues for Mobility Fund Public Notice* is also available on the Internet at the Commission's Web site or by using the search function for WT Docket No. 10–208 on the ECFS Web page at *http://www.fcc.gov/cgb/ecfs/.*

Synopsis of Public Notice

1. The Commission recently received comments on a Notice of Proposed Rulemaking, *Universal Service Reform Mobility Fund, Notice of Proposed Rulemaking,* 75 FR 67060, November 1, 2010 (*Mobility Fund NPRM*), to use reserves accumulated in the Universal Service Fund (USF) to create a Mobility Fund which would employ a market-based, reverse auction mechanism to award one-time support to providers to extend mobile voice coverage over current-generation 3G or 4G networks in areas where such networks are lacking.

2. In proposing the Mobility Fund, the Commission acknowledged the relatively low level of telecommunications deployment on and the distinct challenges in bringing connectivity to Tribal lands. The Commission further noted that, in light of the United States' unique government-to-government trust relationship with American Indian Tribes and Alaska Native Villages, and to address the particular challenges in advancing deployment on Tribal lands, a more tailored approach that provides at least some Mobility Fund support for Tribal lands on a separate track may be beneficial. The Commission sought broad comment on whether to reserve funds for developing a Mobility Fund program to target USF support separately to Tribal lands that trail national 3G coverage rates. Commenters to the proceeding generally support the adoption of a mechanism or program within the Mobility Fund focused on Tribal areas and provided input on a number of elements important to establishing a separate fund. There are particular issues related to the establishment of such a mechanism, however, for which additional comment may benefit the Commission as it considers how to proceed.

1. Possible Mechanism To Reflect Tribal Priorities for Competitive Bidding

3. The Commission acknowledges and respects the sovereignty and self-determination of Tribal governments, and recognizes their rights to establish their own communications priorities and goals. Commenters have suggested that Tribal governments are best positioned to identify what the needs of their members and communities are and to target resources to best achieve those goals. At the same time, the Commission has proposed that scarce USF resources may best be awarded through a competitive, market-based mechanism to maximize their impact. In considering whether to establish a program within the Mobility Fund focused on Tribal areas, the Commission seeks comment on how it might tailor its competitive bidding and other procedures to best meet Tribal needs. Accordingly, the Commission seeks comment on ways to afford Tribal governments an opportunity to identify their own priorities within the context of a reverse auction mechanism for Mobility Fund support.

4. By way of background, the reverse auction as proposed in the *Mobility Fund NPRM* would determine winning bidders support based on the lowest per-unit bids to cover designated unserved census blocks, using the population or some other metric such as road miles in the unserved areas as units and taking into account a requirement that there be no more than one Mobility Fund recipient in any particular unserved area. The auction mechanism would compare all per-unit bids across all areas (that is, compare all bids against all other bids throughout the eligible areas of the county, rather than compare all bids for a single area against each other), and rank all the submitted bids from lowest per-unit amount to highest. The bidder making the lowest per-unit bid would first be assigned support in an amount equal to the amount needed to cover the units deemed unserved in the specific area at the per-unit amount that was bid. Support would continue to be assigned to the bidders with the next lowest per-unit bids in turn, as long as support had not already been assigned for that area, until the sum of funds requested by the winning bidders was such that no further winning bids could be funded by the money available in the Mobility Fund. Support amounts would be based on the per-unit bids of the winning bidders times the number of unserved units associated with a particular geographic area.

5. The Commission seeks comment here on the possibility of providing to Tribal governments an additional specified number of "priority units" to ensure that Mobility Fund support for Tribal areas best serves Tribal needs. The priority units could be based upon the total number of units, however defined, in unserved blocks located within their Tribal lands boundaries. Tribes would have the flexibility to allocate these units in whatever manner they choose. Under this mechanism, Tribes could elect to allocate all of their priority units to one census block that is particularly important to them (for instance, because of the presence of an anchor institution, large numbers of unserved residents, etc.), or to divide the total number of priority units among multiple census blocks according to their relative priority. By giving Tribes an opportunity to allocate additional units to particular unserved census blocks within the boundaries of their Tribal land, a bidder could increase the number of units covered by its bid to cover those Unserved census blocks and therefore reduce its per-unit bid amount. This would increase the likelihood that the unserved census blocks assigned priority units would receive funding through the proposed competitive bidding process. If such bids were to be among those selected to receive support, support amounts would be based on the per-unit bid amount times the total of regular units and priority units for the area. The Commission invites comment on this proposal. In particular, the Commission invites comment on whether this

mechanism would help to ensure that Tribal priorities are met in providing USF support for the extension of mobile voice service. To the extent other options may be preferable, commenters are requested to discuss alternatives in detail and explain how these options would work in the context of the proposed competitive bidding mechanism. Commenters are also invited to provide information about what factors are most important in targeting limited support for mobile wireless service within Tribal lands.

2. Possible Requirement for Engagement With Tribal Governments Prior to Auction

6. Several commenters suggest that parties participating in a Mobility Fund auction seeking support to serve Tribal lands be required to demonstrate that Tribal governments have been formally and effectively engaged in the planning process and that the service to be provided will advance the goals established by the Tribal government. The Commission seeks comment on those proposals. What issues should receive priority in a flow of information and exchange of ideas with Tribal governments? What subjects of discussion will increase the potential for sustainability and adoption of the contemplated service? Among other things, the Commission believes the topics of engagement with Tribal governments could include: (1) Needs assessment, deployment planning and inclusion of Tribal anchor institutions and communities; (2) feasibility and sustainability planning; (3) marketing supported services in a culturally sensitive manner; (4) rights-of-way processes, land use permitting, facilities siting and cultural preservation review processes; and, (5) compliance with Tribal business and licensing requirements. At what point in time should any such engagement requirement apply (*e.g.,* at the short-form or long-form application stage)? Commenters are invited to address the appropriate scope and timing of a potential consultation requirement.

3. Possible Preference for Tribally-Owned and -Controlled Providers

7. At least one comment to the Mobility Fund NPRM suggested a preference for Tribally-owned and -controlled providers. Specifically, the Commission seeks comment on a proposal that would provide a form of bidding credit to qualified Tribally-owned and -controlled providers. If a provider qualified for this bidding credit, its per-unit bid amount would be reduced by a designated percentage for purposes of comparing it to other bids made—although if the bid were to win, support would be calculated at the full, undiscounted bid amount. That is, the "reduced" bid would fall lower in the ranking of bids from lowest to highest, making it more likely that a Tribally-owned and -controlled entity would be among the winning bidders eligible to receive funding, but the bidding credit would not reduce the amount of funding that the entity would receive if it were to be awarded support. The Commission seeks comment on this approach. The Commission also invites comment on whether a Tribal preference is appropriate in the context of awarding universal service funds. To the extent the Commission wishes to adopt such a bidding credit for Tribally-owned and -controlled providers, what percentage would be appropriate? Are there other methods the Commission should consider to provide a preference to Tribally-owned and -controlled providers? The Commission notes that the establishment of an absolute Tribal priority, as proposed in the mobile spectrum context and adopted in the context of the Tribal Priority for radio broadcast licensing, may not be appropriate here. This is because in the reverse auction mechanism proposed for the Mobility Fund, an award would not be made for each area, but instead support would be granted only for those areas where the per-unit bids are lowest.

8. The Commission also seeks comment on whether it should employ both a priority unit mechanism and a bidding preference for Tribal entities at the same time. And, if not, which of these mechanisms may work more effectively in a Mobility Fund auction to target support consistent with Tribal needs?

4. Timing of a Tribal Mobility Fund Auction

9. In the *Mobility Fund NPRM,* the Commission noted that addressing Mobility Fund support for Tribal lands on a separate track could be beneficial in providing adequate time to consult with Tribal governments and seek their input. While commenters generally supported creation of a separate Tribal Mobility Fund, they cautioned that addressing Tribal issues on a "separate track" should not put them on a "slow track." The Commission agrees that Tribal issues are a priority and should be resolved expeditiously in order to speed the provision of services on Tribal lands. The Commission observes, however, that there are pending proposals regarding utilization of spectrum over Tribal lands that could benefit from the support that may be available through a Tribal Mobility Fund auction. In particular, the *Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum Over Tribal Lands, Notice of Proposed Rulemaking,* 76 FR 18476, April 4, 2011, proposes a variety of options for Tribal entities to access spectrum over Tribal lands. The Commission seeks comment on the extent to which these open issues should influence the timing of a possible Tribal Mobility Fund auction.

Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), the *Mobility Fund NPRM* included an Initial Regulatory Flexibility Analysis (IRFA) pursuant to 5 U.S.C. 603, exploring the potential impact on small entities of the Commission's proposal. The Commission invites parties to file comments on the IRFA in light of this additional notice.

Procedural Matters

Ex Parte Presentations. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the *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 generally is required. Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.

Federal Communications Commission.

Margaret W. Wiener,

Chief, Auctions and Spectrum Access Division.

[FR Doc. 2011–9860 Filed 4–20–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 110218147–1199–01]

RIN 0648–BA74

National Standard 10 Guidelines

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce

ACTION: Advance notice of proposed rulemaking; request for comments; notice of a public meeting.

SUMMARY: NMFS issues this advance notice of proposed rulemaking (ANPR) to provide background information and request public comment on potential adjustments to the National Standard 10 Guidelines.

DATES: Written comments regarding the issues in this ANPR must be received by 5 p.m., local time, on July 20, 2011. A public meeting to obtain additional comments on the items discussed in this ANPR will be held at the NOAA Science Center in Silver Spring, MD, on May 19, 2011 from 1 p.m. to 3 p.m. NMFS may hold additional meetings during the comment period and will announce those meetings in the **Federal Register**.

ADDRESSES: A public meeting will be held on May 19, 2011 from 1 p.m. to 3 p.m. at the NOAA Science Center, 1301 East-West Highway; Silver Spring, MD 20910.

You may submit comments, identified by "0648–BA74", by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov.*
- *Fax:* 301–713–1193, Attn: Debra Lambert.
- *Mail:* Debra Lambert; National Marine Fisheries Service, NOAA; 1315 East-West Highway, Room 13403; Silver Spring, MD 20910.

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 publically accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Debra Lambert, National Marine Fisheries Service, 301–713–2341.

SUPPLEMENTARY INFORMATION:

Background

Section 301(a) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) contains 10 national standards (NS) with which all Fishery Management Plans (FMPs) and their amendments and implementing regulations must be consistent. Section 301(b) of the MSA requires that "the Secretary establish advisory guidelines (which shall not have the force and effect of law), based on the national standards to assist in the development of fishery management plans." Conforming to the NS guidelines (50 CFR part 600, subpart D) when preparing an FMP, FMP amendment, and regulations is essential to properly addressing the intentions of Congress when it established and revised the MSA.

The Sustainable Fisheries Act, signed into law in 1996, added National Standard 10 (NS10) to the MSA (15 U.S.C. 1801 *et seq.*). National Standard 10 states: "Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea." NMFS published final guidelines for NS10 in 1998 (63 FR 24212; May 1, 1998). More recently, the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, added section 303(a)(9)(C) to the MSA, which states that fishery impact statements shall address the impact of conservation and management measures and include possible mitigation measures for "the safety of human life at sea, including whether and to what extent such measures may affect the safety of participants to the fishery."

Need for Revision

Commercial fishing is one of the most dangerous occupations because fishing operations are often conducted under poor weather conditions, high winds, cold temperatures, and on moving platforms that can be slippery or icy; some gear types can be dangerous to operate; a number of structural or mechanical problems can arise on vessels; and the work can be physically straining and lead to fatigue. Recreational fishing, including the for-hire charter and party-boat segments, can also be a dangerous activity with participants facing many of the same risks as commercial participants.

The National Standard 10 Guidelines are the primary source of guidance for the consideration of safety issues in fishery management regulations. The current Guidelines are relatively short and have four main sections with the following elements: (1) A general statement that fishing is a dangerous occupation and recommendation that Regional Fishery Management Councils (Councils) reduce safety risks when developing management measures; an explanation of the qualifying phrase "to the extent practicable" in NS10; and an explanation that the phrase "safety of human life at sea" refers to both the safety of a fishing vessel and the safety of persons aboard the vessel; (2) a list of safety issues to consider when evaluating management measures; (3) a recommendation that during the preparation of any FMP, FMP amendment, or regulation that might affect safety of human life at sea, the Council should consult with the U.S. Coast Guard and fishing industry as to the nature and extent of any adverse impact; and (4) a list of mitigation measures that could be considered when management measures are developed.

Recent events suggest a need to revise the guidelines for NS10. The current Guidelines are thirteen years old and fisheries management and fishing vessel safety science in general has evolved during that time. NOAA has new fishery management requirements and policies in place, and the implementation of these measures will lead to changes in the way fisheries are managed. Major changes in fisheries management that change the way fishing operations are conducted, including catch share programs, could impact the safety of fishermen at sea, and those impacts should be assessed during the management process.

As mentioned above, section 303(a)(9)(C) to the MSA states that fishery impact statements shall include possible mitigation measures for "the safety of human life at sea, including whether and to what extent such measures may affect the safety of participants to the fishery." This is a relatively new requirement (added by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006) and NMFS could provide guidance on addressing this requirement in the revised National Standard 10 Guidelines.

There are also external factors that point to the need to focus on safety at sea. The Coast Guard Authorization Act (CGAA) of 2010 was signed by President Obama on October 15, 2010. Section 604 of the CGAA builds on requirements set forth in the Commercial Fishing Industry Vessel Safety Act of 1988, including the following: It authorizes the U.S. Coast Guard to examine at dockside, at least once every 2 years, fishing vessels that operate beyond 3 miles to ensure that they meet safety standards; it authorizes and requires a training program for the operators of fishing vessels that operate beyond 3 miles; and it establishes design and construction standards for all new vessels. Furthermore, the CGAA requires that Alternative Compliance and Safety Agreement programs be

developed for certain groups of existing fishing vessels. These new requirements highlight an emphasis on improving fishing vessel safety. NMFS will ensure that revisions to the NS10 Guidelines will complement the new mandates of the CGAA.

The current NS10 Guidelines do not contain any guidance on analytical methods to evaluate safety. Recent work by the National Institute for Occupational Safety and Health and the U.S. Coast Guard has shown that the fishery management process can more explicitly address safety at sea by analyzing fatalities and calculating fatality rates for the fishery and understanding the overall trend in fatality rates. This information can be used in risk assessments to identify major hazards within a fishery. NMFS could include guidance on the analytical approaches for addressing safety considerations in the revised NS10 Guidelines.

For the above reasons, NMFS believes it is appropriate and timely to revise NS10 Guidelines and is accepting public comments on potential revisions to the Guidelines. Through the revision of the NS10 Guidelines, NMFS intends to enhance consideration of safety issues in fisheries management.

Public Comments

To help determine the scope of issues to be addressed and to identify significant issues related to this action, NMFS is soliciting written comments on this ANPR and will hold a public meeting at the NOAA Science Center in Silver Spring, MD, on May 19, 2011 from 1 p.m. to 3 p.m. NMFS may hold additional public meetings during the comment period and will announce those meetings in the **Federal Register**. The public is encouraged to submit comments related to the specific ideas mentioned in this ANPR. NMFS is also seeking additional ideas and solutions to improve safety at sea and the NS10 Guidelines. All written comments received by the due date will be considered in drafting proposed revisions to the NS10 Guidelines.

Issues Under Consideration

In considering potential revisions to the NS10 Guidelines, NMFS has identified the following list of issues related to safety of human life at sea. NMFS seeks public comment on the scope of this ANPR generally and the potential for guidance on the following fisheries safety issues.

1. *Assembling Fatality, Injury, and Vessel Loss Information:* Establishing guidance on how to assemble and analyze data on fatalities and injuries for each Federal fishery using information from NMFS's National Observer Program, U.S. Coast Guard investigations, U.S. Coast Guard's Marine Information and Safety and Law Enforcement database system, and National Institute for Occupational Safety and Health data.

2. *Developing Fatality, Injury, and Vessel Loss Rates:* Establishing guidance on how to estimate workforce for each Federal fishery in order to calculate fatality and injury rates. By combining fatality and non-fatal injury information with workforce estimates, injury, fatality, and vessel loss rates can be calculated to identify trends over time.

3. *Evaluating Risks:* Establishing general guidance on how to conduct fishery specific risk assessments, which can help identify major safety hazards within a fishery. The frequency for conducting such assessments will also be explored.

4. *Safety Considerations and Mitigation Measures:* Risk assessments may identify that fishery conservation and management measures are needed and appropriate to improve safety at sea. The current NS10 Guidelines contain three safety considerations (operating environment, gear and vessel loading requirements, and limited season and area fisheries) and eight mitigation measures to consider when developing management measures (see 50 CFR 600.355 paragraphs (c) and (d)). NMFS seeks comments on these sections and, if appropriate, additional safety considerations and mitigation measures that could be added to the Guidelines. For example, NMFS could consider how fishery management measures can better complement and reinforce U.S. Coast Guard safety regulations. In addition, where regulations currently restrict vessel upgrades or replacement, mitigation measures could include allowing for vessel replacement in a fleet so that older vessels can be replaced with newer and safer vessels. Other potential mitigation measures could include eliminating or reducing penalties for cutting fishing trips short due to weather or other conditions and extending fishing seasons to allow for quotas to be reached.

5. *Recreational Fisheries:* NMFS welcomes information about safety issues in both the private recreational and the recreational for-hire components of recreational fisheries and suggestions on how to address them.

6. *Establishing a Safety Committee:* The current NS10 Guidelines (50 CFR 600.355 paragraph (d)) recommend that Councils consult with the U.S. Coast Guard and the fishing industry during the development of management measures that might affect the safety of human life at sea. NMFS welcomes comments on this guidance and if improvements to the consultation process are necessary. For example, NMFS could recommend that Councils and the Secretary of Commerce (Secretary), as appropriate, establish a Safety Committee or Safety Advisory Panel that regularly reports on ongoing activities to reduce injuries, fatalities, and vessel losses within their jurisdiction. U.S. Coast Guard personnel, NMFS National Observer Program personnel, and state enforcement officers would be encouraged to participate on such committees and/or panels.

7. *Stock Assessment and Fishery Evaluation Reports:* Establishing guidance for the type of safety information to include in Stock Assessment and Fishery Evaluation (SAFE) reports. The National Standard 2 Guidelines state that safety information should be summarized in SAFE reports. SAFE reports provide Councils and the Secretary with important scientific information needed for management purposes and different types of safety information could be added to these reports to better inform the Councils and the Secretary.

8. *Fishery Impact Statements:* Establishing guidance for addressing safety issues in fishery impact statements, as required by the MSA. Fishery impact statements are supposed to address the impact of conservation and management measures and include possible mitigation measures for "the safety of human life at sea, including whether and to what extent such measures may affect the safety of participants to the fishery" (MSA section 303(a)(9)(C)).

Special Accommodations

The public meeting to be held at the NOAA Science Center on May 19, 2011 from 1 p.m. to 3 p.m. will be accessible to people with physical disabilities. Request for sign language interpretation or other auxiliary aids should be directed to Debra Lambert (301–713–2341), by May 5, 2011.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 15, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2011–9718 Filed 4–20–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 110321211–1234–01]

RIN 0648–BA94

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Gag Grouper Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed temporary rule; request for comments.

SUMMARY: This proposed temporary rule would replace a temporary rule made effective January 1, 2011, and implement interim measures to reduce overfishing of gag in the Gulf of Mexico (Gulf). This rule would reduce the commercial quota for gag and, thus, the combined commercial quota for shallow-water grouper species (SWG), and establish a 2-month recreational season for gag. This rule would also suspend red grouper multi-use allocation in the Gulf grouper and tilefish individual fishing quota (IFQ) program, as recommended by the Gulf of Mexico Fishery Management Council (Council). The intended effect of this proposed rule is to reduce overfishing of the gag resource in the Gulf.

DATES: Written comments must be received on or before May 6, 2011.

ADDRESSES: You may submit comments on the proposed rule identified by NOAA–NMFS–2011–0072 by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Peter Hood, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

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 (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 (enter N/A in the required field if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

Copies of documents supporting this proposed rule, which include a draft environmental assessment and an initial regulatory flexibility analysis (IRFA), may be obtained from Peter Hood, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701 or on the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gove/sf/pdfs/draft_EA_2011_gag_interim_rule.pdf.*

FOR FURTHER INFORMATION CONTACT: Peter Hood, *telephone:* 727–824–5305 or *e-mail: Peter.Hood@noaa.gov.*

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the optimum yield (OY) from federally managed fish stocks. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

Through Amendment 30B to the FMP and its implementing regulations, which became effective on May 18, 2009 (74 FR 17603, April 16, 2009), the Council and NMFS set the commercial quota for gag at 1.49 million lb (0.68 million kg), and the SWG quota at 7.65 million lb (4.47 million kg). That rule also established annual catch limits and accountability measures for commercial and recreational gag, red grouper and SWG; increased the commercial quota for red grouper; removed the commercial closed season for SWG; established an incidental bycatch allowance trip limit for gag and red grouper; reduced the commercial minimum size limit for red grouper; reduced the gag bag limit and aggregate grouper bag limit; increased the red grouper bag limit; extended the closed season for recreational SWG; eliminated the end date for the Madison-Swanson and Steamboat Lumps marine reserves; and required that federally permitted reef fish vessels comply with the more restrictive of Federal or state reef fish regulations when fishing in state waters.

In 2009, the Southeast Data, Assessment, and Review (SEDAR) process updated the stock assessment for gag. Based on that update assessment, NMFS informed the Council, in a letter dated August 11, 2009, that gag are overfished and undergoing overfishing. In response to the update assessment, the Council began developing Amendment 32 to the FMP, which includes measures to end overfishing of gag and establish a rebuilding plan for the gag stock.

In the course of developing management measures for Amendment 32, the Council and NMFS discovered potential inconsistencies in the commercial and recreational estimates of gag discards, and how these data were used in the update assessment. Therefore, the Council requested NMFS implement interim measures for gag while it reassessed the gag update. Accordingly, NMFS published a temporary rule on December 1, 2010 (75 FR 74650), which became effective January 1, 2011. That temporary rule, effective through May 31, 2011, reduced the commercial quota for gag to 100,000 lb (45,359 kg), reduced the commercial SWG quota to 4.83 million lb (2.19 million kg), suspended red grouper multi-use allocation in the Gulf grouper and tilefish individual fishing quota (IFQ) program, and prohibited the recreational harvest of gag.

This proposed temporary rule would replace the existing temporary rule, and is based on the results of the rerun of the update assessment. This rule would (based on the original quotas implemented through Amendment 30B to the FMP) reduce the commercial quota for gag from 1.49 million lb (0.68 million kg) to 430,000 lb (195,045 kg), reduce the commercial SWG quota from 7.65 million lb (3.47 million kg) to 5.16 million lb (2.34 million kg), suspend red grouper multi-use allocation in the Gulf grouper and tilefish IFQ program, and implement a recreational fishing season for gag from September 16 through November 15, with a 2-fish daily bag limit. If implemented, these measures would remain in effect for 180 days, with the possibility of extending them for another 186 days, unless amended by subsequent rulemaking.

In relation to the temporary rule currently in effect, this proposed temporary rule would increase the commercial quota for gag by 330,000 lb (149,685 kg), increase the commercial

SWG quota by 330,000 lb (149,685 kg), continue the suspension of red grouper multi-use shares in the Gulf grouper and tilefish IFQ program, and implement a 2-month recreational fishing season for gag.

Status of Stock

The rerun of the update assessment for gag was completed by the SEDAR update assessment review panel in December 2010. This rerun assessment addressed the problems the previous assessment had with gag discards, and was reviewed by the Council's Scientific and Statistical Committee (SSC) in January 2011. The rerun of the update assessment indicated the gag stock is still undergoing overfishing.

Based on the results of the rerun assessment, the SSC recommended an acceptable biological catch (ABC) for 2011 of 1.58 million lb (0.72 million kg), which is greater than the ABC recommended by the SSC after the 2009 update assessment. OY for 2011 would be the yield associated with F_{OY} (the fishing mortality at OY), or 1.28 million lb (0.58 million kg). Given the allocation for gag is 39 percent for the commercial sector and 61 percent for the recreational sector, the commercial and recreational annual catch targets (ACTs) would be reduced to 500,000 lb (226,796 kg) and 780,000 lb (353,802 kg), respectively, from their values implemented through the last Amendment, Amendment 30B to the FMP (74 FR 17603, April 16, 2009).

Grouper and Tilefish IFQ Program

The commercial sector is currently managed under an IFQ program implemented in January 2010. Under this program, each qualifying fisherman is allocated IFQ shares based on historical participation in the grouper and tilefish component of the Gulf reef fish fishery. To allow for flexibility and to reduce bycatch, at the beginning of each fishing year, a percentage of each fisherman's gag and red grouper allocations are designated as multi-use allocations. The IFQ program designates 4 percent of red grouper allocation and 8 percent of gag allocation to multi-use allocation. Red grouper multi-use allocation may be used to harvest red grouper after all of an IFQ account holder's (shareholder or allocation holder's) red grouper allocation has been used or transferred, and to harvest gag after both gag and gag multi-use allocation has been used or transferred. However, the use of all the current red grouper multi-use allocations to harvest gag would account for approximately 40 percent of the proposed gag quota and would likely lead to overfishing of gag. Accordingly, NMFS proposes to suspend red grouper multi-use allocation in the IFQ program.

Management Measures Contained in This Proposed Rule

At its April 2011 meeting, the Council requested that NMFS propose a new temporary rule to replace the existing temporary rule. This request was made after the State of Florida's Fish and Wildlife Conservation Commission (FWC) voted at its April 2011 meeting to adopt compatible regulations with NMFS. This is because the management measures contained in this proposed temporary rule would only meet the reductions needed to reduce overfishing of gag if the State of Florida's FWC adopts compatible regulations in state waters on June 1, 2011.

To account for discard mortality, this temporary rule would reduce the commercial quota for gag to 430,000 lb (195,045 kg), which provides a 14-percent buffer from the 500,000-lb (226,796-kg) ACT. The additional quota of 330,000 lb (149,685 kg) from what fishermen were allocated at the beginning of the fishing year through the temporary rule currently in effect 100,000 lb (45,359 kg), would be released to IFQ participants on the effective date of the temporary rule. IFQ participants would have the opportunity to fish their additional allocation through the rest of the fishing year.

In order to harmonize the commercial quota for SWG with the commercial quota for gag, this proposed rule would set the commercial SWG quota at 5.16 million lb (2.34 million kg).

This temporary rule would also suspend red grouper multi-use allocations to ensure the gag commercial quota is not exceeded. This action does not reduce the overall red grouper allocation, but will prohibit the conversion of red grouper multi-use allocation that could lead to additional gag landings. Red grouper multi-use allocation will be addressed further in Amendment 32 to the FMP.

This temporary rule would establish a recreational gag fishing season from September 16 through November 15, 2011. The needed reductions in gag are between 48 and 62 percent to end overfishing, and between 58 to 69 percent to reduce the harvest consistent with F_{OY}. The Southeast Regional Office developed a decision model to evaluate different management scenarios. This model allowed the Council to vary season length and evaluate the effects of trip type, effort shifting, size limits, bag limits, release mortality rates, and Florida state regulation compatibility. To end overfishing of gag, the Council recommended a 2-month fall recreational fishing season, with no change to the bag limit (2 fish daily) or size limit (22 inches (56 cm)). The Council considered other seasons; however, these seasons were either shorter in length, would result in additional dead discards, or did not meet the needed reductions in gag mortality.

Future Action

NMFS has determined that this proposed temporary rule is necessary to reduce overfishing of gag in the Gulf of Mexico. NMFS will consider all public comments received on this proposed rule in determining whether to proceed with a final rule and, if so, whether any revisions would be appropriate in the final rule. If NMFS issues a final rule, it would be effective for not more than 180 days after publication, as authorized by section 305(c) of the Magnuson-Stevens Act. The final rule could be extended for an additional 186 days, provided that the public has had an opportunity to comment on the rule.

NMFS acknowledges the need to continue monitoring all sources of gag mortality to determine the appropriate level of future actions necessary to ensure progress consistent with the stock rebuilding plan over the long term.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed temporary rule is consistent with the Magnuson-Stevens Act and other applicable law, subject to further consideration after public comment.

This proposed temporary rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act, for this proposed rule. The IRFA describes the economic impact that this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the objectives of, and legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from NMFS (*see* **ADDRESSES**). A summary of the IRFA follows.

The Magnuson-Stevens Act provides the statutory basis for this proposed temporary rule. No duplicative, overlapping, or conflicting Federal rules have been identified. The preamble of this proposed rule provides a statement

of the need for and objectives of this rule, and it is not repeated here.

This proposed temporary rule is expected to directly affect commercial harvesting and for-hire operations. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the U.S., including fish harvesters. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. For for-hire vessels, the other qualifiers apply and the receipts threshold is $7.0 million (NAICS code 713990, recreational industries).

This proposed temporary rule is expected to directly affect commercial fishing vessels whose owners possess gag fishing quota shares and for-hire fishing vessels that harvest gag. As of October 1, 2009, 970 entities owned a valid commercial Gulf reef fish permit and thus were eligible for initial shares and allocation in the grouper and tilefish IFQ program. Of these 970 entities, 908 entities initially received shares and allocation of grouper or tilefish, and 875 entities specifically received gag shares and an initial allocation of the commercial sector's gag quota in 2010. These 875 entities are expected to be directly affected by the actions to reduce the commercial quota for gag and prohibit the conversion of red grouper allocation to multi-use allocation.

Of the 875 entities that initially received gag shares, 215 were not commercially fishing in 2008 or 2009, and thus had no commercial fishing revenue during these years. On average, these 215 entities received an initial allocation of 874 lb (397 kg) of gag in 2010. Eight of these 215 entities also received a bottom longline endorsement in 2010. These 8 entities received a much higher initial allocation of gag in 2010, with an average of 3,139 lb (1,427 kg).

The other 660 entities that initially received gag shares and allocations in 2010 were active in commercial fisheries in 2008 or 2009. The maximum annual commercial fishing revenue in 2008 or 2009 by an individual vessel with commercial gag fishing quota shares was approximately $606,000 (2008 dollars).

The average charterboat is estimated to earn approximately $88,000 (2008 dollars) in annual revenue, while the average headboat is estimated to earn approximately $461,000 (2008 dollars). Based on these values, all commercial and for-hire fishing vessels expected to be directly affected by this proposed temporary rule are determined for the purpose of this analysis to be small business entities.

Of the 660 commercial fishing vessels with commercial landings in 2008 or 2009, 139 vessels did not have any gag landings in 2008 or 2009. Their average annual gross revenue in these 2 years was approximately $50,800 (2008 dollars). The vast majority of these vessels' commercial fishing revenue is from a combination of snapper, mackerel, dolphin, and wahoo landings. On average, in 2010, these vessels received an initial allocation of 540 lb (245 kg) of gag quota.

The remaining 521 commercially active fishing vessels did have landings of gag in 2008 or 2009. Over that 2-year period, these vessels averaged approximately $71,000 (2008 dollars) in annual gross revenue from commercial fishing. On average, these vessels had 2,375 lb (1,080 kg) and 1,300 lb (591 kg) of gag landings in 2008 and 2009, respectively, or 1,835 lb (834 kg) between the 2 years. Gag landings accounted for approximately 8 percent of these vessels' annual average gross revenue, and thus they are somewhat, though not significantly, dependent on revenue from gag landings. These vessels' average initial gag allocation in 2010 was 2,121 lb (964 kg). Therefore, on average, their 2008 gag landings were very near their 2010 gag allocation, but their 2009 gag landings were considerably less than their 2010 allocation.

Of these 521 vessels, 52 vessels also received a bottom longline endorsement in 2010. These particular vessels' average annual revenue was approximately $156,000 (2008 dollars) in 2008 and 2009. Revenue from gag landings decreased from approximately $15,900 to $8,400 in 2009, and thus they became relatively less dependent on gag landings. These vessels, however, are highly dependent on revenue from red grouper landings, which accounted for 54 percent and 47 percent of their gross revenue in 2008 and 2009, respectively. Revenue from deep-water grouper (DWG) landings decreased only slightly, from approximately $36,000 in 2008 to $31,000 in 2009, and thus these vessels became relatively more dependent on revenue from DWG landings. Their average initial 2010 allocation of gag was approximately 5,507 lb (2,503 kg), while their average gag landings were 3,933 lb (1,788 kg) and 2,204 lb (1,002 kg) in 2008 and 2009, respectively. Thus, vessels that now have a bottom longline endorsement have been harvesting well below that allocation in recent years, particularly in 2009.

The for-hire fleet is comprised of charter vessels, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. The harvest of gag in the exclusive economic zone (EEZ) by for-hire vessels requires a charter vessel/headboat permit for Gulf reef fish. On March 23, 2010, there were 1,376 valid or renewable for-hire Gulf reef fish permits. A valid permit is a non-expired permit. Expired reef fish for-hire permits may not be actively fished, but are renewable for up to 1 year after expiration. Because of the extended permit renewal period, numerous permits may be expired but still renewable at any given time of the year during the renewal period after the permit's expiration. The majority (823, or approximately 60 percent) of the 1,376 valid or renewable permits were registered with Florida addresses. The registration address for the Federal permit does not restrict operation to Federal waters off that state; however, vessels would be subject to any applicable state permitting requirements. Although the permit does not distinguish between headboats and charter vessels, it is estimated that 79 headboats operate in the Gulf. The majority of these vessels (43, or approximately 54 percent) operate from Florida ports. Given that nearly 99 percent of target effort for gag and 97 percent of the economic impacts from the recreational sector for gag in the Gulf reef fish fishery are in west Florida, it is assumed that the 823 for-hire vessels (780 charter vessels and 43 headboats) in Florida are expected to be directly affected by the proposed action to establish a recreational gag fishing season of September 16, 2011 through November 15, 2011.

The 215 entities with gag shares that did not participate in commercial fishing in 2008 or 2009 have no commercial fishing revenue and did not earn profit from commercial fishing in those 2 years. The action to decrease the commercial quota for gag from 1.49 million lb (0.68 million kg) to 0.43 million lb (0.20 million kg) would reduce these vessels' average allocation of gag in 2011 from 952 lb (433 kg) to 275 lb (125 kg), or by approximately 677 lb (308 kg). Using the average 2008 price of $3.52 per pound, this loss in allocation could potentially represent a loss of nearly $2,400 (2008 dollars) in gross revenue per entity. Using the 2010 average price of $1.00 per pound of gag allocation, this loss in allocation could potentially represent a loss of $670 (2008 dollars) in net revenue per entity.

For eight of these 215 entities that also possess longline endorsements, their average allocation of gag in 2011 would be reduced from 3,418 lb (1,554 kg) to 987 lb (449 kg), or by 2,431 lb (1,105 kg). Thus, their potential loss in gross revenue and net revenue, estimated to be nearly $8,600 and $2,500 (2008 dollars), respectively, are expected to be somewhat higher.

However, in general, these potential losses in gross revenue and net revenue would only be realized if these 215 entities not only become active in commercial fishing, but also specifically intend to harvest gag in 2011 at a level above their reduced allocation. That is, a reduction in allocation can only lead to a reduction in landings, and thus gross revenue, if these entities intend to harvest at levels above their reduced allocation. Alternatively, these losses in gross and net revenue could be due to these entities' inability to sell the allocations they are losing under the proposed action, though this possibility presumes that a demand for these allocations exists. Regardless, the significance of these potential losses in gross and net revenue to these 215 entities cannot be evaluated given the lack of information on potential gross revenue, net revenue, and profits from commercial fishing in general and specifically for gag.

Similarly, the 139 entities with gag shares that participated in commercial fisheries other than gag earned approximately $50,800 in annual gross revenue on average in 2008 and 2009. Profit estimates for these vessels are not currently available. However, because they did not have any gag landings, none of their gross revenue and thus none of their potential profits were the result of gag harvests. Under the proposed action, their average allocation of gag in 2011 would be reduced from 588 lb (267 kg) to 170 lb (77 kg), or by 418 lb (190 kg). Using the average 2008 price of $3.52 per pound, this loss in allocation could potentially represent a loss of nearly $1,500 (2008 dollars) in gross revenue per entity. Using the 2010 average price of $1.00 per pound of gag allocation, this loss in allocation could potentially represent a loss of approximately $410 (2008 dollars) in net revenue per entity.

However, these potential losses in gross and net revenue could only lead to a loss in profits if these 139 entities intend to commercially harvest gag in 2011 at a level above their reduced allocation. That is, a reduction in allocation can only lead to a reduction in landings if these entities intend to harvest at levels above their reduced allocation. Thus, for example, if these vessels intended to harvest gag in 2011 at a level equivalent to their 2011 allocation, and this harvest was in addition to, rather than in place of, their recent commercial fishing activities, the reduction in allocation could lead to a maximum loss of approximately 3 percent in gross revenue, which could in turn reduce net revenue and profits. Alternatively, losses in gross and net revenue could be due to these entities' inability to sell the allocations being lost under the proposed action, though this possibility presumes that a demand for these allocations exists.

The 521 entities with gag shares that commercially harvested gag in 2008 or 2009 earned approximately $71,000 (2008 dollars) in annual gross revenue on average in 2008 and 2009. Profit estimates for these vessels are not currently available. However, gag landings accounted for approximately 8 percent of these vessels' annual average gross revenue, and thus they are somewhat but not significantly dependent on revenue from gag landings. Under the proposed action, these vessels' gag allocations would be reduced from 2,310 lb (1,050 kg) to 667 lb (303 kg), or 1,643 lb (747 kg) on average. As these vessels have been harvesting at levels near their 2010 allocation in recent years on average, this reduction in gag allocation is likely to lead to an equivalent reduction in gag landings and therefore gross revenue. Using the average 2008 price of $3.52 per pound, it is estimated that these vessels could lose nearly $5,800 (2008 dollars), or approximately 8 percent, in annual gross revenue on average. Using the 2010 average price of $1.00 per pound of gag allocation, under the proposed temporary rule these vessels would lose approximately $1,600 (2008 dollars) in net revenue per entity. Since net revenue is assumed to be representative of profits for commercial vessels, these vessels are expected to experience a reduction in profits.

However, 52 of these 521 vessels also received a bottom longline endorsement in 2010. These particular vessels' average annual gross revenue was approximately $156,000 (2008 dollars) in 2008 and 2009, with gag landings accounting for approximately 8 percent of that gross revenue. These vessels are highly dependent on revenue from red grouper rather than gag landings. Under the proposed action, their allocation of gag in 2011 would decrease from 6,215 lb (2,825 kg) to 1,953 lb (888 kg), or by 4,262 lb (1,937 kg). As these vessels have been harvesting at levels near their 2010 allocation in recent years on average, this reduction in gag allocation is likely to lead to an equivalent reduction in gag landings and therefore gross revenue. Using the average 2008 price of $3.52 per pound, it is estimated that these vessels could lose $15,000 (2008 dollars), or nearly 10 percent, in annual gross revenue on average. Using the 2010 average price of $1.00 per pound of gag allocation, these vessels would lose approximately $4,200 (2008 dollars) in net revenue per entity. Since net revenue is assumed to be representative of profits for commercial vessels, these vessels are expected to experience a reduction in profits.

No additional economic effects would be expected to result from the revised SWG quota because the updated SWG quota simply reflects the reduction in the commercial gag quota, the effects of which have already been discussed.

Under the action to suspend the conversion of red grouper allocation into multi-use allocation valid toward the harvest of red grouper or gag, minimal adverse economic effects are expected as a result of commercial fishing entities not being allowed to convert 4 percent of their red grouper allocation into multi-use allocation. Multi-use allocation that has been converted from red grouper allocation can only be used to possess, land, or sell gag after an entity's gag and gag multi-use allocation has been landed, sold, or transferred. As a result of the proposed reduction in the commercial gag quota, it is likely these entities will exhaust their gag and gag multi-use allocations relatively quickly. Gross revenue from gag landings is greater than gross revenue from an equivalent amount of red grouper landings, since gag commands a relatively higher market price. Thus, gross revenue from commercial fishing revenue and, therefore, profit per vessel could be slightly less than if the multi-use conversion were allowed to continue.

Net operating revenues (NOR) are assumed to be representative of profit for for-hire vessels. It is assumed that 823 for-hire vessels, 780 charter vessels, and 43 headboats, participate in the recreational gag component of the Gulf reef fish fishery. Estimates of NOR from recreational fisheries other than gag, and thus across all fisheries in which these charter vessels and headboats participate, are not currently available. However, on average, NOR for charter vessels from trips targeting gag are estimated to be approximately $1.56 million per year, while NOR for headboats from trips targeting gag are estimated to be $91,300 per year. NOR for all trips targeting gag are estimated to be approximately $1.65 million per year. The average annual NOR from trips targeting gag are estimated to be

$2,000 per charter vessel and $2,124 per headboat.

When the length of the recreational gag season is reduced and the daily bag limit for gag set at zero, some trips that formerly targeted gag will instead target other species, while other trips that formerly targeted gag will be cancelled. Assuming the NOR per trip is constant regardless of the species targeted, for-hire operators will only lose NOR from trips cancelled as a result of the shortened season length. Information regarding the number of trips cancelled as a result of the shortened season is not currently available. Thus, this analysis assumes all of the current for-hire trips targeting gag will be cancelled when the recreational sector is closed. Because some of these trips would probably not be cancelled, this assumption is expected to overestimate the actual reduction in NOR associated with a shorter season. Thus, the following estimates of losses in NOR and profit for charter vessels and headboats should be considered maximum values.

Under the proposed action to establish a recreational gag fishing season of September 16, 2011–November 15, 2011, the losses in NOR from trips targeting gag for charter vessels and headboats are estimated to be approximately $435,000 and $28,000, respectively, and thus NOR for all trips targeting gag is estimated to be approximately $463,000 if this proposed temporary rule is not extended for up to 186 days as allowed under the Magnuson-Stevens Act for interim measures. The losses in NOR from trips targeting gag are estimated to be $560 and $660 per charter vessel and headboat, respectively. These NOR losses represent a loss in profit from trips targeting gag of approximately 28 percent and 31 percent per charter vessel and headboat, respectively. However, if this proposed temporary rule is extended, the losses in NOR for charter vessels and headboats are estimated to be approximately $1.41 million and $81,800, respectively. Thus, the losses in NOR are estimated to be $1,808 and $1,902 per charter vessel and headboat, respectively. These losses in NOR represent a loss in profit from trips targeting gag of approximately 75 percent and 65 percent per charter vessel and headboat, respectively.

This proposed action is not expected to affect profit from trips not targeting gag for charter vessels and headboats. For-hire vessel dependence on fishing for individual species cannot be determined with available data. Although some for-hire vessels are likely more dependent on trips that target gag than other for-hire vessels, overall, about three percent of for-hire anglers are estimated to target gag. As a result, while the action would be expected to substantially affect the NOR derived from gag trips, overall, gag trips do not comprise a substantial portion of total for-hire trips nor would they, by extension, be expected to account for a substantial portion of total for-hire NOR.

Two alternatives, including the status quo, were considered for the action to set the gag commercial quota at 430,000 lb (0.20 million kg). The first alternative, the status quo, would have maintained the gag commercial quota at 1.49 million lb (0.68 million kg). This alternative is not consistent with the goals and objectives of the Council's plan to manage gag to achieve the mandates of the Magnuson-Stevens Act. Specifically, selection of this alternative would be inconsistent with current National Standard 1 guidance because the commercial quota would be above the commercial ACT of 500,000 lb (226,796 kg), which is based on the Council's defined F_{OY} yield of 1.28 million lb (0.58 million kg) for 2011. In addition, this alternative would promote overfishing and slow recovery of the stock.

The second alternative would have set the gag commercial quota at 100,000 lbs (45,539 kg). This alternative is based on the request made by the Council in August 2010 for the interim rule that published December 1, 2010, and reflects the uncertainty in the stock status at that time due to questions regarding how commercial and recreational discards were treated in the assessment update. When this commercial quota was recommended, it was unknown how revisions to the treatment of discards might influence the rerun of the updated stock assessment. If the rerun of the updated assessment yielded a more pessimistic condition of the stock, then setting the harvest based on the F_{OY} yield, estimated then at 390,000 lb (177,273 kg), would not reduce overfishing sufficiently to allow the stock to begin to recover within the maximum time frame allowed under the Magnuson-Stevens Act. The 100,000 lb (45.539 kg) commercial quota was recommended because some gag are expected be incidentally caught by the commercial sector while fishing for other species. Further, most discarded gag die after being released due to the high discard mortality rate associated with fishing at deeper depths. Rather than waste all of these fish, the Council set the quota at a level that would allow some fish to be retained and thus would also be counted towards the commercial quota.

As of March 2, 2011, over 65 percent of the gag IFQ shareholders have less than 50 lb (23 kg) in allocation still available to them. Thus, if the commercial quota is not set at a level above 100,000 lb (45,539 kg), commercially caught gag would likely be lost through dead discards rather than kept and counted towards the commercial quota as fishermen run out of allocation. However, the rerun of the updated assessment showed a slight increase in the projected yields under the F_{OY} if the State of Florida adopted compatible regulations for the recreational sector. Because the State of Florida has adopted compatible regulations for the recreational sector, a higher commercial quota is allowable.

One alternative was considered for the action to suspend the ability of allocation holders to convert red grouper allocation into multi-use allocation valid toward the harvest of red grouper or gag. This alternative would continue to allow 4 percent of the red grouper allocation to be converted into multi-use allocation. This alternative is expected to result in gag harvests that would exceed specified annual catch limits, promote overfishing, and therefore, slow recovery of the stock, contrary to the Council's objectives. Further, this alternative is also expected to result in greater adverse economic effects stemming from the corrective measures that would be implemented to address the over-harvesting of gag.

Three alternatives, including the status quo, were considered for the action to establish a recreational fishing season for gag of September 16, 2011, through November 15, 2011. The first alternative, the status quo, would maintain the recreational ACT at 2.20 million lb (1 million kg) and anglers would be able to harvest the 2-fish daily bag limit for gag starting June 1, 2011. Depending on whether 2006–08 or 2009 is used as the baseline, the estimated reduction in removals under this alternative would be between 15 percent and 20 percent, which is insufficient to allow the stock to rebuild, and would be inconsistent with the stock rebuilding plan being developed by the Council. In addition, this alternative is inconsistent with the Magnuson-Stevens Act and current National Standard 1 guidance because the expected level of harvest would be above the recreational annual catch target of 780,000 lb (353,802 kg), which is based on the Council's defined F_{OY} yield of 1.28 million lb (0.58 million kg) for 2011. Further, this alternative would promote overfishing and slow recovery of the stock.

The second alternative would set the gag bag limit to zero and thereby prohibit the recreational harvest of gag. When the Council requested the current temporary rule, it intended to allow some recreational harvest of gag in 2011 and establish that level of harvest under the long-term management measures being developed in Amendment 32. However, because the rerun of the updated assessment was not completed and reviewed until January 2011, there is insufficient time to implement measures from Amendment 32 early enough in 2011 to meet the Council's intent.

The second alternative is the most conservative alternative. This alternative would reduce fishing mortality the most out of all the considered alternatives and therefore generate the greatest biological benefits to the gag stock. Although this alternative would not allow the recreational harvest of gag while the proposed interim rule is in effect, the number of dead discards would be reduced because no recreational fishing trips would be expected to target or be directed at gag. Because Florida adopted compatible regulations, this alternative would reduce the harvest sufficiently in 2011 to be consistent with the Council's rebuilding plan in Amendment 30B, as it would reduce removals between 58 percent and 67 percent and, as such, end overfishing. If Florida had not adopted compatible regulations, the estimated reduction in removals would be between 43 percent and 61 percent, which would reduce but might not be sufficient to end overfishing.

The third alternative would establish a recreational fishing season for gag of July 1, 2011, through August 15, 2011, and thus would allow for some recreational harvest of gag in 2011 as the Council intended when it requested the current interim rule. This alternative would establish a 46-day recreational fishing season, which is less than the 61-day season under the proposed action. This alternative also minimally overlaps with the red snapper season, which begins on June 1. This alternative would provide for-hire vessels with a greater number of options when marketing summer trips. The expected reduction in removals under this alternative is between 49 percent and 60 percent, and therefore might be sufficient to end overfishing.

The Council heard public testimony regarding potential recreational seasons for gag at its February 2011 meeting. Participants in the recreational sector asked for either a summer or winter season depending on their geographic location. In general, recreational participants from Texas, southwest Florida, and central Florida favored a winter season, while recreational participants from other areas of the Gulf favored a summer season. In looking for a compromise, the Council recommended the proposed recreational season with no changes to the bag limit or size limit. The proposed recreational season would cover the end of the summer recreational fishing season and run through the beginning of the winter recreational fishing season. In addition, the estimated reductions in removals under the proposed recreational season are between 50 percent and 54 percent, which might be sufficient to end overfishing.

This proposed temporary rule does not establish any new reporting, record-keeping, or other compliance requirements.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: April 18, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 622.20 [Amended]

2. In § 622.20, paragraph (b)(2)(iv)(A) is suspended.

3. In § 622.34, paragraph (v) is removed and reserved and paragraph (w) is added to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(w) *Seasonal closure of the recreational sector for gag.* The recreational sector for gag, in or from the Gulf EEZ, is closed from January 1 through September 15 and November 16 through December 31 each year. During the closure, the bag and possession limit for gag in or from the Gulf EEZ is zero.

4. In § 622.42, paragraphs (a)(1)(iii)(A)(*3*) and (a)(1)(iii)(B)(*3*) are suspended and paragraphs (a)(1)(iii)(A)(*4*) and (a)(1)(iii)(B)(*4*) are added to read as follows:

§ 622.42 Quotas.

(a) * * *

(1) * * *

(iii) * * *

(A) * * *

(*4*) For fishing year 2011 and subsequent fishing years—5.16 million lb (2.34 million kg).

(B) * * *

(*4*) For fishing year 2011 and subsequent fishing years—430,000 lb (195,045 kg).

* * * * *

[FR Doc. 2011–9724 Filed 4–20–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 110222150–1152–02]

RIN 0648–BA92

Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; 2011 Scup Specifications; Fishing Year 2011

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes two actions in this rulemaking: An increase to the previously implemented scup commercial and recreational landing allowances for 2011 (specifications) and management measures for the 2011 summer flounder, scup, and black sea bass recreational fisheries. Inclusion of the proposed scup specification increase in this rulemaking is necessary to provide an opportunity for the public to comment on the revised recommendation from the Mid-Atlantic Fishery Management Council (Council) to increase the commercial and recreational scup landing allowances for 2011. The recreational management measures are necessary to comply with the implementing regulations for these fisheries which require NMFS to publish recreational measures for the fishing year and to provide an opportunity for public comment. The intent of the scup increase is to permit greater commercial and recreational harvest opportunity while preventing overfishing on the scup stock. Recreational management measures are

similarly intended to ensure that overfishing the summer flounder, scup, and black sea bass resources in 2011 is unlikely to occur.

DATES: Comments must be received by 5 p.m. local time, on May 23, 2011.

ADDRESSES: You may submit comments, identified by RIN 0648–BA92, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*
- *Fax:* (978) 281–9135, Attn: Comments on 2011 Scup Specifications Increase and Summer Flounder, Scup, and Black Sea Bass Recreational Management Measures, 0648–BA92.
- *Mail and hand delivery:* Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on 2011 Scup Specifications Increase and Summer Flounder, Scup, and Black Sea Bass Recreational Management Measures, 0648–BA92."

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 (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 (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the proposed scup increase Supplement Environmental Assessment (SEA) to the 2011 specifications and the recreational management measures document, including the Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) and other supporting documents for both the scup specifications increase and the recreational management measures are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. These documents are also accessible via the Internet at *http://www.nero.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Ruccio, Fishery Policy Analyst, (978) 281–9104.

SUPPLEMENTARY INFORMATION:

General Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively under the provisions of the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) developed by the Council and the Atlantic States Marine Fisheries Commission (Commission), in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina (NC) northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35 E. 13.3′ N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border.

The Council prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations implementing the FMP appear at 50 CFR part 648, subparts A (general provisions), G (summer flounder), H (scup), and I (black sea bass). General regulations governing fisheries of the Northeastern U.S. also appear at 50 CFR part 648. States manage these three species within 3 nautical miles (4.83 km) of their coasts, under the Commission's plan for summer flounder, scup, and black sea bass. The applicable species-specific Federal regulations govern vessels and individual fishermen fishing in Federal waters of the exclusive economic zone (EEZ), as well as vessels possessing a summer flounder, scup, or black sea bass Federal charter/party vessel permit, regardless of where they fish.

2011 Scup Specifications Increase

Specifications for the 2011 summer flounder, scup, and black sea bass fisheries published in the **Federal Register** on December 28, 2010, and became effective on January 1, 2011 (75 FR 81498). This rule established 2011 scup specifications, as follows: A Total Allowable Catch (TAC) of 24.1 million lb (10,932 mt); a 20.0-million-lb (9,072-mt) Total Allowable Landings (TAL), including research set-aside (RSA) of 396,500 lb (180 mt); a commercial quota of 15,290,730 lb (6,936 mt); and a recreational harvest limit of 4,312,770 lb (1,956 mt). During the December 2010 Council meeting, the Council recommended to NMFS an increase in the 2011 scup specifications. The Council's action to potentially increase the 2011 scup specifications was taken to prevent potential negative impacts on recreational fishermen and provide for recreational fishing opportunities that might not be available under the previously implemented lower, more restrictive landing limit. Adoption of the Council's recommendation for increased scup specifications, which includes an increase to the scup recreational harvest limit, would permit the use of status quo recreational management measures for the 2011 fishery. See the scup recreational management measures section later in this preamble for additional information on how the potential increase recreational harvest limit impacts to the recreational fishery.

The Council formally submitted the increased scup specification recommendation to NMFS for review and rulemaking on January 26, 2011. The Council's revised scup specifications recommendation would increase the 2011 TAC to 31.92 million lb (14,479 mt) from the current TAC of 24.1 million lb (10,932 mt). After removal of estimated 2011 discards, the resulting increased TAL would be 26.50 million lb (12,020 mt). Because the 2011 RSA has already been awarded for scup, the Council recommended, and NMFS agrees, that no change to the RSA level should occur as a result of the increased scup specifications. Thus, after deducting the 2011 awarded RSA of 396,500 lb (180 mt) and applying the allocation criteria within the FMP, the increased commercial quota would be 20.36 million lb (9,235 mt) and the adjusted recreational harvest limit would be 5.74 million lb (2,604 mt).

In considering the scup TAC increase recommended by the Council, NMFS considered the range of possible TACs analyzed by the Council. NMFS is proposing the Council's preferred alternative without modification as it meets the objectives of the FMP, the Magnuson-Stevens Act, and other applicable law. Quota levels above the preferred alternative fail to satisfy the applicable requirements and were adjudged by the Council to be inconsistent with the scientific advice provided by the SSC. Lower TAC alternatives are more restrictive than necessary to meet the objectives of the FMP and would have higher socio-economic impacts on fishery participants.

Table 1 contains the scup commercial quota period information that would result from the proposed increase. All additional commercial scup measures, including possession limits and the amount of unused Winter I (January-May) commercial quota that may be

rolled over to the Winter II (November-December) fishing period, remain unchanged from those published in the **Federal Register** on December 28, 2010 (75 FR 81498).

TABLE 1—PROPOSED REVISED COMMERCIAL SCUP QUOTA ALLOCATIONS FOR 2011 BY QUOTA PERIOD

Quota period	Percent share	Total allowable catch		Estimated discards		Initial quota		Initial quota less overages (through 10/31/2009)		Adjusted quota less overages and RSA	
		lb	mt	lb	mt	lb	mt	lb	mt	lb	mt
Winter I	45.11	11,231,307	5,094	1,907,070	865	9,324,237	4,229	N/A	N/A	9,184,725	4,166
Summer	38.95	9,697,615	4,399	1,646,650	747	8,050,965	3,652	N/A	N/A	7,930,504	3,597
Winter II	15.94	3,968,677	1,800	673,879	306	3,294,798	1,494	N/A	N/A	3,245,500	1,472
Total	100.0	24,897,600	11,293	4,227,600	1,918	20,670,000	9,376	N/A	N/A	20,360,730	9,235

NMFS is proposing to implement the Council's recommendation for a 33-percent increase to the 2011 scup specifications. The increase would remain well below the 2011 scup Acceptable Biological Catch (ABC) of 51.70 million lb (23,451 mt). Furthermore, the increase would be below the scup maximum sustainable yield (MSY) level of 35.60 million lb (16,148 mt) and is consistent with the recommendation provided in a 2008 scup stock assessment and reiterated by the Council's Scientific and Statistical Committee for the 2011 fishery advising against rapid increases in specification levels to meet MSY.

Recreational Management Measures Background

The Council process for devising recreational management measures to recommend to NMFS for rulemaking is generically described in the following section. All meetings are open to the public and the materials utilized during such meetings, as well as any documents created to summarize the meeting results, are public information and typically posted on the Council's Web site (*http://www.mafmc.org*) or are available from the Council by request. Extensive background on the 2011 recreational management measures recommendation process is therefore not repeated in this preamble.

The FMP established Monitoring Committees (Committees) for the three fisheries, consisting of representatives from the Commission, the Council, state marine fishery agency representatives from MA to NC, and NMFS. The FMP's implementing regulations require the Committees to review scientific and other relevant information annually and to recommend management measures necessary to constrain landings within the recreational harvest limits established for the summer flounder, scup, and black sea bass fisheries for the upcoming fishing year. The FMP limits the choices for the types of measures to minimum fish size, possession limit, and fishing season.

The Council's Demersal Species Committee, and the Commission's Summer Flounder, Scup, and Black Sea Bass Management Board (Board) then consider the Committees' recommendations and any public comment in making their recommendations to the Council and the Commission, respectively. The Council reviews the recommendations of the Demersal Species Committee, makes its own recommendations, and forwards them to NMFS for review. The Commission similarly adopts recommendations for the states. NMFS is required to review the Council's recommendations to ensure that they are consistent with the targets specified for each species in the FMP and all applicable laws and Executive Orders before ultimately implementing measures for Federal waters.

All minimum fish sizes discussed hereafter are total length measurements of the fish, i.e., the straight-line distance from the tip of the snout to the end of the tail while the fish is lying on its side. For black sea bass, total length measurement does not include the caudal fin tendril. All possession limits discussed below are per person.

Proposed 2011 Recreational Management Measures

NMFS is proposing through this rule the following measures to apply in the Federal waters of the EEZ and to all federally permitted party/charter vessels with applicable summer flounder, scup, or black sea bass permits regardless of where they fish for the 2011 recreational summer flounder, scup, and black sea bass fisheries: For summer flounder, use of state-by-state conservation equivalency measures, which are the status quo measures; for scup, a 10.5-inch (26.67-cm) minimum fish size, a 10-fish per person possession limit, and an open season of June 6 through September 26, which are the status quo measures; and, for black sea bass, a 13.0-inch (33.02-cm) minimum fish size, a 25-fish per person possession limit, and open season of July 1 through October 1 and November 1 through December 31. NMFS will consider retaining or reinstating status quo black sea bass measures, as needed, for Federal waters (i.e., a 12.5-in (31.75-cm) minimum fish size, a 25-fish per person possession limit and fishing seasons from May 22–October 11 and November 1–December 31) if the Commission develops and implements a state-waters conservation equivalency system that, when paired with the Federal status quo measures, provides the necessary conservation to ensure the 2011 recreational harvest limit will not be exceeded. More detail on these proposed measures is provided in the following sections.

Summer Flounder Recreational Management Measures

The 2011 recreational harvest limit for summer flounder is 11,583,424 lb (5,254 mt), a 35-percent increase from the 2010 limit of 8.59 million lb (3,896 mt). Final landings for 2010 are 4.98 million lb (2,259 mt), well below the recreational harvest limit. The Council and Commission have recommended the use of conservation equivalency to manage the 2011 summer flounder recreational fishery.

NMFS implemented Framework Adjustment 2 to the FMP on July 29, 2001 (66 FR 36208), to permit the use of conservation equivalency to manage the recreational summer flounder fishery. Conservation equivalency allows each state to establish its own recreational management measures (possession limits, minimum fish size, and fishing seasons) to achieve its state harvest limit partitioned from the coastwide recreational harvest limit by the Commission, as long as the combined effect of all of the states' management measures achieves the same level of conservation as would Federal coastwide measures.

The Council and Board annually recommend that either state- or region-specific recreational measures be developed (conservation equivalency) or coastwide management measures be implemented by all states to ensure that the recreational harvest limit will not be exceeded. Even when the Council and Board recommend conservation equivalency, the Council must specify a set of coastwide measures that would apply if conservation equivalency is not approved for use in Federal waters.

When conservation equivalency is recommended, and following confirmation that the proposed state measures developed through the Commission's technical and policy review processes achieve conservation equivalency, NMFS may waive the permit condition found at § 648.4(b), which requires Federal permit holders to comply with the more restrictive management measures when state and Federal measures differ. In such a situation, federally permitted summer flounder charter/party permit holders and individuals fishing for summer flounder in the EEZ would then be subject to the recreational fishing measures implemented by the state in which they land summer flounder, rather than the coastwide measures.

In addition, the Council and the Board must recommend precautionary default measures when recommending conservation equivalency. The Commission would require adoption of the precautionary default measures by any state that either does not submit a summer flounder management proposal to the Commission's Summer Flounder Technical Committee, or that submits measures that would exceed the Commission-specified harvest limit for that state.

Much of the conservation equivalency measures development process happens at both the Commission and individual state level. The selection of appropriate data and analytic techniques for technical review of potential state conservation equivalent measures and the process by which the Commission evaluates and recommends proposed conservation equivalent measures is wholly a function of the Commission and its individual member states. Individuals seeking information regarding the specific state measure development process or the Commission process for technical evaluation of proposed measures should contact the marine fisheries agency in the state of interest, the Commission, or both.

Once states select their final 2011 summer flounder management measures through their respective development, analytical, and review processes and submit them to the Commission, the Commission will conduct further review and evaluation of the state-submitted proposals, ultimately notifying NMFS as to which individual state proposals have been approved or disapproved. NMFS has no overarching authority in the state or Commission management measure development, but is an equal participant along with all the member states in the measures review process. NMFS retains the final authority either to approve or to disapprove the use of conservation equivalency in place of the coastwide measures, and will publish its determination as a final rule in the **Federal Register** to establish the 2011 recreational measures for these fisheries.

States that do not submit conservation equivalency proposals, or whose proposals are disapproved by the Commission, will be required by the Commission to adopt the precautionary default measures. In the case of states that are initially assigned precautionary default measures, but subsequently receive Commission approval of revised state measures, NMFS will publish a notice in the **Federal Register** announcing a waiver of the permit condition at § 648.4(b).

The 2011 precautionary default measures recommended by the Council and Board are for a 20.0-inch (50.80-cm) minimum fish size, a possession limit of two fish, and an open season of May 1 through September 30, 2011.

As described above, for each fishing year, NMFS implements either coastwide measures or conservation equivalent measures at the final rule stage. The 2011 coastwide measures recommended by the Council and Board for 2011 are an 18.5-inch (46.99-cm) minimum fish size, a possession limit of two fish, and an open season from May 1 to September 30, 2011.

In this action, NMFS proposes to implement conservation equivalency with a precautionary default backstop, as previously outlined, for states that either fail to submit conservation equivalent measures or whose measures are not approved by the Commission. NMFS proposes the alternative of coastwide measures, as previously described, for use if conservation equivalency is not approved in the final rule. The coastwide measures would be waived if conservation equivalency is approved in the final rule.

Scup Recreational Management Measures

The 2011 scup recreational harvest limit is currently 4,312,770 lb (1,956 mt), as implemented by the December 28, 2010, specifications final rule (75 FR 81498); however, through this rule NMFS is proposing to increase the 2011 scup recreational harvest limit to 5.74 million lb (2,604 mt). Estimated 2010 scup recreational landings are 5.74 million lb (2,604 mt). The Council and Commission have recommended measures that reflect the status quo for the 2011 scup recreational fishery. The status quo measures for Federal waters are for a 10.5-in (26.67-cm) minimum fish size, a 10-fish per person possession limit, and an open season of June 6 through September 26 (*i.e.,* closed season from January 1–June 5 and again from September 27–December 31). NMFS proposes to retain scup recreational management measures that reflect the status quo for 2011 in Federal waters for use in conjunction with the increased recreational harvest limit proposed concurrently by this rule.

NMFS acknowledges that the Commission has indicated its intent to continue managing the recreational scup fishery through a Commission-based conservation equivalency program that has no comparable measures in the Federal FMP. Thus, recreational management measures will differ between state and Federal waters in 2011. Historically, very little of the scup recreational harvest comes from the Federal waters of the EEZ. The scup recreational harvest from Federal waters for 2009 was approximately 2 percent of the total coastwide landings.

Black Sea Bass Recreational Management Measures

The 2011 black sea bass recreational harvest limit is 1.84 million lb (835 mt), as published in final rule (75 FR 81498; December 28, 2010). The 2010 black sea bass recreational landings were 3.11 million lb (1,411 mt); thus, a 41-percent coastwide reduction in landings from 2010 levels would be required to constrain landings to the 2011 black sea bass recreational harvest limit.

The Council has recommended measures designed to achieve a 41-percent reduction in black sea bass recreational landings. These measures for Federal waters are a 13.0-inch (33.02-cm) minimum fish size, a 25-fish per person possession limit, and open season of July 1 through October 1 and November 1 through December 31 (i.e., closed seasons from January 1–June 30 and October 2–31).

Concurrent with the development of this proposed rule, the Commission has initiated development of Addendum XXI to the Commission's Black Sea Bass FMP. This addendum contemplates application of state-by-state conservation equivalency approaches for black sea bass recreational management measures in state waters.

Interested parties are urged to contact the Commission directly (*http://www.asmfc.org* or (703) 842–0740) as NMFS has only a participatory role in the Commission's process as a Commission voting member. The Council has initiated development of an amendment to the Federal FMP to examine these types of approaches for application in Federal waters; however, the amendment process at the Federal level takes more time to complete than the Commission's addendum process and cannot be completed in time to implement for the 2011 fishing year.

In anticipation that the Commission may develop a conservation equivalency system for state waters, the Council recommended to NMFS that Federal waters black sea bass measures stay or revert to the status quo, as needed, dependent on the completion of the Commission's Addendum XXI. The Council indicated that the as of yet completed Commission measures for state waters, when paired with the status quo measures for Federal waters, are anticipated to achieve the required reduction necessary for the 2011 black sea bass recreational fishery. NMFS is proposing to implement the aforementioned Council-recommended measures (13.0-inch (33.02-cm) minimum fish size, 25-fish possession limit, and July 1–October 1 and November 1–December 31 season) for Federal waters while the Commission's process for state waters conservation equivalency proceeds. This approach is consistent with the joint Council and Commission discussion and motions jointly adopted during the December 15, 2010, meeting at which recreational management measures options were contemplated and approved by both groups.

If the Commission completes a state waters conservation equivalency system for 2011, it is expected that formal analyses and correspondence from the Commission will be provided to both the Council and NMFS conveying the state waters conservation equivalency measures for 2011. In addition, it is expected that the correspondence will demonstrate that the Commission-based conservation equivalency program paired with the status quo Federal measures (i.e., a 12.5-in (31.75-cm) minimum fish size, 25-fish per person possession limits and May 22–October 11 and November 1–December 31 seasons) are sufficient to constrain recreational landings to the 1.84 million lb (835 mt) recreational harvest limit for 2011. If the timing of this Commission process is complete, including the necessary correspondence to NMFS and the Council, before a final rule has been issued by NMFS for the 2011 recreational management measures, NMFS may leave the status quo measures in place for Federal waters. The decision to retain the status quo measures for Federal waters will be contingent on the as of yet to be completed analyses and recommendation from the Commission, and any such decision would be relayed in the final rule published in the **Federal Register**. If the Commission conservation equivalency development process extends beyond the issuance of a recreational management measures final rule, NMFS may issue a second rule to reinstate 2010 measures for Federal waters (i.e., revert to status quo), pending the completion of the Commission process and concurrence by NMFS that the combination of state waters conservation equivalency and status quo Federal measures will achieve the desired 2011 fishery performance. Should the Commission ultimately disapprove or elect not to approve conservation equivalency measures for use in state waters for the 2011 fishery, then Federal measures would remain as proposed in this rule for the duration of the 2011 fishing year: A 13.0-inch (33.02-cm) minimum fish size, 25-fish possession limit, and July 1–October 1 and November 1–December 31.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

IRFAs were prepared for both the scup specifications and the recreational management measures, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFAs describe the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for the two actions is contained in the preamble and in the **SUMMARY** of this proposed rule. A summary of the analyses follows. Copies of the complete IRFAs are available from the Council (see **ADDRESSES**).

This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

Proposed Scup TAC/TAL Increase

The potential impacts of the 2011 scup specifications was provided in the IRFA for the 2011 summer flounder, scup, and black sea bass specifications proposed rule published in the **Federal Register** on November 17, 2010, (75 FR 70192). At 31.92 million lb (14,479 mt), the scup TAC increase proposed by this rule is within the 24.10 million lb (10,932 mt) to 35.63 million lb (16,157 mt) TAC range previously described and analyzed in the 2011 specifications IRFA. The following is provided for the proposed scup increase; however, more extensive information is available in the November 17, 2010, IRFA summary issued for the initially proposed 2011 scup specifications.

The proposed scup TAC/TAL increase could affect any of the 398 federally-permitted commercial fishery vessels that landed scup in 2009, the most recent year for which complete permit data are available. Under the Council's preferred alternative to increase the scup TAC and TAL for 2011, labeled Alternative 1B in the supplemental EA, commercial fishing vessel revenues could increase by $21,432 per vessel. For comparison, this is 90 percent higher than revenues associated with the 2010 fishery levels and $12,940 higher than the estimated profits associated with the currently implemented commercial quota level.

In considering the scup TAC increase recommended by the Council, NMFS considered the range of possible TACs analyzed by the Council. NMFS is proposing the Council's preferred alternative without modification as it meets the objectives of the FMP, the Magnuson-Stevens Act, and other applicable law while also providing the lowest impact on regulated entities. Quota levels above the preferred alternative fail to satisfy the applicable requirements and were adjudged by the Council to be inconsistent with the scientific advice provided by the SSC. Lower TAC alternatives are more restrictive than necessary as they have higher impacts on regulated entities than would the preferred alternative.

Recreational Management Measures

The proposed recreational management measures could affect any recreational angler who fishes for summer flounder, scup, or black sea bass in the EEZ or on a party/charter vessel issued a Federal permit for summer flounder, scup, and/or black sea bass. However, the only regulated entities affected by this action are party/charter vessels issued a Federal permit for summer flounder, scup, and/or black

sea bass, and so the IRFA focuses upon the expected impacts on this segment of the affected public. These vessels are all considered small entities for the purposes of the RFA, *i.e.,* businesses in the recreational fishery with gross revenues of up to $7.0 million. These small entities can be specifically identified in the Federal vessel permit database and would be impacted by the recreational measures, regardless of whether they fish in Federal or state waters. Although fishing opportunities by individual recreational anglers may be impacted by this action, they are not considered small entities under the RFA.

The Council estimated that the proposed measures could affect any of the 980 vessels possessing a Federal charter/party permit for summer flounder, scup, and/or black sea bass in 2009, the most recent year for which complete permit data are available. However, only 348 vessels reported active participation in the 2009 recreational summer flounder, scup, and/or black sea bass fisheries.

In the IRFA, the no-action alternative (i.e., maintenance of the regulations as codified) is: (1) For summer flounder, coastwide measures of a 19.5-inch (49.53-cm) minimum fish size, a 2-fish possession limit, and an open season from May 1 to September 30; (2) for scup, a 10.5-inch (26.67-cm) minimum fish size, a 10-fish possession limit, and an open season of June 6 through September 26; and (3) for black sea bass, a 12.5-inch (31.75-cm) minimum size, a 25-fish possession limit, and open seasons of May 22–October 11 and November 1–December 31.

The impacts of the proposed action on small entities (*i.e.,* federally permitted party/charter vessels in each state in the Northeast region) were analyzed, assessing potential changes in gross revenues for all 18 combinations of alternatives proposed. Although NMFS's RFA guidance recommends assessing changes in profitability as a result of proposed measures, the quantitative impacts were instead evaluated using expected changes in party/charter vessel revenues as a proxy for profitability. This is because reliable cost and revenue information is not available for charter/party vessels at this time. Without reliable cost and revenue data, profits cannot be discriminated from gross revenues. As reliable cost data become available, impacts to profitability can be more accurately forecast. Similarly, changes to long-term solvency were not assessed, due both to the absence of cost data and because the recreational management measures change annually according to the specification-setting process. Effects of the various management measures were analyzed by employing quantitative approaches, to the extent possible. Where quantitative data were not available, qualitative analyses were utilized.

Management measures proposed under the summer flounder conservation equivalency alternative (Summer Flounder Alternative (1) have yet to be adopted; therefore, potential losses under this alternative could not be analyzed in conjunction with various alternatives proposed for scup and black sea bass. Since conservation equivalency allows each state to tailor specific recreational fishing measures to the needs of that state, while still achieving conservation goals, it is expected that the measures developed under this alternative, when considered in combination with the measures proposed for scup and black sea bass, would have fewer overall adverse effects than any of the other combinations that were analyzed.

Impacts for other combinations of alternatives were examined by first estimating the number of angler trips aboard party/charter vessels in each state in 2010 that would have been affected by the proposed 2011 management measures. All 2010 party/charter fishing trips that would have been constrained by the proposed 2011 measures in each state were considered to be affected trips. Marine Recreational Fishery Statistics Survey (MRFSS) data indicate that anglers took 30.66 million fishing trips in 2010 in the Northeastern U.S., and that party/charter anglers accounted for 1.43 million of the angler fishing trips, private/rental boat trips accounted for 16.05 million angler fishing trips, and shore trips accounted for 13.17 million recreational angler fishing trips.

There is very little empirical evidence available to estimate how the party/charter vessel anglers might be affected by the proposed fishing regulations. If the proposed measures discourage trip-taking behavior among some of the affected anglers, economic losses may accrue to the party/charter vessel industry in the form of reduced access fees. On the other hand, if the proposed measures do not have a negative impact on the value or satisfaction the affected anglers derive from their fishing trips, party/charter revenues would remain unaffected by this action. In an attempt to estimate the potential changes in gross revenues to the party/charter vessel industry in each state, two hypothetical scenarios were considered: A 10-percent reduction and a 25-percent reduction in the number of fishing trips that are predicted to be affected by implementation of the management measures in the Northeast (ME through NC) in 2011.

Total economic losses to party/charter vessels were then estimated by multiplying the number of potentially affected trips in each state in 2011, under the two hypothetical scenarios, by the estimated average access fee of $107.13 paid by party/charter anglers in the Northeast in 2010. Finally, total economic losses were divided by the number of federally permitted party/charter vessels that participated in the summer flounder fisheries in 2010 in each state (according to homeport state in the Northeast Region Permit Database) to obtain an estimate of the average projected gross revenue loss per party/charter vessel in 2011. The analysis assumed that angler effort and catch rates in 2011 will be similar to 2010.

The Council noted that this method is likely to overestimate the potential revenue losses that would result from implementation of the proposed measures in these three fisheries for several reasons. First, the analysis likely overestimates the potential revenue impacts of these measures because some anglers would continue to take party/charter vessel trips, even if the restrictions limit their landings. Also, some anglers may engage in catch and release fishing and/or target other species. It was not possible to estimate the sensitivity of anglers to specific management measures. Second, the universe of party/charter vessels that participate in the fisheries is likely to be even larger than presented in these analyses, as party/charter vessels that do not possess a Federal summer flounder, scup, or black sea bass permit because they fish only in state waters are not represented in the analyses. Considering the large proportion of landings from state waters (*e.g.,* more than 88 percent of summer flounder and 98 percent of scup landings in 2009, respectively), it is probable that some party/charter vessels fish only in state waters and, thus, do not hold Federal permits for these fisheries. Third, economic losses are estimated under two hypothetical scenarios: (1) A 10-percent; and (2) a 25-percent reduction in the number of fishing trips that are predicted to be affected by implementation of the management measures in the Northeast in 2011. Reductions in fishing effort of this magnitude in 2011 are not likely to occur, given the fact that the proposed measures do not prohibit anglers from keeping at least some of the fish they catch, or the fact that there are alternative species to harvest. Again, it

is likely that at least some of the potentially affected anglers would not reduce their effort when faced with the proposed landings restrictions, thereby contributing to the potential overestimation of potential impacts for 2011.

Impacts of Summer Flounder Alternatives

The proposed action for the summer flounder recreational fishery would limit coastwide catch to 11.58 million lb (5,254 mt) by imposing coastwide Federal measures throughout the EEZ. As described earlier, upon confirmation that the proposed state measures would achieve conservation equivalency, NMFS may waive the permit condition found at § 648.4(b), which requires federally permitted vessels to comply with the more restrictive management measures when state and Federal measures differ. Federally permitted charter/party permit holders and recreational vessels fishing for summer flounder in the EEZ then would be subject to the recreational fishing measures implemented by the state in which they land summer flounder, rather than the coastwide measures.

Because states have yet to develop specific 2011 management measures, it is not yet possible to analyze the potential impacts of Summer Flounder Alternative 1, which would implement conservation equivalency. However, conservation equivalent recreational management measures allow each state to develop specific summer flounder recreational measures, which would allow the fishery to operate in each state during critical fishing periods while still achieving the conservation objectives. This should help mitigate potential adverse economic impacts. Therefore, the Council concluded in its analysis that Summer Flounder Alternative 1 would likely have the lowest potential adverse impact of the alternatives considered for the 2011 summer flounder recreational fishery.

Because states have a choice of developing specific measures in the Commission's conservation equivalency process, it is expected that the states would adopt conservation equivalent measures that result in fewer adverse economic impacts than the more restrictive proposed precautionary default measures (*i.e.,* 20.0-inch (50.80-cm) minimum fish size, a possession limit of two fish, and an open season of May 1 through September 30, 2011). The precautionary default is a sub-alternative that may be implemented under specific conditions, as outlined in the preamble of this rule. As such, the Council conducted analysis of the potential impact of implementing precautionary default measures in 2011. Under the precautionary default measures, impacted trips are defined as trips taken in 2010 that landed at least one summer flounder smaller than 20.0 inches (50.80 cm), landed more than two summer flounder, or landed summer flounder during closed seasons. The analysis concluded that implementation of precautionary default measures could affect 0.86 percent of the party/charter vessel trips in the Northeast, including those trips where no summer flounder were caught.

The impacts of Summer Flounder Alternative 2 for coastwide measures, which would be implemented by NMFS if conservation equivalency is disapproved in the final rule, i.e., a 18.5-inch (46.99-cm), minimum fish size, a two-fish possession limit, and a fishing season from May 1 through September 30, were evaluated in the Council's analysis. Impacted trips were defined as individual angler trips taken aboard party/charter vessels in 2010 that landed at least one summer flounder smaller than 18.5 inch (46.99 cm) that landed more than two summer flounder, or landed summer flounder during closed seasons. The analysis concluded that the measures would affect 0.79 percent of the party/charter vessel trips in the Northeast.

Continuation of the summer flounder coastwide management measures (i.e., a 20.0-inch (50.80-cm) minimum fish size, two-fish possession limit, and a May 1 through September 1 fishing season) is expected to constrain 2011 landings to the recreational harvest limit; however, continuation of those measures would be more restrictive than necessary under the summer flounder rebuilding plan requirement established 2011 recreational harvest limit.

Impacts of Scup Alternatives

The proposed action for the scup recreational fishery would implement Federal coastwide management measures throughout the EEZ. As described earlier in the preamble, a conservation equivalent program is utilized by the Commission to manage state waters and NMFS is concurrently proposing an increase to the scup TAC/TAL and recreational harvest limit and establish scup recreational management measures designed to achieve the increased recreational harvest limit. Federally permitted charter/party permit holders and recreational vessels fishing for scup in the EEZ would be subject to the recreational fishing measures implemented by NMFS; charter/party vessels participating solely in state waters without a Federal permit would be subject to the provisions adopted by the Commission; federally permitted scup party/charter vessels participating in both state and Federal waters would be subject to the more restrictive of the two measures implemented to manage the 2011 scup recreational fishery.

Scup Alternative 1 (a 10.5-inch (26.67-cm) minimum fish size, a 10-fish per person possession limit, and open season of June 6 through September 26) is the status quo. As explained elsewhere in the preamble, state and Federal measures are expected to differ; however, very little of the scup recreational harvest occurs in Federal waters of the EEZ. Affected trips under Scup Alternative 1 were defined as trips taken in 2010 that landed at least one scup smaller than 10.5-inch (26.67-cm), landed more than 10 scup, or landed scup during the closed seasons (January 1–June 5 and September 27–December 31). Analysis concluded that 1.85 percent of federally permitted party/charter vessel trips could be affected by this alternative. While these measures are the status quo, state and federal measures differed in 2010. This alternative is projected to constrain landings to the Council and NMFS proposed increased scup recreational harvest limit of 5.74 million lb (2,604 mt).

The non-preferred scup coastwide alternative (Scup Alternative 2; 10.5-inch (26.67-cm) minimum fish size, 10-fish per person possession limit, and fishing seasons January 1–February 28 and October 1–31) is projected to constrain landings to levels below the current 2011 scup recreational harvest limit. Affected trips under Scup Alternative 2 were defined as trips taken in 2010 that landed at least one scup smaller than 10.5 inches (26.67 cm), landed more than 10 scup, or landed scup in the closed seasons. The analysis concluded that this alternative could impact 5.71 percent of federally permitted party/charter vessel trips in 2011, if implemented.

Scup Alternative 3 measures (an 11.0-inch (27.94-cm) minimum fish size, 10-fish per person possession limit, and fishing seasons May 24–September 26) are expected to effectively constrain landings to the current 2011 recreational harvest limit if comparable measures are utilized in state waters. Affected trips under Scup Alternative 3 were defined as trips taken in 2010 that landed at least one scup smaller than 11.0-inch (27.94-cm), landed more than 10 scup, or landed scup in the closed seasons. The analysis concluded that this alternative could impact 1.83 percent of

federally permitted party/charter vessel trips in 2011, if implemented.

Because NMFS is proposing to increase the 2011 scup recreational harvest limit, the measures contained in Scup Alternatives 2 and 3 are more restrictive than necessary for managing the 2011 fishery. The projected impacts of Scup Alternative 3 are slightly less than the measures proposed by NMFS; however, the overall estimated reduction in landings associated with Alternative 3 are expected to be up to 25 percent from 2010 levels and, as such, are more restrictive than necessary for 2011.

Impacts of Black Sea Bass Alternatives

The proposed action for the black sea bass recreational fishery would limit coastwide catch to 1.84 million lb (835 mt) by imposing coastwide Federal measures throughout the EEZ. The impact of Black Sea Bass Alternative 1 (a 13.0-inch (33.02-cm) minimum fish size, a 25-fish per person possession limit, and an open season of July 1–October 1 and November 1–December 31), is projected to reduce black sea bass landings by 41 percent in 2011 from 2010 levels. These measures would likely ensure that landings remain below the 2011 recreational harvest limit. Impacted trips were defined as trips taken in 2010 that landed at least one black sea bass smaller than 13.0-inch (33.02-cm), landed more than 25 black sea bass, or landed black sea bass during the proposed closed seasons (January 1–June 30 and October 2–31). Analysis concluded that 3.45 percent of federally permitted party/charter vessel trips could be affected by this alternative.

The non-preferred black sea bass coastwide alternative for status quo (Black Sea Bass Alternative 2; 12.5-inch (31.75-cm) minimum fish size, 25-fish per person possession limit, and fishing seasons of May 22–October 11 and November 1–December 31) is not expected to constrain 2011 landings to the recreational harvest limit if implemented in both state and Federal waters. Individual states may, though the Commission's Addendum XXI, adopt sufficiently restrictive measures that when paired with the Black Sea Bass Alternative 2 measures in Federal waters, achieve the required reduction in landings to constrain harvest to the 2011 recreational harvest limit. The Black Sea Bass Alternative 2 measures could affect 0.76 percent of the effort onboard party/charter vessels if implemented in 2011.

Black Sea Bass Alternative 3 (a 12.5-inch (31.75-cm) minimum fish size, 25-fish per person possession limit, and no closed season) is not expected to effectively constrain landings to the 2011 recreational harvest limit and, as such, is not consistent with the objectives of the FMP or Magnuson-Stevens Act.

Potential 2011 Regional Economic Impact Analysis Summary

Regionally, projected federally permitted party/charter revenue losses in 2011 range from $2.1 million to $7.8 million in sales, $686 thousand to $2.6 million in income, and between 40 and 156 jobs, if a 10-percent reduction in the number of affected trips occurs. The estimated losses are approximately two and a half times as high if a 25-percent reduction in affected trips is assumed to occur.

Potential revenue losses in 2011 could differ for federally permitted party/charter vessels that land more than one of the regulated species. The cumulative maximum gross revenue loss per vessel varies by the combination of permits held and by state. All 18 potential combinations of management alternatives for summer flounder, scup, and black sea bass are predicted to affect party/charter vessel revenues to some extent in all of the Northeast coastal states. Although potential losses were estimated for party/charter vessels operating out of ME and NH, these results are suppressed for confidentiality purposes. Average party/charter losses for federally permitted vessels operating in the remaining states are estimated to vary across the 18 combinations of alternatives. For example, in NY, average losses are predicted to range from a high of $3,477 to a low of $593 per vessel, assuming a 10-percent reduction in effort, as described above. Average gross revenue losses per vessel under each of the 18 combinations of alternatives were generally highest in NC followed by MA, NJ, NY, RI, CT, MD, VA, then DE. Across states, average gross projected revenue losses range from a low of $19 per vessel in DE to $19,003 in NC.

Summary

The proposed recreational management measures for summer flounder in the Commission's conservation equivalency are likely to be similar or more liberal for 2011 (i.e., either smaller minimum fish size, higher possession limits, and/or longer fishing seasons) under the proposed conservation equivalency system (Summer Flounder Alternative 1) than those in place in 2010. If the Commission approves state-developed measures as conservational equivalent to the coastwide measures, measures for Federal waters adopted by waiving § 648.4(b) may also be similar or more liberal for 2011 if NMFS approves conservation equivalency in the final rule.

NMFS is proposing to keep the status quo with respect to scup recreational management measures for 2011, but is proposing an increase to the recreational harvest limit resulting from increases to the scup TAC and TAL. The rationale for this proposed increase is outlined in the preamble to this rule and not repeated here.

The proposed measures for black sea bass are more restrictive than the measures in place for 2010; however, NMFS may retain the status quo measures for Federal waters, but it is dependent on efforts underway by the Commission to devise and implement a state waters management system that, when paired with the 2010 status quo measures for Federal waters, will result in the necessary reduction in 2011 landings from 2010 levels.

The proposed management measures, or management system in the case of conservation equivalency, were chosen because they allow for the maximum level of recreational landings, while allowing the NMFS to achieve the objectives of the FMP. Summer flounder conservation equivalency allows states to implement management measures tailored, to some degree, to meet the needs of their individual respective recreational fishery participants, provided the level of reduction is equal to the overall reduction needed coastwide, consistent with Framework Adjustment 2 to the FMP.

The proposed measures for scup, when used in concert with the proposed increase to the 2011 recreational harvest limit, are expected to achieve the required reduction in 2011 landings from 2010 levels, provided that comparable state measures are implemented through the Commission. Because it appears likely that the 2011 Commission measures may differ from Federal measures, NMFS will consider public comment and more closely examine the Commission measures to determine the likelihood that overfishing could occur as a result of the combined proposed Federal and Commission measures before publishing a final rule. The majority of scup recreational harvest occurs within state waters.

The proposed black sea bass management measures were selected because they are the only set of measures proposed by the Council that are projected to constrain landings to the recreational harvest limit. As discussed in the preamble, there is a

possibility that status quo measures may be retained depending on the outcome of the Commission's Addendum XXI process. However, NMFS must at this time propose measures that achieve the objectives of the FMP and Magnuson-Stevens Act by constraining 2011 harvest of black sea bass to the recreational harvest limit.

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 15, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 648.102 is revised to read as follows:

§ 648.102 Time restrictions.

Unless otherwise specified pursuant to § 648.107, vessels that are not eligible for a moratorium permit under § 648.4(a)(3) and fishermen subject to the possession limit may fish for summer flounder from May 1 through September 30. This time period may be adjusted pursuant to the procedures in § 648.100.

3. In § 648.103, paragraph (b) is revised to read as follows:

§ 648.103 Minimum fish sizes.

* * * * *

(b) Unless otherwise specified pursuant to § 648.107, the minimum size for summer flounder is 18.5 inch (46.99 cm) TL for all vessels that do not qualify for a moratorium permit, and charter boats holding a moratorium permit if fishing with more than three crew members, or party boats holding a moratorium permit if fishing with passengers for hire or carrying more than five crew members.

* * * * *

4. In § 648.105, the first sentence of paragraph (a) is revised to read as follows:

§ 648.105 Possession restrictions.

(a) Unless otherwise specified pursuant to § 648.107, no person shall possess more than two summer flounder in, or harvested from, the EEZ, unless that person is the owner or operator of a fishing vessel issued a summer flounder moratorium permit, or is issued a summer flounder dealer permit. * * *

* * * * *

5. In § 648.107, paragraph (a) introductory text and paragraph (b) are revised to read as follows:

§ 648.107 Conservation equivalent measures for the summer flounder fishery.

(a) The Regional Administrator has determined that the recreational fishing measures proposed to be implemented by Massachusetts through North Carolina for 2011 are the conservation equivalent of the season, minimum fish size, and possession limit prescribed in §§ 648.102, 648.103, and 648.105(a), respectively. This determination is based on a recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission.

* * * * *

(b) Federally permitted vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels subject to the recreational fishing measures of this part and registered in states whose fishery management measures are not determined by the Regional Administrator to be the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.102, 648.103(b) and 648.105(a), respectively, due to the lack of, or the reversal of, a conservation equivalent recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission, shall be subject to the following precautionary default measures: Season—May 1 through September 30; minimum size—20.0 inches (50.80 cm); and possession limit—two fish.

6. Section 648.142 is revised to read as follows:

§ 648.142 Time restrictions.

Vessels that are not eligible for a moratorium permit under § 648.4(a)(7), and fishermen subject to the possession limit specified in § 648.145(a), may possess black sea bass from July 1 through October 1 and November 1 through December 31, unless this time period is adjusted pursuant to the procedures in § 648.140.

7. In § 648.143, paragraph (b) is revised to read as follows:

§ 648.143 Minimum sizes.

* * * * *

(b) The minimum fish size for black sea bass is 13.0 inches (33.02 cm) TL for all vessels that do not qualify for a moratorium permit, and for party boats holding a moratorium permit, if fishing with passengers for hire or carrying more than five crew members, and for charter boats holding a moratorium permit, if fishing with more than three crew members.

* * * * *

[FR Doc. 2011–9627 Filed 4–20–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 76, No. 77
Thursday, April 21, 2011

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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0016]

Notice of Request for Extension of Approval of an Information Collection; Importation of Poultry Meat and Other Poultry Products From Sinaloa and Sonora, Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the importation of poultry meat and other poultry products from Sinaloa and Sonora, Mexico.

DATES: We will consider all comments that we receive on or before June 20, 2011.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2011-0016* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2011–0016, 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–2011–0016.

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: For information on regulations for the importation of poultry meat and other poultry products from Sinaloa and Sonora, Mexico, contact Dr. Magde Elshafie, Staff Officer, NCIE, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231; (301) 734–3277. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Importation of Poultry Meat and Other Poultry Products From Sinaloa and Sonora, Mexico.

OMB Number: 0579–0144.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is authorized, among other things, to prohibit the importation and interstate movement of animals and animal products to prevent the introduction into and dissemination within the United States of animal diseases and pests. To fulfill this mission, APHIS regulates the importation of animals and animal products into the United States. The regulations are contained in title 9, chapter 1, subchapter D, parts 91 through 99, of the Code of Federal Regulations.

The regulations in part 94, among other things, restrict the importation of poultry meat and other poultry products from Mexico and other regions of the world where exotic Newcastle disease (END) has been determined to exist. The regulations allow the importation of poultry meat and poultry products from the Mexican States of Sinaloa and Sonora under conditions that protect against the introduction of END into the United States.

To ensure that these items are safe for importation, we require that certain data appear on the foreign meat inspection certificate that accompanies the poultry meat or other poultry products from Sinaloa and Sonora. We also require that serially numbered seals be applied to containers carrying the poultry meat or other poultry products.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, 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 collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Federal animal health authorities in Mexico and exporters of poultry meat and other poultry products from Mexico to the United States.

Estimated annual number of respondents: 280.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 280.

Estimated total annual burden on respondents: 280 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.)

All responses to this notice will be summarized and included in the request

for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 15th day of April 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–9702 Filed 4–20–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0021]

Notice of Request for Extension of Approval of an Information Collection; Chronic Wasting Disease in Cervids; Payment of Indemnity

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the payment of indemnity for the voluntary depopulation of captive cervid herds known to be affected with chronic wasting disease.

DATES: We will consider all comments that we receive on or before June 20, 2011.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2011-0021* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2011–0021, 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–2011–0021.

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: For information on regulations for the payment of indemnity for the voluntary depopulation of captive cervid herds known to be affected with chronic wasting disease, contact Dr. Patrice N. Klein, Senior Staff Veterinarian, Ruminant Health Programs, NCAHP, VS, APHIS, 4700 Road Unit 43, Riverdale, MD 20737; (301) 734–0738. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Chronic Wasting Disease in Cervids; Payment of Indemnity.

OMB Number: 0579–0189.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) regulates the importation and interstate movement of animals and animal products, and conducts various other activities to protect the health of our Nation's livestock and poultry.

In connection with this mission, APHIS established regulations to provide for the payment of indemnity by USDA for the voluntary depopulation of captive cervid herds known to be affected with chronic wasting disease (CWD).

CWD is a transmissible spongiform encephalopathy of cervids (elk, deer, and other members of the deer family) and is typified by chronic weight loss leading to death. The presence of CWD in cervids causes significant economic and market losses to U.S. producers.

The regulations in 9 CFR part 55 authorize the payment of indemnity for the voluntary depopulation of CWD-positive, -exposed, or -suspect captive cervids. In order to take part in the indemnity program, cervid producers must apply for participation, must sign a payment, appraisal, and agreement form, and must certify as to whether any other parties hold mortgages on the herd. These requirements involve the use of two information collection instruments: An Appraisal/Indemnity Claim Form (VS Form 1–23) and a Herd Plan Agreement.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, 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 collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 10.333 hours per response.

Respondents: State animal health officials, herd owners, and Federal- and State-approved appraisers.

Estimated annual number of respondents: 4.

Estimated annual number of responses per respondent: 1.5.

Estimated annual number of responses: 6.

Estimated total annual burden on respondents: 62 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.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 15th day of April 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–9699 Filed 4–20–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Superior National Forest, Gunflint, Kawishiwi, LaCroix, and Tofte Ranger Districts; Minnesota; Boundary Waters Canoe Area Wilderness Non-Native Invasive Plant Management Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Superior National Forest will prepare an environmental impact statement for the Boundary Waters Canoe Area Wilderness (BWCAW) Non-native Invasive Plant (NNIP) Management Project. In order to maintain and improve aquatic and terrestrial wildlife habitat, to maintain healthy, resilient native plant communities, and to maintain the character and ecological integrity of the BWCAW, the Superior National Forest proposes to use an integrated pest management approach to treat NNIP, beginning with treatments on a total of approximately 13 acres of invasive plants at sites scattered across the wilderness and possibly expanding up to 20 acres over the next 10 years. The proposed activities would eradicate or control existing NNIP populations and respond rapidly to new infestations in order to prevent the further spread of NNIP.

DATES: Comments concerning the scope of the analysis must be received by May 23, 2011. The draft environmental impact statement is expected September 2011 and the final environmental impact statement is expected January 2012.

ADDRESSES: Send written comments to Jim Sanders, Forest Supervisor, *Attn:* BWCAW NNIP Management Project, 318 Forestry Rd., Aurora, MN 55705. Comments may also be sent via e-mail to *comments-eastern-superior-laurentian@fs.fed.us,* or via facsimile to (218) –229–8821.

FOR FURTHER INFORMATION CONTACT: Jack Greenlee, Project Leader, at (218) 229–8817, or *jackgreenlee@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of this project is to maintain and improve aquatic and terrestrial wildlife habitat, to maintain healthy, resilient native plant communities, and to maintain the character and ecological integrity of the BWCAW. To accomplish these objectives, there is a need to implement an integrated pest management approach that eradicates or controls existing NNIP infestations and provides for a rapid response to new infestations.

Proposed Action

The proposed action would implement NNIP management activities, including manual and herbicide control methods, over a ten-year period in the BWCAW. A total of approximately 13 acres of NNIP infestations at approximately 1,000 known sites scattered across the BWCAW would be controlled or eradicated using either manual methods or herbicides. To allow for a rapid response to new infestations, up to 7 additional acres could be treated. To protect water resources, visitor safety, and the environment, spot application methods using low use-rate, low toxicity, short persistence herbicides would be employed. Most NNIP infestations occur on campsites, portages or trails, along shorelines, at old resort/cabin sites, or in burned areas. Manual treatments would be accomplished by pulling, digging, or cutting the plants. Treatments would generally occur during the growing season, from late May to mid-October.

Responsible Official

Superior National Forest Supervisor.

Nature of Decision To Be Made

The decision to be made is whether or not to implement an integrated pest management strategy to control non-native invasive plants in the BWCAW. The decision will include:

- What actions will be approved to address the purpose and need.
- Where will those actions take place.
- Are any mitigation measures needed to further limit effects of approved actions.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. Written comments will be solicited through a notice that will be sent to interested individuals and organizations. Further details about the project, including maps and appendices, are available on the Superior National Forest Web site. Visit the Web site at *http://www.fs.usda.gov/superio*r and see "Projects" under "Land and Resources Management". Look for "BWCAW Non-native Invasive Plant Management Project".

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however anonymous comments will not provide the respondent with standing to participate in subsequent administrative review or judicial review.

Dated: April 15, 2011.

James W. Sanders,

Forest Supervisor.

[FR Doc. 2011–9675 Filed 4–20–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lakeview-Reeder Fuels Reduction, Idaho Panhandle National Forests, Idaho, Bonner County

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplemental environmental impact statement.

SUMMARY: The Priest Lake Ranger District of the Idaho Panhandle National Forests will prepare a Supplemental Environmental Impact Statement (EIS) for the Lakeview-Reeder Fuel Reduction Project. The Notice of Availability of the draft EIS for the Lakeview-Reeder Fuels Reduction Project was published in the **Federal Register** (74 FR 5652) on January 30, 2009 and the notice of the final EIS (74 FR 28045) was published on June 12, 2009. Following the release of the final EIS, two pre-decisional objections were lodged against the project under 36 CFR part 218. Under administrative review, the project was found to be in compliance with existing laws, regulations and policy. Two separate records of decision were issued. The Roads Record of Decision (ROD) was signed on December 3, 2009. This authorized selected roadwork activities analyzed in Alternative 2 that needed to be accomplished before fuels reduction activities could be implemented. The Hazardous Fuels Reduction ROD was signed on May 10, 2010 and authorized the activities analyzed in Alternative 2 that were deferred in the Roads ROD. A complaint for injunctive and declaratory relief against the Fuels Reduction ROD was filed in the United States District Court for the District of Idaho on October 6, 2010. On December 3, 2010, the Fuels Reduction ROD was withdrawn to address issues raised by the decision in *Native Ecosystems Council* v. *Tidwell,*

599 F.3d 926 (9th Cir. 2010). A supplemental EIS will be prepared to address management indicator species, recently designated critical habitat for bull trout, and newly designated Sensitive species. Treatment acres, harvest prescriptions and mitigation for grizzly bears are slightly changed from that presented in the proposed action of the final EIS due to ongoing collaborative efforts.

DATES: Scoping is not required for supplements to environmental impact statements (40 CFR 1502.9(c)(4)). There was extensive public involvement in the development of the proposed action, the 2009 draft EIS, and the 2010 final EIS. The Forest Service is not inviting comments at this time. The draft supplemental EIS is expected to be available in July 2011 and the final supplemental EIS is expected September 2011. The comment period for the draft SEIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

ADDRESSES: Priest Lake Ranger District, 32203 Hwy 57, Priest Lake, Idaho 83856.

FOR FURTHER INFORMATION CONTACT: Albert Helgenberg, IDT Leader, USDA Forest Service, Sandpoint Ranger District, 208–263–5111. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Forest Supervisor selected Alternative 2 with modifications as documented in the May 2010 Lakeview-Reeder Fuels Reduction Project Record of Decision (ROD). The ROD authorized approximately 3,559 acres of vegetation treatment. To improve access to fuel reduction treatment areas, the ROD authorized approximately 1.9 miles of road reconstruction, 19.5 miles of road maintenance, 2.4 miles of system road construction and 0.7 miles of temporary road construction. The supplemental EIS will contain additional information about management indicator species, recently designated critical habitat for bull trout, and newly designated Sensitive species. Any modifications that come out of the ongoing collaborative effort will also be incorporated into the supplemental EIS.

The mailing list for this project will include those individuals, agencies and organizations on the mailing list for the 2009 Draft EIS. The comment period for the draft SEIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**. The Idaho Panhandle National Forests Supervisor will make a decision on this project after considering comments, environmental consequences, and applicable laws, regulations, and policies.

Purpose and Need for Action

The project is needed to reduce hazardous forest fuels to decrease the risk of a wildfire negatively impacting the communities in the project area, public and firefighter safety, public infrastructure, private and National Forest System lands and resource values, and to restore, enhance and protect forest ecosystem components to improve forest health, increase biological diversity and to reduce threats from stand replacing wildfires and insect and disease infestations.

Proposed Action

The proposed action as described in the FEIS includes approximately 2,319 acres of fuel reduction treatment that involve commercial timber harvest and approximately 1,179 acres of ecosystem burn prescriptions that do not involve harvest. Road work includes approximately 19.5 miles of road maintenance, 1.9 miles of road reconstruction, 2.4 miles of new road construction, and 0.7 miles of temporary road construction.

Responsible Official

The Forest Supervisor of the Idaho Panhandle National Forests is the Responsible Official.

Nature of Decision To Be Made

The decison for the Lakeview-Reeder Fuels Reduction Project will identify the land management activities to be implemented in the project area including acres, types, and locations of vegetative treatments including timber harvest and fuel treatments, as well as miles and locations of road maintenance, construction, reconstruction and storage activities. The supplemental EIS is intended to provide additional evaluation of management indicator species, recently designated critical habitat for bull trout, and newly designated Sensitive species and provide that information to the public.

Scoping Process

Scoping is not required for supplements to environmental impact statements (40 CFR 1502.9(c)(4)). There was extensive public involvement in the development of the proposed action, the 2009 Draft EIS, and the 2010 Final EIS. The Forest Service is not inviting comments at this time.

Comment Requested

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early state, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's positions and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: April 15, 2011.

Ranotta K. McNair,

Forest Supervisor.

[FR Doc. 2011–9655 Filed 4–20–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Kaibab National Forest, Williams Ranger District; Arizona; Bill Williams Mountain Restoration Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The purpose of the proposed action is to improve the health and sustainability of forested conditions on and surrounding Bill Williams Mountain by reducing hazardous fuels and moving vegetative conditions in the project area toward the future desired conditions. The project area is located approximately 4 miles south-southwest of the city of Williams, Arizona. The Proposed Action includes a combination of commercial timber harvest treatments and non-commercial mechanical treatments on approximately 15,200 acres. Treatments would thin stands with mechanized equipment to meet or move toward the desired conditions, and in some stands, non-commercial treatments may be the only treatments feasible/necessary to achieve resource objectives. Prescribed fire is also proposed to be used on approximately 15,200 acres of the project area. In some areas, prescribed fire would be used in conjunction with mechanical treatments to achieve restoration and fuel treatment objectives. In other areas where operability is limited and more costly, only prescribed burning may be used to meet resource objectives.

DATES: Comments concerning the scope of the analysis must be received by May 23, 2011. The draft environmental impact statement is expected September 2011 and the final environmental impact statement is expected December 2011.

ADDRESSES: Send written comments to Tom Mutz, Team Leader, Kaibab National Forest, Williams Ranger District, 742 S. Clover Road, Williams, AZ 86046. Comments may also be sent via e-mail (with subject, Bill Williams Mountain Restoration Project Scoping Comment) to *comments-southwestern-kaibab-williams@fs.fed.us* or via facsimile to (928) 635.5680. A public meeting has been scheduled for Wednesday May 11, 2011 at 6 p.m. at the Williams Ranger District Office, 742 South Clover Road, Williams, AZ.

FOR FURTHER INFORMATION CONTACT: Tom Mutz at (928) 635.5661.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of the proposed action is to improve the health and sustainability of forested conditions on and surrounding Bill Williams Mountain by reducing hazardous fuels and moving vegetative conditions in the project area toward the future desired conditions. This work is needed to directly and indirectly improve the watershed conditions feeding the City of Williams water supply.

Proposed Action

To meet the purpose and need for action, the Kaibab National Forest proposes to treat stands surrounding Bill Williams Mountain with mechanized equipment and prescribed fire. A combination of commercial timber harvest treatments and non-commercial mechanical treatments is proposed on approximately 15,200 acres. Mechanized treatments include hand felling, ground-based logging systems, cable-logging systems and helicopter logging. Treatments would thin stands to meet or move toward the desired conditions and in some stands, non-commercial treatments may be the only treatments feasible/necessary to achieve resource objectives. Prescribed fire is also proposed to be used on approximately 15,200 acres of the project area. In some areas, prescribed fire would be used in conjunction with mechanical treatments to achieve restoration and fuel treatment objectives. In other areas where operability is limited and more costly, only prescribed burning may be used to meet resource objectives.

Responsible Official

Kaibab Forest Supervisor.

Nature of Decision To Be Made

Based on the purpose and need for action, the findings in the Environmental Impact Statement and supporting project record, and the consideration of the best available science, the Forest Supervisor will decide:

- Whether to select the proposed action or one of the alternatives;
- What mitigation and/or monitoring measures will be required during implementation of the proposed action or any alternative selected;
- What language and content changes are needed to the Kaibab National Forest Land Management Plan.

Preliminary Issues

Early in the development of the proposed action for this project the Williams Ranger District hosted six "brainstorming" sessions. Many comments received during these sessions were incorporated into the purpose and need for action and desired conditions for the project area. Other comments have helped to identify preliminary issues that need to be considered in the development of the environmental impact statement, such as:

- The consequences and risks of a wildfire on the mountain;
- The protection of the watershed and treatment of steep slopes;
- The safety and protection of life and property on and within the vicinity of Bill Williams Mountain;
- The potential effects to Mexican Spotted Owl habitat;
- And, the potential effects to natural and cultural resources, including the protection of a Traditional Cultural Property.

Scoping Process

This notice of intent initiates the scoping process, which will guide the development of an environmental impact statement for this project. The Kaibab National Forest invites public comment and participation regarding this project and subsequent EIS through scoping efforts in the form of this notice in the **Federal Register**; the Schedule of Proposed Actions (SOPA); and letters sent to potentially interested persons, tribal governments, and State and other Federal agencies. A scoping meeting will also be hosted at the Williams Ranger District on Wednesday May 11, 2011 at 6 p.m. to discuss the proposed action and accept comments. The ranger station is located at 742 South Clover Road, Williams, AZ 86046. Information will be posted on the Kaibab National Forest Web site as the project progresses. Comments received during these scoping efforts will be used to determine the scope and significant issues to be analyzed in depth in the environmental impact statement.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will

be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the Agency with the ability to provide the respondent with subsequent environmental documents.

Authority: 40 CFR 1508.22 and 36 CFR 220.5(b).

Dated: April 14, 2011.

Martie Schramm,

District Ranger.

[FR Doc. 2011–9656 Filed 4–20–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Central Montana Resource Advisory Committee; Correction

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting; correction.

SUMMARY: The Forest Service published a document in the **Federal Register** of April 13, 2011, concerning a notice of meeting for the Central Montana Resource Advisory Committee. The document contained an incorrect date.

FOR FURTHER INFORMATION CONTACT: Ron Wiseman, 406–566–2292.

Correction

In the **Federal Register** of April 13, 2011, in FR Doc. 2011–9006, on page 20624, in the second column, correcrt the **DATES** caption to read: The meeting will be held April 28, 2011 and will begin at 7 p.m.

Dated: April 15, 2011.

Ron B. Wiseman,

Designated Federal Official.

[FR Doc. 2011–9654 Filed 4–20–11; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Louisiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Louisiana Advisory Committee to the Commission will convene on Tuesday, May 10, 2011 at 2 p.m. and adjourn at approximately 6 p.m. at Southern University Law Center, Room 227, 1 Roosevelt Steptoe Dr., Baton Rouge, LA 70813. The purpose of the meeting is to conduct a public briefing and planning meeting to identify a future civil rights project.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by June 3, 2011. The address is U.S. Commission on Civil Rights, 400 State Avenue, Suite 908, Kansas City, Kansas 66101. Persons wishing to e-mail their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Farella E. Robinson, Regional Director, Central Regional Office, at (913) 551–1400, (or for hearing impaired TDD 913–551–1414), or by e-mail to *frobinson@usccr.gov.*

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Central Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Central Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, April 15, 2011.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2011–9669 Filed 4–20–11; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Certification Requirements for NOAA's Hydrographic Product Quality Assurance Program.

OMB Control Number: 0648–0507.

Form Number(s): NA.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 5.

Average Hours per Response: Initial application, documentation to accompany an item submitted for certification, and request for reconsideration of a NOAA decision, 4 hours each; inquiries, 1 hour each.

Burden Hours: 16.

Needs and Uses: This request is for a regular submission (extension) of a current information collection.

NOAA was mandated to develop and implement a quality assurance program under which the Administrator may certify privately-made hydrographic products. NOAA has established procedures by which hydrographic products are proposed for certification; by which standards and compliance tests are developed, adopted, and applied for those products; and by which certification is awarded or denied. The application and recordkeeping requirements at 15 CFR 996 are basis for this collection of information.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: April 15, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–9608 Filed 4–20–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Survey of Income and Program Participation (SIPP) 2012 Re-engineered SIPP—Field Test

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 June 20, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 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 Patrick J. Benton, Census Bureau, Room HQ–6H045, Washington, DC 20233–8400, (301) 763–4618.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to conduct a field test for the Re-engineered SIPP (SIPP–EHC) from January to March of 2012. The SIPP is a household-based survey designed as a continuous series of national panels. The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population, which the SIPP has provided on a continuing basis since 1983. The SIPP has measured levels of economic well-being and permitted changes in these levels to be measured over time.

The SIPP–EHC is molded around a central "core" of labor force and income questions that are supplemented with questions designed to address specific needs in complementary subject areas. The 2012 SIPP–EHC again uses an Event History Calendar (EHC) which facilitates the collection of dates of events and spells of coverage, as did the 2011 SIPP–EHC.

The content of the 2012 SIPP–EHC will match that of the 2011 SIPP–EHC very closely. The SIPP–EHC design does not contain free-standing topical modules. As in the 2010 and 2011 SIPP–EHC interviews, a portion of traditional SIPP topical module content is integrated into the 2012 SIPP–EHC interview. Examples of this content include medical expenses, child care, retirement and pension plan coverage, marital history, adult and child well-being, and others. The EHC should assist respondent's ability to recall events accurately over the longer reference period and provide increased data quality and inter-topic consistency for dates reported by respondents.

The 2012 SIPP–EHC field test will revisit survey respondents who were first interviewed in the 2011 SIPP–EHC field test. The 2012 SIPP–EHC will interview respondents using the previous calendar year 2011 as the reference period. The 2012 SIPP–EHC is a critical evaluation in the transition to annual interviewing for the SIPP program. The 2012 SIPP–EHC will be the first test of the revised interviewing method structure that will follow adults (15 years and older) who move from the prior wave household, and will be the first revised interviewing method test incorporating dependent data from the prior wave in the EHC interview of a current wave. Dependent data, primarily information collected in the EHC from the end of the reference year to the interview month in the prior wave, is a crucial component added to the 2012 SIPP–EHC to reduce the impact of seam bias for longitudinal uses of the monthly data from SIPP–EHC as analyses of monthly data span calendar years. The 2012 SIPP–EHC will be the only opportunity to evaluate the ability to follow movers, implement dependent data use, and produce an initial evaluation of attrition related to the new instrument design and interview interval. Although the sample is limited to high-poverty strata in 20 states and cannot represent the characteristics of the test if implemented in a full nationally representative sample, a comparison can be effectively made to the same geographies and characteristics for the same period in the 2008 panel of the production SIPP. Additionally, the functionality of all of the interrelated systems to locate and re-interview respondents after a year can be tested.

Approximately 2,600 households (based on response and coverage estimates derived from the 2010 SIPP–EHC field work) will be interviewed for the 2012 SIPP–EHC field test. We estimate that each household contains 2.1 people aged 15 and above, yielding approximately 5,460 person-level interviews in this field test. Interviews take 60 minutes per adult on average. The total annual burden for 2012 SIPP–EHC field test interviews will be 5,460 hours in FY 2012.

II. Method of Collection

The 2012 SIPP–EHC field test instrument will consist of one household interview which will reference the calendar year 2011. The interview is conducted in person with all household members 15 years old or over using regular proxy-respondent rules.

III. Data

OMB Control Number: 0607–0957.

Form Number: SIPP/CAPI Automated Instrument.

Type of Review: Regular.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 5,460 people.

Estimated Time per Response: 60 minutes per person on average.

Estimated Total Annual Burden Hours: 5,460.

Estimated Total Annual Cost: The only cost to respondents is their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, 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: April 18, 2011.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–9732 Filed 4–20–11; 8:45 am]

BILLING CODE 3511–07–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[3/10/2011 through 4/15/2011]

Firm Name	Address	Date accepted for investigation	Products
Arctic Lady Enterprises	12042 SE Sunnyside Rd., PMB 333, Clackamas, OR 97086.	13–Apr–11	The firm produces fresh crab.
Bremtown Fine Custom Cabinetry, Inc..	1456 SR 331 North, Bremen, IN 46506.	13–Apr–11	The firm manufactures wooden cabinetry for residential kitchens.
Collegiate Furnishings, Inc.	280 Reese Road, State College, PA 16801.	25–Mar–11	The firm manufactures wooden furniture from Southern Yellow Pine.
Edgemate, Inc.	213 Smith Transport Road, Roaring Spring, PA 16673.	13–Apr–11	The firm manufactures wood veneer sheets and edgebanding.
Intelicoat Technologies Image Products Holdco, LLC.	28 Gaylord St., Ste. 1, South Hadley, MA 01075.	13–Apr–11	The firm manufactures coated paper, film, and specialty substrates for imaging technologies.
Laserlith Corporation	4775 Technology Circle, Suite 3, Grand Forks, NC 58203.	11–Apr–11	The firm manufactures inertial sensors and low-power miniature radar sensors.
Mega Corporation	516 Morse Avenue, Schaumburg, IL 60193.	25–Mar–11	The firm manufactures molded plastic components and assemblies.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 7106, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: April 15, 2011.

Bryan Borlik,

Director.

[FR Doc. 2011–9681 Filed 4–20–11; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–833]

Certain Polyester Staple Fiber From Taiwan: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain polyester staple fiber (PSF) from Taiwan. The period of review is May 1, 2009, through April 30, 2010. This review covers imports of certain PSF from one producer/exporter. We have preliminarily found that sales of the subject merchandise have been made below normal value. If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on these preliminary results. We will issue the final results not later than 120 days after the date of publication of this notice.

DATES: *Effective Date:* April 21, 2011.

FOR FURTHER INFORMATION CONTACT: Michael A. Romani or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–0198 or (202) 482–4477, respectively.

Background

On June 30, 2010, the Department published a notice initiating an administrative review of the antidumping duty order on certain PSF from Taiwan covering the respondents Far Eastern Textiles Ltd. (aka & dba Far Eastern New Century Corporation) and Nan Ya Plastics Corporation (Nan Ya). See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 75 FR 37759 (June 30, 2010). We have rescinded the review in part with respect to Nan Ya. See *Polyester Staple Fiber from Taiwan: Rescission of Antidumping Duty Administrative Review in Part,* 75 FR 51442 (August 20, 2010).

On July 8, 2010, the Department published a notice determining that Far Eastern New Century Corporation (FENC) was the successor-in-interest to Far Eastern Textiles Limited. See

Polyester Staple Fiber from Taiwan: Final Results of Changed-Circumstances Antidumping Duty Administrative Review, 75 FR 39208 (July 8, 2010).

On January 31, 2011, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department extended the due date for the preliminary results by an additional 74 days from the original due date of January 31, 2011, to April 15, 2011. See *Certain Polyester Staple Fiber From Taiwan: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,* 76 FR 5331 (January 31, 2011).

Scope of the Order

The product covered by the order is PSF. PSF is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to the order may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 5503.20.00.20 is specifically excluded from the order. Also specifically excluded from the order are PSF of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting). In addition, low-melt PSF is excluded from the order. Low-melt PSF is defined as a bi-component fiber with an outer sheath that melts at a significantly lower temperature than its inner core.

The merchandise subject to the order is currently classifiable in the HTSUS at subheadings 5503.20.00.45 and 5503.20.00.65. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Request for Verifications

The Department will verify factual information relied upon in an administrative review if a domestic interested party submits a written request not later than 100 days after the date of initiation of the review and the Department conducted no verification during either of the two immediately preceding administrative reviews. See 19 CFR 351.307(b)(1)(v)(A). Alternatively, we will conduct a verification where "good cause" exists. See 19 CFR 351.307(b)(1)(iv).

Invista S.a.r.l., the petitioner, requested that we conduct cost and sales verifications of FENC in comments it submitted on March 8, 2011. The request was filed 151 days after the 100-day deadline established in 19 CFR 351.307(b)(1)(v)(A). Accordingly, the petitioner's request was untimely in this case. In addition, we preliminarily find that good cause, as described in 19 CFR 351.307(b)(1)(iv), to conduct verifications does not exist in this review because FENC has provided adequate explanations of alleged flaws in its responses. See Memorandum to the File entitled "Certain Polyester Staple Fiber from Taiwan: Far Eastern New Century Corporation Analysis Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order (5/1/09–4/30/10)" dated concurrently with this notice.

Product Comparisons

We compared U.S. sales to monthly weighted-average prices of contemporaneous sales made in the home market. We found contemporaneous sales of identical merchandise in the home market for all U.S. sales in accordance with section 771(16) of the Act.

Date of Sale

Section 351.401(i) of the Department's regulations states that the Department normally will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. The regulation provides further that the Department may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established. The Department has a long-standing practice of finding that, where shipment date from the factory precedes invoice date, shipment date better reflects the date on which the material terms of sale are established. See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand,* 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Germany,* 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

With respect to FENC's sales to the United States, shipment date usually occurs on or before the date of invoice. The date of shipment is the date on which goods are shipped from the factory. The date of invoice is the date on which the Government Uniform Invoice is issued. Further, based on record evidence, all material terms of sale are established at the time of shipment and do not change prior to the issuance of the invoice. Therefore, we used the date of shipment as the date of sale where shipment date preceded the date of sale in accordance with our practice. Where the date of invoice preceded the shipment date we used the date of invoice for the date of sale.

For the majority of FENC's home-market sales, the goods are shipped from the factory on the same day that the Government Uniform Invoice is issued. For the remaining sales, the invoice date occurs a few days after the date of shipment from the factory. Based on record evidence, all material terms of sale are established at the time of shipment. There is no evidence on the record that there were order changes in the few days between the date of shipment and the issuance of the Government Uniform Invoice. Based upon these facts and in accordance with our practice, we preliminarily determine that shipment date is the appropriate date of sale for all home-market sales.

Export Price

For sales to the United States, we calculated export price in accordance with section 772(a) of the Act because the merchandise was sold prior to importation by the exporter or producer outside the United States to the first unaffiliated purchaser in the United States and because constructed export-price methodology was not otherwise warranted. We calculated export price based on the free-on-board price to unaffiliated purchasers in the United States. Where appropriate, we made deductions, consistent with section 772(c)(2)(A) of the Act, for the following movement expenses: Inland freight from the plant to the port of exportation, inland insurance in Taiwan, brokerage and handling, harbor service fees, trade promotion fees, and containerization expenses. No other adjustments were claimed or allowed.

Normal Value

Selection of Comparison Market

To determine whether there was a sufficient volume of sales of PSF in the home market to serve as a viable basis for calculating normal value, we

compared the volume of the respondent's home-market sales of the foreign like product to its volume of U.S. sales of the subject merchandise in accordance with section 773(a) of the Act. Pursuant to section 773(a)(1)(B) of the Act, because the respondent's aggregate volume of home-market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for comparison purposes.

Cost of Production

We disregarded below-cost sales by FENC in the last administrative review of the order completed prior to the initiation of this review. See *Certain Polyester Staple Fiber From Taiwan: Final Results of Antidumping Duty Administrative Review,* 74 FR 18348 (April 22, 2009); see also *Certain Polyester Staple Fiber From Taiwan: Preliminary Results of Antidumping Duty Administrative Review,* 74 FR 6136, 6137 (February 5, 2009). Therefore, pursuant to section 773(b)(2)(A)(ii) of the Act, there were reasonable grounds to believe or suspect that the respondent made sales of the foreign like product in its comparison market at prices below the cost of production within the meaning of section 773(b) of the Act in this review.

We calculated the cost of production on a product-specific basis, based on the sum of the respondent's cost of materials and fabrication for the foreign like product plus amounts for general and administrative expenses, interest expenses, and the costs of all expenses incidental to preparing the foreign like product for shipment in accordance with section 773(b)(3) of the Act.

We relied on cost-of-production information FENC submitted in its response to our cost questionnaire, including FENC's adjustment to its cost-of-manufacturing information which accounts for purchases of purified terephthalic acid from affiliated parties at non-arm's-length prices in accordance with the major-input rule of section 773(f)(3) of the Act.

On a product-specific basis, we compared the adjusted weighted-average cost-of-production figures for the period of review to the home-market sales of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales were made at prices below the cost of production. The prices were exclusive of any applicable movement charges, packing expenses, warranties, and indirect selling expenses. In determining whether to disregard home-market sales made at prices below their cost of production and in accordance with sections 773(b)(2)(B), (C), and (D) of the Act, we examined whether such sales were made within an extended period of time in substantial quantities and at prices which permitted the recovery of all costs within a reasonable period of time.

For home-market sales of models not produced during the period of review, we have relied on the cost-of-production information of the most physically similar models, consistent with our long-standing preference where such information is available. See *Stainless Steel Sheet and Strip in Coils From Mexico; Final Results of Antidumping Duty Administrative Review,* 76 FR 2332 (January 13, 2011), and the accompanying Issues and Decision Memorandum at Comment 1 and *Notice of Final Results of the Tenth Administrative Review and New Shipper Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea,* 70 FR 12443 (March 14, 2005), and accompanying Issues and Decision Memorandum at Comment 5.

We found that, for certain products, more than 20 percent of the respondent's home-market sales were at prices below the cost of production and, in addition, the below-cost sales were made within an extended period of time in substantial quantities. In addition, these sales were made at prices that did not permit the recovery of costs within a reasonable period of time. Therefore, we disregarded these sales and used the remaining sales of the same product as the basis for determining normal value in accordance with section 773(b)(1) of the Act.

Calculation of Normal Value

We calculated normal value based on the price FENC reported for home-market sales to unaffiliated customers which we determined were within the ordinary course of trade. We made adjustments for differences in domestic and export packing expenses in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act. We also made adjustments, consistent with section 773(a)(6)(B)(ii) of the Act, for inland-freight expenses from the plant to the customer and expenses associated with loading the merchandise onto the truck to be shipped. In addition, we made adjustments for differences in circumstances of sale in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made these adjustments, where appropriate, by deducting direct selling expenses incurred on home-market sales (*i.e.,* imputed credit expenses and warranties) and adding U.S. direct selling expenses (*i.e.,* imputed credit expenses and bank charges) to normal value.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine normal value based on sales in the comparison market at the same level of trade as the export price. Pursuant to 19 CFR 351.412(c)(1), the normal-value level of trade is based on the starting price of the sales in the comparison market or, when normal value is based on constructed value, the starting price of the sales from which we derive selling, general, and administrative expenses and profit. For export-price sales, the U.S. level of trade is based on the starting price of the sales in the U.S. market, which is usually from the exporter to the importer.

To determine whether comparison-market sales are at a different level of trade than export-price sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. See 19 CFR 351.412(c)(2). If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which normal value is based and the comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act.

In this review, we obtained information from FENC regarding the marketing stages involved in making its reported home-market and U.S. sales for each channel of distribution. FENC reported one channel of distribution (*i.e.,* direct sales to distributers) and a single level of trade in the U.S. market. For purposes of these preliminary results, we have organized the common selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services. Because the sales process and selling functions FENC performed for selling to the U.S. market did not vary by individual customers, the necessary condition for finding they constitute different levels of trade was not met. Accordingly, we determined that all of FENC's U.S. sales constitute a single level of trade.

FENC reported a single channel of distribution (*i.e.,* direct sales to end-users) and a single level of trade in the home market. Because the sales process

and selling functions FENC performed for selling to home-market customers did not vary by individual customers, we preliminarily determine that all of FENC's home-market sales constitute a single level of trade.

We found that the export-price level of trade was similar to the home-market level of trade in terms of selling activities. Specifically, the levels of expense were similar for the selling functions FENC provided in both markets. Accordingly, we considered the export-price level of trade to be similar to the home-market level of trade and not at a different stage of distribution than the home-market level of trade. Therefore, we matched export-price sales to sales at the same level of trade in the home market and no level-of-trade adjustment under section 773(a)(7)(A) of the Act is necessary.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that a dumping margin of 2.92 percent exists for FENC for the period May 1, 2009, through April 30, 2010.

Public Comment

We will disclose the documents resulting from our analysis to parties in this review within five days of the date of publication of this notice. See 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of the publication of this notice in the **Federal Register**. See 19 CFR 351.310(c). If a hearing is requested, the Department will notify interested parties of the hearing schedule.

Interested parties are invited to comment on the preliminary results of this review. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this review are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included.

We intend to issue the final results of this review, including the results of our analysis of issues raised in any submitted written comments, within 120 days after publication of this notice.

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. FENC reported the name of the importer of record and the entered value for all of its sales to the United States during the period of review. In accordance with 19 CFR 351.212(b)(1), we have calculated an importer-specific assessment rate for the merchandise in question by aggregating the dumping margins we calculated for all U.S. sales to the importer and dividing this amount by the total entered value of those sales.

The Department clarified its "automatic assessment" regulation on May 6, 2003. This clarification will apply to entries of subject merchandise during the period of review produced by FENC for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate un-reviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Cash-Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of PSF from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash-deposit rate for FENC will be the rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of the proceeding, 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, a prior 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; (4) if neither the exporter nor the manufacturer is a firm covered in this review, the cash-deposit rate will be 7.31 percent, the all-others rate established in *Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From the Republic of Korea and Antidumping Duty Orders: Certain Polyester Staple Fiber From the Republic of Korea and Taiwan,* 65 FR 33807 (May 25, 2000).

Notification to Importers

This notice also serves as a preliminary 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.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 14, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–9716 Filed 4–20–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–909]

Certain Steel Nails From the People's Republic of China: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* April 21, 2011.

SUMMARY: On February 11, 2011, the Department of Commerce ("Department") received a request on behalf of Mid Continent Nail Corporation ("Petitioner") for a changed circumstances review and a request to revoke, in part, the antidumping duty order on certain steel nails from the People's Republic of China ("PRC") with respect to four types of steel nails. Petitioner's request expressed lack of interest in antidumping duty relief from imports of these four specific types of steel nails. In addition to the four physical descriptions of steel nails, Petitioner requested three of the nails include the labels "roof" or "roofing" on the packaging. The Department is preliminarily not adopting Petitioner's labeling request as an absolute requirement. However, we are preliminarily notifying the public of our intent to revoke, in part, the antidumping duty order as it relates to imports of four specific types of steel nails described below. The Department invites interested parties to comment on these preliminary results.

FOR FURTHER INFORMATION CONTACT: Alexis Polovina, AD/CVD Operations, Office 9, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3927.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2008, the Department published the antidumping duty order on certain steel nails from the PRC. *See Notice of Antidumping Duty Order: Certain Steel Nails From the People's Republic of China,* 73 FR 44961 (August 1, 2008) ("*Order*"). On February 11, 2011, Petitioner submitted a request for a changed circumstances review to revoke, in part, the antidumping duty order on certain steel nails from the PRC with respect to four specific types of steel nails.

On February 22, 2011, the Department received comments on behalf of Itochu Building Products ("IBP") supporting Petitioner's request for partial revocation of the *Order.* IBP requested the Department select the date of the preliminary determination of the original investigation as the effective date of the revocation and also conduct an expedited review. On March 1, 2011, the Department received comments on behalf of National Nail Corp. ("National Nail") supporting Petitioner's request for partial revocation of the *Order.* National Nail also requested that the Department select the date of the preliminary determination of the original investigation as the effective date of revocation and conduct an expedited review. On March 4, 2011, Department officials spoke with counsel representing Petitioner to clarify an inconsistency regarding the effective dates identified in Petitioner's request,[1] and clarified that Petitioner intended for the effective date of the partial revocation to be January 23, 2008, the date of the preliminary determination of the investigation. On March 8, 2011, counsel representing IBP met with Department officials to discuss the effective date.[2] On March 24, 2011, the Department received comments on behalf of United Sources Inc. ("United Sources") supporting Petitioner's request for partial revocation of the *Order.* United Sources also requested that the Department select the date of the preliminary determination of the investigation as the effective date of revocation and conduct an expedited review.

Scope of the Order

The merchandise covered by this proceeding includes certain steel nails having a shaft length up to 12 inches. Certain steel nails include, but are not limited to, nails made of round wire and nails that are cut. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and have a variety of finishes, heads, shanks, point types, shaft lengths and shaft diameters. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, whether by electroplating or hot dipping one or more times), phosphate cement, and paint. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted shank styles. Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the fastener using a tool that engages with the head. Point styles include, but are not limited to, diamond, blunt, needle, chisel and no point. Finished nails may be sold in bulk, or they may be collated into strips or coils using materials such as plastic, paper, or wire.

Certain steel nails subject to this proceeding are currently classified under the Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 7317.00.55, 7317.00.65 and 7317.00.75. Excluded from the scope of this proceeding are roofing nails of all lengths and diameter, whether collated or in bulk, and whether or not galvanized. Steel roofing nails are specifically enumerated and identified in ASTM Standard F 1667 (2005 revision) as Type I, Style 20 nails.

Also excluded from the scope of this proceeding are corrugated nails. A corrugated nail is made of a small strip of corrugated steel with sharp points on one side. Also excluded from the scope of this proceeding are fasteners suitable for use in powder-actuated hand tools, not threaded and threaded, which are currently classified under HTSUS 7317.00.20 and 7317.00.30. Also excluded from the scope of this proceeding are thumbtacks, which are currently classified under HTSUS 7317.00.10.00.

Also excluded from the scope of this proceeding are certain brads and finish nails that are equal to or less than 0.0720 inches in shank diameter, round or rectangular in cross section, between 0.375 inches and 2.5 inches in length, and that are collated with adhesive or polyester film tape backed with a heat seal adhesive. Also excluded from the scope of this proceeding are fasteners having a case hardness greater than or equal to 50 HRC, a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Initiation and Preliminary Results of Changed Circumstances Review, and Intent To Revoke Order in Part

At the request of Petitioner, and in accordance with sections 751(b)(1) and (d)(1) of the Tariff Act of 1930, as amended ("Act"), and 19 CFR 351.216, the Department is initiating a changed circumstances review of certain steel nails from the PRC to determine whether partial revocation of the antidumping duty order is warranted with respect to the following four types of steel nails:

(1) Non-collated (*i.e.,* hand-driven or bulk), two-piece steel nails having plastic or steel washers (caps) already assembled to the nail, having a bright or galvanized finish, a ring, fluted or spiral shank, an actual length of 0.500″ to 8″, inclusive; and an actual shank diameter of 0.1015″ to 0.166″, inclusive; and an actual washer or cap diameter of 0.900″ to 1.10″, inclusive.

(2) Non-collated (*i.e.,* hand-driven or bulk), steel nails having a bright or galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500″ to 4″, inclusive; an actual shank diameter of 0.1015″ to 0.166″, inclusive; and an actual head diameter of 0.3375″ to 0.500″, inclusive.

(3) Wire collated steel nails, in coils, having a galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500″ to 1.75″, inclusive; an actual shank diameter of 0.116″ to 0.166″, inclusive; and an actual head diameter of 0.3375″ to 0.500″, inclusive.

(4) Non-collated (*i.e.,* hand-driven or bulk), steel nails having a convex head (commonly known as an umbrella head), a smooth or spiral shank, a galvanized finish, an actual length of 1.75″ to 3″, inclusive; an actual shank diameter of 0.131″ to 0.152″, inclusive; and an actual head diameter of 0.450″ to 0.813″, inclusive.

In addition to the physical descriptions of the steel nails subject to this exclusion request, Petitioner included in its request that the following language regarding labeling be

[1] *See* Memorandum to the File, From Alexis Polovina, Case Analyst, Regarding Changed Circumstances Review ("CCR") of Certain Steel Nails from the People's Republic of China ("PRC"): Phone Call with Petitioner, dated March 4, 2011.

[2] *See* Memorandum to the File, Through Alex Villanueva, Program Manager, Office 9, Import Administration, From Timothy Lord, Analyst, Office 9, Import Administration, Regarding Certain Steel Nails from the People's Republic of China: Meeting with Outside Party, dated March 9, 2011.

added to three of the nails for which Petitioner requested revocation: "and whose packaging and packaging marking for entries on or after the date of publication of the final results of the changed circumstances review are clearly and prominently labeled "Roofing" or "Roof" nails." [3] The Department considers the physical descriptions of the steel nails to be the defining factor when determining whether certain steel nails meet the proposed nail exclusions. Accordingly, we find that the additional labeling requirement proposed by Petitioner is unnecessary to define the nails subject to this exclusion and we are preliminarily not adopting Petitioner's labeling requirement.

While Petitioner requested that the Department make the effective date of this CCR retroactive to January 23, 2008 (the date of the preliminary determination in the original investigation), the Department does not find this to be consistent with its recent practice. Instead, the Department preliminarily determines that the effective date for the partial revocation of this *Order* should be August 1, 2009, the earliest date for which entries of certain steel nails have not been subject to a completed administrative review. It is the Department's practice to revoke (in whole or in part) an antidumping duty order so that the effective date of revocation covers entries that have not been subject to a completed administrative review. *See,* e.g., Coumarin from the PRC [4] and *Aspirin from the PRC*.[5] Therefore, the Department preliminarily determines that it shall partially revoke, effective August 1, 2009, the antidumping duty order with respect to the four specific steel nails from the PRC outlined in this notice, pursuant to sections 751(b) and (d) and 782(h) of the Act, as well as 19 CFR 351.216 and 351.222(g).

Section 782(h)(2) of the Act and 19 CFR 351.222(g)(1)(i) provide that the Department may revoke an order if it determines that producers accounting for substantially all of the production of the domestic like product have no further interest in the order, in whole or in part.

In accordance with section 751(b) of the Act, and 19 CFR 351.216(b), we are initiating this changed circumstances review. Petitioner stated in its February 11, 2011, request that itself, Maze Nails (a division of W.H. Maze Company) ("Maze"), and Davis Wire (a Heico Wire Group company) ("Davis"), the remaining three producers from the original group of Petitioners, account for substantially all domestic like product production. Petitioner further stated that Maze and Davis support the request for a changed circumstances review as filed by Petitioner on February 11, 2011.[6] In accordance with section 751(b) of the Act and 19 CFR 351.222(g)(1)(i), we find that Petitioner, along with the other domestic producers supporting the request, comprise substantially all of the production of the domestic like product. *See* Petitioner's Request for Changed Circumstances Review dated February 11, 2011. Petitioner has expressed a lack of interest in the order, in part, with respect to the four specific steel nails identified above. Moreover, pursuant to 19 CFR 351.221(c)(3)(ii), the Department has determined that expedited action is warranted due to the expression of no interest by Petitioner and the supporting domestic producers in applying the antidumping duty order to the specific four nails identified in this request.

Based on the expression of no interest by Petitioner and the supporting domestic producers, and absent any objection by any other interested parties, we have preliminarily determined that the domestic producers of the like product have no interest in the continued application of the antidumping duty order on certain steel nails with respect to the merchandise that is subject to this request. Accordingly, we are notifying the public of our preliminarily results to revoke, in part, the antidumping duty order as it relates to imports of the four specific types of steel nails identified above. Therefore, we intend to change the scope of the order on certain steel nails from the PRC to include the following exclusion:

Excluded from the scope are steel roofing nails of all lengths and diameter, whether collated or in bulk, and whether or not galvanized. Steel roofing nails are specifically enumerated and identified in ASTM Standard F 1667 (2005 revision) as Type I, Style 20 nails. Also excluded from the scope are the following steel nails: (1) Non-collated (*i.e.,* hand-driven or bulk), two-piece steel nails having plastic or steel washers (caps) already assembled to the nail, having a bright or galvanized finish, a ring, fluted or spiral shank, an actual length of 0.500″ to 8″, inclusive; and an actual shank diameter of 0.1015″ to 0.166″, inclusive; and an actual washer or cap diameter of 0.900″ to 1.10″, inclusive; (2) Non-collated (*i.e.,* hand-driven or bulk), steel nails having a bright or galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500″ to 4″, inclusive; an actual shank diameter of 0.1015″ to 0.166″, inclusive; and an actual head diameter of 0.3375″ to 0.500″, inclusive; (3) Wire collated steel nails, in coils, having a galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500″ to 1.75″, inclusive; an actual shank diameter of 0.116″ to 0.166″, inclusive; and an actual head diameter of 0.3375″ to 0.500″, inclusive; and (4) Non-collated (*i.e.,* hand-driven or bulk), steel nails having a convex head (commonly known as an umbrella head), a smooth or spiral shank, a galvanized finish, an actual length of 1.75″ to 3″, inclusive; an actual shank diameter of 0.131″ to 0.152″, inclusive; and an actual head diameter of 0.450″ to 0.813″, inclusive.

Public Comment

Interested parties are invited to comment on these preliminary results. Written comments may be submitted no later than 14 days after the date of publication of these preliminary results. Rebuttals to written comments, limited to issues raised in such comments, may be filed no later than 21 days after the date of publication of these preliminary results. The Department will issue the final results of this changed circumstances review, which will include its analysis of any written comments, no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary results. *See* 19 CFR 351.216(e).

If final partial revocation occurs, we will instruct U.S. Customs and Border Protection ("CBP") to liquidate, without regard to applicable antidumping duties, all unliquidated entries of nails that meet the above-noted specifications, and to refund any estimated antidumping duties collected on such merchandise entered, or withdrawn from warehouse, for consumption on or after August 1, 2009, the day after the most recent period for which an administrative review was completed. *See* 19 CFR 351.222(g)(4). The Department will further instruct CBP to refund with interest any estimated duties collected with respect to unliquidated entries of nails from the PRC entered, or withdrawn from warehouse, for consumption on or after August 1, 2009, in accordance with section 778 of the Act.

This initiation and preliminary results of review and notice are in accordance with sections 751(b) and 777(i) of the

[3] *See* Petitioner's Request for Changed Circumstances Review at 3, dated February 11, 2001.

[4] *See Notice of the Final Results of Changed Circumstances Review and Revocation of the Antidumping Order: Coumarin from the People's Republic of China,* 69 FR 24122 (May 3, 2004) ("*Coumarin from the PRC*").

[5] *See Notice of Final Results of Changed Circumstances Review and Revocation of the Antidumping Duty Order: Bulk Aspirin from the People's Republic of China,* 69 FR 77726 (December 28, 2004) ("*Aspirin from the PRC*").

[6] Signed statements of support from Maze and Davis are included in Petitioner's Request for Changed Circumstances Review dated February 11, 2011, at Attachment 1.

Act and 19 CFR 351.216, 351.221, and 351.222.

Dated: April 14, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–9717 Filed 4–20–11; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–412–801]

Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Preliminary Results of Antidumping Administrative and Changed-Circumstances Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from interested parties, the Department of Commerce (the Department) is conducting administrative reviews of the antidumping duty orders on ball bearings and parts thereof from France, Germany, Italy, Japan, and the United Kingdom for the period May 1, 2009, through April 30, 2010. We have preliminarily determined that sales have been made below normal value by certain companies subject to these reviews. We have also preliminarily determined that Schaeffler Technologies GmbH & Co. KG is the successor-in-interest to Schaeffler KG with respect to the order on ball bearings and parts thereof from Germany.

We invite interested parties to comment on these preliminary results. Parties who submit comments in these reviews are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

DATES: *Effective Date:* April 21, 2011.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0410.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department published the antidumping duty orders on ball bearings and parts thereof from France (54 FR 20902), Germany (54 FR 20900), Italy (54 FR 20903), Japan (54 FR 20904), and the United Kingdom (54 FR 20910) in the **Federal Register**. On June 30, 2010, in accordance with 19 CFR 351.221(b), we published a notice of initiation of administrative reviews of 133 companies subject to these orders. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 75 FR 37759 (June 30, 2010) (*Initiation Notice*).

Subsequent to the initiation of these reviews we published in the **Federal Register** the final results of the 2008–2009 administrative reviews of the orders, in which we revoked the antidumping duty order on ball bearings and parts thereof from the United Kingdom, in part, with respect to merchandise exported or sold by The Barden Corporation (U.K.) Limited and Schaeffler (U.K.) Limited (The Schaeffler Group) effective May 1, 2009.[1] As a result we rescinded the 2009–2010 administrative review of the order on merchandise from the United Kingdom.[2] We have also rescinded the administrative reviews with respect to 34 other companies based on the withdrawals of the applicable requests for reviews. See *Rescission.*

On January 14, 2011, we issued a notice of extension of the deadline for completion of the preliminary results of reviews from January 31, 2011, to March 17, 2011. See *Ball Bearings and Parts Thereof From France, et al.: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Reviews,* 76 FR 2647 (January 14, 2011). On March 22, 2011, we issued a second notice of extension of the deadline for completion of the preliminary results of reviews from March 17, 2011, to April 18, 2011. See *Ball Bearings and Parts Thereof From France, et al.: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative and Changed-Circumstances Reviews,* 76 FR 15940 (March 22, 2011).

The period of review is May 1, 2009, through April 30, 2010. The Department is conducting these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

[1] See *Ball Bearings and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661 (September 1, 2010) (*AFBs 20*).

[2] See *Ball Bearings and Parts Thereof From France, et al.: Partial Rescission of Antidumping Duty Administrative Review,* 75 FR 69402 (November 12, 2010), and *Ball Bearings and Parts Thereof From France: Partial Rescission of Antidumping Duty Administrative Review,* 76 FR 327 (January 4, 2011) (collectively *Rescission*).

Scope of the Orders

The products covered by the orders are ball bearings and parts thereof. These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: Antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 3926.90.45, 4016.93.10, 4016.93.50, 6909.19.50.10, 8414.90.41.75, 8431.20.00, 8431.39.00.10, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.35, 8482.99.25.80, 8482.99.65.95, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.93.30, 8708.93.60.00, 8708.99.06, 8708.99.31.00, 8708.99.40.00, 8708.99.49.60, 8708.99.58, 8708.99.80.15, 8708.99.80.80, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, 8803.90.90, 8708.30.50.90, 8708.40.75.70, 8708.40.75.80, 8708.50.79.00, 8708.50.89.00, 8708.50.91.50, 8708.50.99.00, 8708.70.60.60, 8708.80.65.90, 8708.93.75.00, 8708.94.75, 8708.95.20.00, 8708.99.55.00, 8708.99.68, and 8708.99.81.80.

Although the HTSUS item numbers above are provided for convenience and customs purposes, the written descriptions of the scope of the orders remain dispositive.

The size or precision grade of a bearing does not influence whether the bearing is covered by one of the orders. The orders cover all the subject bearings and parts thereof (inner race, outer race, cage, rollers, balls, seals, shields, *etc.*) outlined above with certain limitations. With regard to finished parts, all such parts are included in the scope of the orders. For unfinished parts, such parts are included if they have been heat-treated or if heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by the orders are those that will be subject to heat treatment after importation. The ultimate application of a bearing also does not influence whether the bearing is covered by the orders. Bearings designed for highly specialized applications are not excluded. Any of the subject bearings, regardless of whether they may ultimately be utilized in aircraft,

automobiles, or other equipment, are within the scope of the orders.

For a list of scope determinations which pertain to the orders, see the "Memorandum to Laurie Parkhill" regarding scope determinations for the 2009/2010 reviews, dated concurrently with this notice, which is on file in the Central Records Unit (CRU) of the main Commerce building, room 7046, in the General Issues record (A–100–001).

Selection of Respondents

Due to the large number of companies in the reviews and the resulting administrative burden to examine each company for which a request had been made and not withdrawn, the Department exercised its authority to limit the number of respondents selected for individual examination in these reviews. Where it is not practicable to examine all known exporters/producers of subject merchandise because of the large number of such companies, section 777A(c)(2) of the Act allows the Department to limit its examination to either a sample of exporters, producers, or types of products that is statistically valid, based on the information available at the time of selection, or exporters and producers accounting for the largest volume of subject merchandise from the exporting country that can be reasonably examined.

Accordingly, in June 2010 we requested information concerning the quantity and value of sales to the United States from the 133 exporters/producers for which we had initiated reviews. We received responses from most of the exporters/producers subject to the reviews; some companies withdrew their requests for review and some companies did not respond to our request for information.[3] Based on our analysis of the responses and our available resources, we chose to examine the sales of certain companies. See Memoranda to Laurie Parkhill, dated August 18, 2010, for the detailed analysis of the selection process for each country-specific review. We selected the following companies for individual examination:

Country	Company
France	SKF France S.A. and SKF Aerospace France S.A.S (SKF France) SNR Roulements S.A./SNR Europe (SNR).
Germany	Schaeffler KG myonic GmbH (myonic).
Italy	Schaeffler Italia S.r.l. (formerly FAG Italia S.p.A.) SKF Industrie S.p.A./Somecat S.p.A. (SKF Italy).
Japan	NTN Corporation (NTN) NSK Ltd.
United Kingdom.	Barden Corporation (U.K.) Limited and Schaeffler (U.K.) Limited[4] NSK Bearings Europe Ltd. (NSK U.K.).

[3] See "Use of Facts Otherwise Available section."

Non-Selected Respondents

For the respondents we did not examine individually in the administrative reviews of the orders on merchandise from France, Germany, and Italy, we cannot apply our normal methodology of calculating a weighted-average margin using the results of the reviews for the two respondents we selected in each review for individual examination due to their requests to protect their business-proprietary information. In such situations, it is our normal practice to calculate a weighted-average margin using the publicly available U.S. sales values and antidumping duty margins of the two selected respondents or to use the simple average of their margins, depending on which result is closer to the actual weighted-average margin of the companies in question. See *AFBs 20* and accompanying Issues and Decision Memorandum at Comment 1.

For responding companies in the administrative reviews of the orders on subject merchandise from France, Germany, and Italy that were not individually examined, we have used weighted-average margins and the publicly available U.S. sales values of the two selected respondents in each respective review to calculate the weighted-average margin. Therefore, we have applied, for these preliminary results, the rate of 5.12 percent (France), the rate of 6.26 percent (Germany), and the rate of 12.32 percent (Italy) to the firms not individually examined in the respective reviews. See the country-specific Memoranda to the File concerning Respondents Not Selected for Individual Examination for France, Germany, and Italy dated concurrently with this notice for an explanation of our calculations.

With respect to the responding companies which remain under review and which we did not select for individual examination in the review of the order on subject merchandise from the United Kingdom, we have assigned the margin we have calculated for NSK U.K. of 5.90 percent to these firms because, after rescission of the review with respect to Barden Corporation (U.K.) Limited and Schaeffler (U.K) Limited, NSK U.K. was the sole remaining company selected for individual examination. With respect to the responding companies which remain under review and which we did not select for individual examination in the review of the order on subject merchandise from Japan, because we do not have publicly available information on U.S. sales value for one of the selected respondents, we have assigned to the non-selected respondents the simple-average margin of the two respondents selected for individual examination; that rate is 11.36 percent.

[4] Revocation resulted in rescission of the review with respect to these firms. See "Background" section above and *Rescission*.

Voluntary Respondents

We received voluntary responses from Asahi Seiko Co., Ltd. (Asahi), and Mori Seiki Co., Ltd., with respect to the review of the order on merchandise from Japan. Due to changes in our workload since our initial selection of respondents for individual examination, we decided to treat these firms as firms selected for individual examination as well. See Memorandum to Laurie Parkhill dated November 15, 2010.

No-Shipments Respondent

On July 15, 2010, SNR UK submitted a letter indicating that it made no sales to the United States during the period of review. We have not received any comments on SNR UK's submission. We confirmed SNR UK's claim of no shipments by issuing a "No-Shipments Inquiry" to U.S. Customs and Border Protection (CBP) on March 18, 2011.

With regard to SNR UK's claim of no shipments, our practice since implementation of the 1997 regulations concerning no-shipments respondents has been to rescind the administrative review if the respondent certifies that it had no shipments and we have confirmed through our examination of CBP data that there were no shipments of subject merchandise during the POR. See *Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27393 (May 19, 1997), and *Oil Country Tubular Goods from Japan: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review,* 70 FR 53161, 53162 (September 7, 2005), unchanged in *Oil Country Tubular Goods from Japan: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 71 FR 95 (January 3, 2006). As a result, in such circumstances, we normally instruct CBP to liquidate any entries from the no-shipment company

at the deposit rate in effect on the date of entry.

In our May 6, 2003, "automatic assessment" clarification, we explained that, where respondents in an administrative review demonstrate that they had no knowledge of sales through resellers to the United States, we would instruct CBP to liquidate such entries at the all-others rate applicable to the proceeding. See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (May 2003 clarification).

Based on SNR UK's assertion of no shipments and no indication from CBP that there are suspended entries of subject merchandise from SNR UK, we preliminarily determine that SNR UK had no sales to the United States during the POR.

Because "as entered" liquidation instructions do not alleviate the concerns which the May 2003 clarification was intended to address, we find it appropriate in this case to instruct CBP to liquidate any existing entries of merchandise produced by SNR UK at the all-others rate should we continue to find at the time of our final results that SNR UK had no shipments of subject merchandise from the United Kingdom. See *Magnesium Metal From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 26922, 26933 (May 13, 2010), unchanged in *Magnesium Metal From the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (September 17, 2010). See also *Certain Frozen Warmwater Shrimp from India: Partial Rescission of Antidumping Duty Administrative Review,* 73 FR 77610, 77612 (December 19, 2008). In addition, the Department finds that it is more consistent with the May 2003 clarification not to rescind the review in part in these circumstances but, rather, to complete the review with respect to SNR UK and issue appropriate instructions to CBP based on the final results of the review. See the "Assessment Rates" section of this notice below.

Verification

As provided in section 782(i) of the Act, we have verified information provided by NSK Ltd. and Schaeffler KG.

We conducted these verifications using standard verification procedures including the examination of relevant sales and financial records and the selection and review of original documentation containing relevant information. Our verification results are outlined in the public versions of our verification reports which are on file in CRU, room 7046 of the main Department building.

Use of Facts Otherwise Available

For the reasons discussed below, we determine that the use of adverse facts available (AFA) is appropriate for the preliminary results of reviews with respect to several companies.

A. Use of Facts Available

Section 776(a)(2) of the Act provides that, if an interested party withholds information requested by the administering authority, fails to provide such information by the deadlines for submission of the information and in the form or manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act, significantly impedes a proceeding under this title, or provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(d) of the Act provides that, if the administering authority determines that a response to a request for information does not comply with the request, the administering authority shall promptly inform the responding party and, to the extent practicable, provide an opportunity to remedy the deficient submission. If the party fails to remedy the deficiency within the applicable time limits, the Department may disregard, subject to section 782(e) of the Act, all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority" if the information is timely, can be verified, and is not so incomplete that it cannot be used and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

The following companies did not respond to our request to provide information concerning the quantity and value of their U.S. sales: France—AVIAC, Eurocopter SAS, Groupe Intertechnique, SNECMA, and Tecnofan; Italy—Eurocopter and SNECMA; Japan—Tsubakimoto. Because these companies did not respond to our request, we could not determine whether and to what extent these companies participated in sales of subject merchandise to the U.S. market. Moreover, because these companies failed to provide the information requested and thus significantly impeded the respective country-specific reviews, we find that we must base their margins on facts otherwise available. See section 776(a) of the Act.

B. Application of Adverse Inferences for Facts Available

In applying the facts otherwise available, section 776(b) of the Act provides that, if the administering authority finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority, in reaching the applicable determination under this title, the administering authority may use an adverse inference in selecting from among the facts otherwise available. See, *e.g., Notice of Final Results of Antidumping Duty Administrative Review, and Final Determination to Revoke the Order In Part: Individually Quick Frozen Red Raspberries from Chile,* 72 FR 70295, 70297 (December 11, 2007) *(Raspberries from Chile Final),* and *Notice of Preliminary Determination of Sales at Less Than Fair Value, and Postponement of Final Determination: Certain Circular Welded Carbon-Quality Line Pipe From Mexico,* 69 FR 59892, 59896 (October 6, 2004).

Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See *Notice of Preliminary Results of Antidumping Duty Administrative Review, Notice of Partial Rescission of Antidumping Duty Administrative Review, Notice of Intent to Revoke in Part: Certain Individually Quick Frozen Red Raspberries from Chile,* 72 FR 44112, 44114 (August 7, 2007) (unchanged in *Raspberries from Chile Final,* 72 FR at 70297). Further, "affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference." See *Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27340 (May 19, 1997). See also *Nippon Steel Corp.* v. *United States,* 337 F.3d 1373, 1380–84 (CAFC 2003).

Because the non-responding companies did not provide requested data concerning their sales of subject merchandise to the United States during the period of review, we determine that they have failed to cooperate by not

acting to the best of their ability. See *Antifriction Bearings and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews, Rescission of Administrative Reviews in Part, and Determination To Revoke Order in Part,* 69 FR 55574 (September 15, 2004) (*AFBs 14*). Therefore, we conclude that the use of an adverse inference is warranted in applying facts otherwise available to these companies.

C. Selection and Corroboration of Information Used as Facts Available

As facts available with an adverse inference, we have selected the rates of 66.42 percent for AVIAC, Eurocopter SAS, Groupe Intertechnique, SNECMA, and Technofan (France), 69.99 percent for Eurocopter SAS and SNECMA (Italy), and 73.55 percent for Tsubakimoto (Japan). These rates represent the highest rates calculated in the history of the respective proceedings and are from the respective less-than-fair-value investigations for each country. See *Final Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France,* 54 FR 19092, 19096 (May 3, 1989), *Final Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Spherical Plain and Tapered Roller Bearings) and Parts Thereof From Italy; and Final Determination of Sales at Not Less Than Fair Value; Spherical Plain Bearings and Parts Thereof, From Italy,* 54 FR 19096, 19101 (May 3, 1989), and *Final Determinations of Sales at Less Than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan,* 54 FR 19101, 19108 (May 3, 1989).

Section 776(c) of the Act provides that the Department shall corroborate, to the extent practicable, secondary information used for facts available by reviewing independent sources reasonably at its disposal. Information from a prior segment of the proceeding constitutes secondary information. See *Certain Frozen Warmwater Shrimp from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 73 FR 39940 (July 11, 2008). The word "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value.

To corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used. Unlike other types of information such as input costs or selling expenses, however, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations. Thus, with respect to an administrative review, if we choose as facts available a calculated dumping margin from a prior segment of the proceeding, it is our practice to find the margin for that time period reliable. See, *e.g., AFBs 14,* 69 FR at 55577. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. See *Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812, 6814 (February 22, 1996) (the Department disregarded the highest dumping margin as best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin).

We find that the rates we are using for these preliminary results, as identified above, have probative value and, therefore, are appropriate rates for use as AFA. All rates fell within the range of margins we calculated for companies in the respective country-specific administrative reviews and there is no information on the record of the reviews that demonstrates that the selected rates are not appropriate AFA rates for the non-responsive firms.

For more detail concerning the corroboration of the AFA rates, see the country-specific Memoranda to Laurie Parkhill, dated concurrently with this notice.

Export Price and Constructed Export Price

For the price to the United States, we used export price (EP) or constructed export price (CEP) as defined in sections 772(a) and (b) of the Act, as appropriate. Due to the extremely large volume of U.S. transactions that occurred during the period of review and the resulting administrative burden involved in calculating individual margins for all of these transactions, we sampled CEP sales in accordance with section 777A of the Act. When a selected firm made more than 10,000 CEP sales transactions to the United States of merchandise subject to a particular order, we reviewed CEP sales that occurred during sample weeks. We selected one week from each two-month period in the review period, for a total of six weeks, and analyzed each transaction made in those six weeks. The sample weeks are as follows: June 7, 2009–June 13, 2009; July 5, 2009–July 11, 2009; October 18, 2009–October 24, 2009; November 1, 2009–November 7, 2009; January 10, 2010–January 16, 2010; March 28, 2010–April 3, 2010. We reviewed all EP sales transactions which the respondents we selected for individual examination made during the period of review.

We calculated EP and CEP based on the packed F.O.B., C.I.F., or delivered price to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for discounts and rebates. See 19 CFR 351.401(c) and 351.102(b)(38). We also made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act.

Certain companies received freight revenues or packing revenues from the customer for certain U.S. sales. In *Certain Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 73 FR 46584 (August 11, 2008) (*OJ Brazil),* and accompanying Issues and Decision Memorandum at Comment 7 and in *Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 74 FR 6857 (February 11, 2009) (*PRC Bags*), and accompanying Issues and Decision Memorandum at Comment 6, the Department determined to treat such revenues as an offset to the specific expenses for which they were intended to compensate. Accordingly, we have used the revenues of the particular respondents as an offset to their respective expenses.

Consistent with section 772(d)(1) of the Act, we calculated CEP by deducting selling expenses associated with economic activities occurring in the United States which includes commissions, direct selling expenses, and U.S. repacking expenses. In accordance with sections 772(d)(1) and (2) of the Act, we also deducted those indirect selling expenses associated with economic activities occurring in the United States and the profit allocated to expenses deducted under section 772(d)(1) of the Act in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on the total revenues realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity based on the ratio of total U.S. expenses to total expenses for both the U.S. and

home markets. Finally, we made an adjustment for profit allocated to these expenses in accordance with section 772(d)(3) of the Act.

With respect to NTN, because it reported fiscal-year expenses, we recalculated technical-service expenses, certain U.S. inland-freight expenses, indirect selling expenses, and repacking expenses using an allocation on the basis of fiscal-year value of sales instead of its reported allocation on the basis of value of sales during the period of review. Also, with respect to NTN, we recalculated the reported inventory-carrying costs consistent with the methodology described in *Ball Bearings and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part,* 73 FR 52823 (September 11, 2008) (*AFBs 18*), and accompanying Issues and Decision Memorandum at Comment 13.

With respect to SNR, because it reported inland-freight expenses and international-freight expenses applicable to its U.S. sales on the basis of value, we recalculated these expenses on the basis of weight. See *Ball Bearings and Parts Thereof from France, et al.: Preliminary Results of Antidumping Duty Administrative Reviews,* 71 FR 12170, 12173 (March 9, 2006), unchanged in *Ball Bearings and Parts Thereof from France, et al.: Final Results of Antidumping Duty Administrative Reviews,* 71 FR 40064 (July 14, 2006) (*AFBs 16*), and accompanying Issues and Decision Memorandum at Comment 6.

With respect to NSK Ltd., we reclassified certain expenses associated with Japanese workers in the United States as indirect selling expenses and deducted them from CEP consistent with the methodology described in *AFBs 16* and accompanying Issues and Decision Memorandum at Comment 26.

With respect to subject merchandise to which value was added in the United States prior to sale to unaffiliated U.S. customers, *e.g.,* parts of bearings that were imported by U.S. affiliates of foreign exporters and then further processed into other products which were then sold to unaffiliated parties, we determined that the special rule for merchandise with value added after importation under section 772(e) of the Act applied to all firms that added value in the United States with the exception of Asahi.

Section 772(e) of the Act provides that, when the subject merchandise is imported by an affiliated person and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, we shall determine the CEP for such merchandise using the price of identical or other subject merchandise sold by the exporter or producer to an unaffiliated customer if there is a sufficient quantity of sales to provide a reasonable basis for comparison and we determine that the use of such sales is appropriate. If there is not a sufficient quantity of such sales or if we determine that using the price of identical or other subject merchandise is not appropriate, we may use any other reasonable basis to determine CEP.

To determine whether the value added is likely to exceed substantially the value of the subject merchandise, we estimated the value added based on the difference between the averages of the prices charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the averages of the prices paid for the subject merchandise by the affiliated purchaser. Based on this analysis, we determined that the estimated value added in the United States by the further-manufacturing firms accounted for at least 65 percent of the price charged to the first unaffiliated customer for the merchandise as sold in the United States. See 19 CFR 351.402(c) for an explanation of our practice on this issue. Therefore, we preliminarily determine that the value added is likely to exceed substantially the value of the subject merchandise for Mori Seiki Co., Ltd., NSK Ltd., NSK U.K., NTN, Schaeffler KG, SKF France, and SKF Italy. Also, for these firms, we determine that there was a sufficient quantity of sales remaining to provide a reasonable basis for comparison and that the use of these sales is appropriate. For the analysis of the decision not to require further-manufactured data, see the Department's company-specific preliminary analysis memoranda dated concurrently with this notice. Accordingly, for purposes of determining dumping margins for the sales subject to the special rule, we have used the weighted-average dumping margins calculated on sales of identical or other subject merchandise sold to unaffiliated persons.

For Asahi, we determined that the special rule did not apply because the value added in the United States did not exceed substantially the value of the subject merchandise. Consequently, Asahi submitted responses to our further-manufacturing questionnaire which included the costs of the further processing performed by Asahi in the United States. We analyzed these sales in the same manner as non-further-manufactured products but deducted the value of further manufacturing incurred in the United States and an amount for profit attributable to the further manufacturing. We used the data reported in Asahi's questionnaire responses to calculate the further-manufacturing expense which we deducted from U.S. prices.

There were no other claimed or allowed adjustments to EP or CEP sales by the respondents. For further descriptions of our analysis, see the company-specific preliminary analysis memoranda dated concurrently with this notice.

Home-Market Sales

Based on a comparison of the aggregate quantity of home-market and U.S. sales and absent any information that a particular market situation in the exporting country did not permit a proper comparison, we determined that the quantity of foreign like product sold by all respondents in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States pursuant to section 773(a)(1) of the Act. Each company's quantity of sales in its home market was greater than five percent of its sales to the U.S. market. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based normal value on the prices at which the foreign like product was first sold for consumption in the exporting country in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the EP or CEP sales.

Due to the extremely large number of home-market transactions that occurred during the period of review and the resulting administrative burden involved in examining all of these transactions, we sampled sales to calculate normal value in accordance with section 777A of the Act. When a selected firm had more than 10,000 home-market sales transactions on a country-specific basis, we used sales in sample months that corresponded to the sample weeks which we selected for U.S. CEP sales, sales in a month prior to the period of review, and sales in the month following the period of review. The sample months were March 2009, June 2009, July 2009, October 2009, November 2009, January 2010, March 2010, and June 2010.

The Department may calculate normal value based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.,* sales were made at

arm's-length prices. See 19 CFR 351.403(c). We excluded from our analysis sales to affiliated customers for consumption in the home market that we determined not to be at arm's-length prices. To test whether these sales were made at arm's-length prices, we compared the prices of sales of comparable merchandise to affiliated and unaffiliated customers, net of all rebates, movement charges, direct selling expenses, and packing. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, when the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated party, we determined that the sales to the affiliated party were at arm's-length prices. See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade,* 67 FR 69186 (November 15, 2002). We included in our calculation of normal value those sales to affiliated parties that were made at arm's-length prices. See company-specific preliminary analysis memoranda dated concurrently with this notice.

Cost of Production

In accordance with section 773(b) of the Act, in the last completed segment of the relevant country-specific proceeding we disregarded below-cost sales for Asahi, NSK Ltd., NSK U.K., NTN, Schaeffler Italia S.r.l., Schaeffler KG, SKF France, SKF Italy, and SNR. Therefore, for the instant reviews, we have reasonable grounds to believe or suspect that sales by all of the above companies of the foreign like product under consideration for the determination of normal value in these reviews may have been made at prices below the cost of production (COP) as provided by section 773(b)(2)(A)(ii) of the Act. Pursuant to section 773(b)(1) of the Act, we conducted COP investigations of sales by these firms in the respective home markets.

With respect to myonic, on November 15, 2010, The Timken Company alleged that myonic sold the foreign like product in Germany at prices below the COP during the period of review. Based on the information on the record and pursuant to section 773(b)(1) of the Act, we found we had reasonable grounds to initiate a COP investigation with respect to myonic. See the December 16, 2010, Memorandum to Laurie Parkhill entitled "Ball Bearings and Parts Thereof from Germany: Request to Initiate Cost Investigation for myonic GmbH."

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, the selling, general, and administrative (SG&A) expenses, and all costs and expenses incidental to packing the merchandise. With respect to NTN, we recalculated the reported general and administrative expenses by including expenses associated with replacing the defective product with respect to sales made to a certain customer category. With respect to Schaeffler KG, we did not allow Schaeffler KG's claimed interest income as an offset to its interest expenses because Schaeffler KG did not demonstrate that the interest income was short-term in nature. In our COP analysis, we used the home-market sales and COP information provided by each respondent in its questionnaire responses or, in the case of Schaeffler Italia S.r.l., additional COP information provided by its largest supplier.

After calculating the COP and in accordance with section 773(b)(1) of the Act, we tested whether home-market sales of the foreign like product were made at prices below the COP within an extended period of time in substantial quantities and whether such prices permitted the recovery of all costs within a reasonable period of time. We compared model-specific COPs to the reported home-market prices less any applicable movement charges, discounts, and rebates.

Pursuant to section 773(b)(2)(C) of the Act, when less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in substantial quantities within an extended period of time. When 20 percent or more of a respondent's sales of a given product during the period of review were at prices less than the COP, we disregarded the below-cost sales because they were made in substantial quantities within an extended period of time pursuant to sections 773(b)(2)(B) and (C) of the Act and because, based on comparisons of prices to weighted-average COPs for the period of review, we determined that these sales were at prices which would not permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act. Based on this test, we disregarded below-cost sales with respect to Asahi, myonic, NSK Ltd., NSK U.K., NTN, Schaeffler Italia S.r.l., Schaeffler KG, SKF France, SKF Italy, and SNR. See the relevant company-specific preliminary analysis memoranda dated concurrently with this notice.

Model-Match Methodology

For all respondents, where possible, we compared U.S. sales with sales of the foreign like product in the home market. Specifically, in making our comparisons, if an identical home-market model was reported, we made comparisons to weighted-average home-market prices that were based on all sales which, where appropriate, passed the COP test of the identical product during the relevant month. We calculated the weighted-average home-market prices on a level of trade-specific basis. If there were no contemporaneous sales of an identical model, we identified the most similar home-market model.

To determine the most similar model, we limited our examination to models sold in the home market that had the same bearing design, load direction, number of rows, and precision grade. Next, we calculated the sum of the deviations (expressed as a percentage of the value of the U.S. model's characteristics) of the inner diameter, outer diameter, width, and load rating for each potential home-market match and selected the bearing with the smallest sum of the deviations. If two or more bearings had the same sum of the deviations, we selected the model that was sold at the same level of trade as the U.S. sale and was the closest contemporaneous sale to the U.S. sale. If two or more models were sold at the same level of trade and were sold equally contemporaneously, we selected the model with the smallest difference-in-merchandise adjustment.

Finally, if no bearing sold in the home market had a sum of the deviations that was less than 40 percent, we concluded that no appropriate comparison existed in the home market. For a full discussion of the model-match methodology we have used in these reviews, see *Antifriction Bearings and Parts Thereof from France, et al.: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Reviews,* 70 FR 25538, 25542 (May 13, 2005), and *Ball Bearings and Parts Thereof from France, et al.: Final Results of Antidumping Duty Administrative Reviews,* 70 FR 54711 (September 16, 2005), and accompanying Issues and Decision Memorandum at Comments 2, 3, and 5.

Normal Value

Home-market prices were based on the packed, ex-factory, or delivered prices to affiliated or unaffiliated purchasers. When applicable, we made adjustments for differences in packing and for movement expenses in

accordance with sections 773(a)(6)(A) and (B) of the Act. Where companies received freight or packing revenues from the home-market customer, we offset these expenses in accordance with *OJ Brazil* and *PRC Bags* as discussed above. With respect to NTN, we recalculated the reported inventory-carrying costs consistent with the methodology described in *AFBs 18* and accompanying Issues and Decision Memorandum at Comment 13. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411 and for differences in circumstances of sale in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. For comparisons to EP, we made circumstance-of-sale adjustments by deducting home-market direct selling expenses from, and adding U.S. direct selling expenses to, normal value. For comparisons to CEP, we made circumstance-of-sale adjustments by deducting home-market direct selling expenses from normal value. We recalculated Schaeffler KG's home-market imputed expenses using the interest rate we calculated based solely on loans denominated in the currency in which the home-market sales were made (*i.e.,* Euros). We also made adjustments, when applicable, for home-market indirect selling expenses to offset U.S. commissions in EP and CEP calculations.

In accordance with section 773(a)(1)(B)(i) of the Act, we based normal value, to the extent practicable, on sales at the same level of trade as the EP or CEP. If normal value was calculated at a different level of trade, we made an adjustment, if appropriate and if possible, in accordance with section 773(a)(7)(A) of the Act. See "Level of Trade" section below.

Constructed Value

In accordance with section 773(a)(4) of the Act, we used constructed value as the basis for normal value when there were no usable sales of the foreign like product in the comparison market. We calculated constructed value in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, SG&A expenses, U.S. packing expenses, and profit in the calculation of constructed value. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the home market.

When appropriate, we made adjustments to constructed value in accordance with section 773(a)(8) of the Act, 19 CFR 351.410, and 19 CFR 351.412 for circumstance-of-sale differences and level-of-trade differences. For comparisons to EP, we made circumstance-of-sale adjustments by deducting home-market direct selling expenses from and adding U.S. direct selling expenses to constructed value. For comparisons to CEP, we made circumstance-of-sale adjustments by deducting home-market direct selling expenses from constructed value. We also made adjustments, when applicable, for home-market indirect selling expenses to offset U.S. commissions in EP and CEP comparisons.

When possible, we calculated constructed value at the same level of trade as the EP or CEP. If constructed value was calculated at a different level of trade, we made an adjustment, if appropriate and if possible, in accordance with sections 773(a)(7) and (8) of the Act.

Level of Trade

To the extent practicable, we determined normal value for sales at the same level of trade as the U.S. sales (either EP or CEP). When there were no sales at the same level of trade, we compared U.S. sales to home-market sales at a different level of trade. The normal-value level of trade is that of the starting-price sales in the home market. When normal value is based on constructed value, the level of trade is that of the sales from which we derived SG&A and profit.

To determine whether home-market sales were at a different level of trade than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the home-market sales were at a different level of trade from that of a U.S. sale and the difference affected price comparability, as manifested in a pattern of consistent price differences between the sales on which normal value is based and home-market sales at the level of trade of the export transaction, we made a level-of-trade adjustment under section 773(a)(7)(A) of the Act. See, *e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa,* 62 FR 61731, 61732 (November 19, 1997).

Where the respondent reported no home-market levels of trade that were equivalent to the CEP level of trade and where the CEP level of trade was at a less advanced stage than any of the home-market levels of trade, we were unable to calculate a level-of-trade adjustment based on the respondent's home-market sales of the foreign like product. Furthermore, we have no other information that provides an appropriate basis for determining a level-of-trade adjustment. For CEP sales in such situations, to the extent possible, we determined normal value at the same level of trade as the U.S. sale to the first unaffiliated customer and made a CEP-offset adjustment in accordance with section 773(a)(7)(B) of the Act. The CEP-offset adjustment to normal value was subject to the so-called "offset cap," calculated as the sum of home-market indirect selling expenses up to the amount of U.S. indirect selling expenses deducted from CEP (or, if there were no home-market commissions, the sum of U.S. indirect selling expenses and U.S. commissions).

For a company-specific description of our level-of-trade analyses for these preliminary results, see Memorandum to Laurie Parkhill, dated concurrently with this notice, entitled "Ball Bearings and Parts Thereof from Various Countries: 2009/2010 Level-of-Trade Analysis," on file in the CRU in the General Issues record (A–100–001).

Weighted-Average Margin

In order to derive a single weighted-average margin for each respondent, we weight-averaged the EP and CEP weighted-average margins (using the EP and CEP, respectively, as the weighting factors). To accomplish this when we sampled CEP sales, we first calculated the total dumping margins for all CEP sales during the review period by multiplying the sample CEP margins by the ratio of total days in the review period to days in the sample weeks. We then calculated a total net value for all CEP sales during the review period by multiplying the sample CEP total net value by the same ratio. Finally, we divided the combined total dumping margins for both EP and CEP sales by the combined total value for both EP and CEP sales to obtain the weighted-average margin.

Preliminary Results of Changed-Circumstances Review

On January 14, 2011, Schaeffler Technologies GmbH & Co. KG (Schaeffler Technologies) requested that the Department initiate a changed-circumstances review to determine whether Schaeffler Technologies is the successor-in-interest to Schaeffler KG. On February 24, 2011, we initiated a

changed-circumstances review pursuant to the request from Schaeffler Technologies. See *Ball Bearings and Parts Thereof From Germany: Initiation of Antidumping Duty Changed-Circumstances Review,* 76 FR 10335 (February 24, 2011). We also announced that we would conduct the changed-circumstances review in the context of the 2009/2010 administrative review.

In determining whether one company is the successor to another for purposes of applying the antidumping duty law, the Department examines a number of factors including, but not limited to, changes in management, production facilities, supplier relationships, and customer base. See *Ball Bearings and Parts Thereof from Japan: Initiation and Preliminary Results of Changed-Circumstances Review,* 71 FR 14679, 14680 (March 23, 2006), unchanged in *Notice of Final Results of Antidumping Duty Changed-Circumstances Review: Ball Bearings and Parts Thereof from Japan,* 71 FR 26452 (May 5, 2006) (collectively *CCR Japan*), and *Industrial Phosphoric Acid From Israel; Final Results of Antidumping Duty Changed Circumstances Review,* 59 FR 6944 (February 14, 1994). Although no single or even several of these factors will necessarily provide a dispositive indication of succession, generally the Department will consider one company to be a successor to another company if its resulting operation is similar to that of its predecessor. See *CCR Japan* and *Brass Sheet and Strip From Canada; Final Results of Antidumping Duty Administrative Review,* 57 FR 20460 (May 13, 1992), at Comment 1. Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the prior company, the Department will assign the new company the cash-deposit rate of its predecessor. *Id.* See also *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea; Preliminary Results of Antidumping Duty Changed Circumstances Review,* 63 FR 14679 (March 26, 1998), unchanged in *Circular Welded Non-Alloy Steel Pipe From Korea; Final Results of Antidumping Duty Changed Circumstances Review,* 63 FR 20572 (April 27, 1998), in which the Department found that a company which only changed its name and did not change its operations is a successor-in-interest to the company before it changed its name.

In its request dated January 14, 2011, Schaeffler Technologies provided information to demonstrate that it is the successor-in-interest to Schaeffler KG.

We preliminarily determine that Schaeffler Technologies is the successor-in-interest to Schaeffler KG. In its January 14, 2011, submission, Schaeffler Technologies provided evidence supporting its claim to be the successor-in-interest to Schaeffler KG. Specifically, Schaeffler Technologies demonstrated that, while the business concerning ball bearings conducted by Schaeffler KG has been transferred to Schaeffler Technologies as part of a reorganization process, the management, production facilities, supplier relationships, and customer base are materially not affected. All of Schaeffler KG's employees and managers remained with Schaeffler Technologies after the transfer was consummated and continue to be employed by Schaeffler Technologies. See January 14, 2011, submission from Schaeffler Technologies at 5. The production facilities now used by Schaeffler Technologies are the same as those used by Schaeffler KG and have not been modified or supplemented after the transfer. *Id.* at 6. Schaeffler Technologies continues to deal with the same suppliers with which Schaeffler KG dealt prior to the transfer and, Schaeffler Technologies claims, any changes in supplier relationships that might occur stem from ordinary commercial considerations not related to the transfer. *Id.* at 6. Finally, there have been no changes to the customer base of Schaeffler Technologies from that which existed under Schaeffler KG except those that result from the normal acquisition or loss of particular customers in the ordinary course of business. *Id.* at 6.

In summary, Schaeffler Technologies has presented evidence to support its claim of successorship. The record indicates that the February 1, 2010, transfer of Schaeffler KG's bearings business to Schaeffler Technologies has not changed the operations of the company in a meaningful way. The management, production facilities, supplier relationships, and customer base of Schaeffler Technologies are substantially unchanged from their status or circumstances prior to the acquisition. The record evidence demonstrates that the new entity operates essentially in the same manner as the predecessor company. Based on the above, we preliminarily determine that Schaeffler Technologies is the successor-in-interest to Schaeffler KG.

Preliminary Results of Reviews

As a result of our reviews, we preliminarily determine that the following percentage weighted-average dumping margins on ball bearings and parts thereof from various countries exist for the period May 1, 2009, through April 30, 2010:

Company	Margin (percent)
FRANCE	
Alcatel Vacuum Technology	5.12
Audi AG	5.12
AVIAC	66.42
Avio	5.12
Bosch Rexroth SAS	5.12
Caterpillar Group Services S.A.	5.12
Caterpillar Materials Routiers S.A.S	5.12
Caterpillar S.A.R.L.	5.12
Dassault Aviation	5.12
Eurocopter SAS	66.42
Groupe Intertechnique	66.42
Kongskilde Limited	5.12
Perkins Engines Company Limited	5.12
SKF France, S.A. and SKF Aerospace S.A.S	4.88
SNECMA	66.42
SNR Roulements S.A. and SNR Europe	7.60
Technofan	66.42
Volkswagon AG	5.12
Volkswagen Zubehor GmbH	5.12
GERMANY	
Audi AG	6.26
BAUER Machinen GmbH	6.26
Bosch Rexroth AG	6.26
BSH Bosch and Siemens Hausgerate GmbH	6.26
Caterpillar S.A.R.L	6.26
Heidelberger Druckmaschinen AG	6.26
Kongskilde Limited	6.26
Myonic GmbH	11.42
Robert Bosch GmbH	6.26
Robert Bosch GmbH Power Tools and Hagglunds Drives	6.26
The Schaeffler Group, Schaeffler KG, and Schaeffler Technologies GmbH	3.67
SKF GmbH	6.26
Volkswagon AG	6.26
Volkswagen Zubehor GmbH	6.26
W & H Dentalwerk Burmoos GmbH	6.26
ITALY	
Audi AG	12.32
Bosch Rexroth S.p.A	12.32
Caterpillar Overseas S.A.R.L	12.32
Caterpillar of Australia Pty. Ltd.	12.32
Caterpillar Group Services S.A.	12.32
Caterpillar Mexico, S.A. de C.V.	12.32
Caterpillar Americas C.V	12.32
Eurocopter	69.99
Hagglunds Drives S.r.l	12.32
Kongskilde Limited	12.32
Perkin Engines Company Limited	12.32
Schaeffler Italia S.r.l., WPB Water Pump Bearing GmbH & Co. KG, and The Scchaeffler Group	2.87

Company	Margin (percent)
SKF Industries S.p.A., Somecat S.p.A., and SKF RIV–SKF Officine di Villar Perosa S.p.A	14.50
SNECMA	69.99
Volkswagen AG	12.32
Volkswagen Zubehor GmbH	12.32
JAPAN	
Asahi Seiko Co., Ltd	3.46
Audi AG	11.36
Bosch Corporation	11.36
Bosch Packaging Technology K.K	11.36
Bosch Rexroth Corporation	11.36
Caterpillar Japan Ltd	11.36
Caterpillar Overseas S.A.R.L	11.36
Caterpillar Group Services S.A.	11.36
Caterpillar Brazil Ltd	11.36
Caterpillar Africa Pty. Ltd	11.36
Caterpillar of Australia Pty. Ltd.	11.36
Caterpillar S.A.R.L	11.36
Caterpillar Americas Mexico, S. de R.L. de C.V	11.36
Caterpillar Logistics Services China Ltd	11.36
Caterpillar Mexico, S.A. de C.V.	11.36
Hagglunds Ltd	11.36
Hino Motors Ltd.	11.36
JTEKT Corporation (formerly known as Koyo Seiko Co.)	11.36
Kongskilde Limited	11.36
Mazda Motor Corporation	11.36
Mori Seiki Co., Ltd	3.50
Nachi-Fujikoshi Corporation	11.36
Nissan Motor Company, Ltd	11.36
NSK Ltd	9.28
NTN Corporation and NTN Kongo Corporation 13.43.	
Perkins Engines Company Limited	11.36
Tsubakimoto Precision Products Co., Ltd	73.55
Volkswagen AG	11.36
Volkswagen Zubehor GmbH	11.36
Yamazaki Mazak Trading Corporation	11.36
UNITED KINGDOM	
Alcatel Vacuum Technology	5.90
Bosch Rexroth Ltd	5.90
Caterpillar S.A.R.L	5.90
Caterpillar Group Services S.A.	5.90
Caterpillar of Australia Pty Ltd.	5.90
Caterpillar Overseas S.A.R.L	5.90
Caterpillar Marine Power UK	5.90
NSK Bearings Europe Ltd	5.90
Perkins Engines Company Ltd.	5.90
SKF (U.K.) Limited and SKF Aeroengine Bearings U.K	5.90
SNR UK	[5]

Comments

We will disclose the calculations we used in our analysis to parties to these reviews within five days of the date of publication of this notice. See 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of the date of publication of this notice. See 19 CFR 351.310(c). If requested, a general-issues hearing and any hearings regarding issues related solely to specific countries will be held at the main Department building at times and locations to be determined.

Interested parties who wish to request a hearing or to participate if one is requested must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. See 19 CFR 351.310(c). Requests should contain the following: (1) The party's name, address, and telephone number; (2) the number of participants; (3) a list of issues to be discussed.

Issues raised in hearings will be limited to those raised in the respective case briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than the following dates:

Case	Briefs due	Rebuttals due
France	May 31, 2011	June 6, 2011.
Germany [6]	May 31, 2011	June 6, 2011.
Italy	May 31, 2011	June 6, 2011.
Japan	May 31, 2011	June 7, 2011.
United Kingdom	June 3, 2011	June 13, 2011.
General Issues	June 6, 2011	June 13, 2011.

Parties who submit case briefs (see 19 CFR 351.309(c)) or rebuttal briefs (see 19 CFR 351.309(d)) in these proceedings are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department intends to issue the final results of these administrative and changed-circumstances reviews, including the results of its analysis of issues raised in any such written briefs or at the hearings, if held, within 120 days of the date of publication of this notice.

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated, whenever possible, an exporter/importer (or customer)-specific assessment rate or value for merchandise subject to these reviews as described below.

The Department clarified its "automatic assessment" regulation on May 6, 2003. This clarification will apply to entries of subject merchandise during the period of review produced by companies selected for individual examination in these preliminary results of reviews for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the country-specific all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see May 2003 clarification, 68 FR 23954.

For the companies which were not selected for individual examination and for the companies to which we are applying AFA, we will instruct CBP to apply the rates listed above to all entries of subject merchandise produced and/or exported by such firms.

Consistent with the May 2003 clarification, for SNR UK which claimed it had no shipments of subject merchandise to the United States, if there are any entries of subject merchandise produced by SNR UK into the United States, we will instruct CBP to liquidate the unreviewed entries of merchandise at the applicable all-others rate.

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of these reviews.

[5] No shipments or sales subject to this review. The firm has an individual rate from the last segment of the proceeding in which the firm had shipments.

[6] Briefs should include any comments with respect to the changed-circumstances review concerning Schaeffler Technologies GmbH.

Export-Price Sales

With respect to EP sales, for these preliminary results, we divided the total dumping margins (calculated as the difference between normal value and EP) for each examined exporter's importer or customer by the total number of units the exporter sold to that importer or customer. We will direct CBP to assess the resulting per-unit dollar amount against each unit of merchandise in each of that importer's/customer's entries under the relevant order during the review period.

Constructed Export-Price Sales

For CEP sales (sampled and non-sampled), we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct CBP to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period. See 19 CFR 351.212(b).

Cash-Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative reviews for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash-deposit rates for the reviewed companies will be the rates established in the final results of the reviews; (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 these reviews, a prior review, or the less-than-fair-value investigations but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash-deposit rate for all other manufacturers or exporters will continue to be the all-others rate for the relevant order made effective by the final results of reviews published on July 26, 1993. See *Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order,* 58 FR 39729 (July 26, 1993). For ball bearings from Italy, see *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 66472, 66521 (December 17, 1996). These rates are the all-others rates from the relevant less-than-fair-value investigations. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) 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 Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

These preliminary results of administrative reviews and preliminary results of changed-circumstances review are issued and published in accordance with sections 751(a)(1), 751(b)(1), and 777(i)(1) of the Act.

Dated: April 14, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–9721 Filed 4–20–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Fire Codes: Request for Comments on NFPA Technical Committee Reports

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) is publishing this notice on behalf of the National Fire Protection Association (NFPA) to announce the availability of and request comments on the technical reports that will be presented at NFPA's 2012 Annual Revision Cycle.

DATES: Thirty-eight reports are published in the 2012 Annual Cycle Report on Proposals and will be available on June 24, 2011. Comments received by 5 p.m. EST/EDST on or before August 30, 2011 will be considered by the respective NFPA Committees before final action is taken on the proposals.

ADDRESSES: The 2012 Annual Revision Cycle Report on Proposals is available and downloadable from NFPA's Web site—*http://www.nfpa.org,* or by requesting a copy from the NFPA, Fulfillment Center, 11 Tracy Drive, Avon, Massachusetts 02322. Comments on the report should be submitted to Amy Beasley Cronin, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02169–7471.

FOR FURTHER INFORMATION CONTACT: Amy Beasley Cronin, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02169–7471, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Since 1896, the National Fire Protection Association (NFPA) has accomplished its mission by advocating scientifically based consensus codes and standards, research, and education for safety related issues. NFPA's *National Fire Codes*®, which holds over 290 documents, are administered by more than 238 Technical Committees comprised of approximately 7,200 volunteers and are adopted and used throughout the world. NFPA is a nonprofit membership organization with approximately 80,000 members from over 70 nations, all working together to fulfill the Association's mission.

The NFPA process provides ample opportunity for public participation in the development of its codes and standards. All NFPA codes and standards are revised and updated every three to five years in Revision Cycles that begin twice each year and that take approximately two years to complete. Each Revision Cycle proceeds according to a published schedule that includes final dates for all major events in the process. The code revision Process contains five basic steps that are followed for developing new documents as well as revising existing documents: Call for Proposals; Report on Proposals (ROP); Call for Comments on the Committee's disposition of the Proposals and publication of these Comments in the Report on Comments (ROC); the Association Technical Meeting at the NFPA Conference & Expo; and finally, the Standards Council Consideration and Issuance of documents.

NOTE: NFPA rules state that, anyone wishing to make Amending Motions on the Technical Committee Reports (ROP and ROC) must signal his or her intention by submitting a Notice of Intent to Make a Motion by the Deadline of 5 p.m. EST/EDST on or before April 6, 2012. Certified motions will be posted by May 4, 2012. Documents that receive notice of proper Amending Motions (Certified Amending Motions) will be presented for action at the Annual 2012

Association Technical Meeting. Documents that receive no motions will be forwarded directly to the Standards Council for action on issuance at its May 29, 2012 meeting.

For more information on these new rules and for up-to-date information on schedules and deadlines for processing NFPA Documents, check the NFPA Web site at *http://www.nfpa.org,* or contact NFPA Codes and Standards Administration.

The purpose of this notice is to request comments on the technical reports that will be presented at NFPA's 2012 Annual Revision Cycle. The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

Background

The National Fire Protection Association (NFPA) develops building, fire, and electrical safety codes and standards. Federal agencies frequently use these codes and standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR part 51.

Request for Comments

Interested persons may participate in these revisions by submitting written data, views, or arguments, to Amy Beasley Cronin, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02169–7471. Commenters may use the forms provided for comments in the Reports on Proposals. Each person submitting a comment should include his or her name and address, identify the notice, and give reasons for any recommendations. Comments received by 5 p.m. EST/EDST on or before August 30, 2011 for the 2012 Annual Cycle Report on Proposals will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published as the 2012 Annual Cycle Report on Comments by February 24, 2012. A copy of the Report on Comments will be sent automatically to each commenter. Reports of the Technical Committees on documents that do not receive a Notice of Intent to Make a Motion will automatically be forwarded to the Standards Council for action on issuance. Action on the reports of the Technical Committees on documents that do receive a Notice of Intent to Make a Motion will be taken at the Association Technical Meeting, which is held at the NFPA Conference & Expo, June 4–7, 2012 in Las Vegas, Nevada, by the NFPA membership.

2012 ANNUAL MEETING—REPORT ON PROPOSALS

NFPA 13	Standard for the Installation of Sprinkler Systems	P
NFPA 13D	Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes	P
NFPA 13R	Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height.	P
NFPA 20	Standard for the Installation of Stationary Pumps for Fire Protection	P
NFPA 24	Standard for the Installation of Private Fire Service Mains and Their Appurtenances	P
NFPA 51	Standard for the Design and Installation of Oxygen-Fuel Gas Systems for Welding, Cutting, and Allied Processes	P
NFPA 55	Compressed Gases and Cryogenic Fluids Code	P
NFPA 61	Standard for the Prevention of Fires and Dust Explosions in Agricultural and Food Processing Facilities	P
NFPA 68	Standard on Explosion Protection by Deflagration Venting	P
NFPA 72	National Fire Alarm and Signaling Code	P
NFPA 80	Standard for Fire Doors and Other Opening Protectives	P
NFPA 101A	Guide on Alternative Approaches to Life Safety	P
NFPA 105	Standard for the Installation of Smoke Door Assemblies and Other Opening Protectives	P
NFPA 110	Standard for Emergency and Standby Power Systems	P
NFPA 111	Standard on Stored Electrical Energy Emergency and Standby Power Systems	P
NFPA 291	Recommended Practice for Fire Flow Testing and Marking of Hydrants	P
NFPA 301	Code for Safety to Life from Fire on Merchant Vessels	P
NFPA 400	Hazardous Materials Code	P
NFPA 402	Guide for Aircraft Rescue and Fire-Fighting Operations	P
NFPA 415	Standard on Airport Terminal Buildings, Fueling Ramp Drainage, and Loading Walkways	P
NFPA 424	Guide for Airport/Community Emergency Planning	P
NFPA 450	Guide for Emergency Medical Services and Systems	P
NFPA 472	Standard for Competence of Responders to Hazardous Materials/Weapons of Mass Destruction Incidents	P
NFPA 473	Standard for Competencies for EMS Personnel Responding to Hazardous Materials/Weapons of Mass Destruction Incidents.	P
NFPA 555	Guide on Methods for Evaluating Potential for Room Flashover	P
NFPA 654	Standard for the Prevention of Fire and Dust Explosions from the Manufacturing, Processing, and Handling of Combustible Particulate Solids.	P
NFPA 1001	Standard for Fire Fighter Professional Qualifications	P
NFPA 1122	Code for Model Rocketry	P
NFPA 1124	Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles	P
NFPA 1127	Code for High Power Rocketry	P
NFPA 1128DS	Draft Standard for Standard Method of Fire Test for Flame Breaks	N
NFPA 1129DS	Draft Standard for Standard Method of Fire Test for Covered Fuse on Consumer Fireworks	N
NFPA 1144	Standard for Reducing Structure Ignition Hazards from Wildland Fire	P
NFPA 1221	Standard for the Installation, Maintenance, and Use of Emergency Services Communications Systems	P
NFPA 1500	Standard on Fire Department Occupational Safety and Health Program	P
NFPA 1582	Standard on Comprehensive Occupational Medical Program for Fire Departments	P
NFPA 1801	Standard on Thermal Imagers for the Fire Service	P
NFPA 1917	Standard for Automotive Ambulance	N

P = Partial revision; W = Withdrawals; R = Reconfirmation; N = New; C = Complete revision.

Dated: March 28, 2011.

Charles H. Romine,

Acting Associate Director for Laboratory Programs.

[FR Doc. 2011–8041 Filed 4–20–11; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Fire Codes: Request for Proposals for Revision of Codes and Standards

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) is publishing this notice on behalf of the National Fire Protection Association (NFPA) to announce the NFPA's proposal to revise some of its fire safety codes and standards and requests proposals from the public to amend existing or begin the process of developing new NFPA fire safety codes and standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its codes and standards.

DATES: Interested persons may submit proposals by 5 p.m. EST/EDST on or before the date listed with the code or standard.

ADDRESSES: Amy Beasley Cronin, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02169–7471.

FOR FURTHER INFORMATION CONTACT: Amy Beasley Cronin, Secretary, Standards Council, at above address, (617) 770–3000.

SUPPLEMENTARY INFORMATION: The National Fire Protection Association (NFPA) proposes to revise some of its fire safety codes and standards and requests proposals from the public to amend existing or begin the process of developing new NFPA fire safety codes and standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its codes and standards. The publication of this notice of request for proposals by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

The NFPA process provides ample opportunity for public participation in the development of its codes and standards. All NFPA codes and standards are revised and updated every three to five years in Revision Cycles that begin twice each year and take approximately two years to complete. Each Revision Cycle proceeds according to a published schedule that includes final dates for all major events in the process. The code revision Process contains five basic steps that are followed for developing new documents as well as revising existing documents: Call for Proposals; Report on Proposals (ROP); Call for Comments on the Committee's disposition of the Proposals, and publication of these Comments in the Report on Comments (ROC); the Association Technical Meeting at the NFPA Conference & Expo; and finally, the Standards Council Consideration and Issuance of documents.

Note: NFPA rules state that, anyone wishing to make Amending Motions on the Technical Committee Reports (ROP and ROC) must signal his or her intention by submitting a Notice of Intent to Make a Motion by 5 p.m. EST/EDST of the Deadline stated in the ROC. Certified motions will then be posted on the NFPA Web site. Documents that receive notice of proper Amending Motions (Certified Amending Motions) will be presented for action at the Association Technical Meeting at the NFPA Conference & Expo. Documents that receive no motions will be forwarded directly to the Standards Council for action on issuance.

For more information on these rules and for up-to-date information on schedules and deadlines for processing NFPA Codes and Standards, check the NFPA Web site at *http://www.nfpa.org,* or contact NFPA Codes and Standards Administration.

Background

The National Fire Protection Association (NFPA) develops building, fire, and electrical safety codes and standards. Federal agencies frequently use these codes and standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR part 51.

When a Technical Committee begins the development of a new or revised NFPA code or standard, it enters one of two Revision Cycles available each year. The Revision Cycle begins with the Call for Proposals, that is, a public notice asking for any interested persons to submit specific written proposals for developing or revising a code or standards. The Call for Proposals is published in a variety of publications. Interested parties have approximately twenty weeks to respond to the Call for Proposals.

Following the Call for Proposals period, the Technical Committee holds a meeting to consider and accept, reject or revise, in whole or in part, all the submitted Proposals. The Committee may also develop its own Proposals. A document known as the Report on Proposals, or ROP, is prepared containing all the Public Proposals, the Technical Committee's action on each Proposal, as well as all Committee-generated Proposals. The ROP is then submitted for the approval of the Technical Committee by a formal written ballot. If the ROP does not receive approval by a two-thirds vote calculated in accordance with NFPA rules, the Report is returned to the Committee for further consideration and is not published. If the necessary approval is received, the ROP is published in a compilation of Reports on Proposals issued by NFPA twice yearly for public review and comment, and the process continues to the next step.

The Reports on Proposals are sent automatically free of charge to all who submitted Proposals and each Committee member, as well as anyone else who requests a copy. All ROP's are also available for free downloading at *http://www.nfpa.org.*

Once the ROP becomes available, there is a 60-day comment period during which anyone may submit a Public Comment on the proposed changes in the ROP. The Committee then reconvenes at the end of the comment period and acts on all Comments.

As before, a two-thirds approval vote by written ballot of the eligible members of the Committee is required for approval of actions on the Comments. All of this information is compiled into a second report, called the Report on Comments (ROC), which, like the ROP, is published, and is made available for public review for a seven-week period.

The process of public input and review does not end with the publication of the ROP and ROC. Following the completion of the Proposal and Comment periods, there is further opportunity for debate and discussion through the Association Technical Meeting that takes place at the NFPA Conference & Expo.

The Association Technical Meeting provides an opportunity for the final Technical Committee Report (*i.e.,* the ROP and ROC) on each proposed new or revised code or standard to be presented to the NFPA membership for the debate and consideration of motions

to amend the Report. Before making an allowable motion at an Association Technical Meeting, the intended maker of the motion must file, in advance of the session, and within the published deadline, a Notice of Intent to Make a Motion. A Motions Committee appointed by the Standards Council then reviews all notices and certifies all amending motions that are proper. Only these Certified Amending Motions, together with certain allowable Follow-Up Motions (that is, motions that have become necessary as a result of previous successful amending motions) will be allowed at the Association Technical Meeting.

For more information on dates/locations of NFPA Technical Committee meetings and NFPA Conference & Expo, check the NFPA Web site at: *http://www.nfpa.org/itemDetail.asp?categoryID=822&itemID=22818.*

The specific rules for the types of motions that can be made and who can make them are set forth in NFPA's Regulation Governing Committee Projects which should always be consulted by those wishing to bring an issue before the membership at an Association Technical Meeting.

Request for Proposals

Interested persons may submit proposals, supported by written data, views, or arguments, to Amy Beasley Cronin, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02169–7471. Proposals should be submitted on forms available from the NFPA Codes and Standards Administration Office or on NFPA's Web site at *http://www.nfpa.org.* Each person must include his or her name and address, identify the code or standard, and give reasons for the proposal. Proposals received by 5 p.m. EST/EDST on or before the closing date indicated with each code or standard would be acted on by the Committee, and then considered by the NFPA Membership at the Association Technical Meeting.

Document-edition	Document title	Proposal closing date
NFPA 10–2010	Standard for Portable Fire Extinguishers	5/23/2011
NFPA 14–2010	Standard for the Installation of Standpipe and Hose Systems	5/23/2011
NFPA 17–2009	Standard for Dry Chemical Extinguishing Systems	5/23/2011
NFPA 17A–2009	Standard for Wet Chemical Extinguishing Systems	5/23/2011
NFPA 22–2008	Standard for Water Tanks for Private Fire Protection	5/23/2011
NFPA 36–2009	Standard for Solvent Extraction Plants	5/23/2011
NFPA 52–2010	Vehicular Gaseous Fuel Systems Code	5/23/2011
NFPA 70B–2010	Recommended Practice for Electrical Equipment Maintenance	5/23/2011
NFPA 77–2007	Recommended Practice on Static Electricity	5/23/2011
NFPA 99B–2010	Standard for Hypobaric Facilities	11/23/2012
NFPA 140–2008	Standard on Motion Picture and Television Production Studio Soundstages, Approved Production Facilities, and Production Locations.	5/23/2011
NFPA 211–2010	Standard for Chimneys, Fireplaces, Vents, and Solid Fuel-Burning Appliances	5/23/2011
NFPA 225–2009	Model Manufactured Home Installation Standard	5/23/2011
NFPA 241–2009	Standard for Safeguarding Construction, Alteration, and Demolition Operations	5/23/2011
NFPA 259–2008	Standard Test Method for Potential Heat of Building Materials	5/23/2011
NFPA 260–2009	Standard Methods of Tests and Classification System for Cigarette Ignition Resistance of Components of Upholstered Furniture.	5/23/2011
NFPA 261–2009	Standard Method of Test for Determining Resistance of Mock-Up Upholstered Furniture Material Assemblies to Ignition by Smoldering Cigarettes.	5/23/2011
NFPA 270–2008	Standard Test Method for Measurement of Smoke Obscuration Using a Conical Radiant Source in a Single Closed Chamber.	5/23/2011
NFPA 274–2009	Standard Test Method to Evaluate Fire Performance Characteristics of Pipe Insulation	5/23/2011
NFPA 289–2009	Standard Method of Fire Test for Individual Fuel Packages	5/23/2011
NFPA 290–2009	Standard for Fire Testing of Passive Protection Materials for Use on LP–Gas Containers	5/23/2011
NFPA 495–2010	Explosive Materials Code	5/23/2011
NFPA 496–2008	Standard for Purged and Pressurized Enclosures for Electrical Equipment	5/23/2011
NFPA 498–2010	Standard for Safe Havens and Interchange Lots for Vehicles Transporting Explosives	5/23/2011
NFPA 501A–2009	Standard for Fire Safety Criteria for Manufactured Home Installations, Sites, and Communities	5/23/2011
NFPA 501–2010	Standard on Manufactured Housing	5/23/2011
NFPA 502–2011	Standard for Road Tunnels, Bridges, and Other Limited Access Highways	11/25/2011
NFPA 505–2011	Fire Safety Standard for Powered Industrial Trucks Including Type Designations, Areas of Use, Conversions, Maintenance, and Operations.	5/23/2011
NFPA 520–2010	Standard on Subterranean Spaces	5/24/2013
NFPA 551–2010	Guide for the Evaluation of Fire Risk Assessments	5/23/2011
NFPA 705–2009	Recommended Practice for a Field Flame Test for Textiles and Films	5/23/2011
NFPA 801–2008	Standard for Fire Protection for Facilities Handling Radioactive Materials	5/23/2011
NFPA 853–2010	Standard for the Installation of Stationary Fuel Cell Power Systems	5/24/2013
NFPA 900–2010	Building Energy Code	5/23/2011
NFPA 909–2010	Code for the Protection of Cultural Resource Properties—Museums, Libraries, and Places of Worship.	5/23/2011
NFPA 914–2010	Code for Fire Protection of Historic Structures	5/24/2013
NFPA 1002–2009	Standard for Fire Apparatus Driver/Operator Professional Qualifications	8/26/2011
NFPA 1006–2008	Standard for Technical Rescuer Professional Qualifications	5/23/2011
NFPA 1404–2006	Standard for Fire Service Respiratory Protection Training	5/23/2011
NFPA 1451–2007	Standard for a Fire Service Vehicle Operations Training Program	5/23/2011
NFPA 1600–2010	Standard on Disaster/Emergency Management and Business Continuity Programs	5/23/2011
NFPA 1855–P*	Standard for Selection, Care, and Maintenance of Protective Ensembles for Technical Rescue Incidents.	5/23/2011
NFPA 1925–2008	Standard on Marine Fire-Fighting Vessels	5/23/2011
NFPA 1962–2008	Standard for the Inspection, Care, and Use of Fire Hose, Couplings, and Nozzles and the Service Testing of Fire Hose.	5/23/2011

Document-edition	Document title	Proposal closing date
NFPA 1964–2008	Standard for Spray Nozzles	5/23/2011
NFPA 1981–2007	Standard on Open-Circuit Self-Contained Breathing Apparatus (SCBA) for Emergency Services	5/23/2011
NFPA 1982–2007	Standard on Personal Alert Safety Systems (PASS)	5/23/2011
NFPA 1999–2008	Standard on Protective Clothing for Emergency Medical Operations	5/23/2011

* Proposed NEW drafts are available from NFPA's Web site—*http://www.nfpa.org* or may be obtained from NFPA's Codes and Standards Administration, 1 Batterymarch Park, Quincy, Massachusetts 02169–7471.

Dated: March 28, 2011.

Charles H. Romine,

Acting Associate Director for Laboratory Programs.

[FR Doc. 2011–8040 Filed 4–20–11; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA383

Fisheries of the Caribbean; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of SEDAR Data and Review Workshops for Caribbean silk snapper, queen snapper and redtail parrotfish.

SUMMARY: The SEDAR assessments of the Caribbean stocks of silk snapper, queen snapper and redtail parrotfish will consist of a series of three workshops: a Data Workshop, an Assessment Workshop, and a Review Workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The Data Workshop will take place May 16–20, 2011; the Review Workshop will take place October 17–21, 2011. See **SUPPLEMENTARY INFORMATION** for specific dates and times of the workshops.

ADDRESSES: The Data Workshop will be held at the Renaissance St. Croix Carambola Beach Resort and Spa, Estate Davis Bay, Kingshill St. Croix VI 00850, telephone: (888) 503–8760. The Review Workshop will be held at the Hotel El Convento, 100 Cristo Street, Old San Juan, PR 00901, telephone: (181) 723–9036.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR includes three workshops: (1) Data Workshop, (2) Stock Assessment Workshop and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Stock Assessment Workshop is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Consensus Summary documenting Panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and State and Federal agencies.

SEDAR 21 Data and Review Workshop Schedule:

May 16–20, 2011; SEDAR 21 Data Workshop

May 16, 2011: 1 p.m.–8 p.m.; May 17–19, 2011: 8 a.m.–8 p.m.; May 20, 2011: 8 a.m.–12 p.m.

An assessment data set and associated documentation will be developed during the Data Workshop. Participants will evaluate all available data and select appropriate sources for providing information on life history characteristics, catch statistics, discard estimates, length and age composition, and fishery dependent and fishery independent measures of stock abundance.

October 17–21, 2011; SEDAR 26 Review Workshop

October 17, 2011: 1 p.m.–8 p.m.;

October 18–20, 2011: 8 a.m.–8 p.m.;

October 21, 2011: 8 a.m.–12 p.m.

The Review Workshop is an independent peer review of the assessment developed during the Data and Assessment Workshops. Workshop Panelists will review the assessment and document their comments and recommendations in a Consensus Summary.

The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from, or completed prior to the time established by this notice.

Although non-emergency issues not contained in this agenda may come before this group 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 Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to each workshop.

Dated: April 18, 2011.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–9707 Filed 4–20–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA381

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: This notice advises the public that the Western Pacific Fishery Management Council (Council) will convene meetings of the Community Demonstration Projects Program (CDPP) Advisory Panel in Honolulu, HI.

DATES: The CDPP Advisory Panel meeting will be held Tuesday and Wednesday, April 26–27, 2011. For the specific date, time, and agenda for each meeting see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meetings of the CDPP Advisory Panel will be held at the Council office at 1164 Bishop Street, Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; *telephone:* (808) 522–8220.

SUPPLEMENTARY INFORMATION: The date, time and agenda for each meeting are as follows:

Tuesday, April 26, 2011, 9 a.m.–5 p.m.

1. Introductions.
2. Review of CDPP and Marine Education and Training (MET) Magnuson-Steven Act authorities.
3. Overview of 2011 Grant Solicitation.
   a. CDPP Federal Funding Opportunity.
   b. MET Federal Funding Opportunity.
4. Reviewer Conflict of Interest and Confidentiality Certification.
5. CDPP Grant Application Review and Ranking Process.
   a. CDPP Program Review Instructions.
   b. CDPP Program Evaluation Criteria.
   c. CDPP Evaluation Form.
6. Panel review and ranking of CDPP Applications.
   a. Overview of 2011 CDPP Applications.
   b. Panel discussion and recommendations.

Wednesday, April 27, 2011, 9 a.m.–5 p.m.

7. MET Grant Application Review and Ranking Process.
   a. MET Program Review Instructions.
   b. MET Program Evaluation Criteria.
   c. MET Evaluation Form.
8. Panel review and ranking of MET Applications.
   a. Overview of 2011 MET Applications.
   b. Panel discussion and recommendations.
9. Summary of AP review and recommendations for funding 2011 CDPP and MET grant applications.

The order in which agenda items are addressed may change. Public comment periods will be provided during the agenda. The CDPP Advisory Panel will meet as late as necessary to complete scheduled business.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. 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 Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 18, 2011.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries Service.

[FR Doc. 2011–9677 Filed 4–20–11; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, April 27, 2011; 10 a.m.–11 a.m.

PLACE: Room 410, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the public.

Matter To Be Considered

Compliance Status Report

The Commission staff will brief the Commission on the status of compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: April 19, 2011.

Todd A Stevenson,

Secretary.

[FR Doc. 2011–9882 Filed 4–19–11; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Exclusive, Non-Exclusive, or Partially-Exclusive Licensing of an Invention Concerning the Method and Apparatus for Stereo Imaging

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Announcement is made of the availability for licensing of the invention set forth in U.S. Provisional Patent Application Serial No. 61/465,598, entitled "Method and Apparatus for Stereo Imaging," filed on March 11, 2011. The United States Government, as represented by the Secretary of the Army, has rights to this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research and Technology Applications (ORTA), (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The invention relates to a method and apparatus for the generation of macro scale extremely high resolution digital images and the generation of macro scale extremely high resolution images in 3D.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2011–9679 Filed 4–20–11; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before May 23, 2011.

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, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*. Please note that written comments received in response to this notice will be considered public records.

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. The OMB is particularly interested in comments which: (1) Evaluate 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; (2) 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; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: April 18, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title of Collection: Federal Family Education Loan Program and William D. Ford Federal Direct Loan Program Unpaid Refund Loan Discharge Application.

OMB Control Number: 1845–0058.

Agency Form Number(s): N/A.

Frequency of Responses: On Occasion.

Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 400.

Total Estimated Annual Burden Hours: 200.

Abstract: This form serves as the means by which eligible borrowers in the Federal Family Education Loan Program and William D. Ford Federal Direct Loan Program apply for discharge of the portion of a loan that a school failed to return to the loan holder in accordance with federal regulations.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4517. 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., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

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. 2011–9706 Filed 4–20–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 20, 2011.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Information Management and Privacy Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 18, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title of Collection: An Impact Evaluation of the Teacher Incentive Fund (TIF).

OMB Control Number: 1850–0876.

Agency Form Number(s): N/A.

Frequency of Responses: On occasion.

Affected Public: Individuals or households; Not for-profit institutions.

Total Estimated Number of Annual Responses: 1,309.

Total Estimated Number of Annual Burden Hours: 1,284.

Abstract: This is the second submission of a two-stage clearance request for approval of data collection activities that will be used to support An Impact Evaluation of the Teacher Incentive Fund (TIF). The evaluation will estimate the impact of the differentiated pay component of the TIF program on student achievement and teacher and principal quality and retention. In addition, the evaluation will provide descriptive information of the program's implementation, grantee challenges, and grantee responses to challenges.

Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4560. 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., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

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. 2011–9709 Filed 4–20–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before May 23, 2011.

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, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*. Please note that written comments received in response to this notice will be considered public records.

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. The OMB is particularly interested in comments which: (1) Evaluate 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; (2) 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; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: April 18, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title of Collection: Federal Direct PLUS Loan Request for Supplemental Information.

OMB Control Number: 1845–0103.

Agency Form Number(s): N/A.

Frequency of Responses: On Occasion.

Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 1,230,000.

Total Estimated Annual Burden Hours: 615,000.

Abstract: The Federal Direct PLUS Loan Request for Supplemental Information serves as the means by which a Direct PLUS Loan applicant (parent or graduate/professional student) may provide certain information to a school that will assist the school in originating the borrower's Direct PLUS Loan award, and as an alternative to providing this information to the school by other means established by the school.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4512. 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., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

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. 2011–9712 Filed 4–20–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, May 11, 2011; 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee 37830.

FOR FURTHER INFORMATION CONTACT: Patricia J. Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–2347 or e-mail: *halseypj@oro.doe.gov* or check the Web site at *http://www.oakridge.doe.gov/em/ssab.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations

to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: The main meeting presentation will be on Groundwater Contamination Management Strategies at the Oak Ridge Reservation.

Public Participation: The EM SSAB, Oak Ridge, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Patricia J. Halsey at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Patricia J. Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Patricia J. Halsey at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.oakridge.doe.gov/em/ssab/minutes.htm*.

Issued at Washington, DC, on April 18, 2011.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–9684 Filed 4–20–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–66–000.

Applicants: White Oak Energy LLC.

Description: Application for approval under section 203 of the Federal Power Act and request for expedited action of White Oak Energy LLC.

Filed Date: 04/13/2011.

Accession Number: 20110413–5177.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 4, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–2547–001.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits tariff filing per 35: NYISO Compliance Filing EITC to be effective 3/15/2011.

Filed Date: 04/13/2011.

Accession Number: 20110413–5080.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 4, 2011.

Docket Numbers: ER11–2677–001.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.17(b): Response to Request for Additional Information (KPP NITSA/NOA) to be effective 7/30/2010.

Filed Date: 04/13/2011.

Accession Number: 20110413–5155.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 4, 2011.

Docket Numbers: ER11–3161–002.

Applicants: NorthWestern Corporation.

Description: NorthWestern Corporation submits tariff filing per 35.17(b): Second Resubmittal of Service Agreements/LGIAs with Martinsdale to be effective 9/10/2009.

Filed Date: 04/13/2011.

Accession Number: 20110413–5100.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 4, 2011.

Docket Numbers: ER11–3344–000.

Applicants: Florida Power Corporation.

Description: Florida Power Corporation submits tariff filing per 35.13(a)(2)(iii: Revised OATT Attachment C of Florida Power Corporation under Docket ER10–1282 to be effective 3/30/2011.

Filed Date: 04/13/2011.

Accession Number: 20110413–5049.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 4, 2011.

Docket Numbers: ER11–3345–000.

Applicants: Carolina Power & Light Company.

Description: Carolina Power & Light Company submits tariff filing per 35.13(a)(2)(iii: Revised OATT Attachment C of Carolina Power and Light Co. under Docket ER10–1282 to be effective 3/30/2011.

Filed Date: 04/13/2011.

Accession Number: 20110413–5052.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 4, 2011.

Docket Numbers: ER11–3346–000.

Applicants: WestConnect.

Description: WestConnect submits tariff filing per 35.1: FERC Electric Rate Schedule, Volume No. 2, WestConnect Participation Agreement to be effective 7/1/2011.

Filed Date: 04/13/2011.

Accession Number: 20110413–5062.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 4, 2011.

Docket Numbers: ER11–3347–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Queue No. W3–030—Original Service Agreement No. 2841 to be effective 3/17/2011.

Filed Date: 04/13/2011.

Accession Number: 20110413–5083.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 4, 2011.

Docket Numbers: ER11–3348–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Queue No. W3–080—Original Service Agreement No. 2842 WMPA to be effective 3/17/2011.

Filed Date: 04/13/2011.

Accession Number: 20110413–5085.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 4, 2011.

Docket Numbers: ER11–3349–000.

Applicants: Wisconsin Electric Power Company.

Description: Wisconsin Electric Power Company submits tariff filing per 35.13(a)(2)(iii: Wisconsin Electric Formula Rate Tariff Service Agreement No 2 Revised to be effective 6/1/2011.

Filed Date: 04/13/2011.

Accession Number: 20110413–5113.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 4, 2011.

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.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

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 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.

Dated: April 14, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–9657 Filed 4–20–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER96–780–031; *ER00–3240–021; ER01–1633–018; ER10–892–003.*

Applicants: Oleander Power Project, L.P., Southern Company Services, Inc., Southern Company—Florida LLC, Southern Turner Cimarron I, LLC.

Description: Report of non-material change in status of Southern Companies and Southern Turner Cimarron I LLC.

Filed Date: 04/12/2011.

Accession Number: 20110412–5216.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 3, 2011.

Docket Numbers: ER10–3125–001; *ER10–3102–001; ER10–3100–001; ER10–3107–001; ER10–3109–001.*

Applicants: Effingham County Power, LLC, Walton County Power, LLC, Washington County Power, LLC, AL Sandersville LLC, MPC Generating LLC.

Description: Notice of Non-Material Change in Status of AL Sandersville LLC, et. al. under ER10–3125, et al.

Filed Date: 04/13/2011.

Accession Number: 20110413–5069.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 04, 2011.

Docket Numbers: ER10–3356–001.

Applicants: Entergy Arkansas, Inc.

Description: Entergy Arkansas, Inc. submits tariff filing per 35.17(b): West Memphis Corrected NITSA to be effective 1/1/2011.

Filed Date: 02/08/2011.

Accession Number: 20110208–5138.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 20, 2011.

Docket Numbers: ER11–2724–000.

Applicants: Black Hills Colorado IPP, LLC.

Description: Supplemental Information of Black Hills Colorado IPP, LLC.

Filed Date: 04/05/2011.

Accession Number: 20110405–5110.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 26, 2011.

Docket Numbers: ER11–2726–000.

Applicants: Black Hills Colorado IPP, LLC.

Description: Supplemental Information/Request of Black Hills Colorado IPP, LLC, and Black Hills/Colorado Electric Utility Company L.P.

Filed Date: 04/05/2011.

Accession Number: 20110405–5113.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 26, 2011.

Docket Numbers: ER11–2962–001.

Applicants: Tropicana Manufacturing Company Inc.

Description: Amendment to Application of Tropicana Manufacturing Company, Inc. under ER11–2962.

Filed Date: 04/13/2011.

Accession Number: 20110413–5038.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 4, 2011.

Docket Numbers: ER11–3333–000.

Applicants: NV Energy, Inc.

Description: NV Energy, Inc. submits tariff filing per 35.12: Service Agreement 11–00036 to be effective 1/21/2011.

Filed Date: 04/12/2011.

Accession Number: 20110412–5002.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 3, 2011.

Docket Numbers: ER11–3334–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii: Conforming Tariff Record—Exhibit 1D Billing Policy to be effective 5/1/2011.

Filed Date: 04/12/2011.

Accession Number: 20110412–5021.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 3, 2011.

Docket Numbers: ER11–3335–000.

Applicants: KGen Murray I and II LLC.

Description: KGen Murray I and II LLC submits tariff filing per 35.15: Notice of Cancellation to be effective 4/13/2011.

Filed Date: 04/12/2011.

Accession Number: 20110412–5043.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 3, 2011.

Docket Numbers: ER11–3336–000.

Applicants: Command Power Corp.

Description: Command Power Corp. submits tariff filing per 35.12: Initial Application for MBR to be effective 6/11/2011.

Filed Date: 04/12/2011.

Accession Number: 20110412–5094.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 3, 2011.

Docket Numbers: ER11–3337–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Previously approved revisions to the RAA Schedule 17—Parties to the RAA to be effective 2/14/2011.

Filed Date: 04/12/2011.

Accession Number: 20110412–5096.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 3, 2011.

Docket Numbers: ER11–3338–000.

Applicants: Monmouth Energy, Inc.

Description: Monmouth Energy, Inc. submits tariff filing per 35.15: Market-

Based Rate Tariff Cancellation to be effective 4/1/2011.

Filed Date: 04/12/2011.

Accession Number: 20110412–5112.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 3, 2011.

Docket Numbers: ER11–3339–000.

Applicants: Freepoint Commodities, LLC.

Description: Freepoint Commodities, LLC submits tariff filing per 35.12: Freepoint Commodities LLC MBR Tariff to be effective 5/12/2011.

Filed Date: 04/12/2011.

Accession Number: 20110412–5121.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 3, 2011.

Docket Numbers: ER11–3340–000.

Applicants: Interstate Power and Light Company.

Description: Interstate Power and Light Company submits tariff filing per 35.13(a)(2)(iii): IPL & OGWF—LBA Agreement to be effective 5/2/2011.

Filed Date: 04/12/2011.

Accession Number: 20110412–5150.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 3, 2011.

Docket Numbers: ER11–3341–000.

Applicants: Entergy Arkansas, Inc.

Description: Entergy Arkansas, Inc. submits tariff filing per 35.13(a)(2)(iii): Dow Chemical Amended IOA to be effective 6/11/2011.

Filed Date: 04/12/2011.

Accession Number: 20110412–5157.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 3, 2011.

Docket Numbers: ER11–3342–000.

Applicants: Dynasty Power Inc.

Description: Dynasty Power Inc. submits tariff filing per 35.12: Dynasty MBR Tariff to be effective 6/1/2011.

Filed Date: 04/12/2011.

Accession Number: 20110412–5202.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 3, 2011.

Docket Numbers: ER11–3343–000.

Applicants: Public Service Company of New Mexico.

Description: Public Service Company of New Mexico submits tariff filing per 35: Revision to Attachment C and Attachment P to be effective 4/1/2011 under ER11–03343–000 Filing Type: 80.

Filed Date: 04/13/2011.

Accession Number: 20110413–5000.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 4, 2011.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH11–13–000.

Applicants: The GE Companies.

Description: Revised Form 65–A of The GE Companies under PH11–13.

Filed Date: 04/13/2011.

Accession Number: 20110413–5066.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 4, 2011.

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.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

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.

Dated: April 13, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–9663 Filed 4–20–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–3329–000]

Gila River Energy Supply LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Gila River Energy Supply LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 3, 2011.

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 Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding 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 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.

Dated: April 13, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–9661 Filed 4–20–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–3339–000]

Freepoint Commodities LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Freepoint Commodities LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 3, 2011.

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 Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding 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 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.

Dated: April 13, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–9660 Filed 4–20–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–3336–000]

Command Power Corp.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Command Power Corp.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 3, 2011.

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 Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding 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 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.

Dated: April 13, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–9662 Filed 4–20–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–3342–000]

Dynasty Power Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Dynasty Power Inc.'s application for market-

based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 3, 2011.

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 Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding 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 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.

Dated: April 13, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–9659 Filed 4–20–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[P–13123–002–CA]

Eagle Mountain Pumped Storage Hydroelectric Project, Eagle Crest Energy; Notice of Cancellation of Teleconference

On March 15, 2011, the Commission issued public notice of a teleconference scheduled to occur on Friday, April 15, 2011 at 9 a.m. (Pacific Time). The teleconference was scheduled as part of our on-going Section 7 Endangered Species Act consultation efforts with the U.S. Fish and Wildlife Service for the proposed Eagle Mountain Pumped Storage Hydroelectric Project. This meeting has been cancelled.

We will reschedule this meeting in the near future and provide public notice.

Dated: April 13, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–9658 Filed 4–20–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may 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, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	File date	Presenter or requester
Prohibited:		
1. ER11–2224–000	4–8–11	Gavin Donohue.
2. ER11–2377–000	3–24–11	John Amey.[1]
3. Project No. 2088–000	4–13–11	Jim Lynch.[2]
Exempt:		
1. CP10–477–000	3–28–11	Audrey Platt.
2. CP11–31–000	3–24–11	Gertrude F. Johnson.[3]
3. CP11–56–000	3–24–11	Hon. Deborah J. Glick.
4. ER11–2224–000	4–1–11	Hon. Joseph Crowley, *et al.*

Docket No.	File date	Presenter or requester
5. ER11–2224–000	4–7–11	Hon. Robert E. Curry.[4]
6. ER11–2224–000	4–6–11	Michael Henry.[5]
7. ER11–2224–000	3–28–11	Hon. Charles Schumer.
8. ER11–2224–000	3–29–11	Hon. Michael R. Bloomberg.
9. Project No. 2079–069	4–8–11	Carolyn Templeton.[6]
10. Project No. 12715–000	3–24–11	David Sinclair.[7]
11. Project No. 13351–000	3–14–2011	Janet Hutzel.[8]

[1] Record of e-mail correspondence.
[2] Record of e-mail exchange.
[3] Memo to file regarding 3–10–11 meeting between FERC staff, National Park Service and Transcontinental Gas Pipe Line Company, LLC concerning the Mid-Atlantic Connector Expansion Project.
[4] Record of e-mail correspondence.
[5] Record of telephone call from Hon. Charles Schumer.
[6] Memo to file regarding 4–4–11 meeting between FERC staff and representatives of Placer County Water Agency concerning the Middle Fork American Hydroelectric Project.
[7] Record of e-mail correspondence.
[8] Notification of determination of eligibility from the National Park Service.

Dated: April 14, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–9664 Filed 4–20–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9298–5]

Meeting of the Local Government Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. EPA's Local Government Advisory Committee (LGAC) will meet May 18–19, 2011, in Chicago, Illinois. The Committee meeting will be held at U.S. EPA Region 5, Ralph Metcalfe Federal Building, Lake Superior conference room, 77 West Jackson Blvd., Chicago, Illinois. The focus of the Committee meeting will be on Administrator Lisa P. Jackson's seven priorities as expressed in her charge to the committee: protecting America's waters; cleaning up our communities; expanding the conversation on environmentalism; improving air quality; taking action on climate change; assuring the safety of chemicals; and building strong partnerships.

SUPPLEMENTARY INFORMATION: This is an open meeting and all interested persons are invited to attend. The Committee will hear comments from the public between 4:45 p.m. and 5:30 p.m. on Wednesday, May 18, 2011. Individuals or organizations wishing to address the LGAC will be allowed a maximum of five minutes to present their point of view. Also, written comments should be submitted electronically to *Zampieri.Paula@epa.gov.* Please contact the Designated Federal Officer (DFO) at the number listed below to schedule agenda time. Time will be allotted on a first come first serve basis, and the total periodfor comments may be extended if the number of requests for appearances requires it. The Committee's meeting minutes and summary notes will be available online, withinsixty days of the meeting date. Meeting minutes and summary notes can be found online at: *http://www.epa.gov/ocir/scas_lgac/lgac_index.htm.*

ADDRESSES: The LGAC meeting will be held at US EPA Region 5, Ralph Metcalfe Federal Building, Lake Superior Conference Room, 77 West Jackson Blvd., Chicago, Illinois.

FOR FURTHER INFORMATION CONTACT: Paula Zampieri, DFO for the Local Government Advisory Committee (LGAC) at (202) 566–2496 or e-mail at *Zampieri.Paula@epa.gov.*

INFORMATION ON SERVICES FOR THOSE WITH DISABILITIES: For Information on access or services for individuals with disabilities, please contactPaula Zampieri at (202) 566–2496 or *Zampieri.Paula@epa.gov.* To request accommodation of a disability, please request it 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: April 13, 2011.

Paula Zampieri,

Designated Federal Officer, Local Government Advisory Committee.

[FR Doc. 2011–9687 Filed 4–20–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9298–6]

Science Advisory Board Staff Office; Notification of a Public Teleconferences of the Science Advisory Board Panel for Review of Hydraulic Fracturing Study Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces two public teleconferences of the SAB Panel to discuss its draft report of the review of EPA's Draft Hydraulic Fracturing Study Plan.

DATES: Two public teleconference calls will be held on Thursday, May 19, 2011 from 1 p.m. to 5 p.m. and on Wednesday, May 25, 2011 from 1 p.m. to 5 p.m. (Eastern Time).

ADDRESSES: The public teleconferences will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Notice and these public teleconferences may contact Mr. Edward Hanlon, Designated Federal Officer (DFO), SAB Staff Office, by telephone/voice mail at (202) 564–2134; by fax at (202) 565–2098 or via e-mail at *hanlon.edward@epa.gov.* General information concerning the EPA Science Advisory Board can be found at the EPA SAB Web site at *http://www.epa.gov/sab.* Any inquiry regarding EPA's Draft Hydraulic Fracturing Study Plan should be directed to Ms. Susan Burden, EPA Office of Research and Development (ORD), at *Burden.Susan@epa.gov* or (202) 564–6308. Media inquiries regarding EPA's Draft Hydraulic Fracturing Study Plan should be

directed to Ms. Amy Dewey, EPA Office of Public Affairs (OPA), at *Dewey.Amy@epa.gov* or (202) 564–7816.

SUPPLEMENTARY INFORMATION:

Background: The SAB was established pursuant to 42 U.S.C. 4365 to provide independent scientific and technical advice to the 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), 5 U.S.C., App. 2. Pursuant to FACA and EPA policy, notice is hereby given that the SAB Panel will hold two public teleconferences to provide an independent review of EPA's Draft Hydraulic Fracturing Study Plan.

Hydraulic fracturing generates vertical and horizontal fractures in underground geologic formations to facilitate extraction of gas (or oil) from the subsurface. The general process involves drilling a vertical well, in many cases extending the well bore horizontally into the formation, removing water, injecting hydraulic fracturing fluids and then extracting the natural gas along with separation and management of fluids. To respond to concerns voiced by the public and meet a Congressional request, the EPA Office of Research and Development (ORD) initiated a study on the potential impacts of hydraulic fracturing on drinking water resources. At a public face-to-face meeting on April 7–8, 2010, the SAB Environmental Engineering Committee (EEC) augmented with other SAB members evaluated and commented on ORD's proposed scope of study and key research questions regarding the potential public health and drinking water resource issues that may be associated with hydraulic fracturing [**Federal Register** Notice dated March 18, 2010 (75 FR 13125)]. On June 24, 2010 the SAB provided the EPA Administrator with an advisory report entitled *Advisory on EPA's Research Scoping Document Related to Hydraulic Fracturing,* EPA–SAB–10–009.

ORD's next step was to develop a draft Study Plan for its hydraulic fracturing research. The SAB formed a new Hydraulic Fracturing Study Plan Review Panel which met on March 7–8, 2011 to discuss and evaluate ORD's Draft Hydraulic Fracturing Study Plan. [**Federal Register** Notice dated February 9, 2011 (76 FR 7199–7180)]. Materials from the March 2011 meeting are posted on the SAB Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/MeetingCal/153AC7DF8D2626F98525781000648075?OpenDocument.* The purpose of the May 19, 2011 and May 25, 2011 teleconference calls is for the SAB Panel to discuss its draft review report that was developed based on consensus views reached at the March 7–8, 2011 meeting.

Availability of Meeting Materials: The agenda and materials in support of these teleconference calls will be placed on the EPA SAB Web site at *http://www.epa.gov/sab* in advance of the teleconference calls.

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office.

Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit comments for a federal advisory committee to consider as it develops advice for EPA. Input from the public to the SAB will have the most impact if it provides specific scientific or technical information or analysis for SAB to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should contact the Designated Federal Officer for the relevant advisory committee directly.

Oral Statements: Members of the public have opportunity to provide oral statements during the May 19, 2011 teleconference call. In general, individuals requesting an oral presentation during the May 19, 2011 public teleconference will be limited to three minutes per speaker. Interested parties should contact Mr. Edward Hanlon, DFO, in writing (preferably via e-mail), at the contact information noted above, by May 12, 2011 to be placed on the list of public speakers for the teleconference.

Written Statements: Written statements should be received in the SAB Staff Office by May 12, 2011 so that the information may be made available to the Panel for their consideration. Written statements should be supplied to the DFO in electronic format via e-mail (acceptable file formats: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). It is the SAB Staff Office general policy to post written comments on the Web page prior to the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Mr. Edward Hanlon 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: April 15, 2011.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2011–9686 Filed 4–20–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act; Open Internet Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice; of intent to establish.

SUMMARY: In accordance with the Federal Advisory Committee Act, the purpose of this notice is to announce that a Federal Advisory Committee, known as the "Open Internet Advisory Committee" (hereinafter "the Committee"), is being established.

FOR FURTHER INFORMATION CONTACT: Ellen Satterwhite, Federal Communications Commission, Consumer and Governmental Affairs Bureau, 202–418–3626, e-mail: *ellen.satterwhite@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Chairman of the Federal Communications Commission ("FCC") has determined that the establishment of the Committee is necessary and in the public interest in connection with the performance of duties imposed on the FCC by law. The Committee Management Secretariat, General Service Administration concurs with the establishment of the Committee. The purpose of the Committee is to track and evaluate the effects of the FCC's Open Internet rules (available at *http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db1223/FCC-10-201A1.pdf*), and to provide any recommendations the Committee deems appropriate to the FCC regarding

policies and practices related to preserving the open Internet. The Committee will observe market developments regarding the freedom and openness of the Internet and will focus in particular on issues addressed in the FCC's Open Internet rules, such as transparency, reasonable network management practices, differences in treatment of fixed and mobile broadband services, specialized services, technical standards, and the state of competition.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2011–9723 Filed 4–20–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

AGENCY: Federal Election Commission.

DATE AND TIME: *Tuesday, April 26, 2011, AT 10 a.m.*

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2011–9875 Filed 4–19–11; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 16, 2011.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106–2204:

1. *Mechanics Bancorp, MHC and Mechanics Bancorp, Inc.,* both of Taunton, Massachusetts; to become a mutual bank holding company and a stock bank holding company, respectively, by acquiring Mechanics Co-operative Bank, Taunton, Massachusetts.

Board of Governors of the Federal Reserve System, April 18, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–9713 Filed 4–20–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Delegation of Authority

Notice is hereby given that I have delegated to the Commissioner of Food and Drugs the authorities vested in the Secretary of Health and Human Services under Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402) (as amended by the Family Smoking Prevention and Tobacco Control Act), as amended. These authorities may be redelegated.

These authorities shall be exercised under the Department's policy on regulations and the existing delegation of authority to approve and issue regulations. In addition, I hereby ratify and affirm any actions taken by the Commissioner of Food and Drugs, or other FDA officials, which involved the exercise of the authorities delegated herein prior to the effective date of this delegation. This delegation is effective upon signature.

(Authority: Section 6 of the Reorganization Plan No. 1 of 1953, Section 2 of the Reorganization Plan No. 3 of 1966, and 5 U.S.C. 301.)

Dated: April 14, 2011.

Kathleen Sebelius,

Secretary of Health and Human Services.

[FR Doc. 2011–9667 Filed 4–20–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HIT Standards Committee Advisory Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

Name of Committee: HIT Standards Committee.

General Function of the Committee: to provide recommendations to the National Coordinator on standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption, consistent with the implementation of the Federal Health IT Strategic Plan, and in accordance with policies developed by the HIT Policy Committee.

Date and Time: The meeting will be held on May 18, 2011, from 9 a.m. to 3 p.m./Eastern Time.

Location: Washington Marriott Hotel, 1221 22nd Street, NW., Washington, DC. For up-to-date information, go to the ONC Web site, *http://healthit.hhs.gov.*

Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, e-mail: *judy.sparrow@hhs.gov.* Please call the contact person for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The committee will hear reports from its workgroups, including the Clinical Operations, Vocabulary Task Force, Clinical Quality, Implementation, and Enrollment Workgroups. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on ONC's Web site after the meeting, at *http://healthit.hhs.gov.*

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before May 13, 2011. Oral comments from the public will be scheduled between approximately 2 and 3 p.m./Eastern Time. Time allotted for each presentation will be limited to three minutes each. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public hearing session, ONC will take written comments after the meeting until close of business.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: April 12, 2011.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2011–9690 Filed 4–20–11; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HIT Policy Committee Advisory Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

Name of Committee: HIT Policy Committee.

General Function of the Committee: To provide recommendations to the National Coordinator on a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed.

Date and Time: The meeting will be held on May 11, 2011, from 10 a.m. to 4 p.m./Eastern Time.

Location: Renaissance Dupont Circle Hotel, 1143 New Hampshire Ave., NW., Washington, DC. For up-to-date information, go to the ONC Web site, *http://healthit.hhs.gov.*

Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, e-mail: *judy.sparrow@hhs.gov.* Please call the contact person for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The committee will hear reports from its workgroups, including the Meaningful Use Workgroup, the Privacy & Security Tiger Team, the Information Exchange Workgroup, and the Quality Measures Workgroup. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on ONC's Web site after the meeting, at *http://healthit.hhs.gov.*

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before May 6, 2011. Oral comments from the public will be scheduled between approximately 3 and 4 p.m. Time allotted for each presentation is limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public hearing session, ONC will take written comments after the meeting until close of business.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: April 13, 2011.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2011–9696 Filed 4–20–11; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the President's Council on Fitness, Sports, and Nutrition

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health, Office of the President's Council on Fitness, Sports, and Nutrition.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services (DHHS) is hereby giving notice that the President's Council on Fitness, Sports, and Nutrition (PCFSN) will hold a meeting. The meeting will be open to the public.

DATES: The meeting will be held on May 10, 2011, from 11 a.m. to 2:30 p.m.

ADDRESSES: U.S. Capitol Visitor Center, East Capitol & First Streets, NE., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Ms. Shellie Pfohl, Executive Director, President's Council on Fitness, Sports, and Nutrition, Tower Building, 1101 Wootton Parkway, Suite 560, Rockville, MD 20852, (240) 276–9866. Information about PCFSN, including details about the upcoming meeting, can be obtained at *http://www.fitness.gov* and/or by calling (240) 276–9567.

SUPPLEMENTARY INFORMATION: On June 23, 2010, the President established Executive Order 13545 to amend Executive Order 13265, dated June 6, 2002. Under Executive Order 13545, direction is given for the scope of the President's Council on Physical Fitness and Sports to be expanded to recognize that good nutrition goes hand in hand with fitness and sports participation. Executive Order 13545 gives authority for the title of the Council to be revised to include nutrition. The new title is President's Council on Fitness, Sports, and Nutrition (PCFSN).

The primary functions of the PCFSN include (1) advising the President, through the Secretary, concerning progress made in carrying out the provisions of Executive Order 13545 and shall recommend to the President, through the Secretary, actions to accelerate progress; (2) advising the Secretary on ways to promote regular physical activity, fitness, sports participation, and good nutrition. Recommendations may address, but are not necessarily limited to, public awareness campaigns; Federal, State, and local physical activity; fitness, sports participation, and nutrition initiatives; and partnership opportunities between public- and private-sector health promotion entities; (3) functioning as a liaison to relevant State, local, and private entities in order to advise the Secretary regarding opportunities to extend and improve physical activity, fitness, sports, and nutrition programs and services at the local, State, and national levels; and (4) monitoring the need to enhance programs and educational and promotional materials sponsored, overseen, or disseminated by the Council, and shall advise the Secretary, as necessary, concerning such need. In performing its functions, the Council shall take into account the Federal Dietary Guidelines for Americans and the Physical Activity Guidelines for Americans.

The PCFSN will hold, at a minimum, one meeting in a calendar year. The meeting will be held to (1) assess ongoing Council activities and (2) discuss and plan future projects and programs. The agenda for the planned meeting is being developed and will be posted at *http://www.fitness.gov* when it has been finalized.

The meeting that is scheduled to be held on May 10, 2011 is open to the public. Every effort will be made to provide reasonable accommodations for persons with disabilities and/or special needs who wish to attend the meeting. Persons with disabilities and/or special needs should call (240) 276–9567 no later than close of business on May 6, 2011, to request accommodations. Members of the public who wish to attend the meeting are asked to pre-register by calling (240) 276–9567. Registration for public attendance must be completed before close of business on May 6, 2011.

Dated: April 12, 2011.

Shellie Y. Pfohl,

Executive Director, President's Council on Fitness, Sports, and Nutrition.

[FR Doc. 2011–9665 Filed 4–20–11; 8:45 am]

BILLING CODE 4150–35–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HIT Standards Committee's Workgroup Meetings; Notice of Meetings

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meetings.

This notice announces forthcoming subcommittee meetings of a Federal advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meetings will be open to the public via dial-in access only.

Name of Committees: HIT Standards Committee's Workgroups: Clinical Operations, Vocabulary Task Force, Clinical Quality, Implementation, and Privacy & Security Standards workgroups.

General Function of the Committee: To provide recommendations to the National Coordinator on standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption, consistent with the implementation of the Federal Health IT Strategic Plan, and in accordance with policies developed by the HIT Policy Committee.

Date and Time: The HIT Standards Committee Workgroups will hold the following public meetings during May 2011: May 5th Vocabulary Task Force, 12 p.m. to 1:30 p.m./ET; May 9th Privacy & Security Standards Workgroup, 11 a.m. to 1 p.m./ET, and Implementation Workgroup, 2 p.m. to 4 p.m./ET; May 12th Clinical Quality Workgroup, 2 to 3:30 p.m./ET, and Privacy & Security Standards Workgroup, 4 p.m. to 5 p.m./ET; May 15th Clinical Quality Workgroup, 10:30 a.m. to 12:30 p.m./ET, and Privacy & Security Standards Workgroup, 2 p.m. to 4 p.m./ET; and May 19th joint Clinical Quality Workgroup hearing, location—TBD, 9 a.m. to 3 p.m./ET.

Location: All workgroup meetings will be available via webcast; visit *http://healthit.hhs.gov* for instructions on how to listen via telephone or Web. Please check the ONC Web site for additional information as it becomes available. Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, e-mail: *judy.sparrow@hhs.gov.* Please call the contact person for up-to-date information on these meetings. A notice in the **Federal Register** about last minute modifications that affect a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The workgroups will be discussing issues related to their specific subject matter, *e.g.,* clinical operations vocabulary standards, clinical quality, implementation opportunities and challenges, and privacy and security standards activities. If background materials are associated with the workgroup meetings, they will be posted on ONC's Web site prior to the meeting at *http://healthit.hhs.gov.*

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the workgroups. Written submissions may be made to the contact person on or before two days prior to the workgroups' meeting dates. Oral comments from the public will be scheduled at the conclusion of each workgroup meeting. Time allotted for each presentation will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public session, ONC will take written comments after the meeting until close of business on that day.

If you require special accommodations due to a disability,

please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: April 12, 2011.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2011–9691 Filed 4–20–11; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HIT Policy Committee's Workgroup Meetings; Notice of Meetings

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meetings.

This notice announces forthcoming subcommittee meetings of a Federal advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meetings will be open to the public via dial-in access only.

Name of Committees: HIT Policy Committee's Workgroups: Meaningful Use, Privacy & Security Tiger Team, Quality Measures, Governance, Adoption/Certification, and Information Exchange workgroups.

General Function of the Committee: To provide recommendations to the National Coordinator on a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed.

Date and Time: The HIT Policy Committee Workgroups will hold the following public meetings during May 2011: May 2nd Meaningful Use Workgroup,
9 a.m. to 11 a.m./ET; May 3rd Meaningful Use Workgroup in-person meeting, location—TBD, 9 a.m. to 3 p.m./ET; May 4th Privacy & Security Tiger Team, 2 p.m. to 4 p.m./ET; May 5th Quality Measures Workgroup, 10 a.m. to 11:30 a.m./ET; May 10th Meaningful Use Workgroup, 9 a.m. to 12 p.m./ET; May 13th Meaningful Use Workgroup hearing, location—TBD, 9 a.m. to 3 p.m./ET; May 16th Privacy & Security Tiger Team, 2 p.m. to 4 p.m./ET; May 19th Quality Measures Workgroup hearing, location—TBD, 9 a.m. to 3 p.m./ET; and May 20th Meaningful Use Workgroup, 10 a.m. to 1 p.m./ET.

Location: All workgroup meetings will be available via webcast; for instructions on how to listen via telephone or Web visit *http://healthit.hhs.gov.* Please check the ONC Web site for additional information or revised schedules as it becomes available.

Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, e-mail: *judy.sparrow@hhs.gov.* Please call the contact person for up-to-date information on these meetings. A notice in the **Federal Register** about last minute modifications that affect a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The workgroups will be discussing issues related to their specific subject matter, *e.g.,* meaningful use, information exchange, privacy and security, quality measures, governance, or adoption/certification. If background materials are associated with the workgroup meetings, they will be posted on ONC's Web site prior to the meeting at *http://healthit.hhs.gov.*

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the workgroups. Written submissions may be made to the contact person on or before two days prior to the workgroup's meeting date. Oral comments from the public will be scheduled at the conclusion of each workgroup meeting. Time allotted for each presentation will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public session, ONC will take written comments after the meeting until close of business on that day.

If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: April 12, 2011.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2011–9694 Filed 4–20–11; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-11–0773]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Daniel Holcomb, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

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 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. Written comments should be received within 60 days of this notice.

Proposed Project

National Surveillance for Severe Adverse Events Associated with Treatment of Latent Tuberculosis Infection—(0920–0773 exp. 04/31/2011)—Reinstatement with change—Division of Tuberculosis Elimination (DTBE), National Center for HIV, Viral

Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

As part of the national tuberculosis (TB) elimination strategy, the American Thoracic Society and CDC have published recommendations for targeted testing for TB and treatment for latent TB infection (LTBI)(Morbidity and Mortality Weekly Report 2000;49[RR06];1–54). However, between October 2000 and September 2004, the CDC received reports of 50 patients with severe adverse events (SAEs) associated with the use of the two or three-month regimen of rifampin and pyrazinamide (RZ) for the treatment of LTBI; 12 (24%) patients died (Morbidity and Mortality Weekly Report 2003;52[31]:735–9). In 2004, CDC began collecting reports of SAEs associated with any treatment regimen for LTBI. For surveillance purposes, an SAE was defined as any drug-associated reaction resulting in a patient's hospitalization or death after at least one treatment dose for LTBI. During 2004 − 2008, CDC received 17 reports of SAEs in 15 adults and two children; all patients had received isoniazid (INH) and had experienced severe liver injury (Morbidity and Mortality Weekly Report 2010; 59:224–9).

Reports of SAEs related to RZ and INH have prompted a need for this project—a national surveillance system of such events. The objective of the project is to determine the annual number and temporal trends of SAEs associated with any treatment for LTBI in the United States. Surveillance of such events will provide data to support periodic evaluation of guidelines for treatment of persons with LTBI and revision.

The Centers for Disease Control and Prevention request approval for a 3-year reinstatement with change of the previously approved National Surveillance for Severe Adverse Events Associated with Treatment of Latent Tuberculosis Infection—(OMB No. 0920–0773, expires April 31, 2011). The changes include a shortened data collection form and an increase in the number of respondents. This project will continue the passive reporting system for SAEs associated with therapy for LTBI. The system will rely on medical chart review and/or onsite investigations by TB control staff.

Potential respondents 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 7 jurisdictions in the Pacific and Caribbean). Data will be collected using the data collection form for SAEs associated with LTBI treatment. Based on previous reporting, CDC anticipates receiving an average of 10 responses per year from the 60 reporting areas. The data collection form is completed by healthcare providers and health departments 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. CDC is collaborating with FDA in the reporting of SAEs. Reporting will be conducted through telephone, e-mail, or during CDC site visits. In this request, CDC is requesting approval for approximately 60 burden hours annually, an estimated increase of 36 hours. This is due to an estimated increase of reports of SAEs after the publication of the MMWR report on SAEs in 2010. There are no costs to respondents other than their time.

ESTIMATE OF ANNUALIZED BURDEN TABLE

Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Physicians	10	1	1	10
Nurses	10	1	4	40
Medical Clerk	10	1	1	10
Total				60

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–9671 Filed 4–20–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day-11–0792]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Daniel Holcomb, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

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 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. Written comments should be received within 60 days of this notice.

Proposed Project

Environmental Health Specialists Network (EHS–Net) National Voluntary Environmental Assessment Information System (NVEAIS)—New—National Center for Environmental Health

(NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The CDC is requesting OMB approval for the EHS–Net National Voluntary Environmental Assessment Information System (NVEAIS) to collect data from foodborne illness outbreak environmental assessments routinely conducted by local, state, territorial, or tribal food safety programs during outbreak investigations. Environmental assessment data are not currently collected at the national level. The data reported through this information system will provide timely data on the causes of outbreaks, including environmental factors associated with outbreaks, and are essential to environmental public health regulators' efforts to respond more effectively to outbreaks and prevent future, similar outbreaks. This information system is specifically designed to link to CDC's existing disease outbreak surveillance system (National Outbreak Reporting System).

The information system was developed by the Environmental Health Specialists Network (EHS–Net), a collaborative project of CDC, the U.S. Food and Drug Administration (FDA), the U.S. Department of Agriculture (USDA), and nine states (California, Connecticut, Georgia, Iowa, New York, Minnesota, Oregon, Rhode Island, and Tennessee). The network consists of environmental health specialists (EHSs), epidemiologists, and laboratorians. The EHS–Net has developed a standardized protocol for identifying, reporting, and analyzing data relevant to foodborne illness outbreak environmental assessments.

While conducting environmental assessments during outbreak investigations is routine for food safety program officials, however, reporting information from the environmental assessments to CDC is not. State, Local, Tribal, and Territorial food safety program officials are the respondents for this data collection—one official from each participating program will report environmental assessment data on outbreaks. These programs are typically located in public health or agriculture agencies and there are approximately 3,000 such agencies in the United States. Thus, although it is not possible to determine how many programs will choose to participate, as NVEAIS is voluntary, the maximum potential number of program respondents is approximately 3,000.

These programs will be reporting data on outbreaks, not their programs or personnel. It is not possible to determine exactly how many outbreaks will occur in the future, nor where they will occur. However, we can estimate, based on existing data that a maximum of 1,400 foodborne illness outbreaks will occur annually. Only those programs in the jurisdictions in which these outbreaks occur would report to NVEAIS. Thus, not every program will respond every year. Consequently, the respondent burden estimate is based on the number of outbreaks likely to occur each year. Assuming each outbreak occurs in a different jurisdiction, there will be one respondent per outbreak.

There are two activities associated with NVEAIS that require a burden estimate. The first is entering all requested environmental assessment data into NVEAIS. This will be done once for each outbreak and will take approximately 2 hours per outbreak.

The second activity is the manager interview that will be conducted at each establishment associated with an outbreak. Most outbreaks are associated with only one establishment; however, some are associated with multiple establishments. We estimate that a maximum average of 4 manager interviews will be conducted per outbreak. Each interview will take about 20 minutes.

The total estimated annual burden is 4,667 hours. There is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Food safety program personnel	Reporting environmental assessment data into electronic system.	1,400	1	2	2,800
Food safety program personnel	Manager interview	1,400	4	20/60	1,867
Total					4,667

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–9670 Filed 4–20–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0231]

Agency Information Collection Activities; Proposed Collection; Comment Request; Adverse Experience Reporting for Licensed Biological Products; and General Records

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the proposed extension of the collection of information concerning requirements relating to FDA's adverse experience reporting (AER) for licensed biological products, and general records associated with the manufacture and distribution of biological products.

DATES: Submit either written or electronic comments on the collection of information by June 20, 2011.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Juanmanuel Vilela, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7651, *Juanmanuel.vilela@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed 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 through the use of automated collection techniques when appropriate, and other forms of information technology.

Adverse Experience Reporting for Licensed Biological Products; and General Records—21 CFR Part 600 (OMB Control Number 0910–0308)—Extension

Under the Public Health Service Act (42 U.S.C. 262), FDA may only approve a biologics license application for a biological product that is safe, pure, and potent. When a biological product is approved and enters the market, the product is introduced to a larger patient population in settings different from clinical trials. New information generated during the postmarketing period offers further insight into the benefits and risks of the product, and evaluation of this information is important to insure its safe use. FDA issued the AER requirements in part 600 (21 CFR part 600) to enable FDA to take actions necessary for the protection of the public health in response to reports of adverse experiences related to licensed biological products. The primary purpose of FDA's AER system is to identify potentially serious safety problems with licensed biological products. Although premarket testing discloses a general safety profile of a biological product's comparatively common adverse effects, the larger and more diverse patient populations exposed to the licensed biological product provides the opportunity to collect information on rare, latent, and long-term effects. In addition, production and/or distribution problems have contaminated biological products in the past. AER reports are obtained from a variety of sources, including manufacturers, patients, physicians, foreign regulatory agencies, and clinical investigators. Identification of new and unexpected safety issues through the analysis of the data in the AERS system contributes directly to increased public health protection. For example, evaluation of these safety issues enables FDA to take focused regulatory action. Such action may include, but is not limited to, important changes to the product's labeling (such as adding a new warning), coordination with manufacturers to ensure adequate corrective action is taken, and removal of a biological product from the market when necessary.

Section 600.80(c)(1) requires licensed manufacturers or any person whose name appears on the label of a licensed biological product to report each adverse experience that is both serious and unexpected, whether foreign or domestic, as soon as possible but in no case later than 15 calendar days of initial receipt of the information by the licensed manufacturer. These reports are known as postmarketing 15-day alert reports. This section also requires licensed manufacturers to submit any followup reports within 15 calendar days of receipt of new information or as requested by FDA, and if additional information is not obtainable to maintain records of the unsuccessful steps taken to seek additional information. In addition, this section requires a person who submits an adverse action report to the licensed manufacturer rather than FDA to maintain a record of this action. Section 600.80(e) requires licensed manufacturers to submit a 15-day alert report for an adverse experience obtained from a postmarketing clinical study only if the licensed manufacturer concludes that there is a reasonable possibility that the product caused the adverse experience. Section 600.80(c)(2) requires licensed manufacturers to report each adverse experience not reported in a postmarketing 15-day alert report at quarterly intervals, for 3 years from the date of issuance of the biologics license, and then at annual intervals. The majority of these periodic reports are submitted annually since a large percentage of currently licensed biological products have been licensed longer than 3 years. Section 600.80(i) requires licensed manufacturers to maintain for a period of 10 years records of all adverse experiences known to the licensed manufacturer, including raw data and any correspondence relating to the adverse experiences. Section 600.81 requires licensed manufacturers to submit, at an interval of every 6 months, information about the quantity of the product distributed under the biologics license, including the quantity distributed to distributors. These distribution reports provide FDA with important information about products distributed under biologics licenses, including the quantity, certain lot numbers, labeled date of expiration, the fill lot numbers for the total number of dosage units of each strength or potency distributed (*e.g.,* fifty thousand per 10-milliliter vials), and date of release. FDA may require the licensed manufacturer to submit distribution reports under this section at times other than every 6 months. Under § 600.90, a licensed manufacturer may submit a waiver request for any requirements that apply to the licensed manufacturer under §§ 600.80 and 600.81. A waiver request submitted under § 600.90 must include supporting documentation.

Manufacturers of biological products for human use must keep records of each step in the manufacture and distribution of a product including any

recalls. These recordkeeping requirements serve preventative and remedial purposes by establishing accountability and traceability in the manufacture and distribution of products. These requirements also enable FDA to perform meaningful inspections. Section 600.12 requires, among other things, that records must be made, concurrently with the performance of each step in the manufacture and distribution of products. These records must be retained for no less than 5 years after the records of manufacture have been completed or 6 months after the latest expiration date for the individual product, whichever represents a later date. In addition, under § 600.12, manufacturers must maintain records relating to the sterilization of equipment and supplies, animal necropsy records, and records in cases of divided manufacturing responsibility with respect to a product. Under § 600.12(b)(2), manufacturers are also required to maintain complete records pertaining to the recall from distribution of any product. Furthermore, § 610.18(b) requires, in part, that the results of all periodic tests for verification of cultures and determination of freedom from extraneous organisms be recorded and maintained.

Respondents to this collection of information include manufacturers of biological products and any person whose name appears on the label of a licensed biological product. Under table 1 of this document, the number of respondents is based on the estimated number of manufacturers that are subject to those regulations or that submitted the required information to the Center for Biologics Evaluation and Research and Center for Drugs Evaluation and Research, FDA, in fiscal year (FY) 2010. Based on information obtained from the FDA's database system, there were 108 licensed biologics manufacturers. This number excludes those manufacturers who produce Whole Blood or components of Whole Blood and in-vitro diagnostic licensed products, because of the exemption under § 600.80(k). The total annual responses are based on the number of submissions received by FDA in FY 2010. There were an estimated 86,583 15-day Alert reports, 57,300 periodic reports, and 349 lot distribution reports submitted to FDA. The number of 15-day alert reports for postmarketing studies under § 600.80(e) is included in the total number of 15-day alert reports. FDA received 21 requests for waivers under § 600.90, of which 19 were granted. The hours per response are based on FDA experience. The burden hours required to complete the MedWatch Form for § 600.80(c)(1), (e), and (f) are reported under OMB Control No. 0910–0291.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours
600.80(c)(1) and 600.80(e)	108	801.69	86,583	1	86,583
600.80(c)(2)	108	530.55	57,300	28	1,604,400
600.81	108	3.23	349	1	349
600.90	21	1	21	1	21
Total					1,691,353

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Under table 2 of this document, the number of respondents is based on the number of manufacturers subject to those regulations. Based on information obtained from FDA's database system, there were 304 licensed manufacturers of biological products in FY 2010. However, the number of recordkeepers listed for § 600.12(a) through (e) excluding (b)(2) is estimated to be 131. This number excludes manufacturers of blood and blood components because their burden hours for recordkeeping have been reported under § 606.160 in OMB Control No. 0910–0116. The total annual records is based on the annual average of lots released in FY 2010 (6,752), number of recalls made (1,881), and total number of adverse experience reports received (143,883) in FY 2010. The hours per record are based on FDA experience.

FDA estimates the burden of this recordkeeping as follows:

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping (in hours)	Total hours
600.12 [2]	131	51.54	6,752	32	216,064
600.12 (b)(2)	304	6.19	1,881	24	45,144
600.80(c)(1) and 600.80(i)	108	1,332.25	143,883	1	143,883
Total					405,091

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

[2] The recordkeeping requirements in § 610.18(b) are included in the estimate for § 600.12.

Dated: April 15, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–9651 Filed 4–20–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0012]

Analgesic Clinical Trials Innovation, Opportunities, and Networks (ACTION) Initiative

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of grant funds for the support of the Analgesic Clinical Trials Innovation, Opportunities, and Networks (ACTION) Initiative. The goal of the ACTION Initiative is to streamline the discovery and development process for new analgesic drug products for the benefit of public health. The ACTION Initiative is being developed, in large part, through the establishment of a cooperative agreement with one or more organizations. The ACTION Initiative will address major gaps in scientific information, which can slow down analgesic clinical trials and analgesic drug development. FDA will support the ACTION Initiative under the authority of the Federal Food, Drug, and Cosmetic Act.

DATES: Important dates are as follows:

1. The application due date is June 8, 2011.

2. The anticipated start date is July 14, 2011.

3. The opening date is April 22, 2011.

4. The expiration date is June 9, 2011.

FOR FURTHER INFORMATION AND ADDITIONAL REQUIREMENTS CONTACT: Igor Cerny, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 3124, Silver Spring, MD 20993–0002, 301–796–4273, e-mail: *Igor.Cerny@fda.hhs.gov;* Vieda Hubbard, Office of Acquisitions and Grant Services, Food and Drug Administration, 5630 Fishers Lane (HFA–500), Rockville, MD 20857, 301–827–7177, e-mail: *vieda.hubbard@fda.hhs.gov.*

For more information on this funding opportunity announcement (FOA) and to obtain detailed requirements, please refer to the full FOA located at *http://grants.nih.gov/grants/guide/* (select the "Request for Applications" link), *http://www.grants.gov/* (see "For Applicants" section) and/or *http://www.fda.gov/AboutFDA/PartnershipsCollaborations/PublicPrivatePartnershipProgram/ucm231130.htm.*

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

RFA–FD–11–006

93.103

A. Background

Despite the enormous advances in drug development over the past 2 or 3 decades (*e.g.,* drugs that cure cancer and biologic drug products that halt the progression of rheumatoid arthritis), the development of novel analgesic drug products has lagged behind. Indeed, to this day, the only analgesic drug products that are used widely and successfully are opioids, acetaminophen, and nonsteroidal anti-inflammatory agents, all of which have serious, potentially life-threatening toxicities, even when used properly. While there has been exploration at the earliest stages of drug development, there has been widespread reluctance on the part of the pharmaceutical industry to take novel products further into development. This is in no small part due to the often daunting task of demonstrating the efficacy of analgesics in clinical trials. Many experts in analgesic drug development believe that it is the design of the clinical trials that is at fault in this situation and that better trial designs will yield more successful results. This hypothesis is certainly supported by the frequent failures of clinical efficacy trials of opioid drug products, considering the well established effectiveness of these products from literally thousands of years of clinical experience. For these reasons, additional studies are needed to assess the confounding nature of analgesic clinical trials and analgesic drug development.

B. Research Objectives

Based on collaboration with FDA, key stakeholder input, best Government, academic, and industry practices, and knowledge gained through workshops, the Grantee will be responsible for developing, defining, and recommending projects as described in this section. Applicants should, at a minimum, address the following three overarching research domains in this section. The overall study design processes within each of these domains should be aligned with established strategic goals and provide results and recommendations in alignment with the objectives of the ACTION Initiative.

1. Data analysis of primarily group analgesic clinical trials data (databases) for relationships between assay sensitivity and metrics including, but not limited to, specific research designs and methodological features so as to inform the future design of analgesic clinical trials.

2. Scientific assessment of FDA's clinical trial databases and development of novel and alternative means of analyzing various pain scores in a manner that effectively considers variables, such as bias and interindividual variance.

3. Development of methodologies for the execution and transformation of pooled trial data from multiple relevant analgesic trials.

C. Eligibility Information

The following organizations/institutions are eligible to apply:

- Higher education institutions as defined in section 101 of the Higher Education Act of 1965 (or a consortium of such institutions).

The following types of higher education institutions are always encouraged to apply for National Institutes of Health support as public or private institutions of higher education:

- Hispanic serving institutions.
- Historically Black colleges and universities.
- Tribally controlled colleges and universities.
- Alaska Native and Native Hawaiian serving institutions.

Nonprofits other than institutions of higher education.

- A nonprofit organization described in section 501(c)(3) of the Internal Revenue Code of 1986, which is exempt from tax under section 501(a) of that code.

An eligible organization that wishes to enter into a collaborative agreement must provide an assurance that the entity will not accept funding for a Critical Path Public-Private Partnership project from any organization that manufactures or distributes products regulated by FDA unless the entity provides assurances in its agreement with FDA that the results of the Critical Path Public-Private Partnership project will not be influenced by any source of funding.

II. Award Information/Funds Available

A. Award Amount

It is anticipated that no more than $1 million will be allocated to this cooperative agreement. It is anticipated that a single award will be made.

B. Length of Support

The scope of the proposed project will determine the project period. The maximum period is 5 years.

III. Electronic Application, Registration, and Submission

Only electronic applications will be accepted. To submit an electronic application in response to this FOA, applicants should first review the full announcement located at *http://grants.nih.gov/grants/guide/* (select the "Request for Applications" link), *http://www.grants.gov/* (see "For Applicants" section) and *http://www.fda.gov/AboutFDA/PartnershipsCollaborations/PublicPrivatePartnershipProgram/ucm166082.htm.* (FDA has verified the Web site addresses throughout this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.) For all electronically submitted applications, the following steps are required.

- Step 1: Obtain a Dun and Bradstreet (DUNS) Number.
- Step 2: Register With Central Contractor Registration.
- Step 3: Obtain Username & Password.
- Step 4: Authorized Organization Representative (AOR) Authorization.
- Step 5: Track AOR Status.
- Step 6: Register With Electronic Research Administration (eRA) Commons.

Steps 1 through 5, in detail, can be found at *http://www07.grants.gov/applicants/organization_registration.jsp.* Step 6, in detail, can be found at *https://commons.era.nih.gov/commons/registration/registrationInstructions.jsp.* After you have followed these steps, submit electronic applications to: *http://www.grants.gov.*

Dated: April 13, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–9650 Filed 4–20–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Cellular, Tissue and Gene Therapies Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Cellular, Tissue and Gene Therapies Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 29, 2011, from 8 a.m. to 5 p.m.

Location: Crowne Plaza Hotel, 8777 Georgia Ave., Silver Spring, MD 20910.

Contact Person: Gail Dapolito or Sheryl Clark, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On June 29, 2011, the committee will discuss cellular and gene therapy products for the treatment of retinal disorders. Topics to be considered include the following: (1) Efficacy endpoints in pediatric and adult populations, (2) potential safety issues related to repeat administration or second eye administration, and (3) evaluation of product delivery into target site.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before June 22, 2011. Oral presentations from the public will be scheduled between approximately 11:30 a.m. and 12:30 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before June 14, 2011. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by June 15, 2011.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Gail Dapolito at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 13, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–9653 Filed 4–20–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse (NIDA); Submission for OMB Review; Comment Request; Study of Substance Abuse doc.com Module Project

SUMMARY: In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the National Institute on Drug Abuse (NIDA), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

This proposed information collection was previously published in the **Federal Register** in Volume 75, No. 242, pages 79008–79009, on December 17, 2010 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

Proposed Collection: Title: Study of Substance Abuse doc.com Module Project. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* This is a request for a two-year clearance to conduct a research study to assess the efficacy of a specific interactive Web-based teaching module in the field of professional education of healthcare providers. This online module was developed as a work product by the same team of investigators from Drexel University College of Medicine (DUCOM) and University of Pennsylvania School of Medicine (Penn Med) under a contract as part of NIDA's Centers of Excellence (CoE) for Physician Information. This project will assess efficacy of the NIDA CoE online teaching module with educational interventions in enhancing: (1) The knowledge of healthcare professionals about substance use disorders; (2) attitudes of healthcare professionals toward patients with these disorders; and (3) communication skills of healthcare professionals in providing assessment and referral to treatment for patients who abuse substances. The overall goal of this project is to assess the efficacy of an educational intervention, which should result in an increase in the involvement of primary care providers in the screening, managing and, when appropriate, referring patients with substance use disorders. This effort is made according to Executive Order 12862, which directs Federal agencies that provide significant services directly to the public to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.

The project will utilize a randomized cluster controlled trial design that compares the group that receives educational exposure to the set of new educational interventions (NIDA online teaching module plus educational adjuncts) to a control group that receives exposure to the standard medical school or residency educational curriculum related to substance use disorders. The project will use a repeated measures approach to assess the educational intervention's efficacy (*i.e.,* individuals will take surveys before and after exposure to the intervention or to the control curriculum). The outcomes of the study will be based on changes in knowledge, attitudes, and indirect measures of communication skills before and after the intervention, compared with the changes in these parameters in the control group.

Frequency of Response: This project will be conducted annually or biennially. *Affected Public:* Individuals and businesses. *Type of Respondents:* Medical students and resident physicians. The annual reporting burden is calculated as follows: *Estimated Total Annual Number of Respondents:* 708; *Estimated Number of Responses per Respondent:* 4 for medical students; 2 for resident physicians; *Average Burden Hours per Response:* 0.17. *Estimated Total Annual Burden Hours Requested:* 377. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report. The estimated annualized burden is summarized below.

Respondents	Estimated number of subjects	Estimated number of surveys per subject	Average burden hours per survey	Estimated total burden hours
Medical Students	400	4	0.17	272
Primary Care Resident Physicians	308	2	0.17	105
Total	708			377

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) 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; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 through the use of automated collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Elisabeth Davis, MPH, NIH/NIDA/OSPC, 6001 Executive Boulevard, Bethesda, MD 20824–9591, or e-mail your request, including your address to *davise2@nida.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: March 23, 2011.

Mary Affeldt,

Executive Officer, (OM Director) NIDA.

[FR Doc. 2011–9720 Filed 4–20–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

Date: July 13, 2011.

Time: 9 a.m. to 4 p.m.

Agenda: Strategic Discussion of NCI's Clinical and Translational Research Programs.

Place: National Institutes of Health, Building 31, C–Wing, 6th Floor, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Sheila A. Prindiville, MD, MPH, Director, Coordinating Center for Clinical Trials, Office of the Director, National Cancer Institute, National Institutes of Health, 6120 Executive Blvd., 3rd Floor Suite, Bethesda, MD 20892, 301–451–5048, *prindivs@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 14, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–9710 Filed 4–20–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Loan Repayment Program.

Date: May 5, 2011.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Keith McKenney, PhD, Scientific Review Officer, NHGRI, 5635 Fishers Lane, Suite 4076, Bethesda, MD 20814, 301–594–4280, *mckenneyk@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: April 12, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–9719 Filed 4–20–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group; Subcommittee J—Population and Patient-Oriented Training.

Date: June 30, 2011.

Time: 7:45 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Ilda M. Mckenna, PhD, Scientific Review Officer, Research Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8111, Bethesda, MD 20892, 301–496–7481, *mckennai@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 14, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–9715 Filed 4–20–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Aging and Mobility.

Date: May 12, 2011.

Time: 2 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alfonso R. Latoni, PhD, Deputy Chief And Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892, 301–402–7702, *Alfonso.Latoni@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 14, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–9722 Filed 4–20–11; 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: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Protection and Advocacy for Individuals with Mental Illness (PAIMI) Annual Program Performance Report (OMB No. 0930–0169)—Reinstatement

The Protection and Advocacy for Individuals with Mental Illness (PAIMI) Act at 42 U.S.C. 10801 *et seq.,* authorized funds to the same protection and advocacy (P&A) systems created under the Developmental Disabilities Assistance and Bill of Rights Act of 1975, known as the DD Act (as amended in 2000, 42 U.S.C. 15041 *et seq.*]. The DD Act supports the Protection and Advocacy for Developmental Disabilities (PADD) Program administered by the Administration on Developmental Disabilities (ADD) within the Administration on Children and Families. ADD is the lead Federal P&A agency. The PAIMI Program supports the same governor-designated P&A systems established under the DD Act by providing legal-based individual and systemic advocacy services to individuals with significant (severe) mental illness (adults) and significant (severe) emotional impairment (children/youth) who are at risk for abuse, neglect and other rights violations while residing in a care or treatment facility.

In 2000, the PAIMI Act amendments created a 57th P&A system—the American Indian Consortium (the Navajo and Hopi Tribes in the Four Corners region of the Southwest). The Act, at 42 U.S.C. 10804(d) states that a P&A system may use its allotment to provide representation to individuals with mental illness, as defined by s42 U.S.C. 10802 (4)(B)(iii) residing in the community, including their own home, *only,* if the total allotment under this title for any fiscal year is $30 million or more, and in such cases an eligible P&A system *must* give priority to representing PAIMI-eligible individuals, as defined by 42 U.S.C. 10802(4)(A) and (B)(i).

The Children's Health Act of 2000 (CHA) also referenced State P&A system authority to obtain information on incidents of seclusion, restraint and related deaths [see, CHA, Part H at 42 U.S.C. 290ii–1]. PAIMI Program formula grants awarded by SAMHSA go directly to each of the 57 governor-designated P&A systems. These systems are located in each of the 50 states, the District of Columbia, the American Indian Consortium, and five (5) territories—American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

The PAIMI Act at 42 U.S.C. 10805(7) requires that each P & A system prepare and transmit to the Secretary HHS and to the head of its State mental health agency a report on January 1. This report describes the activities, accomplishments, and expenditures of the system during the most recently completed fiscal year, including a section prepared by the advisory council (the PAIMI Advisory Council or PAC) that describes the activities of the council and its assessment of the operations of the system.

The Substance Abuse Mental Health Services Administration (SAMHSA) proposes to revise the annual PAIMI Program Performance Report (PPR), including the advisory council section of the report for the following reasons: (1) To make it consistent with the r annual reporting requirements under the Act and its Rules [42 CFR part 51], (2) to conform to the GPRA requirements that SAMHSA obtain information that closely measures actual outcomes of programs that are funded by the agency, and (3) to determine if the reporting burden can be reduced by removing any information that does not facilitate evaluation of the programmatic and fiscal effectiveness of a State P&A system.

The SAMHSA revisions to the annual PPR and Advisory Council section reflect the statutory and regulatory requirements of the PAIMI Act. These revisions include, but may not be limited to the following items: (1) Clarifying the instructional guidance in the PPR, *e.g.,* Section 3.-Living Arrangements; Section 4—Complaints/Problems of PAIMI-eligible Individuals, at 4. D.2.—Intervention Strategy Outcome Statement, by using a chart format to capture the most significant outcome achieved per strategy used; eliminating the need for attachments, *i.e.,* in Section 7—Grievance Procedures, a copy of the policies/procedures, in Section 8—Other Services and Activities a copy of agency policies/procedures for obtaining comments from the public (8.A.3.), and a copy of the public comment opportunity notice (8.A.1.); (2) clarifying the Advisory Council section of the PPR, *e.g.,* Section B. PAIMI Advisory Council Membership, secondary identification instructions; and, (3) eliminating the submission of supplemental documents, *e.g.,* PAIMI bylaws, *etc.* The revised report formats will be effective for the FY 2011 PPR reports due on January 1, 2012.

The annual burden estimate is as follows:

	Number of respondents	Number of responses per respondent	Hours per response	Total hour burden
Program Performance Report	57	1	26	1,482
Advisory Council Report	57	1	10	570
Total	57			2,052

Written comments and recommendations concerning the proposed information collection should be sent by May 23, 2011 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–7285.

Dated: April 14, 2011.

Elaine Parry

Director, Office of Management, Technology and Operations.

[FR Doc. 2011–9683 Filed 4–20–11; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2011–0012]

Nationwide Cyber Security Review (NCSR) Assessment

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 60-day notice and request for comments; New Information Collection Request: 1670–NEW.

SUMMARY: The Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Office of Cybersecurity and Communications (CS&C), National Cyber Security Division (NCSD), Cyber Security Evaluation Program (CSEP), will submit the following Information Collection Request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

DATES: Comments are encouraged and will be accepted until June 20, 2011. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Written comments and questions about this Information Collection Request should be forwarded to DHS/NPPD/CS&C/NCSD/CSEP, 245 Murray Lane, SW., Mail Stop 0640, Arlington,VA 20598–0640. E-mailed requests should go to Michael Leking, *michael.leking@dhs.gov.* Written comments should reach the contact person listed no later than June 20, 2011. Comments must be identified by "DHS–2011–0012"and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *E-mail:* Include the docket number in the subject line of the message.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

SUPPLEMENTARY INFORMATION: Per the House Report 111–298 and Senate Report 111–31, NPPD, in cooperation with FEMA and relevant stakeholders, shall develop the necessary tools for all levels of government to complete a cyber network security assessment so that a full measure of gaps and capabilities can be completed. The NCSR will be conducted via the US–CERT Secure Portal. The assessment stakeholders will be states and large urban areas. The NCSR is a voluntary self-assessment designed to measure cybersecurity preparedness and resilience. Through the NCSR, CSEP will examine relationships, interactions, and processes governing IT management and the ability to effectively manage operational risk.

OMB is particularly interested in comments that:

1. Evaluate 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;

2. 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;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are 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 submissions of responses.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate, Office of Cybersecurity and Communications, National Cyber Security Division, Cyber Security Evaluation Program.

Title: Nationwide Cyber Security Review (NCSR) Assessment.

OMB Number: 1670–NEW.

Frequency: Annually.

Affected Public: Chief Information Officers, Chief Information Security Officers, Chief Technology Officers, and IT security personnel within states and major urban areas.

Number of Respondents: 750 respondents (estimate).

Estimated Time per Respondent: 2 hours.

Total Burden Hours: 1,500 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost (operating/maintaining): $36,630.

Dated: April 12, 2011.

David Epperson,

Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2011–9631 Filed 4–20–11; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–35]

Notice of Submission of Proposed Information Collection to OMB 2012 Rental Housing Finance Survey (RHFS)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is

soliciting public comments on the subject proposal.

Estimates derived from the RHFS sample will help public and private stakeholders better understand the financing, operating costs, and property characteristics of the multifamily rental housing stock in the United States. Many of the questions are similar to those found on the 1995 Property Owners and Managers Survey and the rental housing portion of the 2001 Residential Finance Survey.

DATES: *Comments Due Date: May 23, 2011.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–Pending) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail *OIRA-Submission@omb.eop.gov;* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate 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; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: 2012 Rental Housing Finance Survey (RHFS).

OMB Approval Number: 2528–Pending.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use:

Estimates derived from the RHFS sample will help public and private stakeholders better understand the financing, operating costs, and property characteristics of the multifamily rental housing stock in the United States. Many of the questions are similar to those found on the 1995 Property Owners and Managers Survey and the rental housing portion of the 2001 Residential Finance Survey.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	4,640	0.920		0.982		4,200

Total Estimated Burden Hours: 4,200.

Status: New collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 14, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–9642 Filed 4–20–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5484–N–11]

Notice of Proposed Information Collection: Comment Request; Mortgagor's Certificate of Actual Cost

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date: June 20, 2011.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, Room 9120 or the number for the Federal Information Relay Service, (1–800–877–8339).

FOR FURTHER INFORMATION CONTACT: Joyce Allen, Director, Office of Multifamily Housing Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–1142 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Mortgagor's Certificate of Actual Cost Certification.

OMB Control Number, if applicable: 2502–0112.

Description of the need for the information and proposed use: The information collected on the "Certificate of Actual Cost" form provides HUD with information to determine whether the sponsor has mortgage insurance acceptability and to prevent windfall profits. Its provides a base for evaluating housing programs, labor costs, and

physical improvements in connection with the construction of multifamily housing.

Agency form numbers, if applicable: HUD–90112.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 3,352. The number of respondents is 419, the number of responses is 419, the frequency of response is monthly, and the burden hour per response is 8.

Status of the proposed information collection: This is an extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: April 14, 2011.

Ronald Y. Spraker,

Associate General Deputy Assistant Secretary for Housing.

[FR Doc. 2011–9645 Filed 4–20–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5484–N–12]

Notice of Proposed Information Collection: Comment Request; Budget-Based Rent Increases

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 20, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Colette.Pollard@HUD.gov* or telephone (202) 402–3400.

FOR FURTHER INFORMATION CONTACT: Delbra Smith or Sheila Stewart, Office of Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone number (202) 708–1320 (this is not a toll-free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Budget-Based Rent Increases.

OMB Control Number, if applicable: 2502–0324.

Description of the need for the information and proposed use: This information is necessary to allow certain owners of multifamily housing projects to plan for expected increases in expenditures. The information will be used to determine the reasonableness of rent increases.

Agency form numbers, if applicable: HUD–92547–A.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 11,570 generating approximately 11,570 annual responses; the frequency of responses is annually; the estimated time to prepare the response is estimated at 5.75 hours, and the estimated total number of hours needed to prepare the information collection is 66,528.

Status of the proposed information collection: This is an extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., chapter 35, as amended.

Dated: April 14, 2011.

Ronald Y. Spraker,

Associate General Deputy Assistant Secretary for Housing.

[FR Doc. 2011–9647 Filed 4–20–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5484–N–10]

Notice of Proposed Information Collection: Comment Request; Housing Counseling Program—Application for Approval as a Housing Counseling Agency

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date: June 20, 2011.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, Room 9120 or the number for the Federal Information Relay Service, (1–800–877–8339).

FOR FURTHER INFORMATION CONTACT: Gayle F. Knowlson, Director, Program Support Division, Atlanta Homeownership Center, Department of Housing and Urban Development, 40 Marietta Street, Five Points Plaza Bldg., Atlanta, GA 30303–2806, telephone (404) 331–5001, Ext. 2345 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have

practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Housing Counseling Program—Application for Approval as a Housing Counseling Agency.

OMB Control Number, if applicable: 2502–NEW.

Description of the need for the information and proposed use: National and Regional Intermediaries, Multi-State Organizations and local public and private nonprofit agencies that provide housing counseling services directly or through their affiliates, sub-grantees or branches regarding home buying, homeownership, rental housing and homeless services programs submit an application for designation as a HUD-approved housing counseling agency. HUD uses the information to evaluate the agency and to populate Agency profile data in the Housing Counseling System (HCS) database. This data populates HUD's Web site and automated 1–800 Hotline.

Agency form numbers, if applicable: HUD–9900.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 1,144. The number of respondents is 143, the number of responses is 1, the frequency of response is on occasion, and the burden hour per response is 8.

Status of the proposed information collection: This is an extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Ronald Y. Spraker,

Associate General Deputy Assistant Secretary for Housing.

[FR Doc. 2011–9646 Filed 4–20–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5514–C–02]

Fellowship Placement Pilot Program Requests for Expressions of Interests To Administer Pilot Contact Information Correction

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: On April 13, 2011, at 71 FR 20699, HUD published a notice announcing HUD's proposal to conduct a Fellowship Placement Pilot (fellowship program). The April 13, 2011, notice had an incorrect telephone number for the contact person. This notice corrects the Contact Information section of the notice. All other information remains correct as published. The corrected Contact Information is set out below.

FOR FURTHER INFORMATION CONTACT: Kheng Mei Tan, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; telephone number 202–708–1112 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

Dated: April 15, 2011.

Camille E. Acevedo,

Associate General Counsel for Legislation and Regulations.

[FR Doc. 2011–9643 Filed 4–20–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection for Tribal Energy Development Capacity Program; Comment Request

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Submission to the Office of Management and Budget.

SUMMARY: As required by the Paperwork Reduction Act, the Office of Indian Energy and Economic Development (IEED) is submitting a proposed information collection related to funds provided under the Tribal Energy Development Capacity (TEDC) program to the Office of Management and Budget (OMB) for review. Indian tribes, including Alaska Native regional and village corporations, may be considered for funding under the TEDC if they provide certain information as part of an application. Once an application is accepted, the Indian tribe must then submit reports regarding the progress of their project. This notice requests comments on the information collection associated with the application and progress reports.

DATES: Submit comments on or before May 23, 2011.

ADDRESSES: You may submit comments on the information collection to the Desk Officer for the Department of the Interior at the Office of Management and Budget, by facsimile to (202) 395–5806 or you may send an e-mail to: *OIRA_DOCKET@omb.eop.gov.* Please send a copy of your comments to Ashley Stockdale, Department of the Interior, Office of Indian Energy and Economic Development, Room 20—South Interior Building, 1951 Constitution Avenue, NW., Washington, DC 20245, fax (202) 208–4564; e-mail: *Ashley.Stockdale@bia.gov.*

FOR FURTHER INFORMATION CONTACT: Ashley Stockdale (202) 219–0740. You may review the ICR online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Energy Policy Act of 2005 authorizes the Secretary of the Interior to provide assistance to Indian tribes for energy development and appropriates funds for such projects on a year-to-year basis. *See* 25 U.S.C. 3502. When funding is available, the Office of IEED may solicit proposals for projects for building capacity for tribal energy resource development on Indian land from Indian tribes, including Alaska Native regional and village corporations under the TEDC program. For the purposes of this program, "Indian land" includes: all land within the boundaries of an Indian reservation, pueblo, or rancheria; any land outside those boundaries that is held by the United States in trust for a tribe or individual Indian or by a tribe or individual Indian with restrictions on alienation; and land owned by an Alaska Native regional or village corporation.

Tribes may use the contracting mechanism established by the Indian Self-Determination Act or may receive the money through adjustments to their funding from the Office of Self-Governance. *See* 25 U.S.C. 450 *et seq.* Indian tribes that would like to submit a TEDC project proposal must submit an application that includes certain

information and, once funding is received, must submit reports on how they are using the funding. A complete application must contain the following elements:

- A formal signed resolution of the governing body of the tribe;
- A proposal describing the planned activities and deliverable products; and
- A detailed budget estimate, including contracted personnel costs, travel estimates, data collection and analysis costs, and other expenses.

The project proposal must include information about the tribe sufficient to allow IEED to evaluate the proposal based on the following criteria:

(a) Energy resource potential;

(b) Tribe's energy resource development history and current status;

(c) Tribe's existing energy resource development capabilities;

(d) Demonstrated willingness of the tribe to develop independent energy resource development business entity;

(e) Intent to develop and retain energy development capacity within tribal government or business entities; and

(f) Tribal commitment of staff, training, or monetary resources.

The IEED requires this information to ensure that it provides funding only to those projects that meet the goals of the TEDC and the purposes for which Congress provides the appropriations.

The Paperwork Reduction Act of 1995 provides an opportunity for interested parties to comment on proposed information collection requests. The IEED is proceeding with this public comment period to obtain an information collection clearance from OMB.

II. Request for Comments

The IEED requests your comments on this collection concerning: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) Ways we could enhance the quality, utility and clarity of the information to be collected; and (d) Ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. Before including your address, phone number, e-mail address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0XXX.

Type of Review: New.

Title: Tribal Energy Development Capacity Program Grants.

Brief Description of Collection: Indian tribes that would like to apply for TEDC funding must submit an application that includes certain information. A complete application must contain a formal signed resolution of the governing body of the tribe, a proposal describing the planned activities and deliverable products; and a detailed budget estimate, including contracted personnel costs, travel estimates, data collection and analysis costs, and other expenses. The IEED requires this information to ensure that it provides funding only to those projects that meet the goals of the TEDC program and purposes for which Congress provides the appropriation. Upon acceptance of an application, a tribe must then submit one- to two-page quarterly progress reports summarizing events, accomplishments, problems and/or results in executing the project. The IEED estimates that approximately 20 tribes will apply each year, and that IEED will accept approximately 10 of those applicants into the program.

Respondents: Indian tribes under 25 U.S.C. 3502.

Number of Respondents: 20 applicants per year; 10 project participants each year.

Estimated Time per Response: 40 hours per application; 1.5 hours per progress report.

Frequency of Response: Once per year for applications; 4 times per year for progress reports.

Total Annual Burden to Respondents: 860 hours (800 for applications and 60 for progress reports).

Dated: April 11, 2011.

Alvin Foster,

Acting Chief Information Officer—Indian Affairs.

[FR Doc. 2011–9666 Filed 4–20–11; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–6694–A; LLAK965000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision will be issued by the Bureau of Land Management (BLM) to Afognak Native Corporation, Successor in Interest to Port Lions Native Corporation. The decision approves the surface estate in the lands described below for conveyance pursuant to the Alaska Native Claims Settlement Act. The subsurface estate in these lands will be conveyed to Koniag, Inc., when the surface estate is conveyed to Afognak Native Corporation, Successor in Interest to Port Lions Native Corporation. The lands are in the vicinity of Kodiak, Alaska, and are located in:

Seward Meridian, Alaska

T. 25 S., R. 23 W.,
Sec. 27.

Containing approximately 1 acre.

Notice of the decision will also be published four times in the Kodiak Daily Mirror.

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until May 23, 2011 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notices of appeal transmitted by electronic means, such as facsimile or e-mail, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960, by e-mail at *ak.blm.conveyance@blm.gov,* or by telecommunication device (TTD) through the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, seven days a week.

Jennifer Noe,

Land Law Examiner, Land Transfer Adjudication II Branch.

[FR Doc. 2011–9700 Filed 4–20–11; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–8103–05; LLAK965000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to Doyon, Limited. The decision approves conveyance of the surface and subsurface estates in the lands described below pursuant to the Alaska Native Claims Settlement Act. The lands are in the vicinity of Anvik, Alaska, and are located in:

Seward Meridian, Alaska

T. 29 N., R. 59 W.,
Sec. 36.

Containing 597.36 acres.

Notice of the decision will also be published four times in the *Fairbanks Daily News-Miner.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until May 23, 2011 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notices of appeal transmitted by electronic means, such as facsimile or e-mail, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION, CONTACT: The BLM by phone at 907–271–5960, by e-mail at *ak.blm.conveyance@blm.gov,* or by telecommunication device (TTD) through the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

Linda L. Keskitalo,

Land Law Examiner, Land Transfer Adjudication II Branch.

[FR Doc. 2011–9698 Filed 4–20–11; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–19155–1–LLAK965000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to Doyon, Limited. The decision approves conveyance of the surface and subsurface estates in the lands described below pursuant to the Alaska Native Claims Settlement Act. The lands are in the vicinity of Huslia, Alaska, and are located in:

Kateel River Meridian, Alaska

T. 6 N., R.12 E.,
Sec. 21, lots 1 and 2;
Sec. 23, lot 2;
Sec. 24, lots 2 and 3;
Sec. 25, lots 1, 3 and 4;
Sec. 28, lots 2 and 4.

Containing 2,721.25 acres.

T. 5 N., R. 13 E.,
Sec. 5, lots 1, 2 and 3;
Secs. 6, lots 1 and 2;
Sec. 7.

Containing 1,742.03 acres.
Aggregating 4,463.28 acres.

Notice of the decision will also be published four times in the *Fairbanks Daily News-Miner.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until May 23, 2011 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notices of appeal transmitted by electronic means, such as facsimile or e-mail, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960 or by e-mail at *ak.blm.conveyance@blm.gov.* Persons who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

John Leaf,

Land Law Examiner, Land Transfer Adjudication II Branch.

[FR Doc. 2011–9695 Filed 4–20–11; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO300000.L1430000]

Amended Proposed Withdrawal, Notice of Public Meetings, Partial Termination of Segregative Effect; Arizona, California, Colorado, Nevada, New Mexico, and Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Assistant Secretary of the Interior for Land and Minerals Management proposes to withdraw approximately 677,384 acres of public lands from settlement, sale, location, or entry under the public land laws, including the mining laws, on behalf of the Bureau of Land Management (BLM) to protect and preserve for a 5-year

period, 24 Solar Energy Study Areas, now known as proposed Solar Energy Zones (SEZ), while they are analyzed for future solar energy development as part of the Programmatic Environmental Impact Statement for Solar Energy Development in Six Southwestern States. The lands will remain open to the mineral leasing, geothermal leasing, and mineral material laws. On June 30, 2009, a Notice of Proposed Withdrawal was published in the **Federal Register** (74 FR 31308), which segregated the lands from settlement, sale, location, or entry under the general land laws, including the mining laws, for a 2-year period. This new Notice slightly amends the prior proposal and provides revised legal descriptions for the proposed SEZs to include some additional lands. It also terminates the segregative effect as to lands no longer included in the proposed withdrawal.

DATES: Comments must be received by July 20, 2011. The BLM will hold a public meeting on the proposed withdrawal. The location, date, and time of the scheduled public meeting is listed in the **SUPPLEMENTARY INFORMATION** section below.

ADDRESSES: Written comments should be sent to the BLM Director, 1849 C Street, NW., (WO–350), Washington, DC, 20240.

FOR FURTHER INFORMATION CONTACT: Linda Resseguie, BLM, by telephone at 202–912–7337, or by e-mail at *linda_resseguie@blm.gov;* or one of the BLM State Offices listed below.

SUPPLEMENTARY INFORMATION: The applicant is the BLM at the address above, and its amended application requests the Assistant Secretary of the Interior for Land and Minerals Management to withdraw, subject to valid existing rights, approximately 677,384 acres of public lands located in the States of Arizona, California, Colorado, Nevada, New Mexico, and Utah from settlement, sale, location, or entry under the public land laws, including the mining laws, but not the mineral leasing, geothermal leasing, or the mineral material laws. On June 30, 2009, a Notice of Proposed Withdrawal and Opportunity for Public Meeting was published in the **Federal Register** (74 FR 31308), which segregated the lands from surface entry and mining for a 2-year period. As a result of scoping comments received, and land management decisions made since then, adjustments to the boundaries of all 24 original SEZs have been made and they have been conformed to the Public Land Survey System by establishing legal land descriptions for each area. Three modifications were made regarding the subject lands: (1) Including lands within the exterior boundaries of the SEZs that have slopes greater than 5 percent; (2) deleting lands from the original areas that are not applicable to the purpose for the proposed withdrawal; and (3) adding adjacent lands that were found to be equally well suited to solar energy development. Copies of maps depicting the updated land descriptions are available at the Programmatic EIS Web site (*http://solareis.anl.gov*) and are also available from the BLM offices listed below:

Arizona State Office, One North Central Avenue, Suite 800, Phoenix, Arizona 85004.

California State Office, 2800 Cottage Way, Suite W–1623, Sacramento, California 95825.

Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

Nevada State Office, 1340 Financial Boulevard, Reno, Nevada 89502.

New Mexico State Office, 301 Dinosaur Trail, Santa Fe, New Mexico 87508.

Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101.

The SEZs depicted on the maps are described as follows:

ARIZONA—AZ 035131

Gila and Salt River Meridian

Brenda SEZ:

T. 4 N., R. 16 W.,
Sec. 1, lots 3 and 4, S½NW¼, and SW¼;
Secs. 2, 3, and 4;
Sec. 5, lots 1, 2, and 3, S½NE¼, and NE¼SE¼;
Sec. 9, NE¼, NE¼NW¼, and NE¼SE¼;
Sec. 10, N½, N½S½, and SW¼SW¼;
Sec. 11, NW¼.
T. 5 N., R. 15 W.,
Sec. 31, lots 1 to 4, inclusive, E½W½, and E½.
The areas described aggregate approximately 3,878 acres.

Bullard Wash SEZ:

T. 9 N., R. 9 W.,
Sec. 1, S½;
Sec. 2, S½S½;
Sec. 3, SW¼ and S½SE¼;
Sec. 4, E½SE¼;
Sec. 8, NE¼, N½SE¼, N½SW¼SE¼, and SE¼SE¼;
Sec. 9, S½;
Secs. 10, 11, 12, 14, and 15;
Sec. 17, NE¼NE¼;
Sec. 21, NE¼NE¼;
Sec. 22, NE¼, E½NW¼, NW¼NW, N½SE¼, and SE¼SE¼;
Secs. 23 and 24;
Sec. 25, N½, N½SW¼, SE¼SW¼, and SE¼;
Sec. 26, NE¼, NE¼NW¼, and NE¼SE¼.
The areas described aggregate approximately 7,239 acres.

Gillespie SEZ:

T. 2 S., R. 6 W.,
Sec. 6, SW¼, W½SE¼, and SE¼SE¼, unsurveyed;
Sec. 7, N½, NE¼SW¼, N½SE¼, and SE¼SE¼, unsurveyed;
Sec. 8, SE¼NW¼, W½NW¼, SW¼, S½SE¼, and NW¼SE¼, unsurveyed;
Sec. 9, SW¼SW¼, unsurveyed;
Sec. 15, NW¼SW¼, N½SW¼SW¼, SE¼SW¼, and S½SW¼SE¼, unsurveyed;
Sec. 16, S½NE¼, S½NW¼NE¼, NW¼, and N½NE¼SE¼, unsurveyed;
Sec. 17, N½NE¼, N½SE¼NE¼, NE¼NW¼, and N½NW¼NW¼, unsurveyed;
Sec. 22, S½NE¼NE¼, NW¼NE¼, N½SW¼NE¼, SE¼NE¼, and N½NE¼NW¼, unsurveyed;
Sec. 23, SW¼NW¼, N½SW¼, SE¼SW¼, S½NE¼SE¼, NW¼SE¼, and S½SE¼, unsurveyed;
Sec. 24, S½NW¼SW¼ and S½SW¼, unsurveyed.
T. 2 S., R. 7 W.,
Sec. 1, SE¼SW¼, NE¼SE¼, and S½SE¼;
Sec. 12, N½NE¼, SE¼NE¼, and NE¼NW¼.
The areas described aggregate approximately 2,618 acres.

CALIFORNIA—CA 050951

San Bernardino Meridian

Iron Mountain SEZ:

T. 1 N., R. 17 E.,
Secs. 1, 2, 3, and 10 to 14, inclusive.
T. 2 N., R. 17 E.,
Sec. 12, lots 3 to 8, inclusive, SW¼NE¼, S½NW¼, SW¼, and W½SE¼;
Sec. 13;
Sec. 22, E½, S½NW¼, and SW¼;
Secs. 23 to 27, inclusive, 34 and 35.
T. 1 N., R. 18 E.,
Secs. 1 to 14, inclusive;
Sec. 15, lots 1 to 6, inclusive, NE¼, E½NW¼, and E½SE¼;
Secs. 16, 17, 18, and 21;
Sec. 22, NE¼NE¼, E½SE¼NE¼, NW¼SE¼NE¼, W½W½, W½E½NW¼, E½SW¼, and W½SW¼SE¼;
Sec. 23, lots 1 to 6, inclusive, N½N½, and SE¼NE¼;
Sec. 24;
Sec. 25, lot 1, NE¼, E½NW¼, SW¼NW¼, and S½;
Sec. 26, lots 1 to 4, inclusive, and SE¼;
Sec. 27, W½E½NW¼, W½NW¼, and W½NW¼SW¼;
Sec. 28, N½, E½NE¼SW¼, NW¼NE¼SW¼, N½NW¼SW¼, and N½SE¼;
Sec. 29, E½NE¼, NW¼NE¼, N½SW¼NE¼, SE¼SW¼NE¼, N½SW¼SW¼NE¼, and NE¼NE¼SE¼;
Sec. 32, SW¼NE¼NE¼, S½NW¼NE¼, S½N½NW¼ excluding lands within Right-of-Way CALA–051594, S½N½ excluding lands within Right-of-Way CALA–051594, and S½ excluding lands within Right-of-Way CALA–051594;
Sec. 33, S½S½NE¼, W½SE¼NW¼, SW¼NW¼, SE¼SE¼NW¼, and S½;

Sec. 34, SE¼NE¼NE¼, S½NE¼, E½SE¼NW¼, SW¼SE¼NW¼, S½SW¼NW¼, and S½;
Sec. 35, lot 1, E½, E½NW¼, SW¼NW¼, and SW¼;
Sec. 36.
T. 2 N., R. 18 E.,
Sec. 7, S½ of lots 1 and 2 in the NW¼, lots 1 and 2 in the SW¼, W½SE¼, and SE¼SE¼;
Sec. 15, S½NE¼, E½SW¼, and SE¼;
Sec. 17, SE¼NW¼, W½NW¼, and S½;
Secs. 18, 19, and 20;
Sec. 21, SW¼NE¼, S½NW¼, NW¼NW¼, and S½;
Sec. 22, E½, E½NW¼, SW¼SW¼, and E½SW¼;
Sec. 23, S½NW¼, SW¼, and S½SE¼;
Sec. 24, S½SW¼;
Sec. 25, W½NE¼, SE¼NE¼, W½, and SE¼;
Secs. 26 to 35, inclusive.
T. 1 N., R. 19 E.,
Secs. 1 to 15, inclusive, and secs. 17 to 35, inclusive.
T. 2 N., R. 19 E.,
Sec. 22, S½S½;
Sec. 23, E½SW¼, SW¼SW¼, and SE¼;
Sec. 24, E½, S½NW¼, and SW¼;
Secs. 25, 26, and 27;
Sec. 28, E½, S½NW¼, and SW¼;
Sec. 29, S½;
Sec. 30, S½ of lots 1 and 2 in the NW¼, lots 1 and 2 in the SW¼, SW¼NE¼, and SE¼;
Secs. 31 to 35, inclusive.
T. 1 N., R. 20 E.,
Secs. 5 to 9, inclusive, and secs. 16 to 21, inclusive;
Sec. 22, W½NE¼, S½SE¼NE¼, W½, and SE¼;
Secs. 27 to 34, inclusive.
T. 2 N., R. 20 E.,
Secs. 19, 30, and 31;
Sec. 32, S½.
T. 1 S., R. 18 E.,
Secs. 1 to 4, inclusive;
Sec. 5, excluding the lands within the Right-of-Way CALA–051594;
Sec. 8, NE¼, E½SE¼, and NW¼SE¼ excluding lands within the Right-of-Way CALA–051594;
Secs. 9, 10, and 11;
Sec. 12, excluding the lands within the Right-of-Way CALA–052369;
Sec. 13, E½ excluding the lands within the Right-of-Way CALA–052369, NW¼, and W½SW¼;
Sec. 14;
Sec. 15, E½ and E½W½;
Sec. 23, N½NE¼ and NE¼NW¼;
Sec. 24, N½NE¼ excluding the lands within the Right-of-Way CALA–052369, NE¼SW¼NE¼, N½SE¼NE¼, and NW¼NW¼.
T. 1 S., R. 19 E.,
Secs. 1 to 10, inclusive;
Sec. 11, N½ and S½ excluding lands within Right-of-Way CALA–0118172;
Sec. 12, N½N½, S½NW¼, and N½NW¼SW¼;
Sec. 15, N½NE¼, SW¼NE¼, NW¼, N½N½SW¼, and N½NW¼SE¼;
Secs. 17 and 18;
Sec. 19, lots 1 and 2 in the NW¼ excluding lands within Right-of-Way CALA–0118169 and CALA 052369, and NE¼ excluding lands within Right-of-Way CALA–0118169;
Sec. 20, N½ excluding lands within Right-of-Way CALA–0118169;
Sec. 21, NW¼NW¼ excluding lands within Right-of-Way CALA–0118172.
T. 1 S., R. 20 E.,
Sec. 3;
Sec. 4, lots 1 and 2 in the NE¼, lots 1 and 2 in the NW¼, N½SW¼, N½S½SW¼, S½SE¼SW¼, and SE¼;
Sec. 5, lots 1 and 2 in the NE¼, lots 1 and 2 in the NW¼, N½S½, and N½S½S½;
Sec. 6;
Sec. 9, N½NE¼ and NE¼NW¼;
Sec. 10, N½N½, SE¼NW¼, S½NE¼, N½N½SE¼ excluding lands within the Right-of-Way CALA–0118172, and N½NE¼SW¼ excluding lands within the Right-of-Way CALA–0118172.

The areas described aggregate approximately 106,522 acres.

Riverside East SEZ

T. 3 S., R. 15 E.,
Sec. 15, SW¼;
Sec. 21, NE¼NE¼, E½NW¼NE¼, SW¼NE¼, SE¼NE¼, S½SW¼, NE¼SW¼, S½SE¼NW¼, and SE¼;
Sec. 22, SW¼NW¼NE¼, SW¼NE¼, SW¼SE¼NE¼, W½, W½NE¼SE¼, SE¼NE¼SE¼, W½SE¼, and SE¼SE¼;
Sec. 23, W½SW¼SW¼;
Sec. 26, SW¼NE¼NW¼, W½NW¼, SE¼SE¼NW¼, SW¼ excluding lands within Right-of-Way CALA–051571, W½NW¼SE¼, SW¼SE¼ excluding non-public lands and lands within Right-of-Way CALA–051597, and S½SE¼SE¼;
Sec. 27 excluding lands within Right-of-Way CALA–051597;
Sec. 28;
Sec. 29, E½NE¼, SW¼NE¼, SE¼SE¼NW¼, E½SW¼, SW¼SW¼ excluding non-public lands, and SE¼;
Sec. 32, N½, and S½ excluding nonpublic lands and lands within Right-of-Way CALA–051571;
Sec. 33, excluding lands within Right-of-Way CALA–051571;
Sec. 34, excluding lands within Right-of-Way CALA–051597;
Sec. 35, excluding lands within Right-of-Way CALA–052057 and CALA–051206.
T. 4 S., R. 15 E.,
Sec. 1, excluding lands within Joshua Tree National Park;
Secs. 2 and 3, excluding lands within Right-of-Way CALA–051206;
Sec. 4, excluding non-public lands;
Sec. 5, excluding non-public lands and lands within Right-of-Way CALA–051571;
Sec. 8, excluding lands within Right-of-Way CALA–051571;
Sec. 9, excluding lands within Right-of-Way CALA–051206;
Sec. 10, excluding lands within Right-of-Way CALA–051206;
Secs. 11 and 12;
Sec. 13, excluding non-public lands;
Secs. 14 and 15;
Sec. 17, that portion situated north of Right-of-Way CALA–051206 and north and east of Right-of-Way CALA–051571;
Sec. 21, that portion situated north of Right-of-Way CALA–0149780;
Secs. 22, 23, and 24;
Sec. 25, N½N½, SW¼NE¼, S½NW¼, SW¼ excluding non-public lands, W½SE¼, and SE¼SE¼;
Sec. 26, N½, S½SW¼SW¼, SW¼SE¼SW¼, NE¼SE¼, NE¼NW¼SE¼, and NE¼SE¼SE¼;
Sec. 27, N½NE¼, N½SE¼NE¼, N½NE¼NW¼, SE¼NE¼SW¼, E½SE¼SW¼, S½SE¼, and S½NW¼SE¼;
Sec. 30, lots 1 and 2, W½NE¼, NW¼ unsurveyed, and NW¼SE¼;
Sec. 31, N½ of lot 1 in the NW¼ and N½ of lot 2 in the NW¼;
Sec. 34, E½ and E½E½W½;
Sec. 35, lots 1 and 2, SW¼NE¼NE¼, S½NW¼NE¼, SW¼NE¼, W½SE¼NE¼, SE¼SE¼NE¼, W½, N½SE¼, and SW¼SE¼.
T. 5 S., R. 15 E.,
Sec. 3, E½ of lot 1 in the NE¼, E½ lot 2 in the NE¼, and E½SE¼;
Sec. 10, E½NE¼ and NE¼SE¼;
Sec. 13, S½;
Sec. 14, S½;
Sec. 15, E½SE¼;
Sec. 22, E½NE¼, SW¼, and N½SE¼, excluding nonpublic lands;
Sec. 23, N½ and SE¼;
Sec. 24, N½, SW¼, E½SE¼, and SW¼SE¼;
Sec. 25, N½N½N½;
Sec. 27, NW¼NW¼.
T. 3 S., R. 16 E.,
Sec. 13;
Sec. 14, E½NE¼, SE¼SW¼, and SE¼;
Sec. 22, E½SE¼ and SW¼SE¼;
Secs. 23 and 24;
Sec. 25, excluding non-public lands;
Sec. 26, NE¼NE¼.
T. 4 S., R. 16 E.,
Sec. 1, excluding lands within Right-of-Way CALA–051207;
Sec. 7, lot 3;
Sec. 12, excluding lands within Right-of-Way CALA–051207;
Sec. 13;
Sec. 14, excluding lands within Joshua Tree National Park;
Sec. 18, S½ of lot 1 in the NW¼, lot 1 in the E½SW¼, lots 2 and 3, and SW¼SE¼;
Sec. 19, excluding non-public lands;
Sec. 20, SW¼NW¼, SW¼, W½SE¼, and SE¼SE¼;
Sec. 21, SW¼SW¼;
Sec. 22, E½SE¼;
Sec. 23, excluding lands within Joshua Tree National Park;
Secs. 24 and 25;
Sec. 26, E½, E½W½, and NW¼NW¼;
Sec. 27, N½NE¼;
Sec. 28, NW¼, N½SW¼, and SW¼SW¼ excluding lands within Right-of-Way CALA–051221;
Sec. 29, N½, W½SW¼, and SE¼;
Sec. 30, excluding non-public lands;
Sec. 31, lot 3 in the NW¼NW¼, N½ of lot 3 in the SW¼NW¼, and S½ of lot 3 in the SW¼SW¼;
Sec. 35;
Sec. 36, NE¼, E½NW¼, NE¼SW¼, and S½SE¼.

T. 5 S., R. 16 E.,
Secs. 1 and 2;
Sec. 3, lots 1 and 2 in the NE¼, lot 1 in the NW¼ excluding nonpublic lands, lot 2 in the NW¼, and SE¼ excluding non-public lands;
Sec. 4, N½ of lot 1 in the NE¼ and lot 2 in the NE¼;
Sec. 6, lot 1 in the S½NE¼, S½ of lot 2 in the NE¼NE¼, lot 2 in the NW¼NE¼, and lot 2 in the NW¼;
Sec. 8, S½NW¼SW¼ and SW¼SW¼;
Sec. 10, N½ excluding nonpublic lands and S½;
Sec. 11, N½NE¼, N½SW¼NE¼, SE¼SW¼NE¼, SE¼NE¼, NE¼NW¼, N½NW¼NW¼, SE¼NW¼NW¼, S½SW¼NW¼, SW¼SE¼NW¼, SW¼, S½NW¼SE¼, and S½SE¼;
Sec. 12, N½, S½SW¼SW¼, NE¼SE¼, E½NW¼SE¼, NW¼NW¼SE¼, NW¼SE¼SE¼, and NE¼SW¼SE¼;
Sec. 13, S½NE¼, S½N½NE¼, S½NE¼NW¼, SE¼NW¼, W½NW¼, and S½;
Sec. 14, E½;
Sec. 15, S½;
Sec. 17, S½N½ and NW¼NW¼;
Sec. 18, lot 1 and 2 in the SW¼ and SE¼;
Secs. 19 and 20;
Sec. 21, N½;
Sec. 22;
Sec. 23, E½, E½NW¼, NW¼NW¼, and SW¼;
Sec. 24;
Sec. 25, W½;
Sec. 26;
Sec. 27, that portion situated northerly of Right-of-Way CAR–05498;
Sec. 28, N½N½N½;
Sec. 29, N½N½N½;
Sec. 30, N½N½ of lot 1 in the NW¼, N½ of lot 2 in the NW¼, and N½N½NE¼;
Sec. 34, those portions of the N½N½N½ situated northerly of Right-of-Way CAR–05498;
Sec. 35, N½N½N½.

T. 3 S., R. 17 E.,
Sec. 17, excluding the Palen-McCoy Wilderness Area;
Secs. 18 and 19;
Secs. 20 and 21, excluding the Palen-McCoy Wilderness Area;
Sec. 27, SW¼ excluding the Palen-McCoy Wilderness Area;
Sec. 28, excluding the Palen-McCoy Wilderness Area;
Sec. 29;
Sec. 30, lots 1 and 2 in the NW¼, N½ of lots 1 and 2 in the SW¼, NE¼, and N½SE¼;
Sec. 31, lot 1 in the E½SW¼ excluding lands within Right-of-Way CAR–06910 and lot 2 in the SW¼ excluding lands within Right-of-Way CAR–06910;
Sec. 32, E½, NE¼NW¼, and E½SE¼NW¼;
Sec. 33;
Sec. 34, excluding the Palen-McCoy Wilderness Area.

T. 4 S., R. 17 E.,
Sec. 3, excluding the Palen-McCoy Wilderness Area;
Sec. 4;
Sec. 5, lots 1 and 2 in NE¼, E½SE¼, and E½W½SE¼;
Sec. 6, W½ of lots 1 and 2 in the NE¼, W½ of lots 1 and 2 in the NW¼, S½E½ of lot 1 in the NW¼, lots 1 and 2 in the SW¼, and SE¼;
Sec. 7;
Sec. 8, E½NE¼, E½W½NE¼, and NE¼SE¼;
Sec. 9;
Sec. 10, excluding the Palen-McCoy Wilderness Area;
Sec. 11, excluding the Palen-McCoy Wilderness Area;
Sec. 14, excluding the Palen-McCoy Wilderness Area;
Sec. 15;
Sec. 17, W½SW¼;
Secs. 18 and 19;
Sec. 20, W½NW¼;
Sec. 21, NE¼ and E½SE¼;
Sec. 22;
Sec. 23, excluding the Palen-McCoy Wilderness Area;
Sec. 26, excluding the Palen-McCoy Wilderness Area;
Sec. 27;
Sec. 28, E½NE¼;
Secs. 30 and 31;
Sec. 34, E½, E½W½, and E½W½W½;
Sec. 35, excluding the Palen-McCoy Wilderness Area.

T. 5 S., R. 17 E.,
Sec. 1, excluding the Palen-McCoy Wilderness Area;
Sec. 2, excluding the Palen-McCoy Wilderness Area;
Sec. 3, E½E½E½;
Sec. 5, lots 1 and 2 in the NW¼ and SW¼;
Sec. 6;
Sec. 7, excluding non-public lands;
Sec. 8, W½ and SE¼;
Sec. 9, SW¼, W½SE¼, SW¼NE¼SE¼, W½SE¼SE¼, and SE¼SE¼SE¼;
Sec. 10, E½E½E½;
Sec. 11, excluding the Palen-McCoy Wilderness Area;
Sec. 14, excluding the Palen-McCoy Wilderness Area and non-public lands;
Sec. 15, NE¼NE¼NE¼, SW¼NW¼SW¼, W½SW¼SW¼, SE¼SW¼SW¼, and S½SE¼SW¼;
Sec. 17, excluding non-public lands;
Sec. 18, excluding non-public lands;
Sec. 19, NE¼, lots 1 and 2 in the NW¼, and lots 1 and 2 in the SW¼;
Sec. 20, W½NW¼, SE¼NW¼, and S½;
Sec. 21;
Sec. 22, SW¼NW¼NE¼, SW¼NE¼, W½, NW¼NE¼SE¼, S½NE¼SE¼, W½SE¼, and SE¼SE¼;
Sec. 23, NE¼ excluding the Palen-McCoy Wilderness Area, E½NW¼, E½NE¼SW¼, S½SW¼, and SE¼;
Sec. 26, SW¼NW¼ and SW¼;
Sec. 27, N½, N½SW¼, SE¼SW¼, and SE¼;
Sec. 28;
Sec. 29, E½ and SW¼;
Secs. 31 to 34 inclusive;
Sec. 35, NW¼ excluding non-public lands.

T. 6 S., R. 17 E.,
Sec. 1, lots 1 and 2 in the NW¼ and S½;
Sec. 2;
Sec. 3, excluding non-public lands;
Sec. 4, that portion situated northerly of Right-of-Way CAR–05498;
Secs. 10, 11, and 12, those portions situated northerly of Right-of-Way CAR–05498.

T. 6 S., R. 18 E.,
Secs. 1, 2, 3, and 4 excluding Palen-McCoy Wilderness Area;
Sec. 7, lot 1 in the SW¼, lot 2 in the SW¼, and SE¼;
Sec. 9;
Sec. 10, N½, NE¼SW¼, and N½SE¼;
Secs. 11, 12, and 13;
Sec. 14, N½, N½S½, and S½SE¼;
Sec. 17, that portion situated northerly of Right-of-Way CAR–05498;
Sec. 18, those portions of the NE¼ situated northerly of Right-of-Way CAR–05498;
Sec. 23, N½NE¼, NE¼NW¼ and that portion of the S½ situated northerly of Right-of-Way CAR–05498;
Sec. 24, that portion of the S½ situated northerly of Right-of-Way CAR–05498.

T. 6 S., R. 19 E.,
Secs. 3, 4, and 5, excluding the Palen-McCoy Wilderness Area;
Sec. 6, N½ excluding the Palen-McCoy Wilderness Area and SE¼;
Secs. 7, 8, and 9;
Secs. 10, 11, 12, and 13 excluding the Palen-McCoy Wilderness Area;
Secs. 14, 15, 17, and 18;
Sec. 19, NW¼NE¼, N½ of lots 1 and 2 in the NW¼, S½ of lots 1 and 2 in the SW¼, and SE¼;
Secs. 20 to 24, inclusive;
Sec. 25, W½;
Secs. 26 and 27;
Sec. 28, that portion situated northerly of Right-of-Way CALA–0107395;
Sec. 29, that portion of the E½ situated northerly of Right-of-Way CALA–0107395;
Sec. 33, that portion of the N½ situated northerly of Right-of-Way CALA–0107395;
Sec. 34, that portion of the N½ situated northerly of Right-of-Way CALA–0107395;
Sec. 35, that portion of the N½ situated northerly of Right-of-Way CALA–0107395.

T. 6 S., R 20 E.,
Sec. 3;
Sec. 5, S½ excluding the Palen-McCoy Wilderness Area;
Sec. 7, excluding the Palen-McCoy Wilderness Area;
Sec. 8, excluding the Palen-McCoy Wilderness Area;
Secs. 9, 10, and 15;
Sec. 16, S½NW¼ and NE¼NW¼;
Sec. 17, E½ and NW¼;
Sec. 18;
Sec. 19, lots 1 and 2 in the SW¼ and W½E½;
Sec. 20, W½, E½SE¼, and SW¼SE¼;
Sec. 21, E½, W½NW¼, and NE¼NW¼;
Sec. 22, N½ and SE¼;
Sec. 23, S½;
Sec. 24, S½;
Sec. 25, N½ and SE¼;
Sec. 26;
Sec. 27, N½NW¼, SW¼NW¼, and S½;
Sec. 28, E½, NE¼SW¼, and S½SW¼;
Secs. 29 and 30;
Sec. 31, N½ of lot 1 in NW1/4 and N½N½NE¼;

Sec. 32, N½N½N½;
Sec. 33, N½N½NE¼;
Sec. 34, N½N½N½;
Sec. 35, NW¼NE¼, N½NW¼, and S½.
T. 7 S., R. 20 E.,
Sec. 1, lots 1 and 2 in the NE¼, lots 1 and 2 in the NW¼, and SW¼;
Sec. 2, lots 1 and 2 in the NE¼, lots 1 and 2 in the NW¼, and SE¼;
Sec. 11, E½NE¼, SW¼NE¼, and S½;
Secs. 12, 13, 24, and 25.
T. 4 S., R. 21 E.,
Sec. 2, SW¼;
Secs. 3 and 4;
Sec. 5, E½ of lot 1 in the NE¼, lots 5 to 12, inclusive, and SE¼;
Sec. 8, E½;
Secs. 9 to 15, inclusive;
Secs. 21 to 35, inclusive.
T. 5 S., R. 21 E.,
Secs. 1 to 14, inclusive;
Sec. 15, S½;
Secs. 17 to 23, inclusive;
Sec. 24, S½;
Secs. 25 to 30, inclusive;
Secs. 32 to 35, inclusive.
T. 6 S., R. 21 E.,
Tracts 37 to 47, inclusive;
Tracts 49 to 56, inclusive;
Tracts 58, 59, N½ of 61 and N½ of 62;
Tracts 68, 69, 71, N½ of 73, and 74 to 80, inclusive;
Secs. 4, 5, 8, and 9;
Sec. 15, lots 1 and 2, SW¼, and W½SE¼;
Secs. 19 and 22;
Sec. 23, lots 2, 3, 5, and 6, and W½W½;
Sec. 26, lot 1;
Sec. 27;
Sec. 29, N½ and SW¼;
Sec. 30;
Sec. 31, lots 5, 6, 9, 10, 11, 12, 17, and 18, S½NE¼, and SE¼;
Sec. 32, NW¼.
T. 7 S., R. 21 E.,
Sec. 2, lots 3, 4, 5, 6, S½N½, E½SW¼, and NW¼SE¼;
Sec. 3;
Sec. 4, lots 3 and 4, S½NE¼, and S½;
Sec. 5, S½S½;
Sec. 6, SE¼;
Sec. 7;
Sec. 8, SW¼;
Sec. 9, E½ and SW¼;
Sec. 10;
Sec. 11, N½ and SW¼;
Sec. 12, NW¼ and N½SW¼;
Sec. 13;
Sec. 14, S½NE¼, NW¼, and S½;
Sec. 15, W½ and SE¼;
Sec. 17, E½, SE¼NW¼, and SW¼;
Sec. 18;
Secs. 19, 20, and 21, excluding the Mule Mountains Area of Critical Environmental Concern (ACEC);
Sec. 22, N½ and SW¼;
Secs. 23 and 24;
Sec. 25, S½NW¼ and N½SW¼;
Sec. 26, E½;
Sec. 27, NW¼ excluding the Mule Mountains ACEC, and S½ excluding the Mule Mountains ACEC;
Sec. 28, excluding the Mule Mountains ACEC;
Sec. 30, excluding the Mule Mountains ACEC;
Sec. 34, excluding the Mule Mountains ACEC;
Sec. 35.
T. 4 S., R. 22 E.,
Secs. 7, 8, and secs. 17 to 20, inclusive;
Secs. 29 to 33, inclusive.
T. 5 S., R. 22 E.,
Secs. 2 to 6, inclusive;
Sec. 7, lots 1 and 2 in the NW¼ and E½;
Secs. 8 to 14, inclusive;
Sec. 15, E½;
Sec. 17;
Sec. 18, NE¼, lots 1 and 2 in the NW¼, and lots 1 and 2 in the SW¼;
Secs. 19 and 20;
Sec. 21, S½;
Secs. 22, 23, and 24;
Sec. 25, W½NE¼, NW¼, and N½SW¼;
Sec. 26, N½;
Sec. 27, N½ and SW¼;
Sec. 28, S½;
Sec. 29, N½ and SW¼;
Sec. 30;
Sec. 31, E½;
Sec. 32;
Sec. 33, SW¼.
T. 6 S., R. 22 E.,
Sec. 3, lots 1 and 2 in the NW¼ and SW¼SW¼;
Secs. 4 to 7, inclusive;
Sec. 8, N½NE¼ and NW¼;
Sec. 9, NE¼, N½NW¼, SE¼NW¼, and E½SE¼;
Sec. 10, NW¼NW¼;
Sec. 18, N½ of lot 1 in the NW¼ and lot 2 in the NW¼.
T. 7 S., R. 22 E.,
Sec. 18, lot 4.
The areas described aggregate approximately 102,986 acres.

Imperial East SEZ:

T. 16 S., R. 17 E.,
Sec. 21, that portion lying 120 feet south of the centerline of Interstate 8 and east of Lake Cahuilla No. 5 ACEC;
Secs. 22 to 25, inclusive, those portions lying 120 feet south of the centerline of Interstate 8;
Secs. 26 and 27;
Secs. 28 and 33, those portions lying east of Lake Cahuilla No. 5 ACEC;
Secs. 34 and 35.
T. 16 S., R. 18 E.,
Secs. 29 and 30, those portions lying 120 feet south of the centerline of Interstate 8;
Sec. 31, lot 3, NE¼, NE¼NW¼, SE¼SW¼, and S½SE¼;
Sec. 32, that portion of the N½N½ lying 120 feet south of the centerline of Interstate 8, S½NW¼SW¼, and S½S½;
Sec. 33, that portion of the N½ lying 120 feet south of the centerline of Interstate 8 and N½SE¼;
Sec. 34, those portions of the N½SW¼ and the NW¼SE¼ lying 120 feet south of the centerline of Interstate 8.
The areas described aggregate approximately 5,722 acres.

Pisgah SEZ:

T. 8 N., R. 4 E.,
Secs. 2, 3, and 4;
Sec. 10, NW¼NE¼ and N½NW¼;
Sec. 11, NE¼;
Sec. 12, N½ and SE¼.
T. 9 N., R. 4 E.,
Sec. 22, SW¼;
Sec. 27, W½;
Secs. 28 and 34.
T. 7 N., R. 5 E.,
Sec. 2, W½ of lot 2 in the NW¼;
Sec. 3, W½ of lot 1 in the NE¼, lot 2 in the NE¼, and lots 1 and 2 in the NW¼.
T. 8 N., R. 5 E.,
Secs. 2, 3, 4, 6, 7, 8, 10, 11, 12, 14, 15, 22, 23, and 24;
Sec. 26, N½, W½W½SW¼, and N½SE¼;
Sec. 27;
Sec. 34, W½ and SE¼;
Sec. 35, W½SW¼, SE¼SW¼, and S½SE¼.
T. 9 N., R. 5 E.,
Sec. 19, W½NE¼, W½, and SE¼;
Secs. 30, 31, 32, 34, and 35.
T. 8 N., R. 6 E.,
Secs. 6 and 7;
Sec. 8, N½, SW¼, and NW¼SE¼;
Secs. 18 and 19;
Sec. 20, W½, W½SE¼, and SE¼SE¼;
Secs. 30 and 31.
The areas described aggregate approximately 23,950 acres.

COLORADO—CO 073899

New Mexico Principal Meridian

Antonito Southeast SEZ:

T. 32 N., R. 9 E.,
Sec. 3, lot 4, SW¼NW¼, W½SW¼, SE¼SW¼, SW¼SE¼, and E½SE¼;
Secs. 4, 9, 10, and 11;
Sec. 12, W½ and SE¼;
Secs. 13, 14, and 15;
Sec. 21, lots 1 to 4, inclusive, and N½;
Sec. 22, lots 1 to 4, inclusive, and N½;
Sec. 23, lots 1 to 4, inclusive, and N½;
Sec. 24, lots 1 to 4, inclusive, and N½.
T. 32 N., R. 10 E.,
Sec. 7, lot 4, SE¼SW¼, and S½SE¼;
Sec. 8, S½S½;
Sec. 9, SW¼SW¼;
Secs. 17 and 18;
Sec. 19, lots 1 to 6, inclusive, NE¼, and E½NW¼;
Sec. 20, lots 1 to 4, inclusive, and N½;
Sec. 21, lots 1 to 4, inclusive, W½NE¼, and NW¼.
The areas described aggregate approximately 9,729 acres.

Detilla Gulch SEZ:

T. 45 N., R. 8 E.,
Sec. 36, that portion of the S½NE¼ lying southeasterly of the centerline of Highway 285 and one-quarter mile north of and parallel to the centerline of the Old Spanish National Historic Trail as mapped by the National Park Service.
T. 45 N., R. 9 E.,
Sec. 20, that portion of the SE¼SE¼ lying southeasterly of the centerline of Highway 285;
Sec. 29, that portion lying southeasterly of the centerline of Highway 285;
Sec. 30, that portion of the S½ lying southeasterly of the centerline of Highway 285;
Sec. 31, NE¼; those portions of lot 1 and the E½NW¼ lying southeasterly of the centerline of Highway 285; that portion of lot 2 lying southeasterly of the centerline of Highway 285 and one-quarter mile north of and parallel to the centerline of the Old Spanish National

Historic Trail as mapped by the National Park Service; and those portions of lot 3, NE¼SW¼, and N½SE¼ lying one-quarter mile north of and parallel to the centerline of the Old Spanish National Historic Trail as mapped by the National Park Service;
Sec. 32, N½; and that portion of the N½SW¼, lying one-quarter mile north of and parallel to the centerline of the Old Spanish National Historic Trail as mapped by the National Park Service;
Sec. 33, N½NE¼ and NW¼.
The areas described aggregate approximately 1,522 acres.

Fourmile East SEZ:

T. 37 N., R. 12 E.,
Sec. 2, lots 3 and 4, and S½NW¼;
Sec. 3, lots 1 to 4, inclusive, and S½N½.
T. 38 N., R. 12 E.,
Sec. 13, S½;
Sec. 23;
Sec. 24, W½ and SE¼;
Sec. 25, N½ and SW¼;
Sec. 34, E½;
Sec. 35, NW¼.
T. 38 N., R. 13 E.,
Sec. 19, lots 1 to 4, inclusive;
Sec. 30, lots 1 to 4, inclusive.
The areas described aggregate approximately 3,882 acres.

Los Mogotes East SEZ:

T. 34 N., R. 8 E.,
Secs. 1, 2, 11, and 12;
Sec. 13, NE¼NE¼, W½NE¼, W½, and NW¼SE¼;
Secs. 14 and 23;
Sec. 24, W½ and W½SE¼;
Sec. 25, W½ and W½E½;
Sec. 26.
The areas described aggregate approximately 5,918 acres.

NEVADA—NV 087208

Mount Diablo Meridian

Amargosa Valley SEZ:

T. 14 S., R. 46 E.,
Secs. 12, 13, 24, 25, and 36, unsurveyed.
T. 15 S., R. 46 E.,
Sec. 1, unsurveyed;
Sec. 12, N½NE¼ and SW¼NE¼, unsurveyed.
T. 13 S., R. 47 E.,
Sec. 33, E½NE¼, SW¼NE¼, SE¼NW¼, and S½;
Sec. 34;
Sec. 35, E½NE¼, SW¼NE¼, NW¼NW¼, S½NW¼, and S½;
Sec. 36.
T. 14 S., R. 47 E.,
Sec. 3, E½SW¼ and SW¼SE¼, unsurveyed;
Secs. 7 to 10, inclusive, unsurveyed;
Sec. 11, S½NW¼, SW¼, and W½SE¼, unsurveyed;
Sec. 13, S½NW¼, NE¼SW¼, and W½SW¼, unsurveyed;
Secs. 14 to 23, inclusive, unsurveyed;
Sec. 24, W½E½ and W½, unsurveyed;
Sec. 25, W½NE¼ and W½, unsurveyed;
Secs. 26 to 35, inclusive, unsurveyed;
Sec. 36, W½ unsurveyed.
T. 15 S., R. 47 E.,
Sec. 1, W½W½, unsurveyed;
Secs. 2 to 6, inclusive, unsurveyed;
Sec. 7, E½, E½NW¼, and NE¼SW¼, unsurveyed;
Secs. 8 to 11, inclusive, unsurveyed;
Sec. 12, NW¼NW¼, unsurveyed;
Sec. 14, N½ and N½S½, unsurveyed;
Sec. 15, N½ and N½S½, unsurveyed;
Sec. 16, N½, N½S½, and SW¼SW¼, unsurveyed;
Sec. 17, E½, N½NW¼, SE¼NW¼, and SW¼, unsurveyed;
Sec. 18, NE¼NE¼, unsurveyed.
The areas described aggregate approximately 31,625 acres.

Delamar Valley SEZ:

T. 5 S., R. 63 E.,
Sec. 25, E½NW¼, SW¼NW¼, W½SW¼, and SE¼SW¼, unsurveyed;
Sec. 35, E½NE¼ and SE¼, unsurveyed;
Sec. 36, W½, unsurveyed.
T. 6 S., R. 63 E.,
Sec. 1, NW¼ and W½SW¼, unsurveyed;
Sec. 2, NE¼, E½NW¼, SW¼NW¼, and S½, unsurveyed;
Sec. 3, S½SW¼, SW¼SE¼, and E½SE¼, unsurveyed;
Sec. 4, SE¼SE¼, unsurveyed;
Sec. 10, N½, N½SW¼, SE¼SW¼, and SE¼, unsurveyed;
Sec. 11, unsurveyed;
Sec. 12, NW¼NW¼, unsurveyed;
Sec. 13, W½SW¼, unsurveyed;
Sec. 14, unsurveyed;
Sec. 15, E½ and E½W½, unsurveyed;
Sec. 22, NE¼, E½NW¼, SW¼NW¼, and S½, unsurveyed;
Sec. 23, unsurveyed;
Sec. 24, W½, unsurveyed;
Sec. 25, W½, unsurveyed;
Sec. 26, unsurveyed;
Sec. 27, E½, E½W½, and SW¼SW¼, unsurveyed;
Sec. 33, E½E½ and W½SE¼, unsurveyed;
Secs. 34 and 35, unsurveyed;
Sec. 36, NW¼, N½SW¼, and SW¼SW¼, unsurveyed.
T. 7 S., R. 63 E.,
Secs. 2 and 3, unsurveyed;
Sec. 4, E½ and E½SW¼, unsurveyed;
Sec. 9, E½ and E½W½, unsurveyed;
Sec. 10, unsurveyed;
Sec. 11, W½ and W½SE¼, unsurveyed;
Sec. 14, N½NW¼ and SW¼NW¼, unsurveyed;
Sec. 15, unsurveyed;
Sec. 16, E½, E½SW¼, and SW¼SW¼, unsurveyed;
Sec. 17, SW¼SW¼, E½SW¼, and W½SE¼, unsurveyed;
Sec. 19, E½, unsurveyed;
Secs. 20 and 21, unsurveyed;
Sec. 22, NW¼ and NW¼SW¼, unsurveyed;
Sec. 28, NW¼NE¼, NW¼, W½SW¼, and NE¼SW¼, unsurveyed;
Sec. 29, unsurveyed;
Sec. 30, E½E½, unsurveyed;
Sec. 31, N½NE¼, unsurveyed;
Sec. 32, N½NE¼ and N½NW¼, unsurveyed.
The areas described aggregate approximately 16,552 acres.

Dry Lake SEZ:

T. 16 S., R. 63 E.,
Sec. 13, lot 4, W½SW¼, SE¼SW¼, and SW¼SE¼;
Sec. 14, SE¼NE¼, SW¼SE¼, and E½SE¼;
Sec. 23, NE¼, NE¼NW¼, and E½SE¼;
Sec. 24, lots 1 to 4, inclusive, W½E½, and W½;
Sec. 25, lots 1 to 4, inclusive, W½E½, and W½;
Sec. 26, E½NE¼, SW¼NE¼, and SE¼;
Sec. 35, E½NE¼, SW¼NE¼, SE¼NW¼, W½NW¼, E½SW¼, and SE¼;
Sec. 36, lots 1 to 4, inclusive, W½E½, and W½.
T. 17 S., R. 63 E.,
Sec. 11, N½SW¼, SE¼SW¼, and SE¼;
Sec. 12, lots 1 to 4, inclusive, S½NE¼, S½NW¼, and S½;
Sec. 13, W½ and W½SE¼;
Sec. 14, NE¼, N½NW¼, E½SW¼, and SE¼;
Sec. 22, SE¼NE¼, W½NE¼, and SE¼;
Sec. 23, NE¼, NE¼NW¼, S½NW¼, and S½;
Secs. 24, 25, and 26;
Sec. 27, E½ and SE¼SW¼;
Sec. 33, lots 9, 10, 13, and 14, and NE¼SE¼;
Sec. 34, lots 1 to 4, inclusive, NE¼, S½NW¼, and N½S½;
Sec. 35, lots 1 to 4, inclusive, N½, and N½S½;
Sec. 36, lots 1 to 4, inclusive, N½, and N½S½.
T. 18 S., R. 63 E.,
Secs. 1 and 2;
Sec. 3, lots 1, 2, 3, 5, 7, 8, 9, 10, 13, and 14, S½NE¼, and NE¼SE¼;
Sec. 4, lot 5;
Sec. 10, lot 1;
Sec. 11, lots 1, 3, 4, 5, and 9, NE¼, NE¼NW¼, N½SE¼, and SE¼SE¼;
Sec. 12;
Sec. 13, lots 4, 8, and 9, that portion of lot 14 lying north of Highway 93, lots 15 and 16, NW¼NE¼, N½NW¼, and SE¼NW¼;
Sec. 14, lot 1.
T. 17 S., R. 64 E.,
Sec. 7, lots 7 to 11, inclusive, SE¼NW¼, E½SW¼, and SE¼;
Sec. 8, lot 8, SW¼NW¼, and W½SW¼;
Sec. 19, lot 5;
Sec. 30, lots 7 and 8;
Sec. 31, lots 5 to 8 inclusive, SW¼NE¼, E½W½, and SE¼;
Sec. 32, S½.
T. 18 S., R. 64 E.,
Sec. 5, lots 6, 7, and 8, SW¼NE¼, S½NW¼ and N½SW¼;
Sec. 6, lots 8 to 14, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 12 to 17, inclusive, lots 21 to 24, inclusive, lots 27 and 28, E½NE¼, and NE¼SE¼.
The areas described aggregate approximately 15,649 acres.

Dry Lake Valley North SEZ:

T. 1 N., R. 64 E.,
Secs. 1 to 4, inclusive, and 9 to 16, inclusive;
Sec. 20, E½NE¼, NW¼SW¼, E½SW¼, and SE¼;
Secs. 21 to 28, inclusive;
Sec. 29, NE¼NE¼;
Sec. 33, NE¼, N½NW¼, N½SE¼, and SE¼SE¼;
Secs. 34, 35, and 36.

T. 2 N., R. 64 E.,
Sec. 4, lot 4, SW¼NW¼, SW¼, and SW¼SE¼;
Sec. 5, lots 1 to 4, inclusive, S½N½, N½SW¼, SW¼SW¼, and SE¼;
Sec. 6, lot 1, S½NE¼, and NE¼SE¼;
Sec. 8, E½NE¼, NW¼NE¼, and NE¼NW¼;
Sec. 9, W½NE¼, SE¼NE¼, W½, and SE¼;
Sec. 10, SW¼NW¼, SW¼SW¼, E½SW¼, and SW¼SE¼;
Sec. 13, SW¼NE¼, SW¼NW¼, SW¼, W½SE¼, and SE¼SE¼;
Sec. 14, SE¼NE¼ and S½;
Secs. 15 and 16;
Sec. 17, E½NE¼;
Secs. 21 to 28, inclusive;
Sec. 29, E½SE¼;
Sec. 32, E½NE¼;
Secs. 33 to 36, inclusive.
T. 3 N., R. 64 E.,
Sec. 29, SW¼NW¼ and SW¼;
Sec. 30, E½E½ and NW¼NE¼;
Sec. 31, E½E½;
Sec. 32, W½NE¼, W½, and SE¼.
T. 1 N., R. 65 E.,
Sec. 5, lots 3 and 4, S½NW¼, and SW¼;
Secs. 6 and 7;
Sec. 8, W½;
Sec. 17, W½;
Secs. 18 and 19;
Sec. 20, W½;
Sec. 29, W½;
Secs. 30 and 31;
Sec. 32, W½.
T. 2 N., R. 65 E.,
Sec. 17, W½SW¼ and SE¼SW¼;
Sec. 18, lot 4, SE¼SW¼, and S½SE¼;
Sec. 19;
Sec. 20, W½;
Sec. 29, W½;
Secs. 30 and 31;
Sec. 32, W½.
T. 1 S., R. 64 E.,
Secs. 1 and 2;
Sec. 3, lots 1 and 2 and SE¼;
Sec. 10, NE¼, E½NW¼, SW¼NW¼, and S½;
Secs. 11 to 15, inclusive;
Sec. 16, SE¼NE¼ and SE¼;
Sec. 21, E½ and E½W½;
Secs. 22 to 27, inclusive;
Sec. 28, E½;
Sec. 33, E½E½ and NW¼NE¼;
Secs. 34, 35, and 36.
T. 2 S., R. 64 E.,
Secs. 1, 2, and 3;
Sec. 4, lot 1 and SE¼NE¼;
Sec. 10, N½, N½SW¼, SE¼SW¼, and SE¼;
Secs. 11 to 14, inclusive;
Sec. 15, NE¼, E½NW¼, NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 23, NE¼, E½NW¼, NW¼NW¼, N½SE¼, and SE¼SE¼;
Sec. 24;
Sec. 25, N½NE¼.
T. 1 S., R. 65 E.,
Sec. 4, lot 4, W½SW¼;
Sec. 6, lots 3 and 4, and lots 7 to 13, inclusive;
Sec. 7, lots 5 to 20, inclusive;
Sec. 8;
Sec. 9, lots 4 and 5 and W½SW¼;
Sec. 14, S½S½;
Sec. 15, W½ and S½SE¼;
Secs. 16 to 23, inclusive;
Secs. 26 to 31, inclusive;
Sec. 32, N½, SW¼, and W½SE¼;
Sec. 33, W½NW¼;
Sec. 34, E½ and E½W½;
Sec. 35.
T. 2 S., R. 65 E.,
Sec. 2;
Sec. 3, lots 1 to 3, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 5, lots 2 to 4, inclusive, SW¼NE¼, S½NW¼, SW¼, and W½SE¼;
Secs. 6 and 7;
Sec. 8, W½E½ and W½;
Sec. 16, SW¼NE¼ and S½NW¼;
Sec. 17, SE¼NE¼, W½NE¼, W½, and SE¼;
Secs. 18 and 19;
Sec. 20, W½NE¼ and W½;
Sec. 29, NW¼, N½SW¼, and SE¼SW¼;
Sec. 30, lot 14, NE¼, E½NW¼, and NE¼SE¼.

The areas described aggregate approximately 76,874 acres.

East Mormon Mountain SEZ:

T. 11 S., R. 69 E.,
Secs. 10 to 15, inclusive, Secs. 22 to 27, inclusive, and Secs. 34 and 35.

The areas described aggregate approximately 8,968 acres.

Gold Point SEZ:

T. 6 S., R. 41 E.,
Sec. 13, S½;
Sec. 14, E½SE¼;
Sec. 23, E½E½ and NW¼SE¼;
Sec. 24;
Sec. 25, N½, NE¼SW¼, and N½SE¼;
Sec. 26, NE¼NE¼.
T. 6 S., R. 41½ E.,
Sec. 13 N½SW¼, SW¼SW¼, and W½NW¼SE¼, unsurveyed;
Sec. 14, S½, unsurveyed;
Sec. 15, S½, unsurveyed;
Sec. 16, S½, unsurveyed;
Secs. 21 and 22, unsurveyed;
Sec. 23, N½NE¼, SW¼NE¼, W½, and NW¼SE¼, unsurveyed;
Sec. 26, NW¼NW¼, unsurveyed;
Sec. 27 N½, SW¼, N½SE¼, and SW¼SE¼, unsurveyed;
Sec. 28, unsurveyed.

The areas described aggregate approximately 4,810 acres.

Millers SEZ:

T. 3 N., R. 39 E.,
Sec. 1;
Sec. 2, lot 1, S½NE¼, NE¼SW¼, S½SW¼, and SE¼;
Sec. 11, N½N½ and SW¼NW¼;
Sec. 12, N½NW¼.
T. 4 N., R. 39 E.,
Sec. 36, E½NE¼, SW¼NE¼, NE¼SW¼, S½SW¼, and SE¼.
T. 3 N., R. 40 E.,
Sec. 4, lots 3 and 4, S½NW¼, and NW¼SW¼;
Sec. 5, lots 1 to 4, inclusive, S½N½, and N½S½;
Sec. 6.
T. 4 N., R. 40 E.,
Sec. 10, S½S½;
Sec. 11, S½;
Sec. 12, SW¼NE¼, S½NW¼, SW¼, and W½SE¼;
Sec. 13, W½E½ and W½;
Secs. 14, 15, and 16;
Sec. 17, S½N½ and S½;
Sec. 18, SE¼;
Sec. 19, E½, E½NW¼, and NE¼SW¼;
Secs. 20 to 23, inclusive;
Sec. 24, W½E½ and W½;
Sec. 25, E½NW¼ and W½W½;
Secs. 26 to 29, inclusive;
Sec. 30, lot 4, E½, E½SW¼, and S½SW¼;
Secs. 31 and 32;
Sec. 33, N½, N½S½, and S½SW¼;
Sec. 34;
Sec. 35, N½, SW¼, and W½SE¼.

The areas described aggregate approximately 16,787 acres.

NEW MEXICO—NM 114441

New Mexico Principal Meridian

Afton SEZ:

T. 24 S., R. 1 E.,
Secs. 4 and 5;
Sec. 6, lots 8 to 11, inclusive, E½, and E½W½;
Sec. 7, lots 5 to 8, inclusive, E½, and E½W½;
Secs. 8, 9, and 17;
Sec. 18, lots 5 to 8, inclusive, E½, and E½W½;
Sec. 19, lots 5 to 8, inclusive, E½, and E½W½;
Secs. 20, 21, and 28;
Sec. 29, lots 1 to 4, inclusive, N½, and N½S½;
Sec. 30, lots 5 to 9, inclusive, NE¼, E½W½, N½SE¼, and SW¼SE¼;
Sec. 31, lots 5 to 14, inclusive, W½NE¼, E½NW¼, NE¼SW¼, and NW¼SE¼;
Sec. 33, lots 1 to 4, inclusive, N½, and N½S½;
Sec. 34, lots 1 to 4, inclusive, N½, and N½S½;
Sec. 35, lots 1 to 7, inclusive, W½NE¼, NW¼, N½SW¼, and NW¼SE¼.
T. 25 S., R. 1 E.,
Sec. 1;
Secs. 3 to 15, inclusive;
Secs. 17 to 20, inclusive;
Sec. 21, N½, N½S½, SE¼SW¼, and S½SE¼;
Secs. 22 to 31, inclusive;
Secs. 33, 34, and 35.
T. 25 S., R. 2 E.,
Sec. 5, lots 13 to 17, inclusive, SW¼NW¼, W½SW¼, and SE¼SW¼;
Sec. 6, lots 2, 3, and 4, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7;
Sec. 8, lot 2, NW¼NE¼, S½NE¼, W½, and SE¼;
Sec. 9, lots 5 and 6;
Secs. 17 to 20, inclusive;
Sec. 21, N½, SW¼, N½SE¼, and SW¼SE¼;
Sec. 27, W½ and W½SE¼;
Sec. 28, S½;
Sec. 29, S½;
Secs. 30 and 33.
T. 24 S., R. 1 W.,
Secs. 1 and 3;
Sec. 4, lots 1 and 2, S½NE¼, SW¼SW¼, S½SE¼SW¼, and SE¼;
Sec. 5, S½;
Secs. 6 to 9, inclusive;

Sec. 10, NW¼;
Secs. 11 to 14, inclusive;
Sec. 15, N½, W½SW¼, and E½SE¼;
Sec. 17, N½;
Secs. 18, N½;
Secs. 19 and 20;
Sec. 21, N½, SW¼, and W½SE¼;
Sec. 22, NE¼NE¼, NW¼NW¼, S½N½, E½SW¼, and SE¼;
Secs. 23 to 35, inclusive.
T. 25 S., R. 1 W.,
Sec. 1;
Secs. 3 to 6, inclusive;
Sec. 7, lots 3 and 4, E½, and E½W½;
Secs. 8 to 15, inclusive, and secs. 17 and 18.
T. 24 S., R. 2 W.,
Secs. 1, 11, and 12;
Sec. 13, N½;
Sec. 14, N½ and N½S½;
Secs. 23 to 26, inclusive, and sec. 35.
T. 25 S., 2 W.,
Secs. 1 and 11;
Sec. 12, W½NE¼, W½, and SE¼;
Secs. 13 and 14.

The areas described aggregate approximately 77,623 acres.

Mason Draw SEZ:

T. 23 S., R. 2 W.,
Secs. 5 to 8, inclusive, and secs. 17 to 20, inclusive;
Secs. 29, 30, and 31.
T. 23 S., R. 3 W.,
Secs. 11 to 14, inclusive and secs. 23 to 26, inclusive;
Sec. 35.

The areas described aggregate approximately 12,909 acres.

Red Sands SEZ:

T. 18 S., R. 8 E.,
Secs. 25 and 35.
T. 19 S., R. 8 E.,
Secs. 1, 3, 4, 9, 10, 15, 21, and 22.
T. 17 S., R. 9 E.,
Sec. 17, that portion of the N½ lying south of Highway 70, N½SW¼, and SE¼;
Sec. 18, S½SE¼;
Sec. 19, lots 3 and 4, NE¼, E½SW¼, N½SE¼, and SW¼SE¼;
Sec. 20, NE¼, S½NW¼, and N½S½;
Sec. 28, W½E½ and W½;
Sec. 33, W½E½ and W½.
T. 18 S., R. 9 E.,
Sec. 4, lots 1 to 12, inclusive, and S½;
Sec. 9, NE¼ and E½SE¼;
Sec. 18, lots 1 to 12, inclusive, and E½;
Sec. 19, lots 1 to 12, inclusive, and E½;
Sec. 22, S½;
Sec. 23, W½SW¼;
Sec. 27, W½E½ and W½;
Secs. 28 and 29;
Sec. 30, lots 1 to 12, inclusive, and E½;
Sec. 31, lots 1 to 12, inclusive, and E½.
T. 19 S., R. 9 E.,
Sec. 2, that portion of lot 4 lying west of Highway 54;
Sec. 3, lots 1 to 7, inclusive, those portions of lots 8 and 9 lying west of Highway 54, lots 10, 11, and 12, SW¼, W½SE½, and that portion of the E½SE¼ lying west of Highway 54;
Sec. 4, lots 1 to 12, inclusive, and S½;
Sec. 5, lots 1 to 12, inclusive, and S½;
Sec. 6, lots 1 to 16, inclusive, and lot 21;
Secs. 8 and 9;
Sec. 10, that portion of the NE¼ lying west of Highway 54, W½, and that portion of the SE¼ lying west of Highway 54;
Sec. 15, that portion of the W½E½ lying west of Highway 54, and W½;
Secs. 17, 20, and 21;
Sec. 22, that portion of the W½NE¼ lying west of Highway 54, NW¼, and that portion of the SW¼ lying west of Highway 54;
Sec. 27, that portion of the N½NW¼ lying west of Highway 54 and north of Red Sands Off-Highway Vehicle (OHV) Area;
Sec. 28, that portion of the NE¼NE¼ lying north of Red Sands OHV area.

The areas described aggregate approximately 22,520 acres.

UTAH—087557

Salt Lake Meridian

Escalante Valley SEZ:

T. 33 S., R. 14 W.,
Sec. 8, NE¼, E½NW¼, SW¼NW¼, and S½;
Sec. 9, E½NE¼, S½SW¼, and SE¼;
Sec. 10;
Sec. 11, W½ and W½SE¼, those portions lying west of Railroad Right-of-Way Grant UTSL 0032533;
Sec. 14, E½, that portion lying west of Railroad Right-of-Way Grant UTSL 0032533;
Secs. 15, 17, 19, 30, and 31.
T. 33 S., R. 15 W.,
Secs. 24 and 25.
T. 34 S., R. 14 W.,
Sec. 6, lot 4.

The areas described aggregate approximately 6,614 acres.

Milford Flats South SEZ:

T. 30 S., R. 10 W.,
Sec. 18, lots 1 and 2, and E½NW¼.
T. 30 S., R. 11 W.,
Sec. 7, lots 3 and 4, and E½SE¼;
Sec. 8, SW¼ and W½SE¼;
Sec. 10, NE¼, E½NW¼, and S½;
Sec. 12, W½;
Sec. 13, N½, N½SW¼, and NW¼SE¼;
Sec. 14, N½, SW¼, N½SE¼, SW¼SE¼;
Secs. 15, 17, and 18;
Sec. 19, lots 1 and 2, NE¼, and E½ NW¼;
Sec. 20;
Sec. 21, N½, N½S½, and SW¼SW¼;
Sec. 22, N½NE¼ and NW¼;
Sec. 29, N½NW¼;
Sec. 30, N½NE¼.

The areas described aggregate approximately 6,480 acres.

Wah Wah Valley SEZ:

T. 27 S., R. 14 W.,
Sec. 8, E½ and SE¼SW¼;
Sec. 9, N½, N½SW¼, SE¼SW¼, and SE¼;
Sec. 10;
Sec. 11, lots 1 and 2, SW¼NE¼, S½NW¼, SW¼, and W½SE¼;
Sec. 13, lot 1;
Secs. 14 and 15;
Sec. 17, NW¼NE¼;
Sec. 21, lots 1 and 6, and E½NE¼;
Secs. 22 and 23;
Sec. 26, N½ and N½S½;
Sec. 27, N½ and N½S½;
Sec. 28, NE¼ and N½SE¼.

The areas described aggregate approximately 6,097 acres.

The total areas described aggregate approximately 677,384 acres of public lands in the following counties: La Paz, Yavapai, and Maricopa, Arizona; Imperial, San Bernardino, and Riverside, California; Conejos, Saguache, and Alamosa, Colorado; Nye, Lincoln, Clark, and Esmeralda, Nevada; Dona Ana and Otero, New Mexico; Iron and Beaver, Utah.

The Assistant Secretary of the Interior for Land and Minerals Management has approved the BLM's petition amendment. Therefore, the petition constitutes a withdrawal proposal of the Secretary of the Interior (43 CFR 2310.1–3(e)).

The purpose of the proposed withdrawal is to protect and preserve 24 SEZs for a 5-year period while they are analyzed for future solar energy development.

The use of a right-of-way, interagency or cooperative agreement, or surface management by the BLM under 43 CFR 3715 or 43 CFR 3809 regulations will not adequately constrain nondiscretionary uses, which could result in loss of adequate protection and preservation of the subject lands for future solar energy development. There are no suitable alternative sites for the withdrawal.

No water rights would be needed to fulfill the purpose of the requested withdrawal.

Records relating to the amended proposal and application may be examined by contacting Linda Resseguie at the above address or by calling 202–912–7337.

The application for proposed withdrawal will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the BLM Director at the address noted above.

Notice is also hereby given that a public meeting in connection with the proposed withdrawal will be held Monday, May 23, 2011, from 6 p.m. to 8 p.m. at the BLM Southern Nevada District Office, 4701 North Torrey Pines Drive, Las Vegas, Nevada 89130.

At this meeting, the public will have an opportunity to provide oral and written comments.

All comments received will be considered before any recommendation concerning the proposed withdrawal is submitted to the Assistant Secretary of the Interior for Land and Minerals Management for final action.

The lands described in this notice will be segregated from settlement, sale, location, or entry under the general land laws, including the mining laws, until June 29, 2011, unless an application is denied or cancelled or the withdrawal is approved prior to that date.

Certain lands described in the June 30, 2009, Notice of Proposed Withdrawal, as published in the **Federal Register** (74 FR 31308), are not applicable to the purpose for which the withdrawal was proposed and have been deleted from the revised SEZ descriptions provided in this Notice. The original withdrawal proposal is cancelled and the segregative effect established by the June 30, 2009, Notice of Proposed Withdrawal, is hereby terminated as to those lands.

Comments including names and street addresses of respondents will be available for public review at the BLM Washington Office at the address noted above, during regular business hours 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, phone number, e-mail 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.

(Authority: 43 CFR 2310.3–1(a))

Robert V. Abbey,

Director, Bureau of Land Management.

[FR Doc. 2011–9551 Filed 4–20–11; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA 49187, LLCA920000 L1310000 FI0000]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease CACA 49187, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas leases.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease CACA 49187 from Gasco Production Co. The petition was filed on time and was accompanied by all required rentals and royalties accruing from December 1, 2010, the date of termination.

FOR FURTHER INFORMATION CONTACT: Rita Altamira, Land Law Examiner, Branch of Adjudication, Division of Energy and Minerals, BLM California State Office, 2800 Cottage Way, W–1623, Sacramento, California 95825, (916) 978–4378.

SUPPLEMENTARY INFORMATION: No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre or fraction thereof and 16 ⅔ percent, respectively. The lessee has paid the required $500 administrative fee and has reimbursed the BLM for the cost of this **Federal Register** notice. The Lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate the lease effective December 1, 2010, subject to the original terms and condition of the lease and the increased rental and royalty rates cited above.

Debra Marsh,

Supervisor, Branch of Adjudication, Division of Energy & Minerals.

[FR Doc. 2011–9693 Filed 4–20–11; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–302 and 731–TA–454 (Third Review)]

Determinations to Conduct Full Five-Year Reviews Concerning the Countervailing Duty and Antidumping Duty Orders; Fresh and Chilled Atlantic Salmon From Norway

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the countervailing duty and antidumping duty orders on fresh and chilled Atlantic salmon from Norway would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further information concerning the conduct of these reviews 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, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* April 8, 2011.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), 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*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On April 8, 2011, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that both the domestic and respondent interested party group responses to its notice of institution (76 FR 166, January 3, 2011) were adequate. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: April 15, 2011.

James R. Holbein,

Acting Secretary to the Commission.

[FR Doc. 2011–9595 Filed 4–20–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated November 19, 2010, and published in the **Federal Register** on December 3, 2010, 75 FR 75495, Chattem Chemicals, Inc., 3801 St. Elmo

Avenue, Building 18, Chattanooga, Tennessee 37409, made application by letter to the Drug Enforcement Administration (DEA) to be registered as an importer of 4-Anilino-N-Phenethyl-4-Piperidine (8333), a basic class of controlled substance listed in schedule II.

The company plans to import this controlled substance in bulk for use in the manufacture of another controlled substance.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a), and determined that the registration of Chattem Chemicals, Inc. to import the basic class of controlled substance is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Chattem Chemicals, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: April 15, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–9692 Filed 4–20–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Suspension of Pension Benefits

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, "Suspension of Pension Benefits," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before May 23, 2011.

ADDRESSES: A copy of this ICR, with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Employee Benefits Security Administration (EBSA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Section 203(a)(3)(B) of the Employee Retirement Security Act (ERISA), 29 U.S.C. 1103(a)(3)(B), and its implementing regulations govern the circumstances under which pension plans may suspend pension benefit payments to retirees who return to work or of participants who continue to work beyond normal retirement age. In order for a plan to suspend benefits, it must notify the affected retiree or participant during the first calendar month or payroll period in which the plan withholds payment that benefits are suspended. The notice must include the specific reasons for such suspension, a general description of the plan provisions authorizing the suspension, a copy of the relevant plan provisions, and a statement indicating where the applicable regulations may be found, *i.e.,* 29 CFR 2530.203–3. In addition, the suspension notification must inform the retiree or participant of the plan's procedure for affording a review of the suspension of benefits.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1210–0048. The current OMB approval is scheduled to expire on May 31, 2011; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on November 10, 2010 (75 FR 69130).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to ensure appropriate consideration, comments should reference OMB Control Number 1210–0048. The OMB is particularly interested in comments that:

- Evaluate 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;
- 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 those who are 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.

Agency: Employee Benefits Security Administration (EBSA).

Title of Collection: Suspension of Pension Benefits.

OMB Control Number: 1210–0048.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 44,222.

Total Estimated Number of Responses: 173,560.

Total Estimated Annual Burden Hours: 147,129.

Total Estimated Annual Costs Burden: $58,108.

Dated: April 18, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–9733 Filed 4–20–11; 8:45 am]

BILLING CODE 4510–29–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549.

Extension:

Rule 17Ab2–1, Form CA–1, SEC File No. 270–203, OMB Control No. 3235–0195.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for approval of extension of the previously approved collection of information provided for in Rule 17Ab2–1 (17 CFR 240.17Ab2–1) and Form CA–1: Registration of Clearing Agencies (17 CFR 249b.200) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17Ab2–1 and Form CA–1 require clearing agencies to register with the Commission and to meet certain requirements with regard to, among other things, a clearing agency's organization, capacities, and rules. The information is collected from the clearing agency upon the initial application for registration on Form CA–1. Thereafter, information is collected by amendment to the initial Form CA–1 when material changes in circumstances necessitate modification of the information previously provided to the Commission.

The Commission uses the information disclosed on Form CA–1 to (i) determine whether an applicant meets the standards for registration set forth in Section 17A of the Securities Exchange Act of 1934 ("Exchange Act"), (ii) enforce compliance with the Exchange Act's registration requirement, and (iii) provide information about specific registered clearing agencies for compliance and investigatory purposes. Without Rule 17Ab2–1, the Commission could not perform these duties as statutorily required.

The Commission staff estimates that each initial Form CA–1 requires approximately 130 hours to complete and submit for approval. This burden is composed primarily of a one-time reporting burden that reflects the applicant's staff time (*i.e.* internal labor costs) to prepare and submit the Form to the Commission. Hours required for amendments to Form CA–1 that must be submitted to the Commission in connection with material changes to the initial CA–1 can vary, depending upon the nature and extent of the amendment. Since the Commission only receives an average of one submission per year, the aggregate annual burden associated with compliance with Rule 17Ab2–1 and Form CA–1 is 130 hours. The main cost to respondents is associated with generating, maintaining, and providing the information sought by Form CA–1. The external costs associated with such activities include fees charged by outside lawyers and accountants to assist the registrant collect and prepare the information sought by the form (though such consultations are not required by the Commission) and are estimated to be approximately $18,000. The rule and form do not involve the collection of confidential information.

Written comments are invited on: (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 estimates 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission 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 PRA that does not display a valid Office of Management and Budget (OMB) control number.

Please direct your written comments to: Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: April 12, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–9639 Filed 4–20–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 173; OMB Control No. 3235–0618; SEC File No. 270–557.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Securities Act Rule 173 (17 CFR 230.173) provides a notice of registration to investors who purchased securities in a registered offering under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). A Rule 173 notice must be provided by each underwriter or dealer to each investor who purchased securities from the underwriter or dealer. The Rule 173 notice is not publicly available. We estimate that it takes approximately 0.01 hour per response to provide the information required under Rule 173 and that the information is filed by approximately 5,338 respondents approximately 43,546 times a year for a total of 232,448,548 responses. We estimate that the total annual reporting burden for Rule 173 is 2,324,485 hours (0.01 hours per response × 232,448,548 responses).

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.

The public may view the background documentation for this information collection at the following Web site, *http://www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to:

Shagufta_Ahmed@omb.eop.gov; and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: April 14, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–9640 Filed 4–20–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 433; OMB Control No. 3235–0617; SEC File No. 270–558.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Rule 433 (17 CFR 230.433) governs the use and filing of free writing prospectuses under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). The purpose of Rule 433 is to reduce the restrictions on communications that a company can make to investors during a registered offering of its securities, while maintaining a high level of investor protection. A free writing prospectus meeting the conditions of Rule 433(d)(1) must be filed with the Commission and is publicly available. We estimate that it takes approximately 1.3 burden hours per response to prepare a free writing prospectus and that the information is filed by 2,906 respondents approximately 1.25 times a year for a total of 3,633 responses. We estimate that 25% of the 1.3 burden hours per response (0.32 hours) is prepared by the respondent for total annual reporting burden of approximately 1,163 hours (0.32 hours × 3,633 responses).

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.

The public may view the background documentation for this information collection at the following Web site, *http://www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: April 15, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–9641 Filed 4–20–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64303; File No. SR–ISE–2011–18]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Rebates for Adding and Removing Liquidity

April 15, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 8, 2011, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change, as described in Items I and II below, which items have been prepared by the self-regulatory organization. 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 transaction fees and rebates for adding and removing liquidity. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, 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 self-regulatory organization 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 self-regulatory organization 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 currently assesses a per contract transaction charge to market participants that add or remove liquidity from the Exchange ("maker/taker fees") in 100 options classes (the "Select Symbols").[3] For complex orders in the Select Symbols, the Exchange currently charges a take fee of: (i) $0.27 per contract for Market Maker and Market Maker Plus[4] orders, (ii) $0.28

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Options classes subject to maker/taker fees are identified by their ticker symbol on the Exchange's Schedule of Fees. *See* Securities Exchange Act Release Nos. 61869 (April 7, 2010), 75 FR 19449 (April 14, 2010) (SR–ISE–2010–25), 62048 (May 6, 2010), 75 FR 26830 (May 12, 2010) (SR–ISE–2010–43), 62282 (June 11, 2010), 75 FR 34499 (June 17, 2010) (SR–ISE–2010–54), 62319 (June 17, 2010), 75 FR 36134 (June 24, 2010) (SR–ISE–2010–57), 62508 (July 15, 2010), 75 FR 42809 (July 22, 2010) (SR–ISE–2010–65), 62507 (July 15, 2010), 75 FR 42802 (July 22, 2010) (SR–ISE–2010–68), 62665 (August 9, 2010), 75 FR 50015 (August 16, 2010) (SR–ISE–2010–82), 62805 (August 31, 2010), 75 FR 54682 (September 8, 2010) (SR–ISE–2010–90), 63283 (November 9, 2010), 75 FR 70059 (November 16, 2010) (SR–ISE–2010–106), 63534 (December 13, 2010), 75 FR 79433 (December 20, 2010) (SR–ISE–2010–114) and 63664 (January 6, 2011), 76 FR 2170 (January 12, 2011) (SR–ISE–2010–120).

[4] A Market Maker Plus is a market maker who is on the National Best Bid or National Best Offer 80% of the time for series trading between $0.03 and $5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $5.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium in each of the front two expiration months and 80% of the time for series trading between $0.03 and $5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $5.00 (for options whose underlying stock's previous trading day's last sale price was greater

Continued

per contract for Firm Proprietary and Customer (Professional) [5] orders; and (iii) $0.35 per contract for Non-ISE Market Maker [6] orders. Priority Customer [7] orders, regardless of size, are not assessed a fee for removing liquidity from the Complex Order book. The Exchange now proposes to increase the take fee for complex orders in the Select Symbols, as follows: (i) For Market Maker and Market Maker Plus complex orders, from $0.27 per contract to $0.30 per contract, and (ii) for Firm Proprietary and Customer (Professional) complex orders, from $0.28 per contract to $0.30 per contract. The Exchange is not proposing any change to the take fee for Non-ISE Market Maker and Priority Customer complex orders.

Additionally, ISE Market Makers who remove liquidity in the Select Symbols from the Complex Order book by trading with orders that are preferenced to them are currently charged $0.25 per contract. The Exchange now proposes to increase the take fee for these preferenced orders from $0.25 per contract to $0.28 per contract. The Exchange notes that NASDAQ OMX PHLX, Inc. ("PHLX") currently assesses a fee for complex orders for certain symbols that are preferenced to market makers at that exchange at a rate of $0.25 per contract. For regular complex orders that remove liquidity in those symbols, PHLX charges a take fee of $0.27 per contract. With this proposed fee change, ISE will maintain the two cent differential that is currently in place at PHLX.[8]

Finally, as an incentive for members to direct customer order flow to the Exchange, Priority Customer complex orders, regardless of size, currently receive a rebate of $0.20 per contract on all legs when these orders trade with non-customer orders in the Exchange's Complex Order book. The Exchange proposes to increase this rebate from $0.20 per contract to $0.25 per contract. The Exchange believes it is necessary to pay a rebate for Customer complex orders that add liquidity in order to continue to attract Customer complex order flow to the Exchange.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Act [9] in general, and furthers the objectives of Section 6(b)(4) of the Act [10] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using its facilities. The impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, most important of which will be its propensity to add or remove liquidity in options overlying the Select Symbols.

The Exchange believes that the proposed fees it charges for options overlying the Select Symbols remain competitive with fees charged by other exchanges and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than to a competing exchange. The Exchange believes that its proposal to assess a $0.30 per contract take fee for complex orders in the Select Symbols is reasonable because the fee is within the range of fees assessed by other exchanges employing similar pricing schemes. For example, the proposed take fees for complex orders are comparable to rates assessed by PHLX. PHLX currently assesses a take fee of $0.28 for Firm and Professional orders and $0.35 for Broker-Dealer orders in its complex order book.[11] The Exchange also believes that its proposal to increase the take fee for preferenced orders to $0.28 per contract is reasonable because it will allow the Exchange to remain competitive with other exchanges that employ a similar pricing scheme while maintaining the two cent differential that currently exists at options exchanges between fees charged for regular complex orders that take liquidity and complex orders that are preferenced to market makers. For example, PHLX currently charges $0.25 per contract to Directed Participants for removing liquidity from its complex order book in a select group of symbols while charging $0.27 per contract for regular complex orders.[12] Additionally, the Exchange believes the proposed fee increases are reasonable and equitable in that they apply equally to all market participants that were previously subject to these fees.

The Exchange also believes that it is reasonable and equitable to provide a rebate for Priority Customer complex orders because paying a rebate would continue to attract additional order flow to the Exchange and thereby create liquidity that ultimately will benefit all market participants who trade on the Exchange. The Exchange further believes that paying a rebate is equitable and reasonable because it is similar to rebates paid by other Exchanges.[13]

Moreover, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory because the proposed fees are consistent with price differentiation that exists today at other option exchanges. Additionally, the Exchange believes it remains an attractive venue for market participants to trade complex orders despite its proposed fee change as its fees remain competitive with those charged by other exchanges for similar trading strategies. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fee levels at a particular exchange to be excessive. For the reasons noted above, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory.

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.

than $100) in premium across all expiration months in order to receive the rebate. The Exchange determines whether a market maker qualifies as a Market Maker Plus at the end of each month by looking back at each market maker's quoting statistics during that month. If at the end of the month, a market maker meets the Exchange's stated criteria, the Exchange rebates $0.10 per contract for transactions executed by that market maker during that month. The Exchange provides market makers a report on a daily basis with quoting statistics so that market makers can determine whether or not they are meeting the Exchange's stated criteria.

[5] A Customer (Professional) is a person who is not a broker/dealer and is not a Priority Customer.

[6] A Non-ISE Market Maker, or Far Away Market Maker ("FARMM"), is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended ("Exchange Act"), registered in the same options class on another options exchange.

[7] A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[8] *See* PHLX Fee Schedule at *http://www.nasdaqtrader.com/content/marketregulation/membership/phlx/feesched.pdf.*

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] *See* PHLX Fee Schedule at *http://www.nasdaqtrader.com/content/marketregulation/membership/phlx/feesched.pdf.*

[12] *Id.*

[13] *Id.*

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[14] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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–2011–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2011–18. 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 Commissions 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 Web site viewing and printing in the Commission's Public Reference Room. 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–2011–18 and should be submitted by May 12, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–9623 Filed 4–20–11; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64304; File No. SR–CBOE–2011–028]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Transaction Fees for CBOE Gold ETF Volatility Index Options

April 15, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 8, 2011, the Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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

CBOE proposes to amend its Fees Schedule to establish fees for transactions in CBOE Gold ETF Volatility Index ("GVZ") options. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 self-regulatory organization 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 those 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange received approval to list and trade options on the CBOE Gold ETF Volatility Index ("GVZ"), which is an up-to-the-minute market estimate of the expected volatility of the SPDR Gold Trust ("GLD") calculated by using real-time bid/ask quotes of CBOE listed GLD options.[3] GVZ uses nearby and second nearby options with at least 8 days left to expiration and then weights them to yield a constant, 30-day measure of the expected (implied) volatility. The Exchange will begin listing GVZ options on April 12, 2011.

The purpose of this rule change is to clarify that the existing transaction fees for "Volatility Indexes" shall apply for transactions in GVZ options, except that the existing Surcharge Fee (currently $.10 per contract for Volatility Index options) will not apply to GVZ options.[4] In addition, the Exchange's marketing fee [5] shall not apply to GVZ options.

For reference, the existing Volatility Index transactions fees that will apply to GVZ options are as follows:

- $0.40 per contract for customer transactions;

[3] *See* Securities Exchange Act Release No. 62139 (May 19, 2010), 75 FR 29597 (May 26, 2010) (approving SR–CBOE–2010–018).

[4] This fee is assessed to help the Exchange recoup license fees the Exchange pays to the different index licensors in order to list options on the respective indexes.

[5] *See* Footnote 6 of the Fees Schedule. In 2007, the Exchange amended its Fees Schedule to broaden the application of existing transaction fees for VIX options to options on all volatility indexes calculated by CBOE. At that time, the Exchange replaced all references to "VIX" in its Fees Schedule with "VOLATILITY INDEXES." The reference to "VIX" in Footnote 6 was inadvertently omitted in that filing. *See* Securities Exchange Act Release No. 56660 (October 15, 2007), 72 FR 59315 (October 19, 2007). Accordingly, the Exchange is proposing to make a technical change to Footnote 6 to change the reference from "VIX" to "VOLATILITY INDEXES."

• $0.40 per contract for voluntary professional transactions;
• $0.40 per contract for professional transactions
• $0.20 per contract for CBOE Market-Maker/DPM transactions; [6]
• $0.25 per contract for Clearing Trading Permit Holder proprietary transactions; [7]
• $0.40 per contract for broker-dealer transactions;
• $0.10 per contract CFLEX Surcharge Fee;
• $0.03 per contract floor brokerage fee; [8]
• $0.015 per contract floor brokerage fee for crossed orders; [9]
• $0.03 per contract par official fee; [10] and
• $0.015 per contract for par official fee for crossed orders.[11]

The Exchange is also proposing to establish a new Surcharge Fee on transactions in GVZ options to help the Exchange offset some of the costs and expenses associated with new product research and development and ongoing maintenance. CBOE is a recognized industry leader in product innovation and believes that the introduction of new products is beneficial for the marketplace and provides investors with new and important risk management tools. Product innovation necessarily results in costs and expenses to the Exchange and involves risk. For example, the Exchange conducts surveys of market participants to scope new products, invests in development and marketing of new products and engages in ongoing maintenance of new products. Similarly, it takes time to build liquidity in new products. As a result, the Exchange believes that the proposed $0.10 per contract Surcharge Fee to help offset some of the costs and expenses expended for product research and development and ongoing maintenance is appropriate and will enable the Exchange to continue its longstanding leadership role in options product innovation.

The Exchange is proposing to codify the new "Product Research & Development" Surcharge Fee in Section 1 (Index Options) to the Fees Schedule by setting it forth in new subparagraph (B) under the existing "Surcharge Fee" category (and renaming the category "Surcharge Fees"). The new Product Research & Development Surcharge Fee will apply to all non-public customer transactions (*i.e.,* CBOE and non-Trading Permit Holder market-maker, Clearing Trading Permit Holder and broker-dealer), including voluntary professionals and professionals.[12] The Exchange notes that the existing "Surcharge Fee" is assessed on transactions in certain index options, including Volatility Indexes, and the Exchange is expressly excluding GVZ options from this fee. In order to differentiate between the existing Surcharge Fee and the proposed Product Research & Development Surcharge Fee, the Exchange is proposing to establish a new subparagraph (A) which will be named "Index License." Those products that are currently assessed the existing Surcharge Fee will be itemized under "Index License" and GVZ will be itemized under "Product Research & Development."

The Exchange is also proposing to make the first reference to "VOLATILITY INDEXES" in the Fees Schedule an active hyperlink that will take readers to a CBOE Web site that identifies all of the Volatility Indexes that underlie options traded on the Exchange. Specifically, the first reference to "VOLATILITY INDEXES" in Section 1 (Index Options, I. Customer at the third bullet point) will be displayed in blue text and has been embedded with the following hyperlink: *http://www.cboe.com/products/Cash-SettledIndexOptions.aspx#Volatility.*

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(4) [14] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE Trading Permit Holders and other persons using its facilities. The Exchange believes the fee changes proposed by this filing are equitable because they will apply uniformly to all market participants that trade GVZ options. In addition, the proposed fees are reasonable and comparable to fees that the Exchange currently assesses for other volatility index products. Furthermore, the proposed new Product Research and Development Surcharge Fee will enable to Exchange to offset some (although not all) of the costs and expenses associated with offering new products. For example, the Exchange conducts surveys of market participants to scope new products, invests in development and marketing of new products and engages in ongoing maintenance of new products. Similarly, it takes time to build liquidity in new products. Finally, the proposed fees further the Exchange's goal of introducing new products to the marketplace that are competitively priced.

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 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 proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A) of the Act [15] and subparagraph (f)(2) of Rule 19b–4 [16] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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

[6] This is the standard rate that is subject to the Liquidity Provider Sliding Scale as set forth in Footnote 10 to the Fees Schedule.

[7] This is the standard rate that is subject to the CBOE Proprietary Products Sliding Scale for Clearing Trading Permit Holder Proprietary Orders as set forth in Footnote 11 to the Fees Schedule.

[8] *See* Section 3 (Floor Brokerage and Par Official Fees) to the Fee Schedule and Footnotes 1, 5 and 15 of the Fees Schedule.

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *See* existing footnote 14 to Fees Schedule, which shall apply to the proposed new Product Research & Development Surcharge Fee.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(2).

Number SR–CBOE–2011–028 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2011–028. 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 Web site viewing and printing 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 publicly available. All submissions should refer to File Number SR–CBOE–2011–028 and should be submitted on or before May 12, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–9648 Filed 4–20–11; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 7421]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: "American Film Showcase—Contemporary Voices in Documentary and Fiction Film"

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/PE/C/CU–11–46.

Catalog of Federal Domestic Assistance Number: 19.415.

Key Dates: September 1, 2011 to January 31, 2013.

Application Deadline: May 25, 2011.

Executive Summary: The Cultural Programs Division of the Office of Citizen Exchanges in the Bureau of Educational and Cultural Affairs (ECA) announces an open competition for a cooperative agreement to administer the "American Film Showcase—Contemporary Voices in Documentary and Fiction Film." Through this program, ECA seeks to bring award-winning independent American documentaries and narrative films to audiences around the world to offer contemporary new insights into American life and culture and issues affecting democratic societies. The films and their filmmakers will be showcased at international venues, including U.S. Embassy-organized events and/or U.S. Embassy-supported international documentary and feature film festivals. This program will provide for travel by documentary and feature filmmakers and film experts in conjunction with public presentation of the films overseas. In addition to presentations, American filmmakers and film experts will be expected to conduct or participate in master classes, workshops, lectures and other outreach activities designed for a variety of audiences, with a focus on younger and underserved audiences. The classes are expected to include filmmaking workshops and training in digital technology, emergent media, and creative use of social media. The Showcase also will provide for follow-up programming that could include return visits overseas by American filmmakers or visits by young foreign filmmakers to the United States.

Through this solicitation, ECA seeks an organization to identify and select a collection of contemporary American documentary and narrative films that offer a broad overview of the best in current American independent filmmaking.

The films should demonstrate high artistic quality, illustrate diverse viewpoints, address a variety of social issues, and reflect the creativity inherent in an open, democratic society.

Documentaries are the priority focus of the American Film Showcase. They should address important and compelling themes and represent more than half of the films in the Showcase, with the remainder being narrative/fiction films. The Showcase also should include a small collection of animated shorts.

U.S. public and non-profit organizations meeting the provisions described in Internal Revenue code section 26 U.S.C. 501(c)(3) may submit proposals for the American Film Showcase.

For this competition, all applicants must demonstrate sufficient experience successfully exhibiting, distributing, or otherwise promoting American documentaries and narrative films. They also should demonstrate extensive knowledge of independent filmmaking—especially the documentary field—both in the U.S. and overseas.

Proposals from organizations with significant international experience and also educational programming experience will be more competitive.

I. Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Purpose

The Bureau seeks proposals that will showcase and promote contemporary American independent documentaries and narrative films and their filmmakers at a variety of international venues, including U.S. Embassy-organized events and U.S. Embassy-supported documentary film festivals, as well as at universities, museums, binational

centers and elsewhere. These events will help engage audiences overseas that have access to few if any American independent documentaries and narrative films. The Showcase will provide opportunities for international audiences to become exposed to American viewpoints on socially relevant issues as presented in these films; gain an understanding of the role of filmmaking as a catalyst for dialogue and for exploring solutions to contemporary problems; and allow American filmmakers to learn about life and culture in the foreign host countries.

Documentaries are the priority focus of the Showcase because they can inspire critical discussion of difficult topics, help foster mutual understanding and demonstrate the importance of free speech in bringing about public discourse to effect change. The documentaries should address a variety of compelling themes and reflect contemporary American society as seen by independent documentary filmmakers. These themes should include—but not be limited to—human rights, ethnic diversity, immigration, democratic processes, women and families, civil society, the environment, science and technology, education and other subjects reflecting contemporary life.

Documentaries should represent more than half of the films in the Showcase, with the remainder being narrative/fiction films. Selected narrative films should not be extraneous to the program but should elaborate in some way on the themes explored in the documentaries. ECA is looking for a creative and imaginative proposal to illustrate this connection. The American Film Showcase should include at least 15 and no more than 20 documentaries and narrative films, with documentaries comprising more than 50% of the total number. Applicant organizations should specify what that number should be and explain the reason for the documentary/narrative film ratio. In addition, the applicant also will select a small collection of animated shorts (approx. five) that demonstrate the latest in American animation techniques and increase programming interest, especially for younger audiences.

The applicant will be responsible for identifying and assembling a collection of American documentaries on diverse social themes, whose filmmakers will be available for overseas travel and programming by U.S. Embassies in connection with the presentation of their documentaries at Embassy-sponsored events or local film festivals, as well as other programming possibilities. The applicant also will be responsible for identifying and assembling a selection of narrative/fiction films that elaborate on the themes explored in the documentaries. Fiction filmmakers also must be available for overseas travel and presentation of their films at U.S. Embassy-sponsored events, local film festivals, and other program venues. In addition to presentations, all American Showcase filmmakers and film experts will be expected to conduct or participate in master classes, lectures and workshops on a variety of subjects, including filmmaking, story-telling, and cinematography; marketing, distribution and funding; animation techniques and computer animation; digital technology, cell-phone and YouTube filmmaking; other forms of emergent media, as well as creative use of social networking. They also are expected to be available for interviews, radio and television appearances, and other outreach activities. Audiences are expected to include film professionals, film students and festival goers; journalism students and other university students; younger students with little background in film; environmental activists and civil society representatives; NGO's seeking to help the disabled; as well as general audiences.

The Showcase also will provide for follow-up programming that could include the return of filmmakers or film experts to countries already visited for more in-depth programs. Alternatively, several young foreign filmmakers encountered during the Showcase tour might be invited to present their films at one or more festivals in the United States. The award recipient will develop follow-up programs in consultation with ECA and U.S. Embassies.

Applicants should submit proposals that show how they will identify and select the collection outlined here and how they will assist ECA in programming the films and their filmmakers in approximately 20 to 25 countries overseas.

Guidelines

The successful applicant must fully demonstrate a capacity to achieve the following:

(1) Identify the film professionals, subject matter specialists, and other experts who will be members of the panel(s) selecting the documentaries and narrative films. Provide credentials to illustrate the film and international expertise of the review panelists.

(2) Identify the specific selection criteria the review panel(s) will use to select the documentary and narrative films and participating filmmakers. The panel(s) may include an ECA representative as an observer.

Since the films and documentaries will be presented abroad as part of ECA's public diplomacy outreach, they should be balanced, represent the diversity of American political, social and cultural life, and take political and cultural sensitivities into consideration. ECA will review and approve nominated documentaries and narrative films and provide final approval for the selection panel(s) recommendations.

(3) Identify, select, and obtain approximately 15–20 American documentaries and narrative films appropriate for overseas presentation. Documentaries should comprise more than 50% of the collection and should reflect compelling themes and issues such as human rights, ethnic diversity, women's issues, and the environment as well as categories such as history and social documentaries, ethnographic films, biographies, and the arts. The narrative films should relate to the themes presented in the documentaries. The collection should include documentary and narrative films appropriate for entry into international film festivals if requested by U.S. embassies. It also should include a mix of feature length and short films to allow for flexible programming at various venues.

(4) Identify, select, and obtain at least five or more animated shorts that demonstrate the latest in American animation techniques, enhance program flexibility, and increase programming interest, especially for younger audiences.

(5) Identify the filmmakers, film professionals, and other film experts who will travel overseas to present the films and arrange their travel, assisting with passport, visa, immunizations, and other pre-travel preparations. Filmmakers must be U.S. citizens who are at least 21 years old; demonstrate the highest artistic ability; be conversant with broader aspects of contemporary American society and culture; be conversant with the other films in the collection, as well as their own; and be adaptable to unescorted, rigorous touring through regions where travel and performance situations may be difficult.

(6) Ensure documentaries and narrative features are available in appropriate formats for various kinds of screening venues and that sufficient copies of the entire collection are available for multiple bookings in various geographic areas. The applicant is responsible for producing Showcase film packages in appropriate formats

with sufficient copies for multiple exhibitions overseas.

(7) Obtain all necessary and appropriate rights clearances for the documentaries, narrative features and animation shorts included in the Showcase collection to ensure copyright protection and permit flexibility in programming. This includes obtaining translation rights.

(8) Obtain transcripts and dialogue lists for all documentaries and narrative films to allow for subtitling when needed. The applicant's budget should include funds to cover some subtitling, with ECA or individual embassies paying the balance.

(9) Ensure all Showcase documentaries and narrative films meet film festival criteria, in the event they are to be submitted for presentation at a U.S. Embassy-supported festival. Assist with festival entry forms.

(10) Work with ECA and U.S. Embassy Public Affairs Sections to develop program models for Embassy-sponsored or Embassy-organized film events that are appropriate for many different audiences and venues.

(11) Working in coordination with ECA, ensure Embassy Public Affairs Sections concur with suitability of selected Showcase films for their programming.

(12) Develop educational, programming and promotional materials to support the Showcase collection, including a website, study guides, posters, press kits, and media packets.

(13) Develop a comprehensive media and public relations strategy that includes outreach to international and U.S. media. The successful applicant will incorporate social media and innovative technologies into their outreach strategy. All final public relations strategies will be developed in consultation with and approved by ECA.

(14) Arrange and provide orientation sessions and pre-travel briefings for filmmakers and film experts, produce press materials and provide publicity and other support while the filmmakers are overseas.

(15) Evaluate program activities.

(16) Report on program activities to ECA immediately following each overseas visit and provide a summary report using a format that ECA will provide.

(17) Assist ECA and U.S. embassies with possible follow-on program development and implementation.

Proposals should reflect a practical understanding of global issues and demonstrate sensitivity to cultural, political, economic, and social differences in regions where the documentaries and narrative films will be shown and the filmmakers and experts programmed. Special attention should be given to describing the applicant organization's experience with documentary and narrative film, with planning and implementing logistical scenarios overseas, and with international and educational programming of the type described here. Please provide details of all such past experience. Applicants also should outline their project team's capacity for doing projects of this nature and provide a detailed sample program to illustrate planning capacity and ability to achieve program objectives. Applicants must identify all U.S. and foreign partner organizations and/or venues with whom they are proposing to collaborate, and describe previous cooperative projects in the section on "Institutional Capacity." For this competition, applicants must include in their proposal supporting materials that demonstrate a minimum of four years experience in conducting international exchange programs. Proposals also must include references with name and contact information for other assistance awards the applicant may have received so the Bureau may contact them directly and include examples of successful projects.

ECA intends to award one cooperative agreement to a qualified institution or organization to administer the American Film Showcase program globally. Activities funded through this cooperative agreement support the organization and implementation of programs in approximately 20 to 25 countries overseas.

Activities must include, but are not limited to:

(1) Selection of contemporary independent documentaries and narrative films with associated filmmakers.

(2) Production of film packages in appropriate formats with appropriate rights clearances for multiple exhibitions overseas.

(3) Development of promotional and corollary support material, including educational and media packets.

(4) Shipping overseas.

(5) Travel overseas by filmmakers and other experts.

(6) Advance program planning.

(7) Programming educational, media, and other outreach activities in consultation with ECA and U.S. embassies.

(8) Assisting filmmakers with passport, visa, immunizations, and other pre-travel preparations.

(9) Arranging and providing orientation sessions and pre-travel briefings, producing press materials, and providing support for publicity while the filmmakers are overseas.

(10) Working with ECA and directly with the media to publicize the American Film Showcase program.

(11) Evaluating program activities.

(12) Reporting on program activities to ECA.

(13) Providing suggestions for—and assistance with—follow-on program development, including the option of bringing foreign filmmakers to the United States.

Applicants must have experience in aspects of documentary and narrative filmmaking and in planning and implementation of programs—with particular emphasis on documentary programs, and on overseas and educational programs—and should address these elements in the proposal. Proposals that include strong programmatic and outreach elements targeted to young audiences will be more competitive. The grantee must be highly responsive and able to work in close consultation with ECA and the Public Affairs Sections of the participating U.S. embassies.

Successful applicants will include with their proposal specific criteria for the selection of American documentaries and filmmakers and the selection of narrative films and filmmakers.

ECA Responsibilities: This is a cooperative agreement, and ECA will be substantially involved in program activities above and beyond routine monitoring. ECA activities and responsibilities for this program are as follows:

(1) The final selection of films and filmmakers.

(2) Determination of the countries to which the films and filmmakers will travel. Priority countries will be those in all world regions of greatest importance to the Department of State's public diplomacy mission to build mutual understanding and support U.S. foreign policy objectives.

(3) Facilitative assistance with the overseas program arrangements, as needed.

(4) Final approval of all program arrangements.

(5) Approval of media and public relations strategies and arrangements for Showcase events.

II. Award Information

Type of Award: Cooperative Agreement. ECA's level of involvement in this program is listed under number I above.

Fiscal Year Funds: FY 2011.

Approximate Total Funding: $700,000.

Approximate Number of Awards: One.

Approximate Average Award: $700,000.

Anticipated Award Date: Pending availability of funds, September 1, 2011.

Anticipated Project Completion Date: January 31, 2013.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this cooperative agreement for two additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

(a.) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates making one award, in an amount up to $700,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition.

(b.) Technical Eligibility: All proposals must comply with the following: (1) Full adherence to the guidelines stated herein and in the Proposal Submission Instructions (PSI); (2) proposal submission deadline date; (3) non-profit organization status, and; (4) for purposes of this competition, a demonstrated track record in independent documentary and narrative film programming and at least four years experience in international exchanges, or your proposal will be declared technically ineligible and given no further consideration in the review process. Eligible applicants may submit only ONE proposal (TOTAL) in response to this RFGP. If multiple proposals are received, all submissions will be declared technically ineligible and will be given no further consideration in the review process. **Please note:** Applicant organizations are defined by their legal name, and EIN number as stated on their completed SF–424 and additional supporting documentation outlined in the PSI document.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information To Request an Application Package

Please contact Susan L. Cohen in the Cultural Programs Division, Office of Citizen Exchanges, ECA/PE/C/CU, SA–5, Third Floor, U.S. Department of State, 2200 C Street, NW., Washington, DC 20037, tel: 202–632–6424, fax: 202–632–9355, e-mail *CohenSL@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/PE/C/CU–11–46 located at the top of this announcement when making your request. Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

Please specify Program Officer Susan L. Cohen, Cultural Programs Division, ECA/PE/C/CU, and refer to the Funding Opportunity Number ECA/PE/C/CU–11–46 located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/grants/open2.html,* or from the Grants.gov Web site at *http://www.grants.gov.*

Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. "Application Deadline and Methods of Submission" section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document for additional formatting and technical requirements.

IV.3c. All federal award recipients and sub-recipients must maintain current registrations in the Central Contractor Registration (CCR) database and have a Dun and Bradstreet Data Universal Numbering System (DUNS) number. Recipients and sub-recipients must maintain accurate and up-to-date information in the CCR until all program and financial activity and reporting have been completed. All entities must review and update the information at least annually after the initial registration and more frequently if required information changes or another award is granted.

You must have nonprofit status with the IRS at the time of application. **Please note:** Effective January 7, 2009, all applicants for ECA federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, "Return of Organization Exempt From Income Tax," must include a copy of relevant portions of this form.

(2) Those who do not file IRS Form 990 must submit information above in the format of their choice.

In addition to final program reporting requirements, award recipients will also be required to submit a one-page document, derived from their program reports, listing and describing their grant activities. For award recipients, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its USASpending.gov website as part of ECA's FFATA reporting requirements.

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1. Adherence To All Regulations Governing the J Visa

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the "Responsible Officer" for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving awards (either a grant or cooperative agreement) under this RFGP will be third parties "cooperating with or assisting the sponsor in the conduct of the sponsor's program." The actions of recipient organizations shall be "imputed to the sponsor in evaluating the sponsor's compliance with" 22 CFR part 62. Therefore, the Bureau expects that any organization receiving an award under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq.*

The Bureau of Educational and Cultural Affairs places critically important emphases on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by recipient organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should explicitly state in writing that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR part 62 *et seq,* including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from:

Office of Designation, Private Sector Programs Division, U.S. Department of State, ECA/EC/D/PS, SA–5, 5th Floor, 2200 C Street, NW., Washington, DC 20037.

IV.3d.2. Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the recipient organization will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are "smart" (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.
2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.
3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.
4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (i.e., surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Recipient organizations will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit SF–424A—"Budget Information—Non-Construction Programs" along with a comprehensive budget for the entire program. The award may not exceed $700,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2. Allowable costs for the program include the following:

(1) Program Expenses, including but not limited to: Costs involved in the identification and selection of an American documentary and narrative film collection, including organization of selection panel/s; costs of producing multiple copies of the documentary and film collection; domestic and international travel for the selected filmmakers (per The Fly America Act) to approximately 20 to 25 countries overseas for an average of one-to-two weeks of programming; visas and immunizations; airport taxes and country entrance fees; honoraria for the filmmakers; educational materials and presentation items; excess and overweight baggage fees for educational material; trip itinerary booklets; press kits and promotional materials; follow-on activities; monitoring and evaluation; and international travel for program implementation and/or evaluation purposes. The following guidelines may be helpful in developing a proposed budget:

A. Travel Costs. International and domestic airfares. (per The Fly America Act), transit costs, ground transportation, and visas for American Film Showcase participants to travel to overseas program destinations.

B. Per Diem: For any U.S. portion of the travel, organizations should use the published Federal per diem rates. The Public Affairs Sections of the participating U.S. embassies and consulates are responsible for per diem abroad. Domestic per diem rates may be accessed at: *http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=17943&contentType=GSA_BASIC%20.*

C. Sub-grantees and Consultants. Sub-grantee organizations may be used, in which case the written agreement between the prospective grantee and sub-grantee should be included in the proposal. Sub-grants must be itemized in the budget under General Program Expenses. Consultants may be used to provide specialized expertise. Daily honoraria cannot exceed $250 per day, and applicants are strongly encouraged to use organizational resources, and to cost share heavily in this area.

D. Health Insurance. Each American Film Showcase participant traveling abroad will be covered under the terms of the ECA-sponsored Accident and Sickness Program for Exchanges (ASPE) insurance policy. Upon notification from the grant recipient, ECA will enroll participants in the plan for the period of the exchange. Details about the insurance program can be provided by the ECA contact for this solicitation. Insurance premiums are paid by ECA and should not be included in the grant proposal budget. However, the cost for international travel insurance for staff travel may be included in the proposal budget.

E. Honoraria for American Film Showcase filmmakers abroad. Daily honorarium is $200 per day for each filmmaker or film expert, including rest and travel days.

F. Educational and Promotional Items. ECA funds for educational and promotional items should not exceed $200 per filmmaker or film expert per program.

G. Excess Baggage. For brochures, educational and other support material related to overseas programming.

H. Immunizations/Visas. For purposes of a proposed budget, line items for immunizations should be estimated at $400 per filmmaker, and visas/visa photos should be estimated at $600 per filmmaker or film expert.

I. Press Kits. Each relevant U.S. embassy should receive appropriate contents for press kits. Items may be sent electronically with the understanding that in some cases, embassies may not be able to access large files or attachments. This line item may include funds for shooting and duplicating publicity photos and duplicating documentary clips. Hard copy versions of press kits also must be available.

J. Staff Travel. Allowable costs include domestic staff travel for one staff member to attend recruitment/selection events in approximately two U.S. cities. International staff travel will be allowable, especially if associated with monitoring and evaluation and undertaken in consultation with ECA. Cost-sharing for staff travel is strongly encouraged.

2. Administrative Costs. Costs necessary for the effective administration of the program may include salaries for grantee organization employees, benefits, and other direct and indirect costs per detailed instructions in the Solicitation Package. While there is no rigid ratio of administrative to program costs, proposals in which the administrative costs do not exceed 25% of the total requested from ECA grant funds will be more competitive on cost effectiveness. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application deadline and methods of submission:

Application Deadline Date: May 25, 2011.

Reference Number: ECA/PE/C/CU–11–46.

Methods of Submission: Applications may be submitted in one of two ways:

(1.) In hard-copy, via a nationally recognized overnight delivery service (*i.e.,* Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2.) electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1.—Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will not notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to "ECA/EX/PM."

The original and 14 copies of the application should be sent to:

Program Management Division, ECA–IIP/EX/PM, Ref.: ECA/PE/C/CU–11–046, SA–5, Floor 4, Department of State, 2200 C Street, NW., Washington, DC 20037.

(Include following language re: CD–ROM submission only if proposals will be forwarded to embassies. If post input is not necessary, delete language.)

Applicants submitting hard-copy applications must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal in text (.txt) or Microsoft Word format on CD–ROM. As appropriate, the Bureau will provide these files electronically to Public Affairs Section(s) at the U.S. embassy(ies) for its (their) review.

IV.3f.2.—Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the "Find" portion of the system.

Please Note: ECA bears no responsibility for applicant timeliness of submission or data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov.

Please follow the instructions available in the ''Get Started'' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the "For Applicants" section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to:

Grants.gov Customer Support, Contact Center Phone: 800–518–4726, Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time. E-mail: *support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Please refer to the Grants.gov Web site for definitions of various "application statuses" and the difference between a submission receipt and a submission validation.

Applicants will receive a validation e-mail from grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov. ECA will not notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov Web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for cooperative agreements resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the Program Idea: Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. Program Planning and Ability To Achieve Objectives: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above. Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. Multiplier Effect/Impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

4. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

5. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

6. Institution's Record/Ability: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau awards (grants or cooperative agreements) as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

7. Follow-on Activities: Proposals should provide a plan for continued follow-on activity (without Bureau support), ensuring that Bureau funded programs are not isolated events. Please also provide suggestions for follow-on program development to be funded by this grant.

8. Project Evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended.

9. Cost-effectiveness and Cost-Sharing: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive a Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.1b. Should any proposals include programming for Iranian audiences or include follow-on activities involving Iranian grantees, the following additional requirements would apply to this project:

A critical component of current U.S. government Iran policy is the support for indigenous Iranian voices. The State Department has made the awarding of grants for this purpose a key component of its Iran policy. As a condition of licensing these activities, the Office of Foreign Assets Control (OFAC) has requested the Department of State to follow certain procedures to effectuate the goals of Sections 481(b), 531(a), 571, 582, and 635(b) of the Foreign Assistance Act of 1961 (as amended); 18 U.S.C. 2339A and 2339B; Executive Order 13224; and Homeland Security Presidential Directive 6. These licensing conditions mandate that the Department conduct a vetting of potential Iran grantees and sub-grantees for counter-terrorism purposes. To conduct this vetting the Department will collect information from grantees and sub-grantees regarding the identity and background of their key employees and Boards of Directors.

Note: To assure that planning for the inclusion of Iran complies with requirements, please contact Susan L. Cohen at (202) 632–6424 for additional information.

Should any proposals include programming involving the Palestinian Authority, West Bank, and Gaza, the following additional requirements would apply: All awards made under this competition must be executed according to all relevant U.S. laws and policies regarding assistance to the Palestinian Authority, and to the West Bank and Gaza. Organizations must consult with relevant Public Affairs Offices before entering into any formal arrangements or agreements with Palestinian organizations or institutions.

Note: To assure that planning for the inclusion of the Palestinian Authority complies with requirements, please contact Susan L. Cohen, ECA/PE/C/CU, 202–632–6424, *cohensl@state.gov* for additional information.

VI.2. Administrative and National Policy Requirements:

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, "Cost Principles for Nonprofit Organizations."

Office of Management and Budget Circular A–21, "Cost Principles for Educational Institutions."

OMB Circular A–87, "Cost Principles for State, Local and Indian Governments."

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations

Please reference the following websites for additional information:

http://www.whitehouse.gov/omb/grants.
http://fa.statebuy.state.gov.

VI.3. Reporting Requirements: You must provide ECA with a hard copy original plus two copies of the following reports:

(1.) A final program and financial report no more than 90 days after the expiration of the award;

(2.) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov website—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

(3.) A SF–PPR, "Performance Progress Report" Cover Sheet with all program reports.

Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please

refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VI.4. Optional Program Data Requirements: Award recipients will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the agreement or who benefit from the award funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Susan L. Cohen, U.S. Department of State, Cultural Programs Division, ECA/PE/C/CU, SA–5, Third Floor, ref: ECA/PE/C/CU–11–46, 2200 C Street, NW., Washington, DC 20037, tel: 202–632–6424, fax: 202–632–9355, *CohenSL@state.gov/.*

All correspondence with the Bureau concerning this RFGP should reference the above title and Ref. number ECA/PE/C/CU–11–46.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: April 15, 2011.

Ann Stock,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–9727 Filed 4–20–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7420]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals; Community Solutions Program

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/PE/C/EUR–SCA–11–36.

Catalog of Federal Domestic Assistance Number: 19.415.

Key Dates:

Application Deadline: June 2, 2011.

Executive Summary: The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs invites proposal submissions for the Community Solutions Program in Africa, East Asia and the Pacific, Europe, the Middle East and North Africa, South and Central Asia, and the Western Hemisphere. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to conduct this professional fellowship program. The Community Solutions Program serves as a mechanism to support and encourage initiatives organized by young civic and community leaders, ages 25–38, currently working to address the economic, environmental, political, and social challenges confronting their respective local communities. Through four- to six-month professional fellowships with a specific leadership component, Community Solutions will provide opportunities for eligible individuals to more effectively address issues of concern in their own towns, cities and regions.

I. Funding Opportunity Description

I.1. Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

I.2. Purpose and Program Description

In an increasingly connected world, local economic, environmental, political, and social challenges are intimately linked to their counterparts on a global scale. So too, are each community's solutions and approaches to these problems. Making progress on today's complex global challenges on a local scale requires multi-dimensional public engagement strategies to forge partnerships, mobilize broad coalitions, and galvanize public opinion across all sectors of society.

The Community Solutions Program seeks to enhance the skills of approximately 65–75 civic and community leaders to more effectively address current economic, environmental, political, and social challenges in their communities through increased civic engagement and dialogue, leadership development, and an enhanced understanding of the way public and private resources interface for the common good. Through a four- to six-month fellowship, complemented by leadership development, Community Solutions will provide opportunities for eligible individuals to experience best practices, learn about effective models of public and community engagement, and develop concrete strategies to better address complex issues in their home communities.

ECA anticipates funding one project for approximately $1,500,000 to take place over the course of two years and target young professionals currently engaged in initiatives that aim to improve and enhance the economic, environmental, political, and social well-being of their communities.

As a global tool to address community-based challenges, the Community Solutions Program seeks to:

(1) Enhance the participants' ability to address complex local economic, environmental, political, and social challenges through a U.S.-based fellowship;

(2) Provide concrete tools to the participants to take on greater leadership roles in their communities, by developing their skills for effective

public discourse, professional collaboration, and project management;

(3) Cultivate professional ties with U.S. economic, environmental, political, and social institutions through collaborative and follow-on projects;

(4) Create a global network of diverse, multi-disciplinary, engaged professionals and civic leaders committed to problem solving and community engagement; and

(5) Expand and strengthen the relationship between the people of the United States and other countries to work in partnership to identify solutions to common issues facing their local communities.

The specific themes for the professional fellowships for this program are: (1) Accountability and Transparency, (2) Tolerance/Conflict Resolution, (3) Environmental Issues, and (4) Women's Issues.

Eligible countries and guidance for each theme are provided in Section I.8 below. Proposals that target professional fellowships that are unrelated to the themes referenced in this Request for Grant Proposals will be deemed technically ineligible and receive no further consideration in the review process.

I.3. Participants

For the purposes of this program, "participants" are defined as citizens of the eligible countries selected through a merit-based, global competition to travel to the United States to take part in a Community Solutions fellowship. Participants must be early to mid-career professionals with demonstrated leadership abilities, who are engaged in a community-based project with the express goal of addressing an economic, environmental, political, and/or social challenge confronting that community (either in or outside of their professional capacity). Participants must possess the intercultural and English language skills necessary to benefit fully from the fellowship. Therefore, strong preference will be given to individuals who have previously studied in the United States for a period of four months or longer, in order to build upon an already established understanding of U.S. society, culture, politics, and public institutions.

Fellows should be placed in community-based, non-profit or other civil society organizations, government offices, or legislative bodies (Federal or State, county or municipal). Hosting institutions and organizations should have expertise relevant to the fellowship's focus and be working on innovative community engagement projects in the non-profit or governmental spheres, including State legislatures, city councils or local government that express a willingness to collaborate on a specific project of mutual interest. Preference should be given to hosting sites that have identified potential collaborative projects or initiatives of interest to Community Solutions participants. In order to enhance the possibility that these collaborative initiatives continue after the conclusion of the fellowship, proposals should include follow-on projects that utilize existing Web or social technologies such as Twitter, blogs, SMS messaging systems, etc.

Through their respective fellowships, Community Solutions Fellows will work with seasoned civic leaders on pre-defined issues of mutual interest. Fellowship sites should provide opportunities and real life models for the Fellows to apply leadership lessons, explore creative approaches to global challenges, and develop concrete strategies to apply within their local communities. Linking Community Solutions Fellows, program hosts and mentors together, the Community Solutions program will work to create a worldwide network of engaged professionals and civic leaders.

Applicants should strive to maximize the number of participants and the length of the U.S.-based program at the given funding levels. Therefore, applicants who engage public and private partners for programming support, and employ other creative techniques to increase or stretch funding dollars will be deemed more competitive than those that do not, under the Cost Effectiveness and Cost-Sharing review criterion.

I.4. Partner Organizations

Applicants must identify the U.S.-based and any foreign-based organizations and individuals with whom they are proposing to collaborate to implement Community Solutions, and describe any previous cooperative activities. While having a presence in each eligible country is not required, applicants that are able to demonstrate institutional capacity in regions overseas (whether through their own resources or through partnerships with other organizations or institutions) will be given strong consideration. In addition, proposals must demonstrate capacity in the United States to secure effective and appropriate host placements for the participants. Proposals that include letters of commitment from possible U.S-based host organizations will be deemed more competitive under the Institutional Planning and Track Record criterion.

I.5. Project Activities

Projects should include placement of participants in carefully identified four- to six-month fellowships in non-profit organizations and other public and civil society organizations where they will work with seasoned community leaders on current complex global challenges related to the participants' community activities. Strong project designs will ground and augment the fellowship experience with leadership development activities that relate to civic engagement.

I.6. Program Guidelines

In a cooperative agreement, ECA's Office of Citizen Exchanges, Professional Exchanges Division, is substantially involved in program activities above and beyond routine monitoring. ECA anticipates working closely with the recipient organization to ensure that all aspects of the program model support the Community Solutions program goals. ECA activities and responsibilities for this program include participation in the design and direction of program implementation including recruitment and selection strategies, development of publicity and program materials, creation of online components, and execution of U.S. based and follow-on programming.

Additional guidelines and programming responsibilities of the recipient organization and ECA are located in the POGI.

I.7. Projected Timeline

ECA envisions the approximate dates of the Community Solutions program to be as follows:

- August 2011–December 2011: Recruitment and selection of foreign participants. Recruitment campaign for U.S. hosting institutions.
- January 2012–May 2012: Securing U.S.-based hosts and host sites.
- July/August 2012: Travel to the United States by all the foreign participants for orientation and placement at community Fellowship sites for a four- to six- month program.
- July/August 2012–December 2012: Community Solutions Fellowships
- December 2012: Travel to Washington, DC, for a two-day end of program workshop.
- January 2013–July 2013: Conduct any follow-on collaborative projects.

I.8. Professional Fellowship Themes

Themes and Eligible Partner Countries: Proposals need to embrace a global program design that incorporates all of the proposed themes under Community Solutions. Program participants should be from all of the

regions listed below. Proposals that target countries or themes not listed in this solicitation will be deemed technically ineligible. No guarantee is made or implied that every country will have participants.

1. Environmental Issues: Fellowships for the "Environmental Issues" theme should focus on issues related to water and resource management, food security, supporting the food supply (at local, regional or national levels), social entrepreneurship (to leverage science and technology to address ecological and environmental issues), low-carbon technologies, and the use of natural resources, pollution, sustainable energy, and climate change.

Geographic Regions and Eligible Countries:

- Africa: Democratic Republic of Congo, Liberia, Malawi, Rwanda, Sierra Leone, Tanzania, Zambia, Zimbabwe, and Uganda
- East Asia and the Pacific: Cambodia, Laos, Malaysia, Mongolia, Papua New Guinea, Philippines, Singapore, Thailand, and Vietnam
- Near East & North Africa: Egypt, Israel, Jordan, Lebanon, Syria, and West Bank/Gaza
- South and Central Asia: Bangladesh, Nepal, Maldives, and Sri Lanka, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan
- Western Hemisphere: Bolivia, Brazil, Costa Rica, El Salvador, Paraguay, Peru, and Trinidad and Tobago

2. Tolerance/Conflict Resolution: Fellowships should expose participants to issues and strategies that address tolerance, multi-culturalism, discrimination, and conflict resolution. Negotiation skills, the art of compromise, fair treatment of minority populations, and civil rights and responsibilities can also be addressed. Based on participants' specific interests, fellowships may need to be identified that deal with conflict resolution and crisis response tools for use in failing, failed, and post-conflict states and complex emergencies/disasters.

Geographic Regions and Eligible Countries:

- Africa: Democratic Republic of Congo, Liberia, Malawi, Rwanda, Sierra Leone, Tanzania, Zambia, Zimbabwe, and Uganda
- Near East & North Africa: Egypt, Israel, Jordan, Lebanon, Syria, and West Bank/Gaza
- South and Central Asia: Bangladesh, Nepal, Maldives, and Sri Lanka
- Western Hemisphere: Bolivia, Columbia, Dominican Republic, El Salvador, Haiti, Paraguay, Peru, and Trinidad and Tobago

3. Transparency and Accountability: Fellowships should provide exposure to institutions and concepts related to civil society, grass-roots democracy, good governance, anti-corruption, transparency, accountability, and/or free and fair elections. The important role of volunteerism and the culture of volunteerism can also be addressed, when appropriate.

Geographic Regions and Eligible Countries:

- Africa: Democratic Republic of Congo, Liberia, Malawi, Rwanda, Sierra Leone, Tanzania, Zambia, Zimbabwe, and Uganda
- East Asia and the Pacific: Cambodia, Laos, Malaysia, Mongolia, Papua New Guinea, Philippines, Singapore, Thailand, and Vietnam
- Europe: Albania, Bulgaria, the Czech Republic, Hungary, Macedonia, Romania, and Slovakia
- South and Central Asia: Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan

4. Women's Issues: Fellowships for the "Women's Issues" theme should focus on issues related to women's empowerment, women's education, women's health, women entrepreneurs, gender equality, and the prevention of all forms of exploitation, including domestic violence. Special emphasis should be placed on identifying Fellowships that will provide exposure to best practices for grassroots organizations working to advance the political, economic, and social empowerment of women.

Geographic Regions and Eligible Countries:

- Africa: Democratic Republic of Congo, Liberia, Malawi, Rwanda, Sierra Leone, Tanzania, Zambia, Zimbabwe, and Uganda
- Near East & North Africa: Egypt, Israel, Jordan, Lebanon, Syria, and West Bank/Gaza
- South and Central Asia: Bangladesh, Nepal, Maldives, Sri Lanka, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan
- Western Hemisphere: Brazil, Dominican Republic, and Haiti

II. Award Information

Type of Award: Cooperative Agreement. ECA's level of involvement in this program is listed under number I above.

Fiscal Year Funds: 2011

Approximate Total Funding: $1,500,000 pending the availability of funds

Approximate Number of Awards: 1

Approximate Average Award: $1,500,000

Anticipated Award Date: August 1, 2011

Anticipated Project Completion Date: July 31, 2013

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this cooperative agreement for two additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1. Eligible applicants: Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds: There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements: (a.) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates making one award, in an amount up to $1,500,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

(b.) Technical Eligibility: All proposals must comply with the following or they will result in your proposal being declared technically

ineligible and given no further consideration in the review process:

—Eligible applicants may not submit more than one proposal in this competition.

—If more than one proposal is received from the same applicant, all submissions will be declared technically ineligible and will receive no further consideration in the review process. **Please note:** Applicant organizations are defined by their legal name, and EIN number as stated on their completed SF–424 and additional supporting documentation outlined in the Proposal Submission Instructions (PSI) document.

—Eligible applicants may only propose working with the countries and themes listed in this RFGP.

—Please refer to the Proposal Submission Instructions (PSI) document for additional requirements.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information to Request an Application Package: Please contact David Gustafson in the Office of Citizen Exchanges, ECA/PE/C, U.S. Department of State, SA–5, 3rd Floor, 2200 C St, NW., Washington, DC 20522–0503, ph: (202) 632–6083, *GustafsonDP@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number: ECA/PE/C/EUR–SCA–11–36 located at the top of this announcement when making your request. Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Linnéa E. Alison and refer to the Funding Opportunity Number ECA/PE/C/EUR–SCA–11–36 located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/grants/open2.html,* or from the Grants.gov Web site at *http://www.grants.gov*.

Please read all information before downloading.

IV.3. Content and Form of Submission: Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. "Application Deadline and Methods of Submission" section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. All federal award recipients and sub-recipients must maintain current registrations in the Central Contractor Registration (CCR) database and have a Dun and Bradstreet Data Universal Numbering System (DUNS) number. Recipients and sub-recipients must maintain accurate and up-to-date information in the CCR until all program and financial activity and reporting have been completed. All entities must review and update the information at least annually after the initial registration and more frequently if required information changes or another award is granted.

You must have nonprofit status with the IRS at the time of application. **Please note:** Effective January 7, 2009, all applicants for ECA federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, "Return of Organization Exempt From Income Tax," must include a copy of relevant portions of this form.

(2) Those who do not file IRS Form 990 must submit information above in the format of their choice.

In addition to final program reporting requirements, award recipients will also be required to submit a one-page document, derived from their program reports, listing and describing their grant activities. For award recipients, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its *USASpending.gov* Web site as part of ECA's FFATA reporting requirements.

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1. Adherence to All Regulations Governing the J Visa

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the "Responsible Officer" for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving awards (either a grant or cooperative agreement) under this RFGP will be third parties "cooperating with or assisting the sponsor in the conduct of the sponsor's program." The actions of recipient organizations shall be "imputed to the sponsor in evaluating the sponsor's compliance with" 22 CFR part 62. Therefore, the Bureau expects that any organization receiving an award under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq.*

The Bureau of Educational and Cultural Affairs places critically important emphases on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by recipient organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should *explicitly state in writing* that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR part 62 *et seq.,* including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from:

Office of Designation, Private Sector Programs Division, U.S. Department of State, ECA/EC/D/PS, SA–5, 5th Floor, 2200 C Street, NW., Washington, DC 20037.

IV.3d.2. Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the recipient organization will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are "smart" (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.

2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.,* surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Recipient organizations will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit SF–424A—"Budget Information—Non-Construction Programs" along with a comprehensive budget for the entire program. Budget requests may not exceed $1,500,000. There must be a

summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2. Allowable costs for the program are outlined in the POGI. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission:

Application Deadline Date: June 2, 2011.

Reference Number: ECA/PE/C/EUR–SCA–11–36.

Methods of Submission:

Applications may be submitted in one of two ways:

(1.) In hard-copy, via a nationally recognized overnight delivery service (*i.e.,* Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, *etc.*), or

(2.) electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1 Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to "ECA/EX/PM".

The original and eight (8) copies of the application should be sent to:

Program Management Division, ECA–IIP/EX/PM, Ref.: ECA/PE/C/EUR–SCA–11–36, SA–5, Floor 4, Department of State, 2200 C Street, NW., Washington, DC 20037.

Applicants submitting hard-copy applications must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal in text (.txt) or Microsoft Word format on CD–ROM. As appropriate, the Bureau will provide these files electronically to Public Affairs Section(s) at the U.S. embassy(ies) for its (their) review.

IV.3f.2—Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the "Find" portion of the system.

Please Note: ECA bears no responsibility for applicant timeliness of submission or data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov.

Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the "For Applicants" section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to:

Grants.gov Customer Support, Contact Center Phone: 800–518–4726, Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time, e-mail: *support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. *There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.*

Please refer to the Grants.gov Web site, for definitions of various "application statuses" and the difference between a submission receipt and a submission validation. Applicants will receive a validation e-mail from grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. *Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.* ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov Web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Optional—IV.3f.3 You may also state here any limitations on the number of applications that an applicant may submit and make it clear whether the limitation is on the submitting organization, individual program director or both.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for

advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for cooperative agreements resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the Program Idea: Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. Program Planning and Ability to Achieve Objectives: Program objectives should be stated clearly and should reflect the applicant's expertise in the subject area and region. Objectives should respond to the topics in this announcement and should relate to the current conditions in the target country/countries. Detailed agendas and relevant work plans should complement the narrative in explaining how objectives will be achieved. Timelines should be comprehensive in nature and include deadlines for completion of major tasks. The substance of workshops, Fellowships, seminars and/or consulting should be described in detail with sample schedules included for each major workshop, seminar, or conference proposed. Responsibilities of proposed in-country partners should be clearly described. A discussion of how the applicant intends to address language issues should be included, if needed.

3. Institutional Capacity and Track Record: Proposals should include (1) the institution's mission and date of establishment; (2) detailed information about proposed in-country partner(s) and the history of the partnership; (3) an outline of prior awards—U.S. government and/or private support received within the scope of community development, leadership, or the RFGP's theme/country/region; and (4) descriptions and resumes of experienced staff members who will implement the program. The proposal should reflect the institution's expertise in the subject area and knowledge of the conditions in the target country/countries. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals. The Bureau strongly encourages applicants to submit letters of support from proposed in-country partners, part participants, or proposed hosting organizations.

4. Cost Effectiveness and Cost Sharing: Overhead and administrative costs in the proposal budget, including salaries, honoraria and subcontracts for services, should be kept to a minimum. Proposals in which the administrative costs do not exceed 25% of the total requested ECA grant funds will be more competitive under this criterion. Applicants are strongly encouraged to cost share a portion of overhead and administrative expenses. Cost-sharing and in-kind contributions, including contributions from the applicant, proposed in-country partner(s), and other sources should be included in the budget request. Proposal budgets that do not reflect cost sharing will be deemed not competitive under this criterion.

5. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue, program evaluation, *etc.*) and program content (orientation, wrap-up sessions, program meetings, resource materials, follow-up activities, *etc.*). Applicants should refer to the Bureau's Diversity, Freedom and Democracy Guidelines in the Proposal Submission Instructions (PSI).

6. Multiplier Effect/Follow-on Activities: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

7. Project Evaluation: Proposals should include a detailed plan to evaluate the program, both as activities unfold and at the end of the program. Program objectives should target clearly defined results in quantitative terms. Competitive evaluation plans will describe how applicant organizations would measure these results, including the evaluative methodology and tools to be utilized and proposals. Proposals should include draft data collection instruments (surveys, questionnaires, etc.) in Tab E and if relevant, samples data sets from similarly conducted programs.

8. Stewardship: Applicants should address how they will utilize innovative tools, low-carbon technologies, and socially responsible approaches to program implementation, including Web-based and other technologies, to reduce the program's carbon footprint and be a faithful steward of Federal resources.

VI. Award Administration Information

VI.1a. Award Notices:

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive a Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.1b The following additional requirements apply to this project:

All awards made under this competition must be executed according to all relevant U.S. laws and policies regarding assistance to the Palestinian Authority, and to the West Bank and Gaza. Organizations must consult with relevant Public Affairs Offices before entering into any formal arrangements or agreements with Palestinian organizations or institutions.

Note: To assure that planning for the inclusion of the Palestinian Authority complies with requirements, please contact please contact Linnéa E. Allison at (202) 632–6060, or *allisonle@state.gov,* for additional information.

VI.2. Administrative and National Policy Requirements: Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, "Cost Principles for Nonprofit Organizations."

Office of Management and Budget Circular A–21, "Cost Principles for Educational Institutions."

OMB Circular A–87, "Cost Principles for State, Local and Indian Governments."

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following websites for additional information: *http://www.whitehouse.gov/omb/grants. http://fa.statebuy.state.gov.*

VI.3. Reporting Requirements: You must provide ECA with an electronic copy of the following reports at *reportseca@state.gov:*

Mandatory:

(1.) A final program and financial report no more than 90 days after the expiration of the award;

(2.) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will be transmitted to OMB, and be made available to the public via OMB's *USAspending.gov* Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

(3.) A SF–PPR, "Performance Progress Report" Cover Sheet with all program reports.

(4.) Quarterly program and financial reports highlighting all major activities undertaken during the grant period including program analysis and lessons learned.

Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VI.4. Program Data Requirements:

Award recipients will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the agreement or who benefit from the award funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, please contact: Linnéa E. Allison, U.S. Department of State, Office of Citizen Exchanges, 2200 C Street (SA–5, 3rd Floor), NW., Washington, DC 20522–0503, (202) 632–6060 (tel.) (202) 632–6492 (fax), or *allisonle@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number—Community Solutions, ECA/PE/C/EUR–SCA–11–36.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: April 15, 2011.

Ann Stock,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–9731 Filed 4–20–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7419]

Privacy Act; System of Records: State-52, Parking Permit and Car Pool Records

Summary: Notice is hereby given that the Department of State proposes to amend an existing system of records, Parking Permit and Car Pool Records, State-52, pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a) and Office of Management and Budget Circular No. A–130, Appendix I. The Department's report was filed with the Office of Management and Budget on March 29, 2011.

It is proposed that the current system will retain the name "Parking Permit and Car Pool Records." It is also proposed that the amended system description will include revisions/additions to the following sections: Categories of individuals, Categories of records, Purpose, Safeguards and Retrievability as well as other administrative updates. The following sections have been added to the system of records, Parking Permit and Car Pool Records, State-52, to ensure Privacy Act of 1974 compliance: Purpose and Disclosure to Consumer Reporting Agencies. Any persons interested in commenting on the amended system of records may do so by submitting comments in writing to the Director, Office of Information Programs and Services, A/GIS/IPS, Department of State, SA–2, 515 22nd Street, Washington, DC 20522–8001. This system of records will be effective 40 days from the date of publication, unless we receive comments that will result in a contrary determination.

The amended system description, "Parking Permit and Car Pool Records, State-52," will read as set forth below.

Dated: March 29, 2011.

Steven J. Rodriguez,

Deputy Assistant Secretary of Operations, Bureau of Administration, U.S. Department of State.

STATE–52

SYSTEM NAME:

Parking Permit and Car Pool Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Department of State, 2201 C Street NW., Washington, DC 20520.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of State, U.S. Agency for International Development (USAID) employees, and full time employees of private organizations who have permits for Department parking facilities; individuals who car pool with employees holding such permits; and persons interested in joining a car pool.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains parking permit information: Full name; employee identification (ID) number of the employee issued the permit; year and make of car; license plate number and state of issuance; bureau; office telephone number and e-mail address; and type of parking permit and desired

payment plan, if applicable. Car pool information: Name of member of car pool; employee ID number if employee is a Department of State direct-hire employee; office telephone number and e-mail address; make of car; license plate number and state of issuance; years of government service; commuting zone; and desired payment plan, if applicable. Records relating to requests for disability parking accommodations at the Department.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. 121, Federal Management Regulation, Subchapter C (Real Property) at 41 CFR 102–74.265 through 74.310 (Parking Facilities).

PURPOSE:

The information in this system is collected to facilitate issuance and maintenance of parking permits for the Department of State and USAID personnel and full time employees of private organizations located in the Department's buildings. The information will be used to facilitate the formation of car pools with employees who have been issued parking permits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this system may be disclosed to the:

(1) Department of Transportation (DOT) to ensure the permit holder does not receive dual transit benefits and

(2) Foreign Affairs Recreation Association (FARA) for the purpose of payment collection.

The Department of State periodically publishes in the **Federal Register** its standard routine uses that apply to all of its Privacy Act systems of records. These notices appear in the form of a Prefatory Statement. These standard routine uses apply to Parking Permit and Car Pool Records, State-52.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and Electronic.

RETERIVABILITY:

By the individual's name, employee ID number, parking permit number, and license plate number.

SAFEGUARDS:

All users are given cyber security awareness training which covers the procedures for handling Sensitive but Unclassified information, including personally identifiable information. Annual refresher training is mandatory. In addition, all Foreign Service and Civil Service employees and those Locally Engaged Staff (LES) who handle Personally Identifiable Information (PII) are required to take the FSI distance learning course instructing employees on privacy and security requirements, including the rules of behavior for handling PII and the potential consequences if it is handled improperly. Before being granted access to Parking Permit and Car Pool Records, a user must first be granted access to the Department of State computer system.

Remote access to the Department of State network from non-Department owned systems is authorized only through a Department approved access program. Remote access to the network is configured with the Office of Management and Budget Memorandum M–07–16 security requirements which include but are not limited to two-factor authentication and time out function.

All Department of State employees and contractors with authorized access have undergone a thorough background security investigation. Access to the Department of State, its annexes and posts abroad is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. All paper records containing personal information are maintained in secured file cabinets in restricted areas, access to which is limited to authorized personnel only. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and ad hoc monitoring of computer usage.

When it is determined that a user no longer needs access, the user account is disabled.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with published record schedules of the Department of State and as approved by the National Archives and Records Administration (NARA). More specific information may be obtained by writing to the Director; Office of Information Programs and Services (A/GIS/IPS); SA–2; Department of State; 515 22nd Street NW.; Washington, DC 20522–8001 or by fax at 202–261–8571.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of General Services Management, A/OPR/GSM, Room B–258, Department of State, 2201 C Street NW., Washington, DC 20520.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe that the Parking Permit and Car Pool Records might have information pertaining to them, should write to the Director, Office of Information Programs and Services; SA–2; Department of State; 515 22nd Street NW.; Washington, DC 20522–8001. The individual must specify that he or she wishes the Parking Permit and Car Pool Records to be checked. At a minimum, the individual should include: Name; employee ID number if a Department employee; current mailing address and zip code; signature; a brief description of the circumstances that caused the creation of the record; and the approximate dates which give the individual cause to believe that the Office of General Services Management has records pertaining to him or her.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to them should write to the Director, Office of Information Programs and Services (address above).

CONTESTING RECORD PROCEDURES:

(See above).

RECORD SOURCE CATEGORIES:

By the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 2011–9734 Filed 4–20–11; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2011–17]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication

of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before May 2, 2011.

ADDRESSES: You may send comments identified by Docket Number FAA–2011–0001 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.

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: David Staples, 202–267–4058, Keira Jones, 202–267–4025, or Tyneka Thomas, 202–267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on April 14, 2011.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2011–0001.
Petitioner: Richmor Aviation, Inc.
Section of 14 CFR Affected: 14 CFR 135.225(f)
Description of Relief Sought: The petitioner requests an exemption to allow Richmor Aviation airplanes to make IFR takeoffs with less than 1 mile visibility and instrument approaches and landings with less than ½ mile visibility at military and foreign airports.

[FR Doc. 2011–9521 Filed 4–20–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications for Modification of Special Permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modification of special permits (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before May 6, 2011.

ADDRESS COMMENTS TO: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue, Southeast, Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for modification of special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on April 11, 2011.

Donald Burger,

Chief, Special Permits and Approvals Branch.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
MODIFICATION SPECIAL PERMITS				
9758–M	.....	Coleman Company, Inc., The Wichita, KS.	49 CFR 173.304(d)(3)(ii); 178.33.	To modify the special permit to authorize the transportation in commerce of an additional Division 2.1 material.
10511–M.	.....	Schlumberger Well Service, a Division of Schlumber Technology Corporation, Sugar Land, TX.	49 CFR 173.304;173.310 ..	To modify the special permit to authorize the transportation in commerce of Division 2.2 gases in non-specification packaging.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
12332–M.	.....	Toyota Motor Sales, U.S.A., Inc., Torrance, CA.	49 CFR 173.166(c) and (e)	To modify the special permit to add cargo vessel as an authorized mode of transportation and to allow consolidation of recycling parts from U.S. territories to be transported with recycling parts from the continental U.S.
14157–M.	.....	Worthington Cylinders of Canada, Tilbury, Ontario.	49 CFR 173.302a	To modify the special permit to change the test criteria for Hot-Dip Galvanized cylinders from the ratio rejection in § 180.209 to elastic expansion of the REE marked on the cylinder.
14921–M.	.....	ERA Helicopters LLC, Lake Charles, LA.	49 CFR 173.302(f)	To modify the special permit issued on an emergency basis to a permanent special permit.

[FR Doc. 2011–9497 Filed 4–20–11; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Application for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications for Special Permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before May 23, 2011.

Address Comments to: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue, SE., Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
NEW SPECIAL PERMITS				
15138–N	.....	Transportation Systems Solutions, Crystal Lake, IL.	49 CFR 172.101, 172.326, 172.514, 172.544, 173.2a, 173.120(b) and 173.150(f)(3).	To authorize the transportation in commerce of certain combustible liquids in bulk packagings that are also marine pollutants in the port area without placards. (modes 1, 2, 3)
15304–N	.....	Hillsboro Aviation, Hillsboro, OR.	49 CFR 172.101, Column (9B), 172.204(c)(3), 173.27(b)(2), 175.30(a)(1), 172.200, 172.300, and 172.400.	To authorize the transportation in commerce of certain hazardous materials by external load on helicopters in remote areas of the US without being subject to hazard communication requirements and quantity limitations where no other means of transportation is available. (mode 4)
15314–N	.....	Mohawk Electrical	49 CFR 173.62	To authorize the transportation in commerce of three (3) Mines, 1.1D in alternative packaging by motor vehicle and cargo vessel. (modes 1, 3)
15317–N	.....	The Dow Chemical Company, Philadelphia, PA.	49 CFR 172.203(a), 172.302(c), 173.31(e)(2)(ii), 173.314, and 173.323(c)(ii).	To authorize the transportation in commerce of ethylene oxide in a DOT 105J400W tank car with a maximum gross rail load (GRL) not to exceed 286,000 pounds. (mode 2)
15335–N	.....	Seastar Chemicals Inc., Sidney, BC.	49 CFR 173.158(f)(3)	To authorize the transportation in commerce of nitric acid up to 70% concentration in an alternative packaging configuration. (modes 1, 2, 3)

Issued in Washington, DC, on April 12, 2011.

Donald Burger,

Chief, Special Permits and Approvals Branch.

[FR Doc. 2011–9494 Filed 4–20–11; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Delays in Processing of Special Permits Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications Delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application are provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Delmer F. Billings, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, (202) 366–4535.

Key to "Reason for Delay"

1. Awaiting additional information from applicant.

2. Extensive public comment under review.

3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.

4. Staff review delayed by other priority issues or volume of special permit applications.

Meaning of Application Number Suffixes

N—New application.

M—Modification request.

PM—Party to application with modification request.

Issued in Washington, DC, on April 12, 2011.

Donald Burger,

Chief, Special Permits and Approvals Branch.

Application No.	Applicant	Reason for delay	Estimated date of completion
MODIFICATION TO SPECIAL PERMITS			
14167–M	Trinityrail; Dallas, TX	4	05–31–2011
6293–M	ATK Space Systems, Inc. (Former Grantee: ATK Thiokol, Inc.) Corine, UT	4	05–31–2011
14741–M	Weatherford International, Fort Worth, TX	4	05–31–2011
14650–M	Air Transport International, L.L.C. Little Rock, AR	4	05–31–2011
8826–M	Phoenix Air Group, Cartersville, GA	4	05–31–2011
10869–M	Norris Cylinder Company, Longview, TX	4	05–31–2011
8815–M	Florex Explosives, Inc., Crystal River, FL	4	05–31–2011
14447–M	SNF Holding Company, Riceboro, GA	4	05–31–2011
12561–M	Rhodia, Inc., Cranbury, NJ	4	05–31–2011
14617–M	Western International Gas & Cylinders, Inc., Bellville, TX	4	05–31–2011
3121–M	Department of Defense, Scott Air Force Base, IL	4	06–15–2011
14763–M	Weatherford International, Forth Worth, TX	4	06–15–2011
14909–M	Lake Clark Air, Inc., Port Alsworth, AK	4	06–30–2011
14860–M	Alaska Airlines, Seattle, WA	4	05–31–2011
12277–M	ISGEC (Former Grantee Indian Sugar and General Engineering Corporation), Haryana.	4	06–30–2011
10656–M	Conference of Radiation Control Program Directors, Inc., Frankfort, KY	4	06–30–2011
11406–M	Conference of Radiation Control Program Directors, Inc., Frankfort, KY	4	06–30–2011
14854–M	Airgas, Inc., Radnor, PA	4	05–31–2011
12629–M	TEA Technologies, Inc., Amarillo, TX	4	06–30–2011
14751–M	ExonMobil, Mont Belvieu, TX	1	05–31–2011
14206–M	Digital Wave Corporation, Centennial, CO	4	06–30–2011
13998–M	3AL Testing Corp., Denver, CO	4	06–30–2011
10898–M	Hydac Corporation, Bethlehem, PA	3	07–15–2011
14996–M	Skydance Helicopters of Northern Nevada, Inc., Minden, NV	4	06–30–2011
7951–M	ConAgra Foods, Naperville, IL	4	06–30–2011
11579–M	Dyno Nobel, Inc., Salt Lake City, UT	3	06–30–2011
11670–M	Schlumberger Oilfield UK Plc Dyce, Aberdeen Scotland, Ab	3	06–30–2011
10922–M	FIBA Technologies, Inc., Millbury, MA	4	05–31–2011
13736–M	ConocoPhillips, Anchorage, AK	4	05–31–2011
NEW SPECIAL PERMIT APPLICATIONS			
14813–N	Organ Recovery Systems, Des Plaines, IL	4	05–31–2011
14839–N	Matheson Tr-Gas, Inc., Basking Ridge, NJ	3	06–30–2011
14878–N	Humboldt County Waste Management Authority, Eureka, CA	4	05–31–2011
14872–N	Arkema, Inc., Philadelphia, PA	4	06–30–2011
14929–N	Alaska Island Air, Inc., Togiak, AK	4	06–30–2011
14945–N	Vulcan Construction Materials LP SE d/b/a Vulcan Materials Company, Atlanta, GA.	4	05–31–2011
14951–N	Lincoln Composites, Lincoln, NE	1	05–31–2011
14972–N	Air Products and Chemicals, Allentown, PA	4	05–31–2011
14992–N	VIP Transport, Inc., Corona, CA	4	05–31–2011
15036–N	UTLX Manufacturing, Incorporated, Alexandria, LA	4	05–31–2011
15053–N	Department of Defense, Scott Air Force Base, IL	4	06–30–2011

Application No.	Applicant	Reason for delay	Estimated date of completion
15080–N	Alaska Airlines, Seattle, WA	1	06–30–2011
15096–N	NK CO., LTD, Saha-Gu, Busan	4	05–31–2011
15099–N	Johnson Controls, Milwaukee, WI	4	05–31–2011
15110–N	Kidde Aerospace and Defense (KAD) Wilson, NC	4	05–31–2011
15112–N	Explo Systems.com	4	05–31–2011
15125–N	Essex Cryogenics of Missouri, Inc., *** St. Louis, MO	4	05–31–2011
15126–N	Trans Aero Ltd., Cheyenne, WY	4	05–31–2011
15131–N	CVA Inc., Mont Belvieu, TX	4	05–31–2011
15146–N	ITW Tech Spray LLC, Amarillo, TX	4	05–31–2011
15162–N	Billings Flying Service, Inc., Billings, MT	4	06–30–2011
15164–N	Alaska Juneau Aeronautics, Juneau, AK	4	05–31–2011
15233–N	ExpressJet Airlines, Inc., Houston, TX	4	06–30–2011
15234–N	Atlantic Southeast Airlines, Inc., Atlanta, GA	4	06–30–2011
15237–N	US Airways, Phoenix, AZ	4	06–30–2011
15251–N	Suburban Air Freight, Inc., Omaha, NE	4	06–30–2011

[FR Doc. 2011–9496 Filed 4–20–11; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35490]

Sierra Northern Railway—Acquisition and Operation Exemption—Union Pacific Railroad Company

Sierra Northern Railway (SERA), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from Union Pacific Railroad Company (UP), and to operate, pursuant to an Administration, Coordination, and License Agreement (License Agreement) between SERA and the Santa Cruz County Regional Transportation Commission (SCCRTC), a freight operating easement over a portion of a line of railroad known as the Santa Cruz Branch located between milepost 0.433, at the east boundary of Salinas Road, near Watsonville Junction, Cal., and milepost 31.39, near Davenport, Cal., including the interconnection with the Santa Cruz and Big Trees Railroad at milepost 20.4, at Santa Cruz, Cal. The total length of the line is approximately 31.0 miles, and there is an additional 3.6 miles of sidings and spurs.[1]

SERA states that SCCRTC and UP have entered into a Purchase and Sale Agreement (Purchase Agreement) under which UP will assign its retained freight operating easement to SERA at the closing of UP's sale of the physical assets of the line to SCCRTC. SERA further states that the License Agreement between SERA and SCCRTC will govern SERA's operation of the line following the closing of SCCRTC's purchase of the physical assets of the line from UP. SERA has disclosed that neither the freight rail easement nor the License Agreement contains a provision that may limit future interchange with a third-party connecting carrier.

On April 8, 2011, SCCRTC filed a related petition for a declaratory order in Docket No. FD 35491, *Santa Cruz County Regional Transportation Commission—Petition For Declaratory Order.* In that proceeding, SCCRTC seeks a determination that it will not become a common carrier as a result of its acquisition of the physical assets of the line pursuant to the Purchase Agreement.[2]

SERA states that it expects the transaction to be consummated in April 2011, on or shortly after the effective date of this exemption, and after a determination that the SCCRTC will not become a carrier by acquiring the physical assets of the line. However, the earliest this transaction may be consummated is May 5, 2011, the effective date of the exemption (30 days after the notice was filed).

SERA certifies that its projected annual revenues as a result of this transaction will not result in SERA becoming a Class II or Class I rail carrier and will not exceed $5 million annually.

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 to stay must be filed no later than April 28, 2011 (7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35490, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy must be served on David Magaw, President, Sierra Northern Railway, 341 Industrial Way, Woodland, CA 95776.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: April 15, 2011.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–9652 Filed 4–20–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from GATX Corporation (WB512–15—3/29/11), for permission to use certain data from the Board's Carload Waybill Samples. A copy of this request may be obtained from the Office of Economics.

The waybill sample contains confidential railroad and shipper data;

[1] SERA currently operates the line pursuant to a lease agreement with UP authorized in *Sierra Northern Railway—Lease and Operation Exemption—Union Pacific Railroad Company,* FD 35331 (STB served Dec. 17, 2009). SERA's existing lease with UP will remain in effect in part and be amended in part to account for UP's assignment of its freight operating easement to SERA, the SCCRTC's purchase of the physical assets of the line from UP, the License Agreement between SERA and the SCCRTC, and SERA's retained lease rights over the portion of the Santa Cruz Branch that is not the subject of the freight operating easement and the License Agreement.

[2] On April 8, 2011, UP filed a letter of support and a request for expedited review for SERA's notice of exemption filed in Docket No. FD 35490 and SCCRTC's petition for declaratory order filed in Docket No. FD 35491.

therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Scott Decker, (202) 245–0330.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2011–9708 Filed 4–20–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Agency Information Collection Activities; Proposed Information Collection Requirements; Comment Request

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision, Treasury (OTS) (collectively, the agencies).

ACTION: Notice.

SUMMARY: The agencies, as part of their continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The agencies are soliciting comment concerning a continuing information collection titled "Basel II Interagency Supervisory Guidance for the Supervisory Review Process (Pillar 2)."

DATES: Comments must be received by June 20, 2011.

ADDRESSES: Comments should be addressed to:

OCC: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention: 1557–0242, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy the comments at the OCC, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Board: You may submit comments, identified by FR 4199, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments by any of the following methods:

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal/notices.html.* Follow instructions for submitting comments on the Agency Web Site.
- *E-mail: Comments@FDIC.gov.* Include "Basel II Supervisory Guidance" in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (EST).
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Public Inspection:* All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal* including any personal information provided. Comments may be inspected and photocopied in the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226, between 9 a.m. and 5 p.m. (EST) on business days. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

OTS: Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet site at *http://www.ots.treas.gov.* In addition, interested persons may inspect the comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755. A copy of the comments may also be submitted to the OMB desk officer for the Agencies: By mail to U.S. Office of Management and Budget, 725 17th Street, NW., Room 10235, Washington, DC 20503 or by facsimile to 202–395–6974, Attention: Federal Banking Agency Desk Officer.

FOR FURTHER INFORMATION CONTACT:

OCC: Mary H. Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Cynthia Ayouch, Acting Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Leneta Gregorie, Counsel, (202) 898–3719, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Ira L. Mills, OTS Clearance Officer, at *Ira.Mills@ots.treas.gov,* (202) 906–6531, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the

Paperwork Reduction Act of 1995, the Agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The Agencies are requesting comment on a continuing information collection.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the Agencies' functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection 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.

Title of Information Collection: Basel II Interagency Supervisory Guidance for the Supervisory Review Process (Pillar 2).

OMB Control Numbers:

OCC: 1557–0242.
FRB: 7100–0320.
FDIC: 3064–0165.
OTS: 1550–0125.

Frequency of Response: Event-generated.

Affected Public:

OCC: National banks.
Board: State member banks and bank holding companies.
FDIC: Insured State nonmember banks and certain subsidiaries of these entities.
OTS: Savings associations and certain of their subsidiaries.

Abstract: The agencies issued a supervisory guidance document for implementing the supervisory review process (Pillar 2). The guidance was issued on July 31, 2008 (73 FR 44620).

Sections 37, 41, 43, and 46 of the guidance impose information collection requirements. Section 37 states that banks should state clearly the definition of capital used in any aspect of its internal capital adequacy assessment process (ICAAP) and document any changes in the internal definition of capital. Section 41 requires banks to maintain thorough documentation of ICAAP. Section 43 specifies that boards of directors must approve the bank's ICAAP, review it on a regular basis, and approve any changes. Boards of directors also are required under section 46 to periodically review the assessment of overall capital adequacy and to analyze how measures of internal capital adequacy compare with other capital measures (such as regulatory or accounting).

The agencies' burden estimates for these information collection requirements are summarized below. Note that the estimated number of respondents listed below include both institutions for which the Basel II risk-based capital requirements are mandatory and institutions that may be considering opting-in to Basel II (despite the lack of any formal commitment by most of these latter institutions).

Estimated Burden

OCC

Number of Respondents: 48.
Estimated Burden per Respondent: 140 hours.
Total Estimated Annual Burden: 6,720 hours.

Board

Number of Respondents: 18.
Estimated Burden per Respondent: 420 hours.
Total Estimated Annual Burden: 7,560 hours.

FDIC

Number of Respondents: 19.
Estimated Burden per Respondent: 420 hours.
Total Estimated Annual Burden: 7,980 hours.

OTS

Number of Respondents: 3.
Estimated Burden per Respondent: 420 hours.
Total Estimated Annual Burden: 1,260 hours.

Dated: April 12, 2011.

Michele Meyer,

Assistant Director, Legislative & Regulatory Activities Division, Office of the Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, April 8, 2011.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, the 11th day of April, 2011.

By order of the Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: April 14, 2011.

By the Office of Thrift Supervision.

Ira Mills,

Paperwork Clearance Officer, Office of the Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2011–9634 Filed 4–20–11; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds—Change in Business Address; American Economy Insurance Company, American States Insurance Company, SAFECO Insurance Company of Illinois

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 8 to the Treasury Department Circular 570, 2010 Revision, published July 1, 2010, at 75 FR 38192.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: Notice is hereby given by the Treasury that the above-named companies formally changed their "Business Address" as follows:

American Economy Insurance Company (NAIC #19690). Business Address: 350 E. 96th Street, Indianapolis, IN 46240.

American States Insurance Company (NAIC #19704). Business Address: 350 E. 96th Street, Indianapolis, IN 46240.

SAFECO Insurance Company of Illinois (NAIC #39012). Business Address: 27201 Bella Vista Parkway, Suite 130, Warrenville, IL 60555.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570 ("Circular"), 2010 Revision, to reflect these changes.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.*

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: March 11, 2011.

Laura Carrico,

Director, Financial Accounting and Services Division.

[FR Doc. 2011–9636 Filed 4–20–11; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Deletion of System of Records

AGENCY: Department of Veterans Affairs.

ACTION: Notice of deletion.

Notice is hereby given that the Department of Veterans Affairs (VA) is deleting a system of records entitled "Employee Reporting System for Project Administration and Control (Data Processing Centers)" (10VA31), which was first published 42 CFR 49732 dated September 27, 1977, and revised at 47 CFR 20242 dated May 11, 1982. The system of records known as "Employee Reporting System for Project Administration and Control (Data Processing Centers)—VA" is obsolete. The information was initially developed as a means to track project assignments and related task assignments and the time an employee spends on administrative overhead tasks. The requirement for VA to maintain this system of records no longer exists. System records have not been amended nor added in several years and, due to mandatory routine destruction, in accordance with applicable records disposition authority, no records exist in the system.

A "Report of Intention to Publish a Federal Register Notice of Deletion of a System of Records" and an advance copy of the system notice have been provided to the appropriate congressional committees and to the Director, Office of Management and Budget (OMB), as required by 5 U.S.C. 552a(r) and guidelines issued by OMB (65 CFR 77677), dated December 12, 2000. This system deletion is effective April 21, 2011.

Approved: March 31, 2011.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. 2011–9685 Filed 4–20–11; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 76 Thursday,
No. 77 April 21, 2011

Part II

Department of Energy

10 CFR Part 430
Energy Conservation Program: Energy Conservation Standards for Residential Clothes Dryers and Room Air Conditioners; Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EERE–2007–BT–STD–0010]

RIN 1904–AA89

Energy Conservation Program: Energy Conservation Standards for Residential Clothes Dryers and Room Air Conditioners

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

ACTION: Direct final rule.

SUMMARY: The Energy Policy and Conservation Act (EPCA) prescribes energy conservation standards for various consumer products and commercial and industrial equipment, including residential clothes dryers and room air conditioners. EPCA also requires the U.S. Department of Energy (DOE) to determine if amended standards for these products are technologically feasible and economically justified, and would save a significant amount of energy. In this direct final rule, DOE adopts amended energy conservation standards for residential clothes dryers and room air conditioners. A notice of proposed rulemaking that proposes identical energy efficiency standards is published elsewhere in today's **Federal Register**. If DOE receives adverse comment and determines that such comment may provide a reasonable basis for withdrawing the direct final rule, this final rule will be withdrawn and DOE will proceed with the proposed rule.

DATES: The final rule is effective on August 19, 2011 unless adverse comment is received by August 9, 2011. If adverse comments are received that DOE determines may provide a reasonable basis for withdrawal of the final rule, a timely withdrawal of this rule will be published in the **Federal Register**. If no such adverse comments are received, compliance with the standards in this final rule will be required on April 21, 2014.

ADDRESSES: Any comments submitted must identify the direct final rule for Energy Conservation Standards for Residential Clothes Dryers and Room Air Conditioners, and provide docket number EERE–2007–BT–STD–0010 and/or regulatory information number (RIN) number 1904–AA89. Comments may be submitted using any of the following methods:

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

2. *E-mail: home_appliance2.rulemaking@ee.doe.gov.* Include the docket number and/or RIN in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. If possible, please submit all items on a CD. It is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. *Telephone:* (202) 586–2945. If possible, please submit all items on a CD. It is not necessary to include printed copies.

For detailed instructions on submitting comments and additional information on the rulemaking process, *see* section VII of this document (Public Participation).

Docket: The docket is available for review at regulations.gov, including **Federal Register** notices, framework documents, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the regulations.gov index. Not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure. A link to the docket web page can be found at *http://www.regulations.gov*.

For further information on how to submit or review public comments or view hard copies of the docket in the Resource Room, contact Ms. Brenda Edwards at (202) 586–2945 or *e-mail: Brenda.Edwards@ee.doe.gov*.

FOR FURTHER INFORMATION CONTACT:

Stephen L. Witkowski, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–7463, *e-mail: stephen.witkowski@ee.doe.gov*.

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–7796, *e-mail: Elizabeth.Kohl@hq.doe.gov*.

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I. Summary of the Direct Final Rule

A. The Energy Conservation Standard Levels

The Energy Policy and Conservation Act (42 U.S.C. 6291 *et seq.*; EPCA or the Act), as amended, provides that any amended energy conservation standard DOE prescribes for covered products, such as residential clothes dryers (clothes dryers) and room air conditioners, must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, the amended standard must result in a significant conservation of energy. (42 U.S.C. 6295(o)(3)(B)) In accordance with these and other statutory provisions discussed in this notice, DOE adopts amended energy conservation standards for clothes dryers and room air conditioners as shown in Table I–1. The standards apply to all products listed in Table I–1 and manufactured in, or imported into, the United States on or after April 21, 2014.

TABLE I–1—AMENDED ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL CLOTHES DRYERS AND ROOM AIR CONDITIONERS

Product class	Minimum CEF levels* *lb/kWh*
Residential Clothes Dryers	
1. Vented Electric, Standard (4.4 ft^3 or greater capacity)	3.73
2. Vented Electric, Compact (120 V) (less than 4.4 ft^3 capacity)	3.61
3. Vented Electric, Compact (240 V) (less than 4.4 ft^3 capacity)	3.27
4. Vented Gas	3.30
5. Ventless Electric, Compact (240 V) (less than 4.4 ft^3 capacity)	2.55
6. Ventless Electric Combination Washer/Dryer	2.08
Product class	Minimum CEER levels** *Btu/Wh*
Room Air Conditioners	
1. Without reverse cycle, with louvered sides, and less than 6,000 Btu/h	11.0

Product class	Minimum CEER levels** *Btu/Wh*
2. Without reverse cycle, with louvered sides, and 6,000 to 7,999 Btu/h	11.0
3. Without reverse cycle, with louvered sides, and 8,000 to 13,999 Btu/h	10.9
4. Without reverse cycle, with louvered sides, and 14,000 to 19,999 Btu/h	10.7
5a. Without reverse cycle, with louvered sides, and 20,000 to 24,999 Btu/h	9.4
5b. Without reverse cycle, with louvered sides, and 25,000 Btu/h or more	9.0
6. Without reverse cycle, without louvered sides, and less than 6,000 Btu/h	10.0
7. Without reverse cycle, without louvered sides, and 6,000 to 7,999 Btu/h	10.0
8a. Without reverse cycle, without louvered sides, and 8,000 to 10,999 Btu/h	9.6
8b. Without reverse cycle, without louvered sides, and 11,000 to 13,999 Btu/h	9.5
9. Without reverse cycle, without louvered sides, and 14,000 to 19,999 Btu/h	9.3
10. Without reverse cycle, without louvered sides, and 20,000 Btu/h or more	9.4
11. With reverse cycle, with louvered sides, and less than 20,000 Btu/h	9.8
12. With reverse cycle, without louvered sides, and less than 14,000 Btu/h	9.3
13. With reverse cycle, with louvered sides, and 20,000 Btu/h or more	9.3
14. With reverse cycle, without louvered sides, and 14,000 Btu/h or more	8.7
15. Casement-only	9.5
16. Casement-slider	10.4

* CEF (Combined Energy Factor) is calculated as the clothes dryer test load weight in pounds divided by the sum of "active mode" per-cycle energy use and "inactive mode" per-cycle energy use in kWh.

** CEER (Combined Energy Efficiency Ratio) is calculated as capacity times active mode hours (equal to 750) divided by the sum of active mode annual energy use and inactive mode.

B. Benefits and Costs to Consumers

Table I–2 presents DOE's evaluation of the economic impacts of today's standards on consumers of clothes dryers and room air conditioners, as measured by the average life-cycle cost (LCC) savings and the median payback period. The average LCC savings are positive for all product classes of clothes dryers and room air conditioners for which consumers would be impacted by the standards.

TABLE I–2—IMPACTS OF TODAY'S STANDARDS ON CONSUMERS OF CLOTHES DRYERS AND ROOM AIR CONDITIONERS

Product class	Average LCC savings (2009$)	Median payback period (years)
Clothes Dryers		
Electric Standard	$14	5.3
Compact 120V	14	0.9
Compact 240V	8	0.9
Gas	2	11.7
Ventless 240V	*0	*n/a
Ventless Combination Washer/Dryer	*0	*n/a
Room Air Conditioners		
< 6,000 Btu/h, with Louvers	7	8.6
8,000–13,999 Btu/h, with Louvers	22	2.8
20,000–24,999 Btu/h, with Louvers	6	4.3
> 25,000 Btu/h, with Louvers	1	10.1
8,000–10,999 Btu/h, without Louvers	13	2.1
> 11,000 Btu/h, without Louvers	11	3.7

* Because the standard level is the same as the baseline efficiency level, no consumers are impacted and therefore calculation of a payback period is not applicable.

C. Impact on Manufacturers

The industry net present value (INPV) is the sum of the discounted cash flows to the industry from the base year through the end of the analysis period (2011 to 2043). Using a real discount rate of 7.2 percent, DOE estimates that the industry net present value (INPV) for manufacturers of clothes dryers is $1,003.6 million in 2009$. Under today's standards, DOE expects that manufacturers may lose 6.4 to 8.0 percent of their INPV, which is $64.5 to −$80.6 million. Additionally, based on DOE's interviews with the manufacturers of clothes dryers, DOE does not expect any plant closings or significant loss of employment.

For room air conditioners, DOE estimates that the INPV for manufacturers of room air conditioners is $956 million in 2009$ using a real discount rate of 7.2 percent. Under today's standards, DOE expects that manufacturers may lose 11.6 to 18.6 percent of their INPV, which is $111.3 to $177.6 million. Additionally, based on DOE's interviews with the manufacturers of room air conditioners, DOE does not expect any plant closings or significant loss of employment.

D. National Benefits

DOE's analyses indicate that today's standards would save a significant amount of energy over 30 years (2014–

2043)—an estimated 0.39 quads of cumulative energy for clothes dryers and 0.31 quads of cumulative energy for room air conditioners. The combined total, 0.70 quads, is equivalent to three-fourths of the estimated amount of energy used in 2008 to dry clothes in all U.S. homes. In addition, DOE expects the energy savings from today's standards to eliminate the need for approximately 0.98 gigawatts (GW) of generating capacity by 2043.

The cumulative national net present value (NPV) of total consumer costs and savings of today's standards in 2009$ ranges from $1.08 billion (at a 7-percent discount rate) to $3.01 billion (at a 3-percent discount rate) for clothes dryers, and from $0.57 billion (at a 7-percent discount rate) to $1.47 billion (at a 3-percent discount rate) for room air conditioners. This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased product costs for products purchased in 2014–2043, discounted to 2011.

In addition, today's standards would have significant environmental benefits. The energy savings would result in cumulative greenhouse gas emission reductions of approximately 36.1 million metric tons (Mt) of carbon dioxide (CO_2) from 2014 to 2043. During this period, the standards would also result in emissions reductions [1] of approximately 29.3 thousand tons of nitrogen oxides (NO_X) and 0.073 ton of mercury (Hg).[2] DOE estimates that the net present monetary value of the CO_2 emissions reductions is between $170 and $2,654 million, expressed in 2009$ and discounted to 2011. DOE also estimates that the net present monetary value of the NO_X emissions reductions, expressed in 2009$ and discounted to 2011, is $4.3 to $43.8 million at a 7-percent discount rate, and $8.9 to $91.7 million at a 3-percent discount rate.[3]

The benefits and costs of today's standards can also be expressed in terms of annualized values. The annualized monetary values are the sum of (1) the annualized national economic value, expressed in 2009$, of the benefits from operating the product (consisting primarily of operating cost savings from using less energy, minus increases in equipment purchase costs, which is another way of representing consumer NPV, plus (2) the monetary value of the benefits of emission reductions, including CO_2 emission reductions.[4] The value of the CO_2 reductions is otherwise known as the Social Cost of Carbon (SCC), and is calculated using a range of values per metric ton of CO_2 developed by a recent interagency process. The monetary benefits of emissions reductions are reported in 2009$ so that they can be compared with the other costs and benefits in the same dollar units. The derivation of the SCC values is discussed in section IV.M.

Although adding the value of consumer savings to the values of emission reductions provides a valuable perspective, two issues should be considered. First, the national operating cost savings are domestic U.S. consumer monetary savings that occur as a result of market transactions, while the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and the SCC are performed with different methods that use quite different timeframes for analysis. The national operating cost savings is measured for the lifetime of products shipped in 2014–2043. The SCC values, on the other hand, reflect the present value of future climate-related impacts resulting from the emission of one metric ton of carbon dioxide in each year. These impacts continue well beyond 2100.

Table I–3 shows the annualized values for the clothes dryer standards. Using a 7-percent discount rate and the SCC value of $22.1/ton in 2010 (in 2009$), the cost of the standards for clothes dryers in today's rule is $52.3 million per year in increased equipment costs, while the annualized benefits are $139.1 million per year in reduced equipment operating costs, $25.0 million in CO_2 reductions, and $0.9 million in reduced NO_X emissions. In this case, the net benefit amounts to $112.7 million per year. DOE has calculated that the annualized increased equipment cost can range from $50.5 to $66.6 million per year depending on assumptions and modeling of equipment price trends. The high end of this range corresponds to a constant real equipment price trend. Using the central estimate of energy-related benefits, DOE estimates that calculated net benefits can range from $98.4 to $114.5 million per year.

Using a 3-percent discount rate and the SCC value of $22.1/ton in 2010 (in 2009$), the cost of the standards for clothes dryers in today's rule is $55.4 million per year in increased equipment costs, while the benefits are $209.1 million per year in reduced operating costs, $25.0 million in CO_2 reductions, and $1.4 million in reduced NO_X emissions. In this case, the net benefit amounts to $180.1 million per year. DOE has calculated that the annualized increased equipment cost can range from $53.1 to $73.5 million per year depending on assumptions and modeling of equipment price trends. The high end of this range corresponds to a constant real equipment price trend. Using the central estimate of energy-related benefits, DOE estimates that calculated net benefits can range from $162.0 to $182.4 million per year.

Table I–4 shows the annualized values for the room air conditioner standards. Using a 7-percent discount rate and the SCC value of $22.1/ton in 2010 (in 2009$), the cost of the standards for room air conditioners in today's rule is $107.7 million per year in increased equipment costs, while the annualized benefits are $153.7 million per year in reduced equipment operating costs, $19.5 million in CO_2 reductions, and $0.999 million in reduced NO_X emissions. In this case, the net benefit amounts to $66.4 million per year.

DOE has calculated that the annualized increased equipment cost can range from $105.7 to $136.6 million per year depending on assumptions and modeling of equipment price trends. The high end of this range corresponds to a constant real equipment price trend. Using the central estimate of energy-related benefits, DOE estimates that calculated net benefits can range from $37.5 to $68.4 million per year.

Using a 3-percent discount rate and the SCC value of $22.1/ton in 2010 (in

[1] DOE calculates emissions reductions relative to the most recent version of the *Annual Energy Outlook* (*AEO*) Reference case forecast. As noted in section 15.2.4 of TSD chapter 15, this forecast accounts for regulatory emissions reductions through 2008, including the Clean Air Interstate Rule (CAIR, 70 FR 25162 (May 12, 2005)), but not the Clean Air Mercury Rule (CAMR, 70 FR 28606 (May 18, 2005)). Subsequent regulations, including the currently proposed CAIR replacement rule, the Clean Air Transport Rule (75 FR 45210 (Aug. 2, 2010)), do not appear in the forecast.

[2] Results for NO_X and Hg are presented in short tons. One short ton equals 2000 lbs.

[3] DOE is aware of multiple agency efforts to determine the appropriate range of values used in evaluating the potential economic benefits of reduced Hg emissions. DOE has decided to await further guidance regarding consistent valuation and reporting of Hg emissions before it once again monetizes Hg emissions reductions in its rulemakings.

[4] DOE used a two-step calculation process to convert the time-series of costs and benefits into annualized values. First, DOE calculated a present value in 2011, the year used for discounting the NPV of total consumer costs and savings, for the time-series of costs and benefits using discount rates of three and seven percent for all costs and benefits except for the value of CO_2 reductions. For the latter, DOE used a range of discount rates, as shown in Table I.3. From the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in 2011, that yields the same present value. The fixed annual payment is the annualized value. Although DOE calculated annualized values, this does not imply that the time-series of cost and benefits from which the annualized values were determined would be a steady stream of payments.

2009$), the cost of the standards for room air conditioners in today's rule is $111.0 million per year in increased equipment costs, while the benefits are $186.2 million per year in reduced operating costs, $19.5 million in CO_2 reductions, and $1.20 million in reduced NO_X emissions. In this case, the net benefit amounts to $95.9 million per year DOE has calculated that the range in the annualized increased equipment cost can range from $108.0 to $146.0 million per year depending on assumptions and modeling of equipment price trends. The high end of this range corresponds to a constant real equipment price trend. Using the central estimate of energy-related benefits, DOE estimates that calculated net benefits can range from $60.9 to $98.9 million per year.

TABLE I–3—ANNUALIZED BENEFITS AND COSTS OF AMENDED STANDARDS (TSL 4) FOR CLOTHES DRYERS SOLD IN 2014–2043

	Discount rate	Monetized *(million 2009$ year)*		
		Primary estimate *	Low estimate *	High estimate *
Benefits				
Operating Cost Savings	7%	139.1	120.6	158.3
	3%	209.1	177.4	241.3
CO_2 Reduction at $4.9/t **	5%	6.0	6.0	6.0
CO_2 Reduction at $22.1/t **	3%	25.0	25.0	25.0
CO_2 Reduction at $36.3/t **	2.5%	39.8	39.8	39.8
CO_2 Reduction at $67.1/t **	3%	76.0	76.0	76.0
NO_X Reduction at $2,519/ton **	7%	0.9	0.9	0.9
	3%	1.4	1.4	1.4
Total†	7% plus CO_2 range	146.1 to 216.1	127.6 to 197.6	165.3 to 235.3
	7%	165.0	146.5	184.3
	3%	235.4	203.7	267.6
	3% plus CO_2 range	216.5 to 286.5	184.8 to 254.8	248.7 to 318.7
Costs				
Incremental Product Costs#	7%	52.3	66.6	50.5
	3%	55.4	73.5	53.1
Net Benefits				
Total†	7% plus CO_2 range	93.7 to 163.7	61.0 to 131.0	114.8 to 184.8
	7%	112.7	79.9	133.8
	3%	180.1	130.2	214.5
	3% plus CO_2 range	161.1 to 231.1	111.3 to 181.3	195.6 to 265.6

* The primary, low, and high estimates utilize forecasts of energy prices and housing starts from the AEO2010 Reference case, Low Economic Growth case, and High Economic Growth case, respectively. Low estimate corresponds to the low net benefit estimate and uses the zero real price trend sensitivity for equipment prices, and the high estimate corresponds to the high net benefit estimate and utilizes the high technological learning rate sensitivity for the equipment price trend.

** The CO_2 values represent global values (in 2009$) of the social cost of CO_2 emissions in 2010 under several scenarios. The values of $4.9, $22.1, and $36.3 per metric ton are the averages of SCC distributions calculated using 5-percent, 3-percent, and 2.5-percent discount rates, respectively. The value of $67.1 per ton represents the 95th percentile of the SCC distribution calculated using a 3-percent discount rate. The value for NO_X (in 2009$) is the average of the low and high values used in DOE's analysis.

† Total benefits for both the 3-percent and 7-percent cases are derived using the SCC value calculated at a 3-percent discount rate, which is $22.1/ton in 2010 (in 2007$). In the rows labeled as "7% plus CO_2 range" and "3% plus CO_2 range," the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

TABLE I–4—ANNUALIZED BENEFITS AND COSTS OF AMENDED STANDARDS (TSL 4) FOR ROOM AIR CONDITIONERS SOLD IN 2014–2043

	Discount rate	Monetized (*million 2009$/year*)		
		Primary estimate *	Low estimate *	High estimate *
Benefits				
Operating Cost Savings	7%	153.7	145.1	161.9
	3%	186.2	174.2	197.3
CO_2 Reduction at $4.9/t **	5%	5.0	5.0	5.0
CO_2 Reduction at $22.1/t **	3%	19.5	19.5	19.5
CO_2 Reduction at $36.3/t **	2.5%	30.7	30.7	30.7
CO_2 Reduction at $67.1/t **	3%	59.4	59.4	59.4
NO_X Reduction at $2,519/ton **	7%	0.999	0.999	0.999
	3%	1.197	1.197	1.197
Total †	7% plus CO_2 range	159.6 to 214.0	151.1 to 205.5	167.9 to 222.3
	7%	174.1	165.5	182.4
	3%	206.8	194.9	218.0
	3% plus CO_2 range	192.3 to 246.7	180.4 to 234.8	203.5 to 257.9

TABLE I–4—ANNUALIZED BENEFITS AND COSTS OF AMENDED STANDARDS (TSL 4) FOR ROOM AIR CONDITIONERS SOLD IN 2014–2043—Continued

	Discount rate	Monetized (*million 2009$/year*)		
		Primary estimate *	Low estimate *	High estimate *
Costs				
Incremental Product Costs	7% 3%	107.7 111.0	136.6 146.0	105.7 108.0
Net Benefits				
Total†	7% plus CO_2 range 7% 3% 3% plus CO_2 range	51.9 to 106.3 66.4 95.9 81.4 to 135.8	43.4 to 97.8 28.9 48.9 34.4 to 88.8	62.2 to 116.6 76.7 110.0 95.5 to 149.9

* The primary, low, and high estimates utilize forecasts of energy prices and housing starts from the AEO2010 Reference case, Low Economic Growth case, and High Economic Growth case, respectively. Low estimate corresponds to the low net benefit estimate and uses the zero real price trend sensitivity for equipment prices, while the high estimate corresponds to the high net benefit estimate and utilizes the high technological learning rate sensitivity for the equipment price trend.

** The CO_2 values represent global values (in 2009$) of the social cost of CO_2 emissions in 2010 under several scenarios. The values of $4.9, $22.1, and $36.3 per metric ton are the averages of SCC distributions calculated using 5-percent, 3-percent, and 2.5-percent discount rates, respectively. The value of $67.1 per ton represents the 95th percentile of the SCC distribution calculated using a 3-percent discount rate. The value for NO_X (in 2009$) is the average of the low and high values used in DOE's analysis.

† Total benefits for both the 3-percent and 7-percent cases are derived using the SCC value calculated at a 3-percent discount rate, which is $22.1/ton in 2010 (in 2009$). In the rows labeled as "7% plus CO_2 range" and "3% plus CO_2 range," the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

E. Conclusion

Based on the analyses culminating in this final rule, DOE found the benefits to the nation of the standards (energy savings, consumer LCC savings, national NPV increase, and emission reductions) outweigh the burdens (loss of INPV and LCC increases for some users of these products). DOE has concluded that the standards represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in significant conservation of energy. DOE further notes that clothes dryers and room air conditioners achieving these standard levels are already commercially available.

II. Introduction

A. Authority

Title III of EPCA sets forth a variety of provisions designed to improve energy efficiency. Part B of title III (42 U.S.C. 6291–6309) provides for the Energy Conservation Program for Consumer Products other than Automobiles.[5] The program covers consumer products and certain commercial equipment (referred to hereafter as "covered products"), including clothes dryers and room air conditioners (42 U.S.C. 6292(a)(2) and (8)), and the Act prescribes energy conservation standards for certain clothes dryers (42 U.S.C. 6295(g)(3)) and for room air conditioners (42 U.S.C. 6295(c)(1)). EPCA further directs DOE to conduct two cycles of rulemakings to determine whether to amend these standards. (42 U.S.C. 6295(c)(2) and (g)(4)) As explained in further detail in section II.C, "Background," this rulemaking represents the second round of amendments to both the clothes dryer and room air conditioner standards.

DOE notes that this rulemaking is one of the required agency actions in the consolidated Consent Decree in *State of New York, et al.* v. *Bodman et al.,* 05 Civ. 7807 (LAP), and *Natural Resources Defense Council, et al.* v. *Bodman, et al.,* 05 Civ. 7808 (LAP), DOE is required to complete a final rule for amended energy conservation standards for room air conditioners and clothes dryers that must be sent to the **Federal Register** by June 30, 2011.

Under the Act, DOE's energy conservation program for covered products consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. The Federal Trade Commission (FTC) is responsible for labeling, and DOE implements the remainder of the program. The Act authorizes DOE, subject to certain criteria and conditions, to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product. (42 U.S.C. 6293) Manufacturers of covered products must use the DOE test procedure as the basis for certifying to DOE that their products comply with applicable energy conservation standards adopted under EPCA and for representing the efficiency of those products. (42 U.S.C. 6293(c) and 6295(s)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted under EPCA. *Id.* The test procedures for clothes dryers and room air conditioners appear at title 10 Code of Federal Regulations (CFR) part 430, subpart B, appendices D and F, respectively.

EPCA provides criteria for prescribing amended standards for covered products. As indicated above, any amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, EPCA precludes DOE from adopting any standard that would not result in significant conservation of energy. (42 U.S.C. 6295(o)(3)) EPCA also provides that, in determining whether a standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i)) DOE must do so after receiving comments on the proposed standard and by considering, to the greatest extent practicable, the following seven factors:

1. The economic impact of the standard on manufacturers and consumers of the products subject to the standard;

2. The savings in operating costs throughout the estimated average life of the covered products in the type (or

[5] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the imposition of the standard;

3. The total projected amount of energy savings likely to result directly from the imposition of the standard;

4. Any lessening of the utility or the performance of the 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 conservation; and

7. Other factors the Secretary considers relevant. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

The Energy Independence and Security Act of 2007 (EISA 2007; Public Law 110–140) amended EPCA, in relevant part, to grant DOE authority to issue a final rule (hereinafter referred to as a "direct final rule") establishing an energy conservation standard on receipt of a statement submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates) as determined by the Secretary, that contains recommendations with respect to an energy conservation standard that are in accordance with the provisions of 42 U.S.C. 6295(o). A notice of proposed rulemaking (NOPR) that proposes an identical energy efficiency standard must be published simultaneously with the final rule, and DOE must provide a public comment period of at least 110 days on this proposal. 42 U.S.C. 6295(p)(4). Not later than 120 days after issuance of the direct final rule, if one or more adverse comments or an alternative joint recommendation are received relating to the direct final rule, the Secretary must determine whether the comments or alternative recommendation may provide a reasonable basis for withdrawal under 42 U.S.C. 6295(o) or other applicable law. If the Secretary makes such a determination, DOE must withdraw the direct final rule and proceed with the simultaneously published notice of proposed rulemaking. DOE must publish in the **Federal Register** the reason why the direct final rule was withdrawn. *Id.*

The Consent Decree in *State of New York, et al.* v. *Bodman et al.,* described above, defines a "final rule" to have the same meaning as in 42 U.S.C. 6295(p)(4) and defines "final action" as a final decision by DOE. As this direct final rule is issued under authority at 42 U.S.C. 6295(p)(4) and constitutes a final decision by DOE which becomes legally effective 120 days after issuance, absent an adverse comment that leads the Secretary to withdraw the direct final rule, DOE asserts that issuance of this direct final rule on or before the date required by the court constitutes compliance with the Consent Decree in *State of New York, et al.* v. *Bodman et al.*

Furthermore, EPCA contains what is commonly known as an "anti-backsliding" provision, which mandates that the Secretary not prescribe any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe a new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States of any covered product type (or class) with performance characteristics, features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4))

EPCA also establishes a rebuttable presumption that a standard is economically justified if 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)

EPCA requires DOE to specify a different standard level than that which applies generally to a type or class of products for any group of covered products that have the same function or intended use if DOE determines that products within such group (A) consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies such a different standard for a group of products, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE deems appropriate. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2))

Federal energy conservation requirements for covered products generally supersede state laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297 (a)–(c)) DOE can, however, grant waivers of Federal preemption for particular state laws or regulations, in accordance with the procedures and other provisions of section 327(d) of the Act. (42 U.S.C. 6297(d))

EPCA also requires that energy conservation standards address standby mode and off mode energy use. Specifically, when DOE adopts a standard for a covered product after July 1, 2010 it must, if justified by the criteria for adoption of standards in section 325(o) of EPCA, incorporate standby mode and off mode energy use into the standard, if feasible, or adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)) As set forth below, the standards for clothes dryers and room air conditioners at 10 CFR 430.32 (h) and (b) are minimum energy factors (EF) and minimum energy efficiency ratios (EER), respectively. Neither of these metrics incorporates standby or off mode energy use, with the limited exception that the EF in appendix D addresses the energy use of pilot lights in gas clothes dryers. (DOE notes that standing pilot lights were prohibited by EPCA for products manufactured after January 1, 1988. As a result, the final amended test procedure, published on January 6, 2011, eliminates measurement of the energy use of such pilot lights. Similarly, DOE does not incorporate the energy use of pilot lights in the metric for gas clothes dryers established in this final rule.) By contrast, the standard levels DOE considered in this direct final rule are expressed in terms of the "combined energy factor" (CEF) for clothes dryers and the "combined energy efficiency ratio" (CEER) for room air conditioners, and each of these metrics incorporates energy use in all modes, including the standby and off modes. DOE uses these metrics in the standards it adopts in this direct final rule.

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011 (76 FR 3281, Jan. 21, 2011). EO 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation

only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

We emphasize as well that Executive Order 13563 requires agencies "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." In its guidance, the Office of Information and Regulatory Affairs has emphasized that such techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes." For the reasons stated in the preamble, DOE believes that today's direct final rule is consistent with these principles, including that, to the extent permitted by law, agencies adopt a regulation only upon a reasoned determination that its benefits justify its costs and select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits.

Consistent with EO 13563, and the range of impacts analyzed in this rulemaking, the energy efficiency standard adopted herein by DOE achieves maximum net benefits.

B. Background

1. Current Standards

In a final rule published on May 14, 1991, DOE prescribed the current Federal energy conservation standards for clothes dryers manufactured on or after May 14, 1994. 56 FR 22250. This rule completed the first of the two rulemakings required under 42 U.S.C. 6295(g)(4) to consider amending the standards for clothes dryers. The current standards consist of four minimum EFs, expressed in pounds of clothing load (lb) per kilowatt-hour (kWh), one for gas dryers and one each for three different types of electric dryers. 10 CFR 430.32(h). These standards are set forth in Table II.1 below.

TABLE II.1—RESIDENTIAL CLOTHES DRYER CURRENT ENERGY CONSERVATION STANDARDS

Product class	EF *lb/kWh*
Electric, Standard (4.4 cubic feet (ft^3) or greater capacity)	3.01
Electric, Compact (120 V) (less than 4.4 ft^3 capacity)	3.13
Electric, Compact (240 V) (less than 4.4 ft^3 capacity)	2.90
Gas	2.67

In a final rule published on September 24, 1997, DOE prescribed the current Federal energy conservation standards for room air conditioners manufactured on or after October 1, 2000. 62 FR 50122. This rule completed the first of the two rulemakings required under 42 U.S.C. 6295(c)(2) to consider amending the standards for room air conditioners. The current standards consist of minimum EERs, expressed as cooling capacity in British thermal units (Btu) per hour (h) divided by electrical input power in watts (W), that vary depending on the size of the room air conditioner, whether it has louvered sides and a heating cycle, and whether it is for casement installations. 10 CFR 430.32(b). These standards are set forth in Table II.2 below.

TABLE II.2—ROOM AIR CONDITIONER CURRENT ENERGY CONSERVATION STANDARDS

Product class	EER *Btu/Wh*
Without reverse cycle, with louvered sides, and less than 6,000 Btu/h	9.7
Without reverse cycle, with louvered sides, and 6,000 to 7,999 Btu/h	9.7
Without reverse cycle, with louvered sides, and 8,000 to 13,999 Btu/h	9.8
Without reverse cycle, with louvered sides, and 14,000 to 19,999 Btu/h	9.7
Without reverse cycle, with louvered sides, and 20,000 Btu/h or more	8.5
Without reverse cycle, without louvered sides, and less than 6,000 Btu/h	9.0
Without reverse cycle, without louvered sides, and 6,000 to 7,999 Btu/h	9.0
Without reverse cycle, without louvered sides, and 8,000 to 13,999 Btu/h	8.5
Without reverse cycle, without louvered sides, and 14,000 to 19,999 Btu/h	8.5
Without reverse cycle, without louvered sides, and 20,000 Btu/h or more	8.5
With reverse cycle, with louvered sides, and less than 20,000 Btu/h	9.0
With reverse cycle, without louvered sides, and less than 14,000 Btu/h	8.5
With reverse cycle, with louvered sides, and 20,000 Btu/h or more	8.5
With reverse cycle, without louvered sides, and 14,000 Btu/h or more	8.0
Casement-Only	8.7
Casement-Slider	9.5

2. History of Standards Rulemaking for Residential Clothes Dryers and Room Air Conditioners

EPCA prescribes energy conservation standards for clothes dryers and for room air conditioners, consisting of a requirement that gas clothes dryers manufactured after January 1, 1988 not be equipped with constant burning pilots and performance standards (minimum EER levels) for room air conditioners. (42 U.S.C. 6295(c)(1) and (g)(3)) These amendments also required, for both products, that DOE conduct two cycles of rulemakings to determine whether to amend these standards. (42 U.S.C. 6295(c)(2) and (g)(4)) As indicated above, DOE completed the first of these rulemaking cycles for clothes dryers in 1991, by adopting performance standards for gas and electric products. DOE completed the first of these rulemaking cycles for room air conditioners in 1997 by adopting amended minimum EER levels.

DOE initiated this rulemaking on October 9, 2007 by publishing a notice announcing the availability of the framework document, the "Energy Conservation Standards Rulemaking Framework Document for Residential Clothes Dryers and Room Air Conditioners." In this notice, DOE also announced a public meeting and requested public comment on the matters raised in the framework document. 72 FR 57254 (October 9, 2007). The framework document describes the procedural and analytical approaches that DOE anticipated using to evaluate energy conservation standards for clothes dryers and room air conditioners, and identified various issues to be resolved in conducting this rulemaking. The framework document is available at *http://www1.eere.energy.gov/buildings/appliance_standards/*.

DOE held the public meeting on October 24, 2007 to present the contents of the framework document, describe the analyses it planned to conduct during the rulemaking, seek comments from interested parties on these subjects, and, in general, inform interested parties about, and facilitate their involvement in, the rulemaking. Interested parties discussed the following major issues at the public meeting: test procedure revisions; product classes; technology options; approaches to the engineering, life-cycle cost, payback period and national impact analyses; efficiency levels analyzed in the engineering analysis; and the approach for estimating typical energy consumption. At the meeting and during the period for commenting on the framework document, DOE received many comments that helped it identify and resolve issues involved in this rulemaking.

DOE then gathered additional information and performed preliminary analyses to help develop potential energy conservation standards for clothes dryers and room air conditioners. This process culminated in DOE's announcement of the availability of its preliminary technical support document (preliminary TSD) and another public meeting to discuss and receive comments on the following matters: the product classes DOE planned to analyze; the analytical framework, models, and tools that DOE was using to evaluate standards; the results of the preliminary analyses performed by DOE; and potential standard levels that DOE could consider. 75 FR 7987 (Feb. 23, 2010) (the February 2010 notice). DOE also invited written comments on the preliminary analysis. *Id.* (The preliminary TSD is available at *http://www1.eere.energy.gov/buildings/appliance_standards/residential/preliminary_analysis_tsd.html.*) DOE also stated its interest in receiving views concerning other relevant issues that participants believe would affect energy conservation standards for clothes dryers or room air conditioners. *Id.* at 7990.

The preliminary TSD provided an overview of the activities DOE undertook in developing standards for clothes dryers and room air conditioners, and discussed the comments DOE received in response to the framework document. It also described the analytical framework that DOE uses in this rulemaking, including a description of the methodology, the analytical tools, and the relationships among the various analyses that are part of the rulemaking. The preliminary TSD presented and described in detail each analysis DOE performed, including descriptions of inputs, sources, methodologies, and results. These analyses were as follows:

- A *market and technology assessment* addressed the scope of this rulemaking, identified the potential classes for clothes dryers and room air conditioners, characterized the markets for these products, and reviewed techniques and approaches for improving their efficiency.
- A *screening analysis* reviewed technology options to improve the efficiency of clothes dryers and room air conditioners, and weighed these options against DOE's four prescribed screening criteria.
- An *engineering analysis* estimated the manufacturer selling prices (MSPs) associated with more energy-efficient clothes dryers and room air conditioners.
- An *energy use analysis* estimated the annual energy use of clothes dryers and room air conditioners.
- A *markups analysis* converted estimated MSPs derived from the engineering analysis to consumer prices.
- A *life-cycle cost analysis* calculated, for individual consumers, the discounted savings in operating costs throughout the estimated average life of each product, compared to any increase in installed costs likely to result directly from the imposition of a given standard.
- A *payback period (PBP) analysis* estimated the amount of time it takes individual consumers to recover the higher purchase expense of more energy efficient products through lower operating costs.
- A *shipments analysis* estimated shipments of clothes dryers and room air conditioners over the time period examined in the analysis, and was used in performing the national impact analysis (NIA).
- A *national impact analysis* assessed the national energy savings (NES), and the national net present value of total consumer costs and savings, expected to result from specific, potential energy conservation standards for clothes dryers and room air conditioners. and
- A *preliminary manufacturer impact analysis* (MIA) took the initial steps in evaluating the effects on manufacturers of new amended energy conservation standards.

The public meeting announced in the February 2010 notice took place on March 16, 2010. At this meeting, DOE presented the methodologies and results of the analyses set forth in the preliminary TSD. Major topics discussed at the meeting included test procedure revisions; product classes (including ventless clothes dryers); integrated efficiency levels; the use of alternate refrigerants in room air conditioners; engineering analysis tools; mark-ups; field energy consumption; life-cycle cost inputs; efficiency distribution forecasts; national impact analysis inputs; and trial standard level selection criteria. DOE also discussed plans for conducting the NOPR analyses. The comments received since publication of the February 2010 notice, including those received at the March 2010 public meeting, have contributed to DOE's proposed resolution of the issues in this rulemaking. This direct final rule responds to the issues raised in the comments received.

3. Consensus Agreement for Residential Clothes Dryers and Room Air Conditioners

In response to the preliminary analysis, DOE received the "Agreement on Minimum Federal Efficiency Standards, Smart Appliances, Federal Incentives and Related Matters for Specified Appliances" (the "Joint Petition"), a comment submitted by groups representing manufacturers (the Association of Home Appliance Manufacturers (AHAM), Whirlpool Corporation (Whirlpool), General Electric Company (GE), Electrolux, LG Electronics, Inc. (LG), BSH Home Appliances (BSH), Alliance Laundry Systems (ALS), Viking Range, Sub-Zero Wolf, Friedrich A/C, U-Line, Samsung, Sharp Electronics, Miele, Heat Controller, AGA Marvel, Brown Stove, Haier, Fagor America, Airwell Group, Arcelik, Fisher & Paykel, Scotsman Ice, Indesit, Kuppersbusch, Kelon, and DeLonghi); energy and environmental advocates (American Council for an Energy Efficient Economy (ACEEE), Appliance Standards Awareness Project (ASAP), Natural Resources Defense Council (NRDC), Alliance to Save Energy (ASE), Alliance for Water Efficiency (AWE), Northwest Power and Conservation Council (NPCC), and Northeast Energy Efficiency Partnerships (NEEP)); and consumer groups (Consumer Federation of America (CFA) and the National Consumer Law Center (NCLC)) (collectively, the "Joint Petitioners"). This collective set of comments, which DOE refers to in this notice as the "Joint Petition" 1B [6] or "Consensus Agreement" recommends specific energy conservation standards for residential clothes dryers and room air conditioners that, in the commenters' view, would satisfy the EPCA requirements in 42 U.S.C. 6295(o). DOE has considered the recommended energy conservation standards in today's final rule.

After careful consideration of the joint comment containing a consensus recommendation for amended energy conservation standards for clothes dryers and room air conditioners, the Secretary has determined that this "Consensus Agreement" has been submitted by interested persons who are fairly representative of relevant points of view on this matter. Congress provided some guidance within the statute itself by specifying that representatives of manufacturers of covered products, States, and efficiency advocates are relevant parties to any consensus recommendation. (42 U.S.C. 6295(p)(4)(A)) As delineated above, the Consensus Agreement was signed and submitted by a broad cross-section of the manufacturers who produce the subject products, their trade associations, and environmental, energy-efficiency and consumer advocacy organizations. Although States were not signatories to the Consensus Agreement, they did not express any opposition to it. Moreover, DOE does not read the statute as requiring absolute agreement among all interested parties before the Department may proceed with issuance of a direct final rule. By explicit language of the statute, the Secretary has discretion to determine when a joint recommendation for an energy or water conservation standard has met the requirement for representativeness (*i.e.,* "as determined by the Secretary"). Accordingly, DOE will consider each consensus recommendation on a case-by-case basis to determine whether the submission has been made by interested persons fairly representative of relevant points of view.

Pursuant to 42 U.S.C. 6295(p)(4), the Secretary must also determine whether a jointly-submitted recommendation for an energy or water conservation standard is in accordance with 42 U.S.C. 6295(o) or 42 U.S.C. 6313(a)(6)(B), as applicable. This determination is exactly the type of analysis which DOE conducts whenever it considers potential energy conservation standards pursuant to EPCA. DOE applies the same principles to any consensus recommendations it may receive to satisfy its statutory obligation to ensure that any energy conservation standard that it adopts achieves the maximum improvement in energy efficiency that is technologically feasible and economically justified and will result in significant conservation of energy, Upon review, the Secretary determined that the Consensus Agreement submitted in the instant rulemaking comports with the standard-setting criteria set forth under 42 U.S.C. 6295(o). Accordingly, the consensus agreement levels were included as TSL 4 in today's rule for both clothes dryers and room air conditioners, the details of which are discussed at relevant places throughout this document.

In sum, as the relevant criteria under 42 U.S.C. 6295(p)(4) have been satisfied, the Secretary has determined that it is appropriate to adopt amended energy conservation standards for clothes dryers and room air conditioners through this direct final rule

As required by the same statutory provision, DOE is also simultaneously publishing a NOPR which proposes the identical standard levels contained in this direct final rule with a 110-day public comment period. DOE will consider whether any comment received during this comment period is sufficiently "adverse" as to provide a reasonable basis for withdrawal of the direct final rule and continuation of this rulemaking under the NOPR. Typical of other rulemakings, it is the substance, rather than the quantity, of comments that will ultimately determine whether a direct final rule will be withdrawn. To this end, the substance of any adverse comment(s) received will be weighed against the anticipated benefits of the Consensus Agreement and the likelihood that further consideration of the comment(s) would change the results of the rulemaking. DOE notes that to the extent an adverse comment had been previously raised and addressed in the rulemaking proceeding, such a submission will not typically provide a basis for withdrawal of a direct final rule.

III. General Discussion

A. Test Procedures

As noted above, DOE's test procedures for clothes dryers and room air conditioners appear at 10 CFR part 430, subpart B, appendices D and F, respectively. Moreover, EPCA requires DOE to amend its test procedures for all covered products, including those for clothes dryers and room air conditioners, to include measurement of standby mode and off mode energy consumption, except where current test procedures fully address such energy consumption or such a procedure is technically infeasible. (42 U.S.C. 6295(gg)(2)) Because the clothes dryer and room air conditioner test procedures previously covered such energy use only as to pilot lights in gas dryers (as noted above, the final test procedure rule eliminates the measurement of this energy use given the statutory prohibition), on December 1, 2008 DOE issued a NOPR in which it proposed revisions of these test procedures to fully address standby and off mode energy use and sought comment on those revisions. 73 FR 74639 (Dec. 9, 2008) (TP NOPR). DOE also held a public meeting on December 17, 2008 to receive oral comments.

DOE subsequently issued a supplemental NOPR (SNOPR) in that rulemaking, in which it (1) addressed comments received in response to the TP NOPR; (2) proposed adoption of certain definitions and calculation

[6] DOE Docket No. EERE–2007–BT–STD–0010, Comment 35. DOE considered the Joint Petitioners comments to supersede earlier comments by the listed parties regarding issues subsequently discussed in the Joint Petition.

methods for standby and off mode energy use; and (3) proposed several amendments to the clothes dryer and room air conditioner test procedures concerning the active modes of these products. 75 FR 37594 (June 29, 2010) (TP SNOPR). For air conditioners, these proposed amendments would update references to industry test standards. *Id.* at 37598. For clothes dryers, DOE proposed to amend its test procedures for the active mode by adopting methods that would allow the testing of ventless products and would more accurately account for automatic cycle termination. *Id.* at 35798, 35799. DOE also proposed amendments to reflect the current usage and capabilities of products (for example, clothes dryer use cycles per year, remaining moisture content (RMC) of clothes dryer loads, and load sizes), and to update test cloth preconditioning provisions, eliminate reference to an obsolete industry test standard, and clarify the required gas supply pressure for testing gas clothes dryers. *Id.* DOE sought and received written comments on the TP SNOPR and also held a public meeting on July 14, 2010 to receive oral comments.

On January 6, 2011, DOE published in the **Federal Register** a final rule for the test procedure rulemaking (76 FR 972) (TP Final Rule), in which it (1) adopted the provisions for the measurement of standby mode and off mode power use for both products proposed in the TP NOPR, as modified by the TP SNOPR, but required that products be installed and set up for standby and off mode testing in accordance with manufacturers' instructions (and if no instructions are given, then the appliance shall be tested at the factory or "default" settings); and (2) adopted several amendments to the clothes dryer and room air conditioner test procedures concerning the active mode for these products, as proposed in and informed by public comment on the TP SNOPR. 76 FR 972 (January 6, 2011). Specifically for room air conditioners, the amendments adopted in the TP Final Rule updated the references to industry test standards. Specifically for clothes dryers, DOE adopted the amendments to include provisions for the testing of ventless products proposed in the TP SNOPR, along with additional clarifications regarding the testing conditions for ventless clothes dryers. 76 FR 976–7. The amendments also include the following changes to reflect the current usage and capabilities of products: (1) Changing the annual clothes dryer use cycles from 416 to 283 cycle per year, (2) changing the initial RMC of clothes dryer loads from 70 percent ± 3.5 percent to 57.5 percent ±3.5 percent, and (3) changing the clothes dryer test load size from 7.00 pounds (lbs) ± .07 lbs to 8.45 ± .085 lbs for standard-size clothes dryers. 76 FR 977. The TP Final Rule also amends the DOE clothes dryer test procedure by updating test cloth preconditioning provisions; revising the water temperature for test load preparation from 100 degrees Fahrenheit (°F) ± 5 °F to 60 °F ± 5 °F; updating references to industry test standards; eliminating reference to an obsolete industry test standard; clarifying the required gas supply conditions for testing gas clothes dryers; clarifying the provisions for measuring the drum capacity; clarifying the definition of "automatic termination control" for clothes dryers; and adding the calculations of EF and CEF to 10 CFR part 430, subpart B, appendix D1. 76 FR 978.

DOE did not adopt the amendments to more accurately measure automatic cycle termination proposed in the TP SNOPR. As discussed in the TP Final Rule, DOE conducted testing of representative clothes dryers using the automatic cycle termination test procedure proposed in the TP SNOPR. The results showed that all of the clothes dryers tested significantly over-dried the DOE test load to near bone dry and, as a result, the measured EF values were significantly lower than EF values obtained using the existing DOE test procedure. The test data also indicated that dryers equipped with automatic termination controls were less efficient than timer dryers. 76 FR 977.

As noted in the TP Final Rule, DOE believes the test procedure amendments for automatic cycle termination proposed in the TP SNOPR do not adequately measure the energy consumption of clothes dryers equipped with such systems using the test load specified in the DOE test procedure. DOE believes that clothes dryers with automatic termination sensing control systems, which infer the RMC of the load from the properties of the exhaust air such as temperature and humidity, may be designed to stop the cycle when the consumer load has a higher RMC than the RMC obtained using the proposed automatic cycle termination test procedure in conjunction with the existing test load.[7] Manufacturers have indicated, however, that test load types and test cloth materials different than those specified in the DOE test procedure do not produce results as repeatable as those obtained using the test load as currenty specified. *Id.*

In addition, DOE presented data in the test procedure final rule published on May 19, 1981 from a field use survey conducted by AHAM as well as an analysis of field test data on automatic termination control dryers conducted by the National Bureau of Standards (now known as the National Institute of Standards and Technology (NIST)). Analysis of this data showed that clothes dryers equipped with an automatic cycle termination feature consume less energy than timer dryers by reducing over-drying. 46 FR 27324 (May 19, 1981).

For these reasons, DOE stated in the TP Final Rule that the test procedure amendments for automatic cycle termination proposed in the TP SNOPR do not adequately measure the energy consumption of clothes dryers equipped with such systems. As a result, DOE did not adopt the amendments for automatic cycle termination proposed in the TP SNOPR. 76 FR 972, 977 (January 6, 2011).

The following sections discuss the comments received in response to the preliminary analyses regarding the test procedures for clothes dryers and room air conditioners.

1. Clothes Dryer Test Procedure

ACEEE and Earthjustice (EJ) both commented that the DOE test procedure inadequately represents field energy use, seriously hindering efforts to develop effective regulations and sound public policy, and produces misleading information for consumers and other interested parties. (ACEEE, No. 24 at p. 2; EJ, No. 28 at p. 1)[8] ACEEE provided suggested test procedure changes, which are outlined in its comments and discussed in the sections below. ACEEE stated these suggested test procedure changes would improve the understanding of the overall contribution of clothes dryers to national energy consumption, the

[7] To investigate this, DOE conducted additional testing using a test load similar to that specified in AHAM Standard HLD–1–2009, which consists of cotton bed sheets, towels, and pillow cases. For tests using the same automatic cycle termination settings as were used in the testing described earlier (that is, normal cycle setting and highest temperature setting), the alternate test load was dried to 1.7 to 2.2 percent final RMC, with an average RMC of 2.0 percent. In comparison, the same clothes dryer under the same cycle settings dried the DOE test load to 0.3 to 1.2 percent RMC, with an average RMC of 0.7 percent. Thus, DOE concluded that the proposed automatic cycle termination control test procedures may not stop at an appropriate RMC when used with the current test load.

[8] A notation in the form "ACEEE, No. 24 at p. 2" identifies a written comment (1) made by the American Council for an Energy Efficient Economy (ACEEE), (2) recorded in document number 24 that is filed in the docket of this rulemaking, and (3) which appears on page 2 of document number 24.

relative performance of products currently on the market, and opportunities to improve clothes dryer energy performance (including the potential of the design options defined in DOE's analysis). ACEEE stated that its suggested test procedure changes would provide DOE better data for determining the appropriate level for standards that yield the maximum cost-effective energy savings for consumers. (ACEEE, No. 24 at p. 2) Earthjustice commented that DOE should correct errors in the existing test procedure that, according to Earthjustice, misstate the actual clothes dryer energy consumption, as identified in the report by ECOS Consulting (ECOS) (prepared for the NRDC),[9] and recalculate the estimates of clothes dryer energy use. (EJ, No. 28 at p. 1) As discussed above, DOE recently published the TP Final Rule amending its clothes dryer test procedure to address many of the test procedure issues identified by ACEEE and Earthjustice. DOE addresses each of these issues individually in the sections below.

a. Standby Mode and Off Mode

Referenced Standards

EPCA directs DOE to amend its test procedures to include measures of standby mode and off mode energy consumption. EPCA further directs DOE to amend the test procedures to integrate such energy consumption into a single energy descriptor for that product. If that is technically infeasible, DOE must prescribe a separate standby mode and off mode energy-use test procedure, if technically feasible. (42 U.S.C. 6295(gg)(2)(A)) Any such amendment must consider the most current versions of the International Electrotechnical Commission (IEC) Standard 62301 ["Household electrical appliances—Measurement of standby power," First Edition 2005–06] and IEC Standard 62087 ["Methods of measurement for the power consumption of audio, video, and related equipment," Second Edition 2008–09].[10] *Id.*

AHAM supported DOE's evaluation of the most current draft version of IEC Standard 62301 Second Edition, which at the time of the preliminary analysis for the standards rulemaking was designated as the Committee Draft for Vote (IEC Standard 62301 CDV), for potential revisions to address standby mode and off mode power in DOE's clothes dryer test procedure. AHAM commented that DOE would thus harmonize with international standards, including those used in Canada and Europe. (AHAM, Public Meeting Transcript, No. 21.4 at p. 30).[11]

In the TP NOPR, DOE discussed that IEC Standard 62301 Second Edition was expected at that time to be published in July 2009. For this reason, DOE stated in the TP NOPR that IEC Standard 62301 First Edition would be the "current version" at the time of publication of the final rule, so consideration thereof would comply with EPCA. DOE incorporated sections from IEC Standard 62301 First Edition in the proposed amendments to the clothes dryer test procedure in the TP NOPR. 73 FR 74639, 74644 (Dec. 9, 2008). DOE did not receive any comments in response to the TP NOPR objecting to the proposed testing methods and procedures referenced in IEC Standard 62301 First Edition. Therefore, the TP SNOPR did not affect DOE's proposal in the TP NOPR to incorporate by reference clauses from IEC Standard 62301 First Edition. 75 FR 37594, 37602 (June 29, 2010). In the TP Final Rule, DOE noted that the most recent draft of IEC Standard 62301 Second Edition, designated as the Final Draft International Standard (IEC Standard 62301 FDIS) had yet to be made available on IEC's public Web site and that IEC Standard 62301 Second Edition is now projected to be issued in April 2011. For the reasons stated in the TP Final Rule, DOE amended its test procedures for clothes dryers in the final rule to incorporate by reference the clauses from IEC Standard 62301 First Edition proposed in the TP SNOPR. DOE also adopted the definitions of "active mode," "standby mode," and "off mode" based on the language presented in IEC Standard 62301 CDV. 76 FR 972, 976–977 (January 6, 2011). DOE may consider incorporating by reference clauses from IEC Standard 62301 Second Edition when that version has been published.

Testing Procedures

As discussed in the *Referenced Standards* section, EPCA directs DOE to amend the test procedures to integrate such energy consumption into a single energy descriptor for that product. If that is technically infeasible, DOE must prescribe a separate standby mode and off mode energy-use test procedure, if technically feasible. (42 U.S.C. 6295(gg)(2)(A)) In the TP NOPR, DOE determined that it is technically feasible to incorporate measures of standby mode and off mode energy use into the overall energy use metric. 73 FR 74639, 74650 (Dec. 9, 2008). In the TP NOPR, DOE proposed to adopt the 140 hours associated with drying as the active mode hours and to associate the remaining 8,620 hours of the year with standby mode and off mode. 73 FR 74639, 74647 (Dec. 9, 2008). In the TP NOPR, DOE also proposed definitions and testing methods for multiple standby modes, including "inactive mode," "delay start mode," and "cycle finished mode."[12] 73 FR 74639, 74647–48 (Dec. 9, 2008). DOE proposed to calculate clothes dryer energy use per cycle associated with standby mode and off mode by (1) calculating the product of wattage and allocated hours for all possible standby modes and off modes; (2) summing the results; (3) dividing the sum by 1,000 to convert from watt-hours (Wh) to kWh; and (4) dividing by the number of cycles per year. 73 FR 74639, 74648 (Dec. 9, 2008). In the TP NOPR, DOE reported that the comparison of annual energy use of different clothes dryer modes showed that delay start and cycle finished modes represent a negligible percentage of total annual energy consumption. The comparison also showed that the power levels in these modes are similar to those for inactive mode and off mode. For these two reasons, DOE presented an alternate approach that would be limited to specifying the hours for only inactive mode and off mode when calculating energy use associated with standby mode and off mode. Under this alternate approach, all of the non-active mode hours (8,620) would be allocated to inactive mode and off mode. 73 FR 74639, 74648 (Dec. 9, 2008).

[9] NRDC, No. 30 at pp. 1–40.

[10] DOE considered IEC Standard 62087 and determined that this standard addresses the methods of measuring the power consumption of audio, video, and related equipment and is therefore inapplicable to the products covered in this rulemaking.

[11] A notation in the form "AHAM, Public Meeting Transcript, No. 21.4 at p. 30" identifies an oral comment that DOE received during the March 16, 2010 public meeting and which was recorded in the public meeting transcript in the docket for this rulemaking (Docket No. EE–2007–BT–STD–0010), maintained in the Resource Room of the Building Technologies Program. This particular notation refers to a comment (1) made by the Association of Home Appliance Manufacturers (AHAM) during the public meeting, (2) recorded in document number 21.4, which is the public meeting transcript that is filed in the docket of this rulemaking, and (3) which appears on page 30 of document number 21.4.

[12] "Inactive mode" is defined as "a standby mode other than delay start mode or cycle finished mode that facilitates the activation of active mode by remote switch (including remote control), internal sensor, or provides continuous status display." "Delay start mode" is defined as "a standby mode that facilitates the activation of active mode by timer." "Cycle finished mode" is defined as "a standby mode that provides continuous status display following operation in active mode."

In the TP NOPR, DOE proposed to establish the CEF [13] for clothes dryer to integrate energy use in the standby mode and off mode with the energy use of the main functions of the product. The CEF would be defined as the clothes dryer test load weight in pounds divided by the sum of the per-cycle standby and off mode energy consumption and either the total per-cycle electric dryer energy consumption or the total per-cycle gas dryer energy consumption expressed in kWh. 73 FR 74639, 74650 (December 9, 2008).

As discussed in chapter 5 of the preliminary TSD, for the preliminary analyses, DOE analyzed the cost-efficiency relationship for CEF using the alternative approach for this metric in the TP NOPR. That approach allocates all of the non-active mode hours into inactive mode and off mode energy use, and then integrates inactive mode and off mode energy use with active mode energy use.

BSH commented that, in the formula to calculate the CEF in the clothes dryer test procedure, "8620" inactive/off mode hours should be replaced by (8720—per cycle duration (hours) × 416 clothes dryer annual cycles), where 8720 = 365 days × 24 hours per day. According to BSH, the standby mode is not valid during the active mode and, therefore, the duration of the active mode should be subtracted from the hours per year when calculating the standby energy consumption. (BSH, No. 23 at p. 5) DOE notes that the estimate for active mode hours presented in the TP NOPR was fixed based on the number of such hours specified in the existing test procedure (140 hours). 73 FR 74646–7 (Dec. 9, 2008). DOE acknowledges that its estimate of the number of cycles per year has decreased. As discussed in the TP Final Rule, DOE notes that changes to the initial RMC, test load size, and specified water temperature for test load preparation may also affect cycle time and the number of active mode hours per year. DOE is not aware, however, of any data indicating that the number of active mode hours has changed and, if so, what a more accurate number might be. Therefore, DOE did not adopt amendments to the number of active mode hours in the TP Final Rule. 76 FR 972, 988 (January 6, 2011). For these reasons, DOE believes that using the 140 annual active mode hours, as specified in the existing test procedure, to determine the number of annual inactive mode and off mode hour of 8,620, as adopted in the TP Final Rule (76 FR 990), provides a more representative estimate of consumer use than the method suggested by BSH.

b. Automatic Cycle Termination

In the framework document, DOE stated the clothes dryer test procedure may not adequately measure the benefits of automatic cycle termination, in which a sensor monitors either the exhaust air temperature or moisture in the drum to determine the length of the drying cycle. Currently, the test procedure provides a single field use factor for the enhanced performance of clothes dryers equipped with automatic termination. This single field use factor does not distinguish between the type of sensing control system (for example, temperature-sensing or moisture-sensing controls) and the accuracy of the control system. In chapter 2 of the preliminary TSD, DOE stated that it agrees that the effects of automatic cycle termination should be more accurately measured in its clothes dryer test procedure, and that this effect should properly account for any over- or under-drying. Thus, DOE noted it was considering clothes dryer test procedure amendments to address automatic cycle termination in the active mode test procedure rulemaking. In response, interested parties commented on the following topics relating to automatic cycle termination.

Definition of Automatic Termination Control

The Joint Petitioners commented that DOE should revise section 1.11 of 10 CFR 430 subpart B, appendix D to more clearly account for electronic controls by specifying that a preferred automatic termination control setting can also be indicated by a visual indicator (in addition to the mark or detent). The clarification would read "* * * mark, visual indicator or detent which indicates a preferred * * *" (Joint Petitioners, No. 33 at p. 25) As discussed in the TP Final Rule, DOE agreed that a clarification should be added to the definition of "automatic termination control." The clarification would be that a mark, detent, or other visual indicator which indicates a preferred automatic termination control setting must be present if the dryer is to be classified as having an automatic termination control. DOE so revised the definition in the TP Final Rule. 76 FR 972, 978 (January 6, 2011).

Testing Procedures

AHAM commented in response to the preliminary analyses that it continues to support the use of the automatic termination field use factor as currently specified by the DOE clothes dryer test procedure. AHAM stated that clothes dryers utilize different algorithms to determine when the drying cycle should end, and any evaluation of a different approach will need to be thoroughly investigated and should not be based on DOE test results from four sample units. AHAM proposed that DOE conduct a study that evaluates: (1) The accuracy of the DOE field use factor for today's products; and (2) the repeatability and reproducibility of a procedure where cycle end is determined by a moisture or temperature sensor. (AHAM, No. 25 at p. 13)

Whirlpool commented that its testing showed significant improvement in the performance of sensors and automatic termination cycles when using systems that incorporate sensors that directly measure the moisture level of the clothes. Based on these test results, Whirlpool recommended that an additional automatic termination factor be included that would be equal to 1.01 to provide an appropriate field use factor for clothes dryers that utilize improved moisture sensor systems. (Whirlpool, No. 22 at p. 5)

After the publication of the preliminary analyses, the Joint Petitioners submitted the Joint Petition, in which they commented that DOE should modify the clothes dryer test procedure to address the effectiveness of automatic termination controls (for example, moisture sensor and temperature sensor controls). (Joint Petitioners, No. 33 at p. 25) Pacific Gas & Electric (PG&E), Southern California Gas Company (SCGC), San Diego Gas and Electric Company (SDGE), and Southern California Edison (SCE) jointly (hereafter the "California Utilities"). NRDC, and NEEP commented that the current DOE test procedure does not test the effectiveness of control sensors, which was found to vary significantly. (California Utilities, No. 31 at p. 3; NRDC, No. 26 at pp. 1, 2; NRDC, No. 30 at p. 29; NEEP, No. 27 at p. 3) NRDC, NEEP, and the California Utilities stated that the DOE test procedure is unrealistic and tests only the bulk-drying stage. In addition, by not testing the high-heat stage (which contributes very little to drying clothes) and instead applying a field use factor, the current test methods overestimate the efficiency of the clothes dryer. The current test methods also do not appropriately measure the energy use of clothes dryers

[13] DOE proposed to use the term "Integrated Energy Factor" (IEF) in the TP NOPR. 73 FR 74639, 74650 (Dec. 9, 2008). However, in the TP SNOPR, DOE proposed to revise the name of the metric to "Combined Energy Factor" (CEF) to avoid confusion with an existing industry standard. 75 FR 37594, 37612 (June 29, 2010). DOE adopted CEF as the measure of clothes dryer energy efficiency in the TP Final Rule. 76 FR 972, 992 (January 6, 2011).

that use more effective controls to limit the energy consumption of the high-heat stage. (NRDC, No. 26 at pp. 1, 2; NRDC, No. 30 at p. 29; NEEP, No. 27 at p. 3; California Utilities, No. 31 at p. 3) NRDC added that the ECOS report stated that there is not much variation in efficiency of the bulk drying stage among different clothes dryers. However, there are considerable differences in the energy consumption of the high-heat stage, which is not measured by the DOE test procedure. (NRDC, No. 30 at p. 23) The ECOS report found that the difference between a standard clothes dryer and one that is effective at turning itself off when clothes are actually dry is about 0.76 kWh per load (5,000 kWh over typical lifetime). (NRDC, No. 26 at pp. 1, 2) The California Utilities also added that according to the ECOS report, clothes dryers, even with the same sensors, can use very different control algorithms that result in substantial variations between clothes dryers in the length of, and the amount of energy consumed during, the high-heat stage. (California Utilities, No. 31 at p. 3)

NRDC commented that DOE should change its test procedure to measure at dryness levels less than 5-percent RMC with logging equipment that provides data enabling the lab to calculate when 5-percent RMC is reached and how long the clothes dryer continues to run thereafter. (NRDC, No. 26 at pp. 1, 2; NRDC, No. 30 at pp. 29–30) The California Utilities, ACEEE, and NPCC also commented that the test procedure should let the clothes dryer run until automatic shutoff, allowing the clothes dryer's sensors and termination controls to operate as intended, which would: (1) Be more representative of actual consumer behavior and give a better measure of expected energy use for consumers; (2) avoid the need for a field use factor to account for high-heat stage energy use and instead measure energy use directly; (3) appropriately measure the energy use of clothes dryers with better termination controls and encourage innovation in these controls; and (4) make the test procedure easier because the technician does not need to keep weighing the clothes. (California Utilities, No. 31 at pp. 3–4, 12; ACEEE, No. 24 at pp. 1–2; NPCC, No. 32 at pp. 1–2)

The California Utilities recommended the following amendments to section 3.3, "Test cycle" of the clothes dryer test procedure:

- Set the clothes dryer for its "Normal" or "Cotton" cycle. If this in turn sets a temperature or dryness control, leave those controls at the default setting. If a temperature control must also be set, set it for "High heat" or "Cotton." If a dryness control must also be set, set it for "Normal dry" or midway between "More dry" and "Less dry."
- Allow the clothes dryer to run until its cycle is complete. Promptly remove and weigh the test load. If it contains 5-percent or less RMC, the test cycle is complete.
- If the test load contains more than 5-percent RMC, return the load to the clothes dryer and reset the controls. In this case, the dryness control would then be set for "Maximum dry" and the cycle would be run to completion again and the test load weighed. Repeat if necessary until the RMC is 5 percent or less.
- Total the amount of electricity (and gas if applicable) used during the initial default cycle and any subsequent cycles. (California Utilities, No. 31 at p. 4)

The California Utilities also stated that section 4 of the DOE test procedure would be modified to remove all references to the field use factor. That factor is no longer needed because the test cycle now represents a typical consumer use cycle (including both the bulk-drying and high-heat stages), and would be omitted from all calculations. (California Utilities, No. 31 at p. 4) The California Utilities stated that the clothes dryers tested for the ECOS report using the default settings of the "Normal" or "Cotton" cycles all resulted in RMCs between 0 and 3 percent at the completion of the clothes dryer cycle. Therefore, it may be reasonable to assume that the additional cycles will rarely be used. The California Utilities stated that the additional cycles are included in their proposal to prevent a manufacturer from creating a default cycle that saves energy by not actually getting the clothes adequately dry. The California Utilities also stated that their proposed procedure represents the most likely consumer response to clothes that did not get dry the first time. (California Utilities, No. 31 at p. 4)

The California Utilities also commented that, under their recommended test procedure changes for automatic cycle termination, there is a noticeable difference in energy consumption between the best and worst clothes dryers. For clothes dryers that respond effectively when the clothes have reached 5-percent RMC by discontinuing the application of heat and allowing the residual heat in the clothes to evaporate the remaining moisture, the energy measured under the new test cycle will be very similar to the energy measured under the current DOE test procedure, as the shutoff point will occur near 5-percent RMC under either test. The California Utilities stated that its proposed test procedure would more accurately measure the real contribution of automatic termination controls and mimic consumer behavior. As a result there would be no need to use a field use factor for clothes dryers with automatic termination controls. (California Utilities, No. 31 at p. 4)

BSH commented that DOE should test clothes dryers using the automatically controlled programs including the cool-down phase. According to BSH, timer dryers waste energy because consumers will set a longer drying time than required to ensure the desired drying results, resulting in over-drying. BSH commented that a change in the test procedure to measure the real final moisture content for automatically controlled dryers will show the differences between competitive clothes dryers. BSH also commented that the cool-down phase is, in automatically controlled dryers, an essential part of the process to use the energy in the most efficient way, and that the heat accumulated in the appliance and the laundry may be used to finish drying the laundry and increase the efficiency of the clothes dryer. (BSH, No. 23 at pp. 4–5)

NRDC commented that the ECOS report states that newer clothes dryers are capable of moisture-sensing drying, but that feature can be (and likely routinely is being) overridden by consumers who continue to operate clothes dryers on a time basis as they always have. NRDC added that the ECOS report states that DOE should require manufacturers to incorporate moisture sensing into the timed cycle to ensure that the heating element shuts off and that airflow is greatly reduced once the clothes are dry. (NRDC, No. 30 at p. 29)

As discussed above in this section, DOE proposed amendments to its clothes dryer test procedure in the TP SNOPR to more accurately account for automatic cycle termination. However, as discussed in the TP Final Rule, DOE conducted testing on a sample of representative clothes dryers according to the amendments to the test procedure for automatic cycle termination proposed in the TP SNOPR. The tests consisted of running the clothes dryer on a "normal" automatic termination setting and stopping the clothes dryer when the heater switches off for the final time (immediately before the cool-down period begins). Three identical tests were conducted for each clothes dryer unit, and the results were averaged. DOE first noted that not all of the clothes dryers offered a "normal" cycle setting. For those clothes dryers,

DOE chose the cycle that would most closely match a "normal" cycle. The results of this testing, presented below in Table III.1, showed that the tested clothes dryers had a measured EF of between 12.4 percent and 38.8 percent lower than the EF measured according to the current DOE clothes dryer test procedure. DOE also noted that all of tested units dried the test load to final RMCs well below the target RMC of 5 percent, ranging from 0.4 percent to 1.4 percent RMC, with an average of 0.8 percent. DOE also noted that even if the field use factor for a timer dryer is applied to the measured EF for a clothes dryer equipped with automatic cycle termination, using the current DOE clothes dryer test procedure (to add the fixed estimate of over-drying energy consumption associated with time termination control dryers), this EF would still be less than the EF measured under the automatic cycle termination test procedure amendments proposed in the TP SNOPR. 76 FR 972, 999 (January 6, 2011).

TABLE III.1—DOE CLOTHES DRYER AUTOMATIC CYCLE TERMINATION TESTS

Test unit	Current DOE test procedure EF *lb/kWh*	Current DOE test procedure w/modified field use factor * EF *lb/kWh*	Proposed automatic cycle termination test procedure		
			EF *lb/kWh*	% Change	Final RMC %
Vented Electric Standard:					
Unit 3	3.20	2.82	2.59	−19.1	1.0
Unit 4	3.28	2.89	2.59	−21.2	0.6
Vented Gas:					
Unit 8	2.83	2.50	2.42	−14.5	0.4
Unit 9	2.85	2.51	2.38	−16.3	0.9
Unit 11	2.98	2.63	2.40	−19.5	0.9
Vented Electric Compact 240V:					
Unit 12	3.19	2.81	2.64	−17.3	0.5
Unit 13	2.93	2.59	2.27	−22.7	1.4
Vented Electric Compact 120V:					
Unit 14	3.23	2.85	1.98	−38.8	0.7
Ventless Electric Compact 240V:					
Unit 15	2.37	2.09	2.07	−12.4	1.1

* Field use factor changed from 1.04 for clothes dryers with automatic termination to 1.18 for timer dryers.

In the TP Final Rule, DOE stated that these test results showed significantly higher measured energy use for clothes dryers tested under the DOE test procedure with the proposed automatic cycle termination amendments. DOE evaluated possible reasons for this difference. DOE concluded that given the test load specified in the test procedure,[14] the proposed automatic cycle termination control procedures may not adequately measure clothes dryer performance. As discussed in the previous paragraph, DOE believes that, although automatic termination control dryers may be measured as having a lower efficiency than a comparable dryer with only time termination control if tested according to the proposed test procedure, automatic termination control dryers may in fact be drying the clothing to approximately 5-percent RMC in real world use. DOE believes that automatic termination control dryers reduce energy consumption (by reducing over-drying) compared to timer dryers based on analysis of the AHAM field use survey and analysis of field test data conducted by NIST. 46 FR 27324 (May 19, 1981).

[14] The DOE clothes dryer test load is comprised of 22 in x 34 in pieces of 50/50 cotton/polyester-blend cloth.

For these reasons, DOE stated in the TP Final Rule that it believes that the test procedure amendments for automatic cycle termination proposed in the TP SNOPR do not adequately measure the energy consumption of clothes dryers equipped with such systems. As a result, DOE did not adopt the amendments for automatic cycle termination proposed in the TP SNOPR. 76 FR 972, 1000 (January 6, 2011). DOE noted that if data is made available to develop a test procedure that accurately measures the energy consumption of clothes dryers equipped with automatic termination controls, DOE may consider revised amendments in a future rulemaking.

With regard to NRDC's comment that DOE should require manufacturers to incorporate moisture sensing into the timed cycle, DOE notes that EPCA defines an energy conservation standard as either a performance standard or, for certain products including clothes dryers, a design requirement. (42 U.S.C. 6291(6)) EPCA also specifies that DOE may set more than one energy conservation standard for products that serve more than one major function by setting one energy conservation standard for each major function. (42 U.S.C. 6295(o)(5)) DOE notes the energy conservation standards for clothes dryers set forth in this final rule are based on drying performance and that an additional precriptive standard to require manufacturers to incorporate moisture sensing into the timed dry cycle would address the same major function of the drying performance. For these reasons, DOE is not adopting an additional prescriptive requirement for clothes dryers.

DOE believes that the alternate test procedure for automatic cycle termination recommended by the California Utilities is similar to the test cycle proposed by DOE in the TP SNOPR. DOE notes that the California Utilities' recommendations would clarify the settings to be used in cases where a "Normal" cycle or "High heat" temperature setting was not clearly specified. DOE does not believe that this added clarification would resolve the issues with the proposed automatic cycle termination test procedure identified in this section because the setting used during DOE testing would be the same under the California Utilities' recommendation. In addition, DOE notes that the California Utilties' recommendation to specify the "Normal dry" setting is generally the default setting under the "Normal" cycle. DOE also notes that the "Normal dry" setting was used during its testing, and as a result this clarification would not resolve the issues associated with the

automatic cycle termination test procedure identified above. Finally, DOE notes the California Utilities' recommendation that if the test load contains more than 5-percent RMC, the test load would be placed back in the clothes dryer and the cycle would be run again using the "Maximum dry" setting is similar to the proposed amendments in the TP SNOPR. However, the proposed amendments in the TP SNOPR would require the test be re-run from the start using the specified initial RMC and the "Maximum dry" setting. The California Utilities' recommendations would require that the test load with the RMC at the end of the first test cycle be re-run on a cycle with the "Maximum dry" setting and the energy would then be accumulated. DOE believes that this recommendation would not resolve the issue of the significant over-drying observed during testing because it addresses cases only in which the test load under-dries. For these reasons, DOE is not adopting the alternate test procedure for automatic cycle termination recommended by the California Utilities. If DOE considers adopting test procedure amendments for automatic cycle termination in a future rulemaking, it may consider these recommendations.

Cycle Settings

NRDC commented that the testing described in the ECOS report showed that automatic termination cycles using lower heat settings or lower dryness level reduce energy consumption and increase efficiency because less energy is spent heating air, cloth, and metal. NRDC commented that the ECOS report summarized testing results for one clothes dryer that showed that the difference in energy consumption between the highest and lowest heat settings was 13 percent and that the drying time increased (from 35 to 49 minutes), but very similar final RMCs were achieved. (NRDC, No. 30 at p. 22) NRDC commented that the ECOS report found that a "normal dry" setting removed practically all of the water (producing a final RMC of less than 1 percent), making the "more dry" setting appear to be unnecessary. The ECOS report stated that the "normal dry" used about 12 percent less energy than the "more dry" setting, and the "less dry" setting saved another 18 percent, but did leave residual moisture in the clothes. NRDC commented that the ECOS report added that in all but the highest humidity climates, the "less dry" setting may be fully adequate and would give considerable energy savings. *Id.* NRDC commented that DOE should measure the efficiency of different clothes dryer settings, in particular the "more dry" setting, which the ECOS report stated may not be warranted because the "normal dry" settings remove effectively all of the moisture. (NRDC, No. 26 at pp. 1, 3)

As discussed in the previous section, DOE did not adopt amendments to more accurately account for automatic cycle termination in the TP Final Rule. Therefore DOE did not consider amendments to the clothes dryer test procedure to measure the efficiency of different clothes dryer automatic cycle termination temperature and dryness level settings.

Effect of Automatic Cycle Termination Test Procedure on Measured Energy Factor

The California Utilities stated that under their proposed test procedure, the 4 percent field use factor would not be necessary; therefore removing it would reduce apparent (reported) energy use by 4 percent. Instead of EFs from 3.01 to 3.4, these clothes dryers would be rated at EF from 3.13 to 3.54. According to the California Utilities, these higher ratings are appropriate because these clothes dryers stop quickly and save the consumer energy under real world operating conditions. (California Utilities, No. 31 at pp. 4–5) NRDC commented that the ECOS report summarized testing results that showed that some electronically controlled dryers could detect the clothes were already dry and shut down after 5 to 15 minutes, while electromechanically controlled dryers needed up to 50 minutes before shutting down. (NRDC, No. 30 at pp. 29–30) The California Utilities also noted that one clothes dryer tested in the ECOS report ran for an additional 30 minutes after reaching 5 percent RMC because of an inefficient control algorithm and would test with an EF of about 2.51 under their proposed test procedure. According to the California Utilities, this lower rating would be appropriate, because in real practice this dryer would significantly increase clothes dryer energy use. (California Utilities, No. 31 at p. 5) The California Utilities commented that a real savings opportunity exists simply through an improved test procedure (as they proposed), which will better characterize the real-world energy performance of dryers. The California Utilities added that dryers that meet the baseline EF under the current test procedure but have poor automatic termination controls will not meet the same EF under a revised test. Thus, those dryers will have to improve to meet the baseline EF of 3.01. The California Utilities added that, if tested using their proposed test procedure, the least efficient clothes dryers in the sample of clothes dryers in the ECOS report will need to increase their efficiency by 20 percent or more to meet the current energy conservation standard. (California Utilities, No. 31 at p. 5)

As discussed in the Test Procedures section, DOE did not adopt the amendments to the clothes dryer test procedure to better account for automatic cycle termination that were proposed in the TP SNOPR. As a result, DOE is not considering any revisions to the energy conservation standards based on the proposed amendments for automatic cycle termination in the TP SNOPR. If DOE considers potential amendments for automatic cycle termination in a future rulemaking, it would also consider any necessary revisions to the energy conservation standards. In addition, as discussed above, DOE noted that the alternate test procedure for automatic cycle termination recommended by the California Utilities is similar to the test cycle proposed by DOE in the TP SNOPR. As a result, DOE does not believe the measured EF would be different between the proposed amendments in the TP SNOPR and the California Utilities' recommendations except for cases in which the test load is not dried to below 5-percent RMC. In this case the California Utilities' recommendations would require that the measured energy consumption from any additional test cycles using the "Maximum dry" setting be added to the energy consumption from the first test cycle, whereas the measured efficiency under the proposed amendments in the TP SNOPR would be based on only the re-run test cycle using the "Maximum dry" setting. However, for the reasons discussed above, DOE believes that the California Utilities' recommendations would not resolve the issue of the significant over-drying observed during DOE testing. As a result, DOE is not adopting the alternate test procedure for automatic cycle termination recommended by the California Utilities and therefore is not considering any revisions to the energy conservation standards based on these recommendations.

c. Ventless Clothes Dryers

For the reasons discussed in section IV.A.3.a of this direct final rule, DOE defines two new product classes in this rulemaking for ventless clothes dryers. The clothes dryer test procedure at 10 CFR part 430, subpart B, appendix D is unable to test ventless clothes dryers, which include condensing clothes

dryers as well as combination washer/dryers. Ventless clothes dryers do not vent exhaust air to the outside as a conventional, vented dryer does. Instead, they typically use ambient air in a heat exchanger to cool the hot, humid air inside the appliance, thereby condensing out the moisture. Alternatively, cold water can be used in the heat exchanger to condense the moisture from the air in the drum. In either case, the dry air exiting the drum is reheated and recirculated in a closed loop. Thus, rather than venting moisture-laden exhaust air outside, ventless clothes dryers produce a wastewater stream that can be either collected in an included water container or discharged down the household drain. The process of condensing out the moisture in the recirculated air results in higher energy consumption than a conventional dryer, and it can significantly increase the ambient room temperature.

To address the potential limitation of the clothes dryer test procedure for ventless dryers, DOE proposed an alternate test procedure for ventless dryers in the TP SNOPR and adopted this procedure in the TP Final Rule. [75 FR 37594, 37620 (June 29, 2010); 76 FR 972, 976–977 (January 6, 2011)] The alternate test procedure consists of adding separate definitions for a "conventional clothes dryer" (vented) and a "ventless clothes dryer." Further, the alternate test procedure qualifies the requirement for an exhaust simulator so that it would only apply to conventional clothes dryers. DOE also adopted provisions to clarify the testing procedures for ventless clothes dryers, including requirements for clothes dryers equipped with a condensation box, requirements for the condenser heat exchanger, and specifications for ventless clothes dryer preconditioning. DOE also adopted clarifications in the TP Final Rule to provide explicit instructions as to the procedure for re-running the test cycle when the condensation box is full. DOE also revised the requirement for ventless clothes dryer preconditioning to remove the maximum time limit for achieving a steady-state temperature. DOE also included additional editorial clarifications to the testing procedures for ventless clothes dryers. 76 FR 972, 976–977 (January 6, 2011).

In chapter 2 of the preliminary TSD, prior to adoption of the TP Final Rule, DOE stated that it was considering amendments to its clothes dryer test procedure to allow for the measurement of the energy efficiency of ventless clothes dryers in its active mode test procedure rulemaking.

The Joint Petitioners commented that DOE should create a ventless clothes dryer (including ventless combination washer/dryer) test procedure to inform a baseline energy consumption level for this new product category. (Joint Petitioners, No. 33 at p. 25)

AHAM suggested that DOE incorporate language from the alternate test procedure presented in the LG's Petition for Waiver and Denial of the Application for Interim Waiver (71 FR 49437, 49439 (Aug. 23, 2006)), with the additional changes that the term "condensing clothes dryer" be changed to "ventless clothes dryer" and "HLD–1" be changed to "AHAM HLD–1." AHAM stated that DOE should validate the proposed test procedure approach and the resultant energy consumption values through a viable statistical method. AHAM stated that it is not in a position to provide data on ventless products due to the small number of products in the proposed "compact ventless" product class. According to AHAM, ventless clothes dryers, when tested using the dryer-centric approach presented by DOE in the LG Petition for Waiver, will appear to have higher energy consumption (kWh per year) than conventional vented clothes dryers. (AHAM, No. 25 at p. 4)

Whirlpool commented that its proposal, which provides amendments to the DOE test procedure to include methods for testing of ventless clothes dryers, improves upon the DOE proposal for the ventless clothes dryer test procedure because it takes into account technical differences between vented and ventless clothes dryers.[15] (Whirlpool, No. 13 at pp. 1–22) Whirlpool indicated that their proposal was a draft only and they would be willing to work with DOE to make revisions or enhancements to this proposal. (Whirlpool, No. 22 at p. 1)

In the TP Final Rule, DOE adopted testing methods for the testing of ventless clothes dryers based on the alternate test procedure proposed in the TP SNOPR; the amendments suggested by Whirlpool; and additional language from the internationally accepted test standards Australia/New Zealand (AS/NZS) Standard 2442, "Performance of household electrical appliances—Rotary clothes dryers" and European Standard EN 61121, "Tumble dryers for household use—Methods for measuring the performance," Edition 3 2005 (EN Standard 61121). 76 FR 972, 976 (January 6, 2011). Also noted in the TP Final Rule, DOE used the term "ventless" instead of "condensing," as suggested by AHAM, to reflect the actual consumer utility (that is, no external vent required) because it is possible that vented dryers that also condense may become available on the market. *Id.* DOE also conducted testing for the TP Final Rule to evaluate the repeatability of the amended test procedure for ventless dryers. As detailed in the TP Final Rule, ventless electric compact 240V dryers and ventless electric combination washer/dryers showed less than 1 percent variation and less than 3.5 percent variation in EF from test to test, respectively. DOE stated in the TP Final Rule that it believes that the amendments for ventless clothes dryers produce repeatable measurements of EF. 76 FR 972, 1009 (January 6, 2011). DOE also notes that the measured EF values for ventless electric compact (240V) dryers and ventless electric combination washer/dryers tested according to the DOE test procedure at appendix D, using only the amendments for ventless clothes dryers (2.37 and 2.02, respectively), are in close agreement with the baseline values proposed in the preliminary analyses shown below in Table IV.15 and Table IV.16. Therefore, DOE did not revise the baseline EF levels for the ventless clothes dryer product classes.

In response to AHAM's comment that "HLD–1" should be changed to "AHAM HLD–1," DOE has adopted this editorial change in the TP Final Rule. 76 FR 972, 1032 (January 6, 2011).

BSH commented that DOE should consider the condensation rate for ventless clothes dryers. BSH added that the condensation rate efficiency is an important indicator to measure. (BSH, No. 23 at p. 4) DOE notes that EN Standard 61121 provides for a measurement of the condensation rate efficiency. However, this measurement is not used in the calculation of energy use, which considers only the energy required to dry the load to a specified final RMC. However, DOE also notes that the ability of a ventless clothes dryer to condense moisture directly affects the energy use per-cycle. For example, if a ventless clothes dryer has a lower condensation efficiency, the air recirculated into the drum would contain more moisture and thus would be able to remove less moisture from the test load. As a result, the energy use of such a ventless clothes dryer would be greater than a ventless clothes dryer with a higher condensation efficiency because it would need to run for a

[15] Whirlpool's proposed amendments for ventless clothes dryers included: (1) Definitions of "conventional" and "condensing" clothes dryers; (2) installation conditions; (3) requirements for clothes dryer preconditioning; (4) requirements for condensation boxes and condenser units; and (5) requirements for test cycle measurements.

longer time to condense the same amount of moisture from the test load. Therefore, DOE believes that the condensation efficiency of a ventless clothes dryer is sufficiently accounted for in the measurement of the per-cycle energy consumption. For these reasons, DOE is not providing for a measurement of condensation efficiency of a clothes dryer.

NRDC questioned whether ventless electric combination washer/dryers are going to be tested in drying mode only or as a unit with washing and drying capability. NRDC stated that, according to the ECOS report, there is a potential for energy savings if manufacturers are allowed to test units together that work together, because it is more efficient to manually remove the water than to dry it. NRDC supported the ECOS report suggestion that DOE consider a testing and labeling program based on the total energy use, cost, and CO_2 emissions for washing and drying a standard load of clothes. According to the ECOS report submitted by NRDC, highly efficient clothes washers greatly decrease the amount of work that a clothes dryer needs to do, but that a clothes dryer is less efficient when drying loads with lower initial RMCs. (NRDC, Public Meeting Transcript, No. 21.4 at p. 22; NRDC, No. 30 at pp. 31–32) Whirlpool commented that the development of a test procedure for ventless electric combination washer/dryers is not worth the time and resources necessary to develop it and suggested that DOE not proceed with such an effort. (Whirlpool, No. 22 at p. 1) DOE is not aware of repeatable and representative test methodologies to accurately measure the efficiency of a combined wash-dry cycle. DOE notes that the clothes washer test procedure requires the measurement of multiple load sizes (minimum, maximum, and average values) as well as multiple cycle settings and water temperatures, but the clothes dryer test procedure requires only a single test load size with a single timed dry cycle with the highest temperature setting. DOE is not aware of how the test load sizes and cycle settings would be aligned to produce accurate and representative test results. DOE also notes that the maximum load size for the washing portion of the cycle (sized according to the capacity of the drum), may be larger than the load size recommended by manufacturers for the drying portion of the cycle, and thus it is not clear what size test load should be specified for a combined cycle. For these reasons, DOE is not adopting a test procedure to measure a full combined wash-dry cycle. DOE also notes that the efficiency of the washer portion of a combination washer/dryer is covered under the minimum energy conservation standards for clothes washers, and that the TP Final Rule amended the clothes dryer test procedure to include methods for measuring the energy use of the drying portion of a combination washer/dryer.

d. Consumer Usage Habits

Annual Cycles

DOE published a final rule on August 27, 1997, amending the DOE clothes washer test procedure to lower the annual clothes washer use cycle value from 416 to 392 cycles per year, a value DOE determined to be more representative of current usage patterns. 62 FR 45484. Further, the revised DOE clothes washer test procedure assumes that 84 percent of all clothes washer loads are dried in clothes dryers. Thus, the annual usage pattern for clothes dryers would be 329 cycles per year. In addition, in the recently proposed amendments to the clothes washer test procedure, DOE proposed to amend the number of cycles per year to 295. 75 FR 57556, 57564 (Sept. 21, 2010). In contrast, the current DOE residential clothes dryer test procedure in appendix D assumes an average annual clothes dryer use of 416 cycles per year. (10 CFR 430.23(d)(1))

DOE stated in chapter 2 of the preliminary TSD that it was reviewing available data on the number of annual clothes dryer cycles, and would consider amendments to its test procedure to accurately reflect the number of annual clothes dryer cycles for the clothes dryer tests.

The Joint Petitioners and ACEEE commented that DOE should update the number of clothes dryer cycles per year based on the best available data (ideally based on a nationally representative sample). (Joint Petitioners, No. 33 at p. 25; ACEEE, No. 24 at p. 1) The California Utilities supported reducing the clothes dryer cycles per year from 416 to 329 to reflect new Energy Information Administration (EIA)'s "Residential Energy Consumption Survey" (RECS) survey data on household use. (California Utilities, No. 31 at pp. 2–3, 12) According to AHAM, a recent Proctor & Gamble (P&G) consumer survey showed that the average consumer dries 5.35 loads per week, or 278 load per year, which is essentially identical to the value estimated by RECS (279 cycles per year), providing good verification for the RECS approach. AHAM commented that DOE should ensure that any value used in the economic portion of the rulemaking analysis (that is, cycles per year) be used in the engineering analysis, and that the test procedure be modified to reflect this value. (AHAM, No. 25 at p. 9)

As discussed in the TP Final Rule, DOE amended its clothes dryer test procedure to change the number of clothes dryer cycles per year from 416 to 283 based on data from the 2005 RECS. 76 FR 972, 977 (January 6, 2011). DOE notes that this value is in close agreement with the estimates provided in the P&G data (278 cycles per year). DOE also noted in the TP SNOPR that data from the 2004 California Statewide Residential Appliance Saturation Study (RASS), which surveyed appliance product usage patterns, including clothes dryers, indicated an average of 4.69 loads per week, or approximately 244 loads per year, which is in agreement with the downward trend of the number of clothes dryer cycles per year. Because the 2004 California Statewide RASS provides only a limited dataset, however, DOE stated in the TP SNOPR that it did not intend to rely only on this data to determine an appropriate number of annual use cycles for the clothes dryer test procedure. 75 FR 37594, 37625 (June 29, 2010). DOE believes that these data sources provide sufficient justification for the revised value of 283 cycles per year using the RECS-based approach.

Cycle Time

Edison Electric Institute (EEI) commented that DOE's assumption of 8,620 standby hours leaves 140 active mode hours which would correspond to 20 minutes per drying cycle (if the assumption is that there are 416 dryer cycles per year). EEI questioned whether this was accurate and stated that DOE should review those numbers. (EEI, Public Meeting Transcript, No. 21.4, at p. 49) DOE notes that the TP Final Rule amends the DOE clothes dryer test procedure to lower the initial RMC of the clothes load from 70 percent to 57.5 percent which will result in a decreased cycle time. DOE also notes that the amendments in the TP Final Rule to increase the test load size for standard size dryers from 7 lb. to 8.45 lb. as well as changing the water temperature for test load preparation from 100 °F to 60 °F will result in an increased cycle time. 76 FR 972, 988 (January 6, 2011). The TP Final Rule also amended the clothes dryer test procedure to change the number of cycles per year from 416 to 283. 76 FR 977. Based on the amendment to the number of annual use cycles, DOE notes that the cycle length would be approximately 30 minutes (140 annual active mode hours/283 active mode cycles per year). DOE is

unaware, however, of consumer usage data indicating that the number of active mode hours per year has changed. For these reasons, DOE did not change the number of clothes dryer active mode hours in the TP Final Rule.

Initial RMC

The DOE clothes dryer test procedure in appendix D specifies that the clothes load have an initial RMC of 70 ± 3.5 percent. DOE stated in the preliminary TSD that a review of residential clothes washer models in the California Energy Commission (CEC) product database suggests that the average RMC is less than the nominal 70 percent that is currently provided for in the DOE clothes dryer test procedure. Therefore, DOE stated it was considering amendments to the clothes dryer test procedure to address RMC.

The Joint Petitioners and ACEEE commented that DOE should update the initial RMC based on the best available data (ideally based on a nationally representative sample). (Joint Petitioners, No. 33 at p. 25; ACEEE, No. 24 at p. 1) NRDC commented that DOE's initial RMC assumptions do not reflect today's washing machines and should be revised to better reflect current washer technology. (NRDC, No. 26 at pp. 2, 4) NRDC commented that the ECOS report summarized test results for a single clothes washer which showed that the RMCs after the wash cycle is finished are 70-percent RMC for cotton bath towels and 40-percent RMC for the DOE 50/50 cotton/polyester test cloths. (NRDC, No. 30 at pp. 30–31) NRDC also stated that the energy consumption of a clothes dryer decreases when the initial RMC is lower, but not in direct proportion to the lowered water content because energy is still used to heat and move the air, cloth and metal. (NRDC, No. 26 at pp. 2, 4) The California Utilities and the NPCC both supported reducing the initial RMC from the current 70 percent to a value nearer to 56 percent, based on data submitted by AHAM, recognizing that today's washers have faster spin speeds and typically leave less water in the clothes. (California Utilities, No. 31 at pp. 2, 12; NPCC, No. 32 at p. 2) However, NPCC also commented that even an initial RMC of 56 percent may not reflect the RMC produced by higher efficiency clothes washers that may be required as a result of the current DOE rulemaking for those products. NPCC commented that the average RMC for clothes washers in the July 2008 CEC appliance product directory was only 46 percent (as presented by DOE), which is well below its proposed revised value. (NPCC, No. 32 at p. 2)

AHAM and Whirlpool supported using the industry shipment-weighted average residential clothes washer RMC of 47 percent derived from data provided by AHAM. They commented that DOE should use the 47-percent RMC in both the engineering and economic analyses; modify the test procedure by changing the RMC from 70 percent to 47 percent; and modify the baseline energy factor to reflect the change in the test procedure. Whirlpool added that failure to do so will result in overstating clothes dryer energy use, thus rendering all payback and LCC calculations erroneous. (AHAM, No. 25 at p. 10; Whirlpool, No. 22 at pp. 2–3) AHAM also stated that data collected by industry showed a 22-percent increase in EF when the initial RMC is changed to 56 percent. AHAM commented that they expect EF will increase further as RMC is reduced to 47 percent, but that the relationship is not expected to be linear. (AHAM No. 25 at p. 10)

BSH also commented that it supports reducing the initial RMC for testing purposes, and added that the DOE test procedure should be defined before any energy conservation standard levels are established. (BSH, No. 23 at p. 6) BSH also commented that it should be clarified which energy consumption results from each change in the test procedure before a suitable classification can be done and added that a round robin test may be helpful to estimate the energy levels. (BSH, No. 23 at p. 6)

In the TP SNOPR, DOE proposed to change the initial RMC from 70 percent to 47 percent based on shipment-weighted clothes washer RMC data provided by AHAM. 75 FR 37594, 37626–31 (June 29, 2010). As discussed in the TP Final Rule, DOE received comments in response to the TP SNOPR that the shipment-weighted average RMC value in the AHAM data was based on the clothes washer RMC, which uses an RMC correction factor to normalize testing results from different lots of test cloth, but the DOE clothes dryer test procedure should instead use the uncorrected RMC value. DOE determined that an initial clothes dryer RMC of 57.5 percent more accurately represents the moisture content of current laundry loads after a wash cycle for the purposes of clothes dryer testing, derived from the 47-percent shipment-weighted RMC for clothes washers (that was based on analysis of data provided by AHAM) without the application of the RMC correction factor specified in the DOE clothes washer test procedure, as discussed above in this paragraph. DOE validated this estimate using clothes washer uncorrected RMC data from testing of a limited sample of representative clothes washers for the DOE clothes washer energy conservation standards rulemaking. As a result, the TP Final Rule amended the DOE clothes dryer test procedure to adopt this value for the initial RMC. 76 FR 972, 977 (January 6, 2011). As discussed in section IV.C.2.a, DOE conducted testing for the TP Final Rule in order to analyze how the amendments to the test procedure, including the change to the initial RMC, would affect the measured efficiency of clothes dryers.

Load Size

Currently the DOE test procedure for clothes dryers requires a 7.00 lb. ± .07 lb. test load for standard-size dryers and a 3.00 lb. ± .03 lb. test load for compact-size dryers. (10 CFR part 430, subpart B, appendix D, section 2.7) DOE stated in chapter 2 of the preliminary TSD that it was reviewing available data to determine the current representative clothes dryer load size, and would consider amendments to its test procedure to accurately reflect the current clothes dryer test load size for the clothes dryer tests.

The Joint Petitioners and ACEEE commented that DOE should update the size of the clothes dryer test load based on the best available data (ideally based on a nationally representative sample). (Joint Petitioners, No. 33 at p. 25; ACEEE, No. 24 at p. 1) The California Utilities and NPCC both supported increasing the test load size from 7 lb. to 8.3 lb., or another appropriate value, commenting that 8.3 lb. is more typical of the size of loads in today's larger clothes dryers, as based on DOE's distribution of tub sizes from models in the CEC database. (California Utilities, No. 31 at p. 2; NPCC, No. 32 at p. 2) NRDC also commented that DOE should consider modifying the clothes dryer size criteria, stating that test load sizes for clothes dryers do not correlate to the test load sizes for washers and likely do not reflect real life load size. According to NRDC, current clothes dryer size classes are likely inaccurate given that today's clothes dryers can comfortably hold loads of 10 to 17 lb., with more 7 to 8 cubic foot (ft^3) models now on the market than models smaller than 7 ft^3. NRDC commented that DOE should reevaluate its clothes dryer size criteria and test load size to better reflect the clothes dryers available on the market today. (NRDC, No. 26 at pp. 2, 4; NRDC, No. 30 at p. 30)

AHAM commented that it prefers that DOE utilize industry values for data such as clothes dryer load size. AHAM stated that the shipment-weighted

residential clothes washer drum volume for standard-size products in 2008 was 3.24 ft^3, which corresponds to an average clothes washer load size of 8.15 lb. AHAM also stated that for compact clothes washers, the shipment-weighted average drum volume was 1.5 ft^3, which corresponds to an average load size of 4.70 lb. AHAM added that because compact products are a separate product class, they should be treated as such in the analysis. AHAM commented that it supports the use of two separate load sizes (8.15 lb. for standard-size and 4.70 lb. for compact-size products), if the modified load size is used in both the engineering and economic analyses, and if the test procedure is modified to be consistent with this analysis and the baseline EF is modified to reflect the change in load size. (AHAM, No. 25 at pp. 10–11)

In the TP Final Rule, DOE amended the clothes dryer test procedure to change the load size from 7.00 lb ± .07 lb to 8.45 lb ± .085 lb based on the historical trends of the shipment-weighted average tub volume for residential clothes washers from 1981 to 2008 and the corresponding percentage increase in clothes washer load sizes (as specified in the load size table 5.1 in the DOE clothes washer test procedure at 10 CFR part 430, subpart B, appendix J1), which is assumed to proportionally impact clothes dryer load size. 76 FR 972, 977 (January 6, 2011). DOE believes that this estimate using the percentage increase in load size based on trends in clothes washer tub volumes would produce a more representative value than simply using the nominal load size value in the clothes washer test procedure, as suggested by AHAM. DOE does not have any consumer usage data indicating that consumers always machine dry the same size load from the wash cycle such that the average clothes washer load size can be directly applied to the clothes dryer test procedure, as suggested by AHAM. As discussed in section IV.C.2.a, DOE conducted testing for the TP Final Rule in order to analyze how the amendments to the test procedure, including the change to the load size, would affect the measured efficiency.

DOE stated in the TP Final Rule that it believes that most compact clothes dryers are used in conjunction with compact-size clothes washers, and DOE is not aware of data on the trends of compact clothes washer tub volumes that would suggest that the tub volume for such clothes washers has changed significantly. 76 FR 972, 1014 (January 6, 2011). DOE did not receive any such data in response to its requests in the TP SNOPR. In addition, as discussed above, DOE does not have any consumer usage data indicating that consumers always machine dry the same size load from the wash cycle such that the average clothes washer load size can be directly applied to the clothes dryer test procedure, as suggested by AHAM. For these reasons, DOE did not revise the test load size for compact clothes dryers in the TP Final Rule. *Id.*

NRDC also commented that the ECOS report states that if DOE were to test each model across a wide range of load sizes and report multiple values, it would help consumers choose the appropriate sized clothes dryer and to fill it with the recommended amount of clothing to dry as efficiently as possible. (NRDC, No. 30 at p. 30) DOE is not aware of any data indicating what load sizes typical consumers use or data on the percentage of clothes dryer cycles at different load sizes to determine how such results would be used to calculate an energy use or energy efficiency metric. DOE is also unaware of data showing how such a change would affect the measured EF compared to the existing test procedure, as required by EPCA. (42 U.S.C. 6293(e)(1)) DOE notes that requiring additional test cycles for different size loads would add significant testing burden on manufacturers. For these reasons, DOE did not amend the clothes dryer test procedure to require the testing of multiple test load sizes in the TP Final Rule.

BSH proposed that tumble clothes dryers be tested with a load size relative to the drum volume, and that this relationship be linear. BSH commented that the load size that the consumer uses generally matches the drum size of the clothes dryer (the larger the drum the higher the average load size dried). According to BSH, using only two load sizes for a wide range of drum volumes will cause unfairness in comparison of different clothes dryers. For example, a standard clothes dryer with a 125-liter drum volume but 60 centimeter (cm) housing (which is right above the limit to be "compact") has an unfair advantage when its energy efficiency is measured due to the fact that the load fills the drum much better than in a larger appliance. (BSH, No. 23 at p. 4) DOE is not aware of any consumer usage data indicating how load size varies with clothes dryer drum capacity. In addition, DOE is not aware of any data indicating how such a change would affect the measured efficiency. For these reasons, DOE did not amend the clothes dryer test procedure to require that the load size vary with drum capacity.

Water Temperature for Test Load Preparation

The current clothes dryer test procedure specifies a water temperature of 100 °F ± 5 °F for the test load preparation. (10 CFR part 430, subpart B, appendix D, section 2.7) The California Utilities, ACEEE, and NPCC stated that this initial clothes load temperature may have been common when most clothes washers used a hot water rinse. However, today almost all clothes washers now default to a cold water final rinse to save water heating energy. (California Utilities, No. 31 at pp. 3, 12; ACEEE, No. 24 at p. 2; NPCC, No. 32 at p. 2) According to ACEEE, today's clothes washers typically have a cold rinse default and consumers increasingly select cold water wash and rinse in response to public information campaigns and the introduction of special "cold water wash" detergents. (ACEEE, No. 24 at p. 2) The California Utilities, ACEEE, and NPCC recommended that DOE align the clothes dryer test method with the clothes washer test method by reducing the water temperature for clothes dryer test load preparation to 60 °F ± 5 °F. (ACEEE, No. 24 at p. 2)

As discussed in the TP Final Rule, DOE analyzed 2005 RECS data on the rinse water temperatures selected by consumers for clothes washer cycles, which indicates that for consumers that use a clothes washer in the home, approximately 80 percent of wash cycles per year use a cold rinse. 76 FR 972, 996 (January 6, 2011). In addition, DOE also noted that the clothes washer test procedure specifies a warm rinse temperature use factor of 27 percent, suggesting that for the majority of clothes washer cycles, consumers use the cold rinse. (10 CFR part 430, subpart B, appendix J1) DOE also sought comment on the warm rinse temperature use factor in the recent proposal to amend the test procedure for residential clothes washers because it received consumer usage survey data from a manufacturer indicating that, for one clothes washer model with no cold rinse option on the cycle recommended for cotton clothes and a default cold rinse on all other cycles, users participating in the survey reported using warm rinse for 1.6 percent of all cycles. 75 FR 57556, 57571 (Sept. 21, 2010) For these reasons, DOE amended the clothes dryer test procedure to change the water temperature for clothes dryer test load preparation from 100 °F ± 5 °F to 60 °F ± 5 °F to be more representative of the clothes load after a cold rinse cycle at the end of the wash cycle. 76 FR 972, 996 (January 6, 2011).

Test Cloth

The current clothes dryer test procedure specifies the use of energy test cloth consisting of a pure finished bleach cloth, made with a momie or granite weave, which is a blended fabric of 50-percent cotton and 50-percent polyester. Each energy test cloth measures 24 inches by 36 inches. Additional specifications are provided in the test procedure for the weight, thread count, and allowable shrinkage. (10 CFR part 430, subpart B, appendix D, section 2.7)

The ECOS report stated that DOE should test a mix of cotton and synthetics of various sizes, including large sheets, towels, and jeans, rather than only testing small, uniform synthetic-blend test cloths to more closely approximate real-world performance. The ECOS report also stated that this would deal more fairly with the real-world situation in which some fabrics have finished drying before others, causing the load to either finish before everything is dry or after some of the fabrics have been over-dried. NRDC also commented that the ECOS report presented test results using different mixes of test loads which showed that clothes dryers often stopped with the synthetic quite dry (less than 2-percent final RMC) but the cotton still damp (greater than 6-percent RMC). According to NRDC, if DOE were to test each model across a wide range of load types and report multiple values, it would help consumers choose an appropriately sized clothes dryer and to fill it with the recommended amount of clothing so that it would dry as efficiently as possible. (NRDC, No. 30 at pp. 22, 30) NRDC added that in this real-world scenario, clothes dryers may be less effective due to clothing balling up or the clothes dryer shutting off early due to a variety in cloth blends. NRDC added that certain techniques such as agitating the drum or reversing the cycle may help mitigate these problems and potentially increase efficiency in a real world scenario. NRDC also added that the standard DOE test cloths do not constitute a typical load and therefore do not accurately test clothes dryers' effectiveness at drying loads that have a variety of fabric types or are more likely to clump. NRDC suggested a mix of 100-percent cotton and 50:50 cotton/polyester as an alternative test load. (NRDC, No. 26 at pp. 1, 3; NRDC, Public Meeting Transcript, No. 21.4 at p. 43)

DOE is unaware of data to determine the composition of clothing types and materials that would be more representative of typical consumer clothing loads than the existing DOE test cloth and still produce accurate and repeatable results. Similarly, DOE is unaware of data showing the test-to-test repeatability of different test loads. Based on discussions with manufacturers, DOE understands the test material specified in the existing DOE clothes dryer test procedure produces the most repeatable results, and other tests loads are less repeatable. In addition, DOE also notes that requiring additional test cycles for loads with different clothes types and materials would add significant testing burden on manufacturers. For these reasons, DOE did not amend the clothes dryer test procedure in the TP Final Rule to change the DOE test load or to require the testing of multiple test loads composed of different clothes types and materials.

e. Drum Capacity Measurement

The Joint Petitioners commented that DOE should clarify section 3.1 of the clothes dryer test procedure regarding the measurement of drum capacity to specify that the clothes dryer's rear drum surface be supported on a platform scale to "prevent deflection of the drum surface * * *" instead of "prevent deflection of the dryer." (Joint Petitioners, No. 33 at p. 25) As discussed in the TP Final Rule, DOE agrees with the comments that the reference to deflection of the "dryer" is unclear and should be clarified to specify that the clothes dryer's rear drum surface should be supported on a platform scale to prevent deflection of the drum surface. For this reason, DOE amended the clothes dryer test procedure in TP Final Rule to reflect this change. 76 FR 972, 1019 (January 6, 2011).

f. HVAC Effects

According to EPCA, any prescribed or amended test procedures shall be reasonably designed to produce test results which measure energy efficiency, energy use, water use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(3))

NRDC and NPCC commented that DOE should analyze the effects of clothes dryers on a home's heating and cooling energy use. (NRDC, No. 26 at pp. 1, 4; NPCC, No. 32 at p. 2) NRDC also commented that the current test procedure does not analyze the clothes dryer's effect on the heating and cooling of the surrounding room, in particular, whether the clothes dryer warms the room, cools it, or leaves it unchanged. NRDC stated that the test procedure does not distinguish between clothes dryers that vent their exhaust air outside (and require makeup air to be conditioned), and those that are unvented. (NRDC, No. 26 at pp. 1, 4; NRDC, No. 30 at p. 31) NPCC also commented that DOE's analysis of the economics of heat recovery clothes dryers should incorporate the reduced impact on space conditioning of this technology option. (NPCC, No. 32 at p. 2) The California Utilities recommended that the DOE clothes dryer test procedure be amended to measure the total airflow volume during the test cycle in order to gather data on heating, ventilation, and air conditioning (HVAC) loading. (California Utilities, No. 31 at pp. 9, 12)

As discussed above, EPCA requires that any prescribed or amended test procedures be reasonably designed to produce test results which measure energy efficiency, energy use, water use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(3)) DOE believes that accounting for the effects of clothes dryers on HVAC energy use is inconsistent with the EPCA requirement that a test procedure measure the energy efficiency, energy use, or estimated annual operating cost of a covered product. As a result, DOE did not revise the clothes dryer test procedure to account for HVAC energy use in the TP Final Rule and does not account for HVAC energy use in these standards.

g. Efficiency Metric

The energy efficiency metric currently used for clothes dryer energy conservation standards, EF, is defined on the basis of a per-cycle measure of the lb. of clothes dried per kWh. (10 CFR 430.23)

BSH commented that DOE should calculate yearly energy consumption for clothes dryers by considering a defined amount of laundry dried within a year. BSH stated that the energy consumption for the yearly load dried in small clothes dryer should be correlated to the energy consumption when the same yearly load is dried in a larger clothes dryer. BSH added that if only the number of loads is used then for a larger clothes dryer, the energy labeled would refer to a much larger amount of clothing than for a smaller clothes dryer. According to BSH, the values would not be comparable and it would appear to the consumer that the larger clothes dryer uses more energy per cycle than the smaller. In reality, when using a compact size clothes dryer consumers would run more cycles per year to dry their yearly amount of laundry. (BSH, No. 23 at p. 5) DOE is not aware of

consumer usage data showing the relationship between clothes dryer drum capacity and the amount of laundry dried by the consumer per year that would suggest that consumers typically dry the same amount of clothing per year, regardless of the drum capacity. For these reasons, DOE did not amend the clothes dryer test procedure in the TP Final Rule to specify a single value for the amount of laundry dried per year.

2. Room Air Conditioner Test Procedure

a. Standby Mode and Off Mode

Referenced Standards

As noted above, EPCA directs DOE to amend its test procedures to include measures of standby mode and off mode energy consumption, taking into consideration the most current versions of IEC Standard 62301 and IEC Standard 62087. (42 U.S.C. 6295(gg)(2)(A)) For the reasons discussed for the clothes dryer test procedure, DOE determined that only IEC Standard 62301 is relevant to the room air conditioner test procedure.

AHAM supported DOE's evaluation of IEC Standard 62301 CDV for potential revisions to address standby mode and off mode power in the room air conditioner test procedure. AHAM commented that DOE would thus harmonize with international standards, including those developed in Canada and Europe. (AHAM, Public Meeting Transcript, No. 21.4 at p. 30) As discussed for clothes dryers in section III.A.1.a, DOE considered the current version, IEC Standard 62301 First Edition, as required by EPCA. For the reasons stated in the TP Final Rule, DOE amended its test procedures for room air conditioners in the final rule to incorporate by reference the clauses from IEC Standard 62301 First Edition proposed in the TP SNOPR, as well as the provisions of IEC Standard 62301 CDV for the mode definitions. 76 FR 972, 975–6 (January 6, 2011). DOE may consider incorporating by reference clauses from IEC Standard 62301 Second Edition when that version has been published.

Testing Procedures

EEI commented that the total number of standby hours would be 8,010 if a product is plugged in all year (8,760 total hours in a year less the 750 cooling mode operating hours), and closer to 2,000 if unplugged. EEI requested clarification on the source of the 5,115 standby hours. (EEI, Public Meeting Transcript, No. 21.4 at p. 37) DOE notes that the estimate of 5,115 total standby and off mode hours, explained in greater detail in the TP SNOPR (75 FR 37594, 37610 (June 29, 2010), assumes (1) the cooling season length is 90 days or 2,160 hours; (2) half of the products in the field would be unplugged outside of the cooling season, while the others would be in standby and/or off mode; and (3) that the cooling season hours not associated with active mode cooling are evenly split between off-cycle mode and standby mode or off mode. Off-cycle mode involves operation of the fan but not the compressor. DOE noted in the TP NOPR that it is not aware of any reliable data for hours spent in different standby and off modes for room air conditioners. 73 FR 7439, 74648–49 (Dec. 9, 2008). In the absence of data suggesting a different allocation of annual hours, DOE adopted the estimate of 5,115 annual hours standby and off mode hours in the TP Final Rule. 76 FR 972, 991 (January 6, 2011).

b. Active Mode Referenced Standards

The current DOE room air conditioner test procedure incorporates by reference two industry test standards: (1) American National Standard (ANS) (since renamed American National Standards Institute (ANSI)) Z234.1–1972, "Room Air Conditioners;" [16] and (2) American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 16–69, "Method of Testing for Rating Room Air Conditioners." [17] (10 CFR part 430, subpart B, appendix F, section 1)

AHAM commented that its current room air conditioner standard is American National Standards Institute (ANSI)/AHAM RAC–1–2008. (AHAM, Public Meeting Transcript, No. 21.4 at p. 35; AHAM, No. 25 at p. 13) As discussed in the TP Final Rule, DOE adopted the amendments to reference the relevant sections of the current industry test standards for room air conditioners, which are designated as: (1) ANSI/AHAM RAC–1–R2008, "Room Air Conditioners;" and (2) ANSI/American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 16–1983 (RA 2009), "Method of Testing for Rating Room Air Conditioners and Packaged Terminal Air Conditioners" (ANSI/ASHRAE Standard 16–1983 (RA 2009)). 76 FR 972, 978 (January 6, 2011)

c. Annual Active Mode Hours

The current DOE room air conditioner test procedure assumes that room air conditioners have an average annual use of 750 hours. (10 CFR part 430.23(f)) DOE noted in chapter 3 of the preliminary TSD that DOE's TSD from September 1997, issued in support of the 1997 room air conditioner rulemaking, provides estimates for average annual operating hours closer to 500.[18] DOE noted in the preliminary TSD developed in support of today's final rule, however, that a similar assessment of room air conditioner hours of operation developed in support of the June 2010 TP SNOPR suggests that the annual hours of operation have since increased and are now in fact close to 750. 75 FR 37594, 37633 (June 29, 2010).

EEI commented that the active mode hours for room air conditioners may be more than the 750 hours currently specified in the DOE room air conditioner test procedure and questioned whether the 750 hours reflect both residential and commercial applications. (EEI, Public Meeting Transcript, No. 21.4 at p. 36) As discussed in the TP Final Rule, DOE noted that estimates using data from the EIA's 2005 RECS [19] support maintaining the 750 annual operating hours specification. As a result, DOE did not amend the room air conditioner test procedure to change the number of annual operating hours. 76 FR 972, 978 (January 6, 2011).

d. Part-Load Operation

DOE noted in the preliminary TSD (chapter 5, "Engineering Analysis") that the DOE room air conditioner test procedure at appendix F measures full-load performance but is not able to assess energy savings associated with technologies which improve part-load performance.

DOE considered amendments to its room air conditioner test procedure to measure part-load performance, but did not propose such changes, as explained in the June 2010 TP SNOPR and the TP final rule. 75 FR 37594, 37634 (June 29, 2010); 76 FR 972, 1016 (January 6, 2011). DOE concluded that developing an additional test for part load, or switching to a seasonal metric to integrate part-load performance is not warranted. DOE noted that (1) sufficient information is not available at this time regarding use of room air conditioner

[16] ANSI standards are available at *http://www.ansi.org.*

[17] ASHRAE standards are available at *http://www.ashrae.org.*

[18] U.S. Department of Energy—Office of Energy Efficiency and Renewable Energy, Technical Support Document for Energy Conservation Standards for Room Air Conditioners. September 1997. Chapter 1, section 1.5. Washington, DC, available at *http://www.eere.energy.gov/buildings/appliance_standards/residential/room_ac.html*

[19] U.S. Department of Energy-Energy Information Administration. "Residential Energy Consumption Survey," 2005 Public Use Data Files, 2005. Washington, DC. Available online at: *http://www.eia.doe.gov/emeu/recs/.*

features that prevent over-cooling; (2) widespread use of part-load technology in room air conditioners is not likely to be stimulated by the development of a part-load or seasonal metric at this time, and therefore, the significant effort required to develop an accurate part-load metric is not likely to be justified by the expected minimal energy savings; and (3) key design changes that improve full-load efficiency also improve part-load efficiency, so the existing EER metric is already a strong indication of product efficiency over a wide range of conditions.

DOE stated in the preliminary TSD that it did not consider technologies such as variable speed compressors and thermostatic expansion valves as design options during the engineering analysis because these design options save energy only during part-load operation. DOE expects, based on available data and the considerations discussed in the test procedure SNOPR and reiterated above, that such technologies will not save enough energy to be cost effective.

DOE requested comments regarding additional design options that it should consider in the engineering analysis. (*See* the preliminary TSD Executive Summary, section ES.4).

NRDC commented that DOE should further analyze the efficiency of part-load operation. NRDC stated that DOE assumed that room air conditioners are generally undersized and run at full capacity and, therefore, did not take into consideration the potential to improve part-load efficiency. NRDC recommended that DOE further investigate the underlying assumption that room air conditioners are almost always run at full capacity and analyze the potential to improve part-load operation efficiency. (NRDC, No. 26 at p. 5) The comment does not provide any new information regarding room air conditioner operation that would allow development of an appropriate seasonal efficiency metric. As discussed in the TP Final Rule, development of such a metric that would take part load operation into account would require knowledge of the distribution of hours spent by room air conditioners at different load levels and at different outdoor and indoor temperature and humidity conditions. 76 FR 972, 1016 (January 6, 2011). Because such data is not available, DOE cannot establish an appropriate efficiency metric and cannot properly evaluate part-load technologies. DOE may amend the test procedure to account for part-load performance in a future rulemaking if sufficient information becomes available.

DOE also notes that the existing EER metric, which represents most of the CEER metric that is the basis of the energy standard prescribed in today's rule, is already a strong indicator of product efficiency over a wide range of conditions. Most of the design options that improve efficiency measured using EER would also improve efficiency measured using a part-load metric. For these reasons, DOE did not amend its room air conditioner test procedure to measure part-load performance. 76 FR 972, 1016 (January 6, 2011).

e. Distribution of Air

NRDC commented that DOE should consider how effectively room air conditioners distribute air throughout the room, adding that if all the cooling is provided by convection into the space, the effectiveness of delivering that cooling by the fan and integral diffuser may have a significant impact on energy use. NRDC stated that the DOE test procedure should take into account how far into the room the airflow travels and whether the unit allows for adjustments to the airflow pattern. NRDC also commented that many units will be placed at sill height, but buildings with wall sleeves will likely have units that are installed below the sill, which could pose different concerns with room air distribution to provide adequate mixing to avoid drafts. (NRDC, No. 26 at p. 6)

DOE notes that the DOE test procedure measures the cooling delivered by the room air conditioner regardless of the distribution of the cooling air within the test chamber. Thus, design options that optimize distribution of the cooling air would not improve the measurement.

DOE agrees with the comment's premise that the energy use of a room air conditioner used by a consumer may be affected by the air circulation patterns it establishes in a room. For example, a consumer located in a room far from the unit and not in line with the product's discharge air outlet may keep the unit operating longer to achieve comfortable local room conditions. This influence has as much to do with installation and use as it does with product characteristics. The relationship between room air circulation and room air conditioner energy use is not sufficiently well understood to allow any consideration of integration of such factors into the energy use metric. DOE is not aware of data evaluating the impact a product's air distribution patterns have on product energy use by consumers. As a result, this issue is not addressed by today's rule.

3. Effects of Test Procedure Revisions on the Measured Efficiency

In any rulemaking to amend a test procedure, DOE must determine to what extent, if any, the proposed test procedure would alter the measured energy efficiency of any covered product as determined under the existing test procedure. (42 U.S.C. 6293(e)(1)) If DOE determines that the amended test procedure would alter the measured efficiency of a covered product, DOE must amend the applicable energy conservation standard accordingly. In determining the amended energy conservation standard, the DOE must measure, pursuant to the amended test procedure, the energy efficiency, energy use, or water use of a representative sample of covered products that minimally comply with the existing standard. The average of such energy efficiency, energy use, or water use levels determined under the amended test procedure shall constitute the amended energy conservation standard for the applicable covered products. (42 U.S.C. 6293(e)(2)) EPCA also states that models of covered products in use before the date on which the amended energy conservation standard becomes effective (or revisions of such models that come into use after such date and have the same energy efficiency, energy use, or water use characteristics) that comply with the energy conservation standard applicable to such covered products on the day before such date shall be deemed to comply with the amended energy conservation standard. (42 U.S.C. 6293(e)(3))

EPCA also provides that amendments to the test procedures to include standby mode and off mode energy consumption will not determine compliance with previously established standards. (U.S.C. 6295(gg)(2)(C)) Because the amended test procedures for standby mode and off mode energy consumption would not alter existing measures of energy consumption or efficiency, these amendments would not affect a manufacturer's ability to demonstrate compliance with previously established standards.

For the TP Final Rule, DOE investigated how the amended test procedures would affect the measured efficiency as compared to the existing DOE test procedures. The following sections discuss these effects for each product.

a. Clothes Dryers

The Joint Petitioners proposed that the final rule amending the clothes dryer test procedure also amend the

standards in the Joint Petition according to the procedures in section 323(e)(2) of EPCA, except that for the purposes of establishing a representative sample of products, DOE should choose a sample of minimally compliant dryers which automatically terminate the drying cycle at no less than 4-percent RMC. (Joint Petitioners, No. 33 at p. 17)

As discussed above, DOE did not adopt amendments to the clothes dryer test procedure to better account for automatic cycle termination. As a result, DOE did not consider any revisions to the energy conservation standards based on amendments for automatic cycle termination. However, DOE notes that EPCA does not include any exceptions that would allow for the measurement of only dryers that automatically terminate the drying cycle at no less than 4-percent RMC. (42 U.S.C. 6293(b)(1)–(3))

As part of the TP Final Rule, DOE conducted testing on a sample of 17 representative clothes dryers to evaluate the effects of the amendments to the clothes dryer test procedure on the measured EF. 76 FR 972, 1026–27 (January 6, 2011). DOE tested these units according to the amended clothes dryer test procedure in the TP Final Rule, conducting up to three tests for each test unit and averaging the results. The results from this testing are shown below in Table III.2. DOE noted in its testing that the amendments to the initial RMC, water temperature for test load preparation, and load size had an effect on the measured EF as compared to the existing test procedure. For vented electric-standard size clothes dryers tested using the amended test procedure, the measured EF increases by an average of about 20.1 percent. For vented gas clothes dryers, the measured EF increased by an average of about 19.8 percent. For vented electric compact 120V and 240V clothes dryers, the measured EF increased by an average of about 15.6 and 12.8 percent, respectively. For ventless electric compact 240V clothes dryers and ventless electric combination washer/dryers, the measured EF increased by an average of about 13.6 and 11.4 percent, respectively, as compared to the measured EF using the existing test procedure with only the amendments for ventless clothes dryers. (That is, without the changes to the initial RMC, water temperature for test load preparation, or other changes) DOE noted that the increase in measured EF is greater for the standard-size products (that is, vented electric standard and vented gas clothes dryers) than for compact-size products due to the additional amendments to increase the test load size for standard-size products. 76 FR 972, 1027 (January 6, 2011). As discussed in section IV.C.2.a, DOE applied these percentage increases in the measured EF based on the test procedure amendments for each product class to the efficiency levels proposed in the preliminary analysis.

TABLE III.2—DOE TEST RESULTS TO EVALUATE THE EFFECTS OF THE CLOTHES DRYER TEST PROCEDURE AMENDMENTS ON MEASURED EF

Test unit	Average EF *lb/kWh*		Change (percent)
	Current test procedure	Amended test procedure	
Vented Electric Standard:			
Unit 1	3.07	3.69	20.4
Unit 2	3.14	3.77	19.5
Unit 3	3.20	3.83	19.6
Unit 4	3.28	3.92	19.4
Unit 5	3.24	3.96	22.5
Unit 6	3.12	3.72	19.1
Vented Gas:			
Unit 7	2.78	3.36	20.6
Unit 8	2.83	3.40	19.9
Unit 9	2.85	3.42	20.2
Unit 10	2.80	3.37	20.5
Unit 11	2.98	3.50	17.6
Vented Electric Compact (240V):			
Unit 12	3.19	3.56	11.4
Unit 13	2.93	3.35	14.2
Vented Electric Compact (120V):			
Unit 14	3.23	3.74	15.6
Ventless Electric Compact (240V):			
Unit 15	2.37	2.69	13.6
Ventless Electric Combo Washer/Dryer:			
Unit 16	2.01	2.27	12.5
Unit 17	2.50	2.76	10.3

Table III.3 shows how the current energy conservation standards are affected by the amendments to the DOE clothes dryer test procedure.

TABLE III.3—ENERGY FACTOR OF A MINIMALLY COMPLIANT CLOTHES DRYER WITH THE CURRENT AND AMENDED TEST PROCEDURE

Product class	EF *lb/kWh*	
	Existing test procedure	Amended test procedure
1. Electric, Standard (4.4 ft^3 or greater capacity)	3.01	3.62

TABLE III.3—ENERGY FACTOR OF A MINIMALLY COMPLIANT CLOTHES DRYER WITH THE CURRENT AND AMENDED TEST PROCEDURE—Continued

Product class	EF *lb/kWh*	
	Existing test procedure	Amended test procedure
2. Electric, Compact (120 v) (less than 4.4 ft^3 capacity)	3.13	3.62
3. Electric, Compact (240 v) (less than 4.4 ft^3 capacity)	2.90	3.27
4. Gas	2.67	3.20

b. Room Air Conditioners

The Joint Petitioners proposed that the final rule amending the room air conditioner test procedure amend the standards in the consensus agreement according to the procedures in section 323(e)(2) of EPCA. (Joint Petitioners, No. 33 at p. 18) These are the provisions that require DOE to adjust the efficiency standard if DOE determines that changes in the energy test procedure alter the measured energy use of covered products. While the measured efficiency of room air conditioners is altered by the incorporation of standby and off mode energy use in the new efficiency metric. However, DOE determined in the TP Final Rule that the amendments to the room air conditioner test procedure do not impact the measurement of EER while providing more accurate and repeatable measurements of capacity and greater flexibility to manufacturers in selecting equipment and facilities. 76 FR 972, 1028 (January 6, 2011). For this reason, DOE believes that revisions to the energy conservation standards for room air conditioners because of the amendments to the test procedure would not be warranted.

B. Technological Feasibility

1. General

In each standards rulemaking, DOE conducts a screening analysis based on information it has gathered on all current technology options and prototype designs that could improve the efficiency of the products or equipment that are the subject of the rulemaking. As the first step in such analysis, DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of these means for improving efficiency are technologically feasible. DOE considers a technology option to be technologically feasible if it is incorporated into commercially available products or working prototypes. 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(i).

Once DOE has determined that particular technology options are technologically feasible, it further evaluates each of these technology options in light of the following additional screening criteria: (1) Practicability to manufacture, install, or service; (2) adverse impacts on product utility or availability; and (3) adverse impacts on health or safety. Section IV.B of this notice discusses the results of the screening analysis for clothes dryers and room air conditioners, particularly the designs DOE considered, those it screened out, and those that are the basis for the trial standard levels (TSLs) in this rulemaking. For further details on the screening analysis for this rulemaking, see chapter 4 of the technical support document accompanying today's direct final rule (direct final rule TSD).

2. Maximum Technologically Feasible Levels

When DOE proposes to adopt an amended standard for a type or class of covered product, it must "determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible" for such product. (42 U.S.C. 6295(p)(1)) Accordingly, DOE determined the maximum technologically feasible ("max-tech") improvements in energy efficiency for clothes dryers and room air conditioners in the engineering analysis, using the design options used in the most efficient products available on the market or in working prototypes. (*See* chapter 5 of the direct final rule TSD.) Table III.4 lists the max-tech levels that DOE determined for this rulemaking.

TABLE III.4—MAXIMUM TECHNOLOGICALLY FEASIBLE EFFICIENCY LEVELS FOR RESIDENTIAL CLOTHES DRYERS AND ROOM AIR CONDITIONERS

Residential clothes dryers	
Product class	Max-tech CEF *lb/kWh*
1. Vented Electric, Standard (4.4 ft^3 or greater capacity)	5.42
2. Vented Electric, Compact (120 V) (less than 4.4 ft3 capacity)	5.41
3. Vented Electric, Compact (240 V) (less than 4.4 ft^3 capacity)	4.89
4. Vented Gas	3.61
5. Ventless Electric, Compact (240 V) (less than 4.4 ft^3 capacity)	4.03
6. Ventless Electric Combination Washer/Dryer	3.69

Room air conditioners	
Product class	Max-tech CEER *Btu/Wh*
1. Without reverse cycle, with louvered sides, and less than 6,000 Btu/h	11.67
2. Without reverse cycle, with louvered sides, and 6,000 to 7,999 Btu/h	11.96
3. Without reverse cycle, with louvered sides, and 8,000 to 13,999 Btu/h	11.96

Room air conditioners	
Product class	Max-tech CEER *Btu/Wh*
4. Without reverse cycle, with louvered sides, and 14,000 to 19,999 Btu/h	11.96
5A. Without reverse cycle, with louvered sides, and 20,000 to 27,999 Btu/h	10.15
5B. Without reverse cycle, with louvered sides, and 28,000 Btu/h or more	9.80
6. Without reverse cycle, without louvered sides, and less than 6,000 Btu/h	10.35
7. Without reverse cycle, without louvered sides, and 6,000 to 7,999 Btu/h	10.35
8A. Without reverse cycle, without louvered sides, and 8,000 to 10,999 Btu/h	10.35
8B. Without reverse cycle, without louvered sides, and 11,000 to 13,999 Btu/h	10.02
9. Without reverse cycle, without louvered sides, and 14,000 to 19,999 Btu/h	10.02
10. Without reverse cycle, without louvered sides, and 20,000 Btu/h or more	9.80
11. With reverse cycle, with louvered sides, and less than 20,000 Btu/h	11.96
12. With reverse cycle, without louvered sides, and less than 14,000 Btu/h	10.15
13. With reverse cycle, with louvered sides, and 20,000 Btu/h or more	10.35
14. With reverse cycle, without louvered sides, and 14,000 Btu/h or more	10.02
15. Casement-Only	10.35
16. Casement-Slider	10.35

a. Clothes Dryers

For electric vented and vent-less clothes dryers, the max-tech level corresponds to the efficiency improvement associated with incorporating heat pump technology, according to information from manufacturer interviews and available research on heat pump dryers. For vented gas clothes dryers, the max-tech level is the value proposed in the framework document was based on data contained in the CEC product database. AHAM submitted aggregated incremental manufacturing cost data in support of this max-tech efficiency level for vented gas clothes dryers. As discussed in chapter 5 of the preliminary TSD, multiple manufacturers stated during interviews that the current maximum efficiency listed for vented gas clothes dryers in a more recent version of the CEC product database is not achievable. Also, as discussed in chapter 5 of the preliminary TSD, DOE testing of the "maximum-available" vented gas clothes dryer in this more recent version of the CEC product database determined that this unit did not achieve the rated efficiency. For these reasons, DOE considered the vented gas clothes dryer max-tech value for which AHAM submitted aggregated incremental manufacturing costs. This max-tech level was supported by multiple manufacturers during interviews.

b. Room Air Conditioners

As described in the direct final rule TSD (chapter 5, "Engineering Analysis"), DOE conducted a full engineering analysis for seven room air conditioner product classes, which comprise a large percentage of identified products on the market. DOE's approach for extending the analysis of the proposed standard levels to the non-analyzed product classes is described in chapter 5, "Engineering Analysis", of the direct final rule TSD. This section of this notice reports specifically on the max-tech efficiency levels for the product classes directly analyzed in the engineering analysis.

DOE used the full set of design options considered applicable to these product classes to determine the max-tech efficiency levels. (*See* chapter 5 of the direct final rule TSD.) Table III.5, below, lists the max-tech levels that DOE determined for this rulemaking—the table shows the levels for the directly analyzed product classes (*see* section IV.C regarding discussion of the product classes that were directly analyzed). The max-tech levels that DOE determined for this rulemaking are based on design options that are used in commercially-available products.

TABLE III.5—MAX-TECH EERS FOR THE ROOM AIR CONDITIONER PRODUCTS RULEMAKING

Analyzed product class	Description	Combined energy efficiency ratio (EER) level
		DOE final rule max-tech
1	Less than 6,000 Btu/h, without reverse cycle and with louvered sides	11.7
2	6,000 to 7,999 Btu/h, without reverse cycle and with louvered sides	*N/A
3	8,000 to 13,999 Btu/h, without reverse cycle and with louvered sides	12.0
4	14,000 to 19,999 Btu/h, without reverse cycle and with louvered sides	*N/A
5A	20,000 Btu/h to 27,999 Btu/h, without reverse cycle and with louvered sides	10.2
5B	28,000 Btu/h or more, without reverse cycle and with louvered sides	9.8
8A	8,000 to 10,999 Btu/h, without reverse cycle and without louvered sides	10.4
8B	11,000 to 13,999 Btu/h, without reverse cycle and without louvered sides	10.0

The DOE max-tech levels differ from those presented in the preliminary TSD. They are higher for three of the analyzed product classes, and lower for three (one product class was not analyzed during the preliminary analysis). The engineering analysis revisions are discussed in section IV.C.2.b below.

DOE determined that max-tech levels for most room air conditioner product classes higher than the commercially available max-tech were technologically

feasible. Although the commercially available products generally do not use all the energy efficient design options considered in the DOE max-tech analyses, the design options are all used in commercially available products, some of which combine nearly all of the design options used in the DOE max-tech configurations.

DOE determined the max-tech levels of each analyzed product class as part of its engineering analysis. The max-tech levels represent the most efficient design option combinations applicable for the analyzed products. Details of this analysis are described in the direct final rule TSD in chapter 5. DOE used different design option groups for each analyzed product class's max-tech design, as indicated in Table III.6.

Table III.6. Options Considered for Room Air Conditioner Max-Tech Levels

Product Class	Design Option						
	BLDC* Fan Motors	High Efficiency PSC Motors	Heat Exchanger Improvement	Subcoolers	10 EER Cmpressor	10.3 EER Cmpressor	Chassis Growths
1	✓	✓	✓	✓	✓		✓
3	✓	✓	✓	✓	✓		✓
5A	✓	✓	✓	✓		✓	✓
5B	✓	✓	✓	✓		✓	✓
8A	✓	✓	✓	✓	✓		
8B	✓	✓	✓	✓	✓		

Stakeholder comments and questions regarding the preliminary analysis max-tech levels primarily addressed the max-tech levels that DOE selected for the analyses. Some stakeholders argued that max available products exist at higher levels, while others argued that the conversion to R–410A refrigerant requires a re-examination of max-tech levels.

c. Available Max-Tech Products With Higher EER Ratings

Numerous stakeholders commented that DOE should update its analysis to include all current ENERGY STAR® and max-tech units on the market. The California Utilities suggested that DOE consider the current best R–410A products on the ENERGY STAR list (California Utilities, No. 31 at pp. 16–17). The California Utilities also pointed out that the ENERGY STAR Database listed products with a 13.5 EER, and that the CEC Database listed four products with a 13.8 EER (California Utilities, No. 31 at p. 13). The Northwest Power and Conservation Council (NPCC) and ACEEE also commented that there were higher efficiency products available than had been assumed by DOE (NPCC, No. 32 at p. 4; ACEEE, No. 24 at p. 4).

DOE is aware that the ENERGY–STAR and CEC databases list products that exceed the max-tech EER of 12.0 that DOE identified in the preliminary analysis. Table III.7 lists products listed at 12.0 EER or higher in one or both of these databases.

TABLE III.7—ROOM AIR CONDITIONER MODELS OF INTEREST FOR MAX-TECH ANALYSIS, AS LISTED IN THE ENERGY STAR AND CEC DATABASES

Brand	Model	Listed EER	Source	
			CEC	ENERGY STAR
Climette	CH1826A	13.8	✔	
Comfort-Aire	REC–183	13.8	✔	
Fedders	AED18E7DG	13.8	✔	
Maytag	MED18E7A	13.8	✔	
Fedders	A7Q06F2A	13.4	✔	
Turbo Air	TAS–09EH	13.5		✔
Turbo Air	TAS–12EH	13.0		✔
Turbo Air	TAS–18EH	13.0		✔
Friedrich	SS10M10	12.0	✔	✔
Friedrich	YS09L10	12.0	✔	✔
Friedrich	SS10L10	12.0	✔	✔
Friedrich	XQ06M10	12.0	✔	✔
Friedrich	SS12M10	12.0	✔	
Haier	ESAD4066	12.0		✔

DOE searched product databases and manufacturer Web sites to gather information about these products and to determine whether these products represented valid room air conditioner ratings. DOE's investigation indicates that none of the products listed with EER higher than 12.0 represent valid room air conditioner ratings, and that some of the products rated at an EER of 12.0 are also invalid representations. The first five products in the table are listed with much lower EER ratings in Natural Resources Canada (NRCan) database.[20] The three Turbo-Air products are ductless mini-split products (as identified by the manufacturer's Web site [21]), not room air conditioners. The Friedrich SS12M10 has been re-rated at lower than 12.0 EER [22], and the validity of the 12.0 rating of the Haier ESAD4066 is likely also incorrect, as discussed in greater detail below. Consequently, DOE concludes that its identification of a max-tech available level no higher than 12.0 EER is valid.

The California Utilities stated that the analysis for room air conditioners was quite favorable in terms of cost-effectiveness, and that many of the analyzed efficiency levels had LCC savings relative to the baseline levels. They indicated that, if DOE's selected efficiency levels are as cost-effective as the analysis suggests, that there may be additional design options or higher efficiency levels that also merit DOE's analysis. (California Utilities, No. 31 at p. 13) PG&E asked whether DOE would consider higher max-tech levels that might result in more stringent standards (Public Meeting Transcript, No. 21.4 at p. 130).

DOE is required to establish energy conservation standards that achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)). DOE developed max-tech levels in the preliminary analysis and made adjustments in the engineering analysis based on new information, as mentioned above, particularly regarding compressors designed for R–410A refrigerant. The engineering analysis adjustments are discussed in more detail in section IV.C.2.b below. DOE determined that the products cited by the commenters that appeared to have higher efficiencies than the max-tech levels either were not room air conditioners or did not have valid ratings. The max-tech levels incorporate all applicable design options for each of the product classes, and based on DOE's research and engineering analysis, DOE does not believe that products with higher efficiency than DOE's max-tech are technologically feasible.

d. Consideration of Conversion to R–410A Refrigerant in Max-Tech Selections

As detailed in the direct final rule TSD (chapter 5), the use of HCFC–22 refrigerant in room air conditioners was phased out starting January 1, 2010. The industry has switched to R–410A refrigerant, which has required significant design modification. Although DOE based its preliminary analyses on use of R–410A refrigerant because HCFC–22 can no longer be used, few R–410A products were available for reverse engineering when DOE conducted the preliminary analyses. Also, there was limited information regarding compressors designed for the new refrigerant, or regarding manufacturers' experiences developing product designs for the new refrigerant.

GE Consumer & Industrial (GE) asked during the March 2010 public meeting whether any of the models considered for the engineering analysis (specifically the max-tech levels) were R–410A products (GE, Public Meeting Transcript, No. 21.4 at pp. 72–73). DOE responded that it based the max-tech analysis of product class 1 on a 12 EER R–410A product that was available at the time of the analysis. GE commented that Consumer Reports published an article in October 2008 [23] in which it reported on test results indicating that this product's efficiency was not 12 EER (Public Meeting Transcript, No. 21.4 at 72–73). GE indicated that DOE should not consider this model to be representative of the technologies or costs required to achieve 12 EER. GE recommended that DOE instead use an alternative model to represent this efficiency level: the Friedrich model XQ06M10,[24] which has a 6,000 Btu/h capacity and 12.0 EER, with a retail price of over $600 and a weight of 72 lbs.

The California Utilities requested clarification on DOE's decision to not pursue a full teardown of the single R–410A unit identified in the preliminary analysis (California Utilities, No. 31 at p. 17). In response, DOE notes that it had obtained sufficient information about this unit to allow development of both an energy model and manufacturing cost model through close examination of heat exchanger details, identification of the compressor and fan motor model number, and measurement of fan power input.

DOE considered the Consumer Reports article regarding the product identified in the preliminary analysis, which was initially considered to represent 12.0 EER using R–410A. Matching this performance level with the energy model required making some input assumptions that DOE considers unlikely, particularly for the condenser air flow rate. Given the information available, DOE agrees with GE's suggestion to instead use the Friedrich 12.0 EER product as a representation of this performance level. The revised analysis for product class 1 is based on calibration of the energy model to match the performance of the Friedrich product. DOE conducted a teardown of this product to verify its design details.

The analysis shows that the product class 1 max-tech level is 11.8, slightly lower than 12. This reflects (1) reduction of the capacity from the 6,000 Btu/h of the Friedrich unit to the 5,000 Btu/h considered representative for the product class, and (2) adopting a 50 lb. product weight limit, as suggested by AHAM (AHAM, No. 25 at p. 6) AHAM commented that OSHA recommends that articles heavier than 50 lbs. should be lifted by two rather than one person. *Id.* DOE considers this limit to be an appropriate demarcation for product class 1, since most of these products currently weigh less than 50 lb. Increase in weight beyond 50 lbs., requiring additional personnel for installation, represents a distinct reduction in consumer utility (specifically, the ability to remove the unit from the window during the off-season, relocate it to other windows without calling an installer, or both). Size limits for room air conditioners are discussed in greater detail in section IV.C.2.b, below.

During the final rule analysis, DOE also considered new products of other product classes that use R–410A refrigerant and adjusted its analysis accordingly based on new information regarding designs and efficiency levels

[20] (1) Natural Resources Canada, Office of Energy Efficiency. *EnerGuide for Equipment—EnerGuide Room Air Conditioner Directory 2002.* 2002; (2) Room Air Conditioner Model Listing. "EnerGuide Room Air Conditioner Directory 2004" *http://oee.nrcan.gc.ca/.*

[21] Product Specifications and Descriptions for Turbo Air Products TAS–09EH, TAS–12EH, TAS–18EH. *http://www.turboairinc.net/productspecs/productspecs.html.*

[22] Friedrich product specifications. Specifications for SS12M10. *http://kuhl.friedrich.com/model-specifications/.*

[23] "Energy Star has lost some luster." Consumer Reports. October 2008. Pg. 24 Vol. 73 No. 10. Copyright 2008 Consumers Union of U.S., Inc.

[24] The GE comment identified Friedrich model AQ06M10, but the listing on the Friedrich Web site is XQ06M10 for a product matching the GE description (same capacity, EER, weight, and other relevant attributes).

of these products. Adjustments DOE made to the engineering analysis during the final rule phase are detailed in section IV.C.2.b below, and in chapter 5 of the TSD.

C. Energy Savings

1. Determination of Savings

DOE used its NIA spreadsheet model to estimate energy savings from amended standards for the products that are the subject of this rulemaking.[25] For each TSL, DOE forecasted energy savings beginning in 2014, the year that manufacturers would be required to comply with amended standards, and ending in 2043. DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between the standards case and the base case. The base case represents the forecast of energy consumption in the absence of amended mandatory efficiency standards, and considers market demand for more-efficient products.

The NIA spreadsheet model calculates the electricity savings in "site energy" expressed in kWh. Site energy is the energy directly consumed by appliances at the locations where they are used. DOE reports national energy savings on an annual basis in terms of the aggregated source (primary) energy savings, the savings in the energy used to generate and transmit the site energy. (See direct final rule TSD chapter 10.) To convert site energy to source energy, DOE derived annual conversion factors from the model used to prepare the EIA *Annual Energy Outlook 2010 (AEO2010).*

2. Significance of Savings

As noted above, DOE cannot adopt a standard for a covered product if such standard would not result in "significant" energy savings. 42 U.S.C. 6295(o)(3)(B) While the term "significant" is not defined in the Act, the U.S. Court of Appeals, in *Natural Resources Defense Council* v. *Herrington,* 768 F.2d 1355, 1373 (DC Cir. 1985), indicated that Congress intended "significant" energy savings in this context to be savings that were not "genuinely trivial." The energy savings for all of the TSLs considered in this rulemaking are nontrivial, and, therefore, DOE considers them "significant" within the meaning of 42 U.S.C. 6295(o)(3)(B).

[25] The NIA spreadsheet model is described in section IV.G of this notice.

D. Economic Justification

1. Specific Criteria

As noted in section II.B, EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)) The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

a. Economic Impact on Manufacturers and Consumers

In determining the impacts of an amended standard on manufacturers, DOE first determines the quantitative impacts using an annual cash-flow approach. This step includes both a short-term assessment—based on the cost and capital requirements during the period between the issuance of a regulation and when entities must comply with the regulation—and a long-term assessment over a 30-year analysis period. The industry-wide impacts analyzed include INPV (which values the industry on the basis of expected future cash flows), cash flows by year, changes in revenue and income, and other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, including analysis of impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of different DOE regulations and other regulatory requirements on manufacturers.

For individual consumers, measures of economic impact include the changes in LCC and the PBP associated with new or amended standards. The LCC, specified separately in EPCA as one of the seven factors to be considered in determining the economic justification for a new or amended standard, 42 U.S.C. 6295(o)(2)(B)(i)(II), is discussed in the following section. For consumers in the aggregate, DOE also calculates the national net present value of the economic impacts on consumers over the forecast period used in a particular rulemaking.

b. Life-Cycle Costs

The LCC is the sum of the purchase price of a product (including its installation) and the operating expense (including energy and maintenance and repair expenditures) discounted over the lifetime of the product. The LCC savings for the considered efficiency levels are calculated relative to a base case that reflects likely trends in the absence of amended standards. The LCC analysis requires a variety of inputs, such as product prices, product energy consumption, energy prices, maintenance and repair costs, product lifetime, and consumer discount rates. DOE assumed in its analysis that consumers will purchase the considered products in 2014.

To account for uncertainty and variability in specific inputs, such as product lifetime and discount rate, DOE uses a distribution of values with probabilities attached to each value. A distinct advantage of this approach is that DOE can identify the percentage of consumers estimated to receive LCC savings or experience an LCC increase, in addition to the average LCC savings associated with a particular standard level. In addition to identifying ranges of impacts, DOE evaluates the LCC impacts of potential standards on identifiable subgroups of consumers that may be disproportionately affected by a national standard.

c. Energy Savings

While significant conservation of energy is a separate statutory requirement for imposing an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III)) DOE uses the NIA spreadsheet results in its consideration of total projected energy savings.

d. Lessening of Utility or Performance of Products

In establishing classes of products, and in evaluating design options and the impact of potential standard levels, DOE sought to develop standards for clothes dryers and room air conditioners that would not lessen the utility or performance of these products. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) None of the TSLs considered in this notice would reduce the utility or performance of the clothes dryers under consideration in this rulemaking. DOE considered the possibility that room air conditioners size increases (and related weight increases) may reduce utility. DOE requested comments from stakeholders during the preliminary analysis phase addressing this issue. In response, DOE received comments from AHAM recommending limits to product weights and from NRDC recommending limits to product dimensions. These comments and DOE's response to them are discussed in section IV.C.2.b. DOE adjusted its analysis so that analyzed

TSLs are within the weigh and dimension limits suggested by stakeholders. These adjustments included: (1) Use of a 50 lbs. limit for the product class 1 analysis, and (2) use of maximum height and width dimensions (for all product classes with louvered sides) consistent with max-tech available products. DOE made these adjustments to its analysis specifically to avoid the possible reduction in consumer utility that could result from increases in size and weight. Further discussion of this analysis can be found in the direct final rule TSD in chapter 5. Furthermore, the energy conservation standards are performance standards rather than design standards, so they do not specify the design options that manufacturers must use to achieve the required efficiency levels. Manufacturers may use design options other than those selected by DOE in its analyses to achieve the required levels. Consequently, DOE believes that the TSLs considered and the TSLs adopted for the energy conservation standard do not represent any such consumer utility reductions, notwithstanding increases in size and weight that DOE considered in the analyses for some of the product classes.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider any lessening of competition that is likely to result from standards. It also directs the Attorney General of the United States (Attorney General) to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii)) DOE published a NOPR containing energy conservation standards identical to those set forth in today's direct final rule and transmitted a copy of today's direct final rule and the accompanying TSD to the Attorney General, requesting that the Department of Justice (DOJ) provide its determination on this issue. DOE will consider DOJ's comments on the rule in determining whether to proceed with the direct final rule. DOE will also publish and respond to DOJ's comments in the **Federal Register** in a separate notice.

f. Need for National Energy Conservation

The energy savings from new or amended standards are likely to improve the security and reliability of the nation's energy system. Reduced demand for electricity may also result in reduced costs for maintaining the reliability of the nation's electricity system. DOE conducts a utility impact analysis to estimate how standards may affect the nation's needed power generation capacity.

Energy savings from the proposed standards are also likely to result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with energy production. DOE reports the environmental effects from the proposed standards, and from each TSL it considered, in the environmental assessment contained in chapter 15 in the direct final rule TSD. DOE also reports estimates of the economic value of emissions reductions resulting from the considered TSLs.

g. Other Factors

EPCA allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) In developing the direct final rule, DOE has also considered the submission of the Joint Petition, which DOE believes sets forth a statement by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates) and contains recommendations with respect to an energy conservation standard that are in accordance with 42 U.S.C. 6295(o). DOE has encouraged the submission of consensus agreements as a way to bring diverse stakeholders together, to develop an independent and probative analysis useful in DOE standard setting, and to expedite the rulemaking process. DOE also believes that standard levels recommended in the consensus agreement may increase the likelihood for regulatory compliance, while decreasing the risk of litigation.

2. Rebuttable Presumption

As set forth in 42 U.S.C. 6295(o)(2)(B)(iii), EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer of a product that meets the standard is less than three times the value of the first-year of energy savings resulting from the standard, as calculated under the applicable DOE test procedure. DOE's LCC and PBP analyses generate values used to calculate the payback period for consumers of potential amended energy conservation standards. These analyses include, but are not limited to, the 3-year payback period contemplated under the rebuttable presumption test. DOE routinely conducts, however, an economic analysis that considers the full range of impacts to the consumer, manufacturer, nation, and environment, as required under 42 U.S.C. 6295(o)(2)(B)(i). The results of this analysis serve as the basis for DOE to definitively evaluate the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). The rebuttable presumption payback calculation is discussed in section IV.F.12 of this direct final rule and chapter 8 of the direct final rule TSD.

IV. Methodology and Discussion

DOE used two spreadsheet tools to estimate the impact of today's proposed standards. The first spreadsheet calculates LCCs and payback periods of potential new energy conservation standards. The second provides shipments forecasts and then calculates national energy savings and net present value impacts of potential energy conservation standards. The two spreadsheets are available online at *http://www1.eere.energy.gov/buildings/appliance_standards/.*

The Department also assessed manufacturer impacts, largely through use of the Government Regulatory Impact Model (GRIM).

Additionally, DOE estimated the impacts on utilities and the environment of energy efficiency standards for clothes dryers and room air conditioners. DOE used a version of EIA's National Energy Modeling System (NEMS) for the utility and environmental analyses. The NEMS model simulates the energy sector of the U.S. economy. EIA uses NEMS to prepare its *Annual Energy Outlook* (*AEO*), a widely known baseline energy forecast for the United States. For more information on NEMS, refer to "The National Energy Modeling System: An Overview," DOE/EIA–0581 (98) (Feb. 1998), available at: *http://tonto.eia.doe.gov/FTPROOT/forecasting/058198.pdf.*

The version of NEMS used for appliance standards analysis is called NEMS–BT, and is based on the *AEO* version with minor modifications.[26]

[26] EIA approves the use of the name "NEMS" to describe only an *AEO* version of the model without any modification to code or data. Because the present analysis entails some minor code modifications and runs the model under various policy scenarios that deviate from AEO

Continued

NEMS–BT offers a sophisticated picture of the effect of standards, because it accounts for the interactions between the various energy supply and demand sectors and the economy as a whole.

A. Market and Technology Assessment

1. General

When beginning an energy conservation standards rulemaking, DOE develops information that provides an overall picture of the market for the products concerned, including the purpose of the products, the industry structure, and market characteristics.

This activity includes both quantitative and qualitative assessments based on publicly available information. The subjects addressed in the market and technology assessment for this rulemaking include quantities and types of products sold and offered for sale; retail market trends; products covered by the rulemaking; product classes and manufacturers; regulatory and non-regulatory programs; and technology options that could improve the energy efficiency of the product(s) under examination. See chapter 3 of the direct final rule TSD for further discussion of the market and technology assessment.

2. Products Included in This Rulemaking

This subsection addresses the scope of coverage for today's direct final rule, discussing whether certain products are subject to the amended standards and whether certain technologies provide a viable means of improving energy efficiency. In the sections that follow, DOE discusses the comments received on the scope of coverage set forth in the preliminary analysis.

a. Clothes Dryers

Hydromatic Technologies Corporation (HTC) suggested that DOE consider "solar" clothes dryers in this rulemaking. (HTC, No. FDMS DRAFT 0068 at p. 3) Under EPCA, any standard for clothes dryers must establish either a maximum amount of energy use or a minimum level of efficiency based on energy use. (42 U.S.C. 6291(5)–(6)) EPCA defines "energy use," in part, as "the quantity of energy" that the product consumes. (42 U.S.C. 6291(4)) EPCA defines "energy" as meaning "electricity, or fossil fuels," or other fuels that DOE adds to the definition, by rule, upon determining "that such inclusion is necessary or appropriate to carry out the purposes" of EPCA. (42 U.S.C. 6291(3)) DOE has not added solar energy (or any other type of fuel) to EPCA's definition of "energy." Thus, DOE currently lacks authority to prescribe standards for clothes dryers when they use the sun's energy instead of fossil fuels or electricity. DOE also notes that it is unaware of any existing clothes dryers that are solar-powered.

DOE has also considered in this rulemaking standards based on microwave or heat pump technology. EPCA does not define "clothes dryer," but DOE's regulations under EPCA provide separate definitions for electric and gas products. Because the types of clothes dryers just mentioned are or would be electric products, DOE's definition of "electric clothes dryer" is relevant in considering them. DOE defines electric clothes dryer as a cabinet-like appliance designed to dry fabrics in a tumble-type drum with forced air circulation. The heat source is electricity and the drum and blower(s) are driven by an electric motor(s). 10 CFR 430.2.

As to microwave technology, in this rulemaking DOE has considered whether microwave drying would be a viable option for improving clothes dryer efficiency. DOE determined, however, that this technology did not merit further consideration for reasons discussed in section IV.B.1. In addition, DOE is unaware of any microwave dryers that are currently commercially available for sale in the United States or elsewhere. Therefore, in this rulemaking DOE did not consider clothes dryer standards based on microwave technology.

DOE also identified heat pump technology as a possible option for improving the energy efficiency of electric clothes dryers. Unlike microwave technology, DOE did not screen out this technology from further consideration in this rulemaking. Furthermore, DOE determined that heat pump clothes dryers are commercially available in Europe and Japan. Accordingly, DOE has fully evaluated in this rulemaking whether standards based on heat pump technology are warranted for clothes dryers.

DOE also considered non-tumbling (that is, cabinet) clothes dryers. DOE notes that, because they do not use a tumbling-type drum, they are not currently within DOE's definition of "electric clothes dryer." 10 CFR 430.2. In analyzing non-tumbling dryers, DOE determined that although these clothes dryers are currently on the market in the United States, DOE understands that they have a very limited market share. Based on a survey of cabinet clothes dryer models available on the U.S. market, DOE is aware of only three cabinet clothes dryer models from two clothes dryer manufacturers that have very low market share (*i.e.,* less than 1 percent) in the conventional tumbling-type clothes dryer market. For these reasons, DOE is not considering standards for these clothes dryers in this rulemaking.

DOE also considered centrifugal spinners. DOE notes that, although centrifugal spinners remove a certain quantity of moisture from a clothes load, they are not within DOE's definition of "electric clothes dryer" as a product designed to dry fabrics in a tumble-type drum with forced air circulation, where the heat source is electricity and the drum and blower(s) are driven by an electric motor(s). 10 CFR 430.2. Such products extract moisture from a clothes load by means of centrifugal force at high spin speeds, without the application of additional heat. The ECOS report submitted to DOE by NRDC states that centrifugal spinners remove 5–14 lbs. of water per kWh of electricity, depending on the size and type of load, making them at least two to seven times as efficient as a typical electric dryer. The ECOS report further cites multiple sources suggesting that mechanical extraction of water is 19–70 times more efficient than evaporating it in a typical drying process. According to the ECOS report, a centrifugal spinner can reduce initial RMC in a clothes load to be dried in a conventional clothes dryer from 60–70 percent down to 45 percent. Sources cited in the ECOS report variously ascribe to this decrease in initial RMC a 25-percent reduction in clothes dryer electricity use, or 209 kWh annual energy savings for a typical clothes dryer. (NRDC, No. 30 at pp. 10–11) Although such centrifugal spinners are currently on the market in the United States, DOE understands that they have a very limited market share. DOE also notes that it is not aware of any centrifugal spinners that can remove moisture from the test load down to 2.5–5 percent RMC, as required by the DOE clothes dryer test procedure. In addition, DOE is not aware of any clothes dryers currently available on the market or prototype designs that incorporate centrifugal spinning and are capable of drying the test load to 2.5–5 percent RMC. For these reasons, DOE is not considering standards for these clothes dryers in this rulemaking

b. Room Air Conditioners

DOE defines "room air conditioner" under EPCA, in part, as a "consumer product * * * which is an encased assembly designed as a unit for mounting in a window or through the wall for the purpose of providing

assumptions, the name "NEMS–BT" refers to the model as used here. (BT stands for DOE's Building Technologies Program.)

delivery of conditioned air to an enclosed space. It includes a prime source of refrigeration and may include a means for ventilating and heating." 10 CFR 430.2. A product known as a "portable air conditioner" has most of these characteristics. However, it rests on the floor, often on wheels, with a short ducted connection to a window or other access to the outside to vent warm condenser air and, for some of these products, to provide condenser cooling air from the outside. DOE notes that portable air conditioners are not within the current DOE definition of "room air conditioner" because they are not designed "for mounting in a window or through the wall." 10 CFR 430.2

DOE notes that EPCA authorizes the prescription of standards for room air conditioners (42 U.S.C. 6292(2)), and that portable air conditioners do not fall within DOE's regulatory definition of room air conditioner at 10 CFR 430.2, as stated above, or the definitions found in the current industry standards ANSI/AHAM RAC–1–2008 and ANSI/ASHRAE Standard 16–1983 (RA 2009).[27] DOE also notes that portable air conditioners cannot be tested in the window configuration used in the referenced standard ANSI/ASHRAE Standard 16–1983 (RA 2009), in the amended test procedure. 76 FR 972, 978 (January 6, 2011). DOE believes that a separate test procedure analysis would need to be considered for these products; as an example, DOE notes that the ANSI/ASHRAE test procedure standard for portable air conditioners (ANSI/ASHRAE Standard 128–2001, "Method of Rating Unitary Spot Air Conditioners") references the ANSI/ASHRAE Standard 37–2005 "Methods of Testing for Rating Unitary Air-Conditioning and Heat Pump Equipment" for testing, and excludes equipment covered by ANSI/AHAM RAC–1 2008. Thus, DOE is not considering standards for portable air conditioners in this rulemaking. DOE may, however, consider standard for portable air conditioners in a future rulemaking.

3. Product Classes

In evaluating and establishing energy conservation standards, DOE divides covered products into classes by the type of energy used, or by capacity or other performance-related feature that justifies a different standard for products having such feature. (See 42 U.S.C. 6295(q)) In determining whether a feature justifies a different standard, DOE must consider factors such as the utility of the feature to users. *Id.* DOE is required to establish different energy conservation standards for different product classes based on these criteria.

a. Clothes Dryers

In the preliminary analysis, DOE proposed to analyze six product classes for residential clothes dryers (for details on these product classes, see chapter 3 of the preliminary TSD). In particular, DOE considered four product classes for vented clothes dryers and two product classes for ventless clothes dryers, ventless electric compact (240 V) and combination washer/dryers, recognizing the unique utility that ventless clothes dryers offer to consumers.[28]

AHAM, BSH, and Whirlpool suggested that DOE consider an additional product class for electric standard-size ventless clothes dryers, even though such products are not currently on the market in the United States, to prepare for likely market entry. AHAM stated that a standard-size ventless product class would decrease the request for waivers that DOE may receive in the near future. AHAM further commented that the analysis for a standard-size ventless product class could be extrapolated from the analysis for compact-size ventless clothes dryers. (AHAM, Public Meeting Transcript, No. 21.4 at pp. 19–20; AHAM, No. 25 at pp. 4–5; BSH, No. 23 at p. 3; Whirlpool, No. 22 at p. 1)

Because DOE is unaware of any standard-size ventless clothes dryers currently on the market, as discussed in section IV.A.2.a, and because DOE does not have information on the performance of standard-size ventless clothes dryers that would warrant the definition of a separate product class, DOE is not establishing a product class for standard-size ventless clothes dryers in today's direct final rule.

According to BSH, clothes dryers should be classified as vented, ventless, and gas product classes, without differentiation by drum size. (BSH, No. 23 at p. 4) EPCA requires DOE to specify a level of energy use or efficiency different from that which applies to the type of covered product for any group of such products that have a capacity or other performance-related feature that justifies a different standard. DOE has previously determined, and has verified in recent testing, that compact-size clothes dryers have inherently different energy consumption than standard-size clothes dryers. DOE also notes that compact-size clothes dryers provide utility to consumers by allowing for installation in space-constrained environments. Therefore, DOE has determined that the capacity and utility of compact clothes dryers justifies a different standard and establishes separate product classes for compact clothes washers under EPCA. (42 U.S.C. 6295(q))

b. Room Air Conditioners

The 1997 final rule for room air conditioners established standards for 16 product classes based on the following characteristics: Capacity, presence or absence of louvered-sides (louvered-side products are intended for installation in windows, while products without louvered sides are for through-the-wall installation), type of cabinet (casement-only, casement-slider, and other), and presence or absence of heat pump mode for heating. 72 FR 50122 (Sept. 24, 1997).

In its preliminary analysis, DOE proposed no changes to the existing product class structure. DOE received two comments addressing product classes, as discussed below.

AHAM recommended that DOE consider splitting the following two product classes: Product class 5 (room air conditioners without reverse cycle, with louvered sides, and capacity 20,000 Btu/h or more) and product class 8 (room air conditioners without reverse cycle, without louvered sides, and capacity 8,000 to 13,999 Btu/h) (AHAM, No. 25 at p. 6). AHAM recommended that product class 5 be split into two product classes, (1) from 20,000 Btu/h to 24,999 Btu/h, and (2) greater than 25,000 Btu/h. AHAM also recommended that product class 8 be split into two product classes, (1) 8,000 Btu/h to 10,999 Btu/h, and (2) 11,000 Btu/h to 13,999 Btu/h. AHAM stated that manufacturers are reaching the limit of achievable efficiency levels for higher-capacity room air conditioners. *Id.*

The Joint Comment also proposed splitting both product classes 5 and 8, but recommended a different capacity at which to split product class 5. The Joint Comment proposed that the new product classes derived from the current product class 5 be (1) from 20,000 Btu/h to 27,999 Btu/h, and (2) 28,000 Btu/h and greater. The Joint Comment proposed the same two separated product classes for product class 8 that AHAM proposed. (Joint Comment, No. 31 at pp. 7–8)

DOE agrees with the recommendations of AHAM and the

[27] EPCA also authorizes the classification of additional consumer products as covered products pursuant to 42 U.S.C. 6292(b) provided that certain criteria are met.

[28] Previously, DOE has described ventless dryers as condensing dryers. The new designation reflects the actual consumer utility (that is, no external vent required) and the market availability of vented dryers that also condense.

Joint Comment that the new product classes are needed to ensure establishment of meaningful efficiency levels over the full range of capacities. This is discussed in detail in the following sections which separately address each of the product class splits.

Splitting of Product Class 5

DOE splits current product class 5 (room air conditioners without reverse cycle, with louvered sides, and capacity 20,000 Btu/h or more) into two new product classes: 5A (room air conditioners without reverse cycle, with louvered sides, and capacity from 20,000 Btu/h to 27,999 Btu/h) and 5B (room air conditioners without reverse cycle, with louvered sides, and capacity 28,000 Btu/h or more). This step is consistent with the recommendations of AHAM and the Joint Comment recommendations to split the product class, but uses the split recommended by the Joint Comment.

DOE made this decision based on the following input:

- Discussions with individual manufacturers of the efficiency options available to large room air conditioners.
- Research on available product sizes and available product efficiencies.
- Reverse engineering of two product class 5 units, including a 28,500 Btu/h unit.
- Engineering analysis of R–410A product class 5 baseline products at two capacity levels (24,000 Btu/h and 28,000 Btu/h).

Max-tech available EER for product classes 1 through 5 (room air conditioners without reverse cycle, with louvered sides, covering the full capacity range of available products) for products using R–410A refrigerant are shown in Table IV.1 below. The max-tech EER drops gradually as capacity increases above 6,000 Btu/h, but drops significantly above 28,000 Btu/h.

TABLE IV.1—MAX-TECH LOUVERED R–410A ROOM AIR CONDITIONERS

Room air conditioner R–410A louvered products (market max available levels)		
Product class	Capacity	Max available EER
1	5,200	11.0
1	5,500	11.2
2	6,000	12.0
2	7,900	11.7
3	11,700	11.4
4	18,000	10.7
5	20,800	10.0
5	27,800	9.7
5	36,000	8.5

DOE produced cost-efficiency curves for product class 5 products at both 24,000 Btu/h and 28,000 Btu/h capacity levels. Table IV.2 shows the results of these analyses, which clearly show (1) much steeper increase in cost as the CEER increases and (2) significantly lower max-tech for the larger capacity products. This analysis demonstrates the much greater potential for efficiency improvement for the lower-capacity products.

TABLE IV.2—COMPARISON OF 24,000 Btu/h AND 28,000 Btu/h ROOM AIR CONDITIONER INCREMENTAL COSTS

Efficiency level	PC5A—24,000 Btu/h		PC5B—28,000 Btu/h	
	CEER	Incremental cost	CEER	Incremental cost
1	8.47	$0.00	8.48	$0.00
2	9.0	8.85	9.0	23.52
3	9.4	19.04	9.4	50.27
4	9.8	50.66	9.8	229.01
5	10.15	204.62	.....	.....

The cost-efficiency analysis and the market analysis demonstrate that limitations in the max-tech levels for product class 5 units occur at the 28,000 Btu/h capacity, rather than the 24,000 Btu/h capacity. DOE used these analyses to determine that the 28,000 Btu/h capacity split was more appropriate than the 24,000 Btu/h split.

DOE's decision to establish the new product classes 5A and 5B that take the place of the current product class 5, and split the product class at the 28,000 Btu/h capacity level, is based on the stakeholder comments and DOE's analysis. Additional details of the analysis can be found in chapter 3 of the direct final rule TSD.

Splitting of Product Class 8

DOE splits product class 8 (room air conditioners without reverse cycle, without louvered sides, and capacity 8,000 to 13,999 Btu/h) to establish two new product classes: 8A (room air conditioners without reverse cycle, without louvered sides, and capacity 8,000 to 10,999 Btu/h) and 8B (room air conditioners without reverse cycle, without louvered sides, and capacity 11,000 to 13,999 Btu/h).

DOE based this split on information similar to that of the decision to split product class 5, as discussed above. DOE focused its reverse engineering and engineering for these product classes on capacities of 8,000 Btu/h and 12,000 Btu/h.

The max-tech EERs of available room air conditioners without louvered sides using R–410A refrigerant are dependent on capacity range. These products are designed to fit in sleeves installed in the building wall. Due to the dependence of this market on replacement sales, as reported by manufacturers during interviews for the final rule analysis, there is little opportunity to adjust the physical size of the product. (This is in contrast to products with louvered sides, designed to fit in windows, which allows more flexibility for size increase to improve efficiency.) Non-louvered products with capacity greater than 12,600 Btu/h are unable to meet the current ENERGY STAR EER level. DOE further notes that non-louvered ENERGY STAR products in the capacity range 11,500 to 12,800 Btu/h require oversized sleeves. At a slightly higher capacity level, these products cannot be designed to meet the DOE energy standard—the available data show that there are currently no available non-louvered products having greater than 13,999 Btu/h capacity.

DOE produced cost-efficiency curves for non-louvered R–410A room air conditioners at 8,000 Btu/h and 12,000 Btu/h capacities, shown in Table IV.3 below. As for the product class 5 analyses, the results show the significantly steeper increase in cost as efficiency level is raised above the

baseline and the reduced max-tech level for the higher-capacity product.

TABLE IV.3—COMPARISON OF 8,000 Btu/h AND 12,000 Btu/h ROOM AIR CONDITIONER INCREMENTAL COSTS

Efficiency level	PC8A—8,000 Btu/h		PC8B—12,000 Btu/h	
	CEER	Incremental cost	CEER	Incremental cost
1	8.41	$0.00	8.44	$0.00
2	9.3	4.61	9.3	11.72
3	9.6	6.68	9.5	15.39
4	10.0	16.63	9.8	26.06
5	10.4	88.45	10.0	93.36

DOE's decision to establish the new product classes 8A and 8B that take the place of the current product class 8 is based on the stakeholder comments and DOE's analysis. DOE has decided to split the product class at the 11,000 Btu/h capacity level recommended by both AHAM and the Joint Comment. Additional details of the analysis can be found in chapter 3 of the direct final rule TSD.

Product Class Summary

Table IV.4 below presents the product classes established in this rulemaking, including both current and classes established in this rulemaking.

TABLE IV.4—PROPOSED ROOM AIR CONDITIONER PRODUCT CLASSES

Number	Product class
Classes Listed in the CFR	
1	Without reverse cycle, with louvered sides, and less than 6,000 Btu/h.
2	Without reverse cycle, with louvered sides, and 6,000 to 7,999 Btu/h.
3	Without reverse cycle, with louvered sides, and 8,000 to 13,999 Btu/h.
4	Without reverse cycle, with louvered sides, and 14,000 to 19,999 Btu/h.
6	Without reverse cycle, without louvered sides, and less than 6,000 Btu/h.
7	Without reverse cycle, without louvered sides, and 6,000 to 7,999 Btu/h.
9	Without reverse cycle, without louvered sides, and 14,000 to 19,999 Btu/h.
10	Without reverse cycle, without louvered sides, and 20,000 Btu/h or more.
11	With reverse cycle, with louvered sides, and less than 20,000 Btu/h.
12	With reverse cycle, without louvered sides, and less than 14,000 Btu/h.
13	With reverse cycle, with louvered sides, and 20,000 Btu/h or more.
14	With reverse cycle, without louvered sides, and 14,000 Btu/h or more.
15	Casement-Only.
16	Casement-Slider.
Product Classes Established in This Rulemaking	
5A	Without reverse cycle, with louvered sides, and 20,000 Btu/h to 27,999 Btu/h.
5B	Without reverse cycle, with louvered sides, and 28,000 Btu/h or more.
8A	Without reverse cycle, without louvered sides, and 8,000 to 10,999 Btu/h.
8B	Without reverse cycle, without louvered sides, and 11,000 to 13,999 Btu/h.

EPCA requires that the establishment of separate product classes be based on either (A) consumption of a different kind of energy from that consumed by other covered products within such type (or class); or (B) a capacity or other performance-related feature which other products within such type (or class) do not have, where such feature justifies a higher or lower standard from that which applies to other products within such type (or class). (42 U.S.C. 6295(q)). The second of these criteria is applicable to the new product classes proposed in this rulemaking, because the new product classes are based on product capacity. The justification of different standards for the new product classes of different capacities is discussed above in this section.

4. Non-Regulatory Programs

DOE's market assessment provides a profile of the residential clothes dryer and room air conditioner industries in the United States. As part of the market and technology assessment, DOE reviews non-regulatory programs promoting energy-efficient residential appliances in the United States. Non-regulatory programs that DOE considers in its market and technology assessment include ENERGY STAR, a voluntary labeling program jointly administered by the U.S. Environmental Protection Agency (EPA) and DOE. ENERGY STAR identifies energy efficient products through a qualification process.[29] To qualify, a product must exceed Federal minimum standards by a specified amount, or if no Federal standard exists, exhibit select energy-saving features. ENERGY STAR specifications currently exist for room air conditioners, but not for residential clothes dryers.

BSH commented that it would support ENERGY STAR qualification for clothes dryers, as well as an energy label system that would help consumers purchase the most efficient models on the market. According to BSH, the European labeling system for clothes dryers has resulted in benefits to

[29] For more information, please visit *http://www.energystar.gov.*

consumers, manufacturers, and the environment. (BSH, No. 23 at pp. 2, 6) The California Utilities commented that a revised test procedure could better differentiate clothes dryer models in terms of energy performance, facilitating an ENERGY STAR program. According to the California Utilities, there is currently no ENERGY STAR program because clothes dryers do not differ in apparent energy use as measured by the existing clothes dryer test procedure. (California Utilities, No. 31 at p. 6).

DOE notes that, according to the joint program between the EPA and DOE, the EPA determines whether to add qualification specifications for newly covered products within ENERGY STAR. DOE encourages the implementation of ENERGY STAR specifications and labeling as a means to achieve national energy savings, and would assist the EPA in applying the DOE clothes dryer test procedure to evaluate qualifying products in any future ENERGY STAR ratings for clothes dryers.

Energy labeling for clothes dryers under the EnergyGuide program is regulated by the FTC. (10 CFR 305) Although DOE does not have the authority under EPCA to revise the regulations for energy labeling to include clothes dryers, DOE would provide technical information to the FTC to support any new EnergyGuide labeling requirement for these products.

5. Technology Options

As part of the market and technology assessment, DOE develops a list of technologies for consideration for improving the efficiency of clothes dryers and room air conditioners. Initially, these technologies encompass all those DOE believes are technologically feasible (the first of the four criteria in the screening analysis). Chapter 3 of the preliminary TSD includes the detailed list of all technology options identified for clothes dryers and room air conditioners. DOE received several comments in response to the technologies proposed in the preliminary analysis to be analyzed for clothes dryers and room air conditioners.

a. Clothes Dryers

Heat Pump Clothes Dryers

DOE notes that heat pump clothes dryers function by recirculating the exhaust air back to the dryer while moisture is removed by a refrigeration-dehumidification system. The warm and damp exhaust air of the dryer enters the evaporation coil of the dehumidifier where it cools down below the dew point, and sensible and latent heat are extracted. The heat is transferred to the condenser coil by the refrigerant and reabsorbed by the air, which is moving in a closed air cycle. DOE notes that there are no heat pump dryers currently available on the U.S. market, but that heat pump clothes dryers are available on the market in Europe.

BSH commented that it foresees the heat pump clothes dryer as an innovative technology breakthrough for improved efficiency in the next few years in North America. BSH noted that in Europe in the last 2 years the market share for heat pump clothes dryers has increased from 3 to 11 percent, and that this success is based on four key factors: (1) European energy consumption values are comparable for all sizes of clothes dryers because they are independent of drum size; (2) the percent range between energy classes in Europe (A = best, B, C * * *) [30] remains constant, so one energy classification is not proportionally larger than another; (3) realistic load quantities are used for testing; and (4) automatic termination control dryers are standard and are given preferential treatment over timer dryers (which tend to over dry and use more energy). (BSH, No. 23 at p. 2)

In the context of the energy conservation standards rulemaking, DOE conducts its analysis to determine an economically justified minimum efficiency standard. DOE notes that the efficiency levels proposed in the preliminary analyses are not used for product marketing classification as they are in the European energy label system. As a result, DOE does not intend to create an energy class system as part of the energy conservation standard rulemaking. As discussed in section III.A.1.d, DOE also notes that its clothes dryer test procedure specifies a single test load size for standard-size clothes dryers and a single test load size for compact-size clothes dryers. In response to BSH's comments regarding realistic load quantities, DOE also notes that it amended the clothes dryer test procedure to revise the test load size for standard-size clothes dryers to be more representative of current consumer usage habits, as discussed in the TP Final Rule. 76 FR 972, 977 (January 6, 2011). Also, as discussed above in section III.A.1.b, DOE did not amend the test procedure in the TP Final Rule to better account for automatic cycle termination. DOE notes that the clothes dryer test procedure provides a field use factor for automatic termination control dryers and a different field use factor for timer dryers. As discussed above, DOE notes that heat pump clothes dryers are available on the market in Europe. DOE also notes that multiple clothes dryer manufacturers that manufacture heat pump clothes dryers for the international markets also manufacture clothes dryers for the United States. For these reasons, DOE believes that heat pump technology is technologically feasible and therefore considered heat pump clothes dryers for the engineering analysis.

Heat Recovery

For this technology option, a heat exchanger is used to recover exhaust heat energy and to preheat inlet air. Based on research of this technology and discussions with manufacturers, this system is feasible for both gas and electric dryers because none of the exhaust air re-enters the dryer. Energy savings are achieved either by using the additional recovered heat to increase the temperature of the air entering the drum and thus reduce the drying time or by using the additional recovered heat to reduce the required heater input power, depending on how the system is implemented. As reported in chapter 3 of the preliminary TSD, estimated energy savings from several researchers range from 2 to 6 percent in non-condensing mode.

The California Utilities and NRDC commented that the energy savings associated with heat recovery would be significantly higher. According to the California Utilities, 80-percent efficient counter-flow heat exchangers are widely available, while 90-percent efficient heat exchangers are technically feasible. The California Utilities estimate energy savings for heat recovery to be about 30 percent for electric clothes dryers and 20 percent for gas clothes dryers. The California Utilities noted that ventless dryers are available in the United States and are common in Europe, suggesting that heat recovery is both technically feasible and practical to manufacture (California Utilities, No. 31 at pp. 6–7, 12, 21) The California Utilities stated that the technologies behind heat recovery and ventless clothes dryers differ only in where the air from the heat exchanger is routed. In ventless clothes dryers, cooled exhaust air is channeled to the heater to be reused and the warmed room air is vented back to the room. For heat recovery, these are reversed, such that cooled exhaust air is vented (usually outside) and the warmed room air is channeled into the heater. (California Utilities, No. 31 at p. 6) The California Utilities provided a

[30] The European energy label system uses a letter scale from "A" to "G" to rate the efficiency and performance of certain appliance products. A rating of "A" denotes the highest efficiency unit, whereas a rating of "G" denotes the lowest efficiency unit.

specific example of a dryer with an EF of 3.10, or 2.26 kWh per cycle, which is stopped at the end of the bulk drying stage. The clothes dryer in this example is assumed to have an average exhaust temperature of 110 °F, or 40 °F above ambient temperature. According to the California Utilities, a 90-percent efficient counter-flow heat exchanger would preheat the incoming air by 36 °F, which would result in 0.684 kWh directly replacing heat that would otherwise be supplied by the electric resistance heater. The replaced heat would correspond to 1.58 kWh per cycle to dry the 7-lb. test load and an EF of 4.43. This would result in a 30-percent energy savings due to heat recovery. *Id.* According to NRDC, as stated in the ECOS report, 40-percent energy savings (1.348 kWh of heater energy savings per cycle) can be achieved for a load of cotton towels with a 90-percent efficient air-to-air cross-flow heat exchanger between the exhaust and intake of the clothes dryer. (NRDC, No. 30 at p. 27)

DOE is not aware of any data indicating that a cross-flow heat exchanger may be used in a clothes dryer application and achieve 80-percent or 90-percent efficiency. DOE notes that an air-to-air heat exchanger used in a clothes dryer must have sufficient fin spacing to prevent lint fouling of the heat exchanger. DOE also notes that the ECOS report does not provide details of how the potential energy savings associated with heat recovery were calculated (that is, data for airflow, temperature, specific heat, and similar items). DOE notes that the California Utilities comment stated that, for an exhaust temperature of 110 °F and a 90-percent efficient cross-flow heat exchanger, the energy savings would be approximately 0.684 kWh per cycle. However, the ECOS report estimated that the energy savings would be 1.348 kWh for what appear to be the same conditions. Because the details of how these estimates were calculated were not provided, DOE is unable to verify the energy savings suggested by the commenters would occur.

DOE also notes that it is unclear whether the estimates provided by the California Utilities and the ECOS report for heat recovery considered condensation in the exhaust air stream. Manufacturers indicated that such heat recovery systems must be designed to prevent condensation in the exhaust ducting, and as a result, there is a limit to the amount of heat that can be recovered.

DOE notes that it has revised the cost-efficiency analysis from the preliminary analyses based on its analysis and discussions with manufacturers. As discussed in section IV.C.2, inlet air preheating (that is, heat recovery) is considered applicable to the maximum-available efficiency levels for vented clothes dryer product classes, and DOE estimates this technology option would provide roughly a 6–7 percent improvement in efficiency. Manufacturers confirmed during interviews with DOE that this efficiency improvement accurately estimates the energy savings potential associated with inlet-air preheating in real-world applications, considering such factors as condensation in the exhaust airstream and lint accumulation in the heat exchanger.

Hydronic Heating

HTC requested that DOE consider its "hydronically heated" clothes dryer, which uses a self-contained hydronic heating system, as a technology option. According to HTC, this technology currently exists, but products incorporating such a design are not yet being sold pending HTC's resolution of licensing and private labeling considerations. (HTC, No. FDMS DRAFT 0068 at p. 3) DOE is also aware of HTC's stand-alone hydronic heater that could be implemented as a clothes dryer heat source, utilizing water or other heat transfer fluids and an immersion element similar to a water heater. The heated fluid would then pass through a heat exchanger, where the heat would be transferred to the air entering the drum and then pumped back to the hydronic heater. Because DOE has not been able to identify any clothes dryers with such hydronic heating systems currently on the market, however, DOE is unable to evaluate the energy consumption associated with a clothes dryer equipped with a stand-alone hydronic heating device and thus has not included it as a design option in today's direct final rule.

Improved Cycle Termination

According to NRDC, the test results in the ECOS report show that a clothes dryer equipped with improved automatic cycle termination saves 0.76 kWh per load compared to a clothes dryer with electromechanical controls. (NRDC, Public Meeting Transcript, No. 21.4 at p. 42) The California Utilities noted that "high performance" automatic cycle termination controls are already available in dryers on the market that produce energy savings on the order of 10-percent or more above current energy use, although DOE's clothes dryer test procedure must be amended to measure this improvement. The California Utilities strongly urged DOE to analyze this technology option.

For the reasons described in section III.A.1.b, DOE did not adopt in the TP Final Rule the amendments for measuring automatic cycle termination proposed in the TP SNOPR. Therefore, DOE did not analyze this technology option further.

Modulating Heat

The NRDC/ECOS report stated that if a conventional gas clothes dryer is improved with modulating burner technology, the performance of the clothes dryer would be roughly equivalent to or superior to many heat pump clothes dryers in terms of CO_2 emissions, source energy use, and energy cost. This performance would be achieved while also offering faster drying times and lower initial purchase price. (NRDC, No. 30 at pp. 37–38) DOE notes that heat pump technology is applicable only to electric clothes dryers, for which DOE maintains a product class distinction from gas clothes dryers. DOE analyzed technologies currently available on the market and concluded that two-stage gas burner modulation is necessary to achieve max-tech performance. Because DOE is not aware of any gas clothes dryers with fully modulating burner systems currently on the market, DOE did not consider this technology further in developing the standards set forth in today's direct final rule. DOE does include this technology as a longer-term means to achieve energy efficiency improvements in a sensitivity analysis described in chapter 16 of the direct final rule TSD.

Outdoor Intake Air

The California Utilities and NRDC suggested that DOE consider as a technology option those technologies that draw intake air for the clothes dryer from outside the residence, thereby reducing space conditioning loads in the home. (California Utilities, No. 31 at p. 8; NRDC, Public Meeting Transcript, No. 21.4 at p. 44) The California Utilities further suggest that such a technology option may be necessitated by the trend in residential new construction towards tighter building envelopes. Tighter envelopes result in reduced exhaust airflow from the clothes dryer and greater depressurization impacts, which can potentially result in indoor air quality problems. According to the California Utilities, the HVAC load is proportional to the amount of air vented from the clothes dryer, but this load can be reduced or eliminated by reducing the total air drawn through the dryer or by having a separate outside air intake and vent. The California Utilities estimate

energy savings due to reductions in HVAC load on the order of 10 percent or more. (California Utilities, No. 31 at pp. 2, 8–9) The NRDC/ECOS report states that outdoor intake air could save about 1 kWh per load, but that without heat recovery this technology option would only be advantageous in the summer. The NRDC/ECOS report adds that with heat recovery outdoor intake air is advantageous year-round. (NRDC, No. 30 at pp. 27–28).

As discussed in section III.A.1.f, EPCA requires that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use, water use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(3)) DOE believes that accounting for the effects of clothes dryers on HVAC energy use is inconsistent with this requirement. Therefore, DOE did not revise the clothes dryer test procedure to account for HVAC energy use in the TP Final Rule, and does not consider outdoor intake air as an additional technology option.

Reverse Tumble

NRDC commented that the use of synthetic mixed fabric in the DOE clothes dryer test procedure may be underestimating the efficiency improvement associated with reverse tumble. NRDC stated that cotton and other natural fabrics tend to ball up when rotated continuously in one direction, and therefore the test procedure is underestimating the potential benefit of reverse tumble. (NRDC, Public Meeting Transcript, No. 21.4 at pp. 42–43) As discussed in section III.A.1.d, DOE is unaware of data to determine the composition of clothing types and materials that would produce results as repeatable as those resulting from use of the current test cloth. Therefore, DOE did not amend the clothes dryer test procedure in the TP Final Rule to change the test load composition. In the absence of comments providing information on the efficacy of reverse tumble for the existing DOE test cloth, DOE continues to believe that no measurable energy savings are associated with this technology option.

Switch Mode Power Supply

ACEEE stated that the technology to reduce standby power consumption to less than 1 W, via switch mode power supply controllers, is widely available at low cost. (ACEEE, No. 24 at p. 2) NRDC stated that the ECOS report found standby power levels in the range of 0.03 to 0.05 W with switch mode power supply controllers, corresponding to energy consumption of 4–6 kWh over the lifetime of the clothes dryer. (NRDC, No. 26 at p. 3; NRDC, No. 30 at p. 5) DOE has observed that switching power supplies offer the highest conversion efficiencies (up to 75 percent) and lowest no-load standby losses (0.2 W or less), though at a higher cost, higher part count, and greater complexity than conventional linear power supplies. DOE noted, however, that switch mode power supplies are incorporated in many clothes dryers currently on the market, and thus has included switch mode power supplies in its analysis for today's direct final rule.

Vent Selector Switch

The NRDC/ECOS report suggested as an additional technology option the incorporation of a "summer/winter" selector so that the waste heat would be delivered to the building during the winter instead of being vented outside. According to the ECOS report, 60 percent of the energy used by the clothes dryer evaporates water from the clothes load and the other 40 percent is available as waste heat to the room. (NRDC, No. 30 at p. 28) For the reasons discussed in section III.A.1.f, DOE did not consider the energy impacts on the space conditioning requirements in amending its clothes dryer test procedure, and thus did not evaluate this technology further.

b. Room Air Conditioners

DOE received comments from several interested parties recommending that DOE also consider the following technologies: Alternative refrigerants, suction line heat exchangers (SLHX), flooded evaporator coils, and automatic timers.

AHAM commented that it had no additional design option suggestions for room air conditioners, and that many of the design options proposed and initially evaluated by DOE are already employed by a number of manufacturers to increase the efficiency of today's products (AHAM, No. 25 at p. 4).

Alternative Refrigerants

DOE notes that HCFC–22 was traditionally the refrigerant used in room air conditioners. On December 15, 2009, the EPA issued a final rule banning the sale and distribution of air-conditioning and refrigeration appliances containing HCFC–22, applying to appliances and components manufactured on or after January 1, 2010. 74 FR 66412, 66418.

During individual manufacturer interviews conducted for the preliminary analysis, manufacturers revealed that the room air conditioning industry was transitioning to using R–410A refrigerant. DOE also discussed the transition with compressor manufacturers, who were developing and manufacturing R–410A rotary compressors for use in room air conditioners.

Because of the phaseout of HCFC–22 and the transition to R–410A, DOE conducted the analysis for today's direct final rule based on use of R–410A refrigerant. DOE's analysis of R–410A room air conditioners is presented in chapter 5 of the direct final rule TSD.

A number of commenters urged DOE to consider alternative refrigerants as a technology option in the screening process. Both ACEEE and the California Utilities suggested that DOE consider hydrocarbon refrigerants possible alternatives to R–410A. (ACEEE, No. 24 at p. 4; California Utilities, No. 31 at p. 16) The California Utilities also suggested that DOE consider R–407C. (California Utilities, No. 31 at p. 16) NPCC supported consideration of alternative refrigerants as well. (NPCC, No. 32 at p. 4)

DOE notes that no hydrocarbon refrigerants are currently included as acceptable for use in air-conditioning applications by the EPA Significant New Alternatives Policy (SNAP) Program list. This program was established to identify acceptable alternatives to ozone-depleting substances used in a variety of applications.[31] The list identifies allowed applications for use of the alternative substances. Since there have been no hydrocarbons included on the SNAP list as acceptable for use in air conditioning appliances, DOE did not consider these alternative refrigerants in its analysis.

R–407C, on the other hand, is approved as an acceptable substitute for use in air-conditioning equipment, which includes room air conditioners. DOE analyzed R–407C to determine whether it offers efficiency improvement over R–410A, using the energy model developed and used throughout the engineering analysis. The results indicate that the efficiency of R–407C is less than that of R–410A for room air conditioners operating at rating conditions. As a result, DOE determined that use of R–407C refrigerant is not a viable design option. Additional details of this analysis are

[31] *See* the SNAP program Web site at *http://www.epa.gov/ozone/snap/.*

presented in chapter 3 of the direct final rule TSD.

DOE also performed research to identify other potential alternative refrigerants during the preliminary analysis, but was unable to identify viable alternative refrigerants to R–410A. The research included a review of air-conditioning products, academic articles, industry publications, and interviews with component vendors. DOE sought to include refrigerants that were approved by the EPA for use in room air conditioners. For more detail, see chapter 3 of the direct final rule TSD.

Suction Line Heat Exchangers

An SLHX transfers heat between the high-temperature liquid refrigerant leaving the condenser and the low-temperature vaporized refrigerant leaving the evaporator. The heat exchanger lowers the outgoing temperature of the liquid refrigerant and raises the temperature of the outgoing vapor refrigerant. This heat transfer allows for the liquid refrigerant to be subcooled before entering the expansion device and offers the potential to increase the vapor-compression cycle's cooling capacity.

The California Utilities and NPCC argued that DOE should consider SLHXs based on possible performance improvements (California Utilities, No. 31 at pp. 14–15; NPCC, No. 32 at p. 4). The California Utilities comment cited the 1997 room air conditioner rulemaking, which cited a study by Allied-Signal demonstrating a 4 percent increase in system performance with the addition of a SLHX in a 2.5 ton split system AC application, and simulations by NIST for split-system air conditioning applications showing EER improvement of 3.5 percent [32] for R–410A systems using SLHX. (California Utilities, No. 31 at pp. 14–15).

DOE reviewed the room air conditioner rulemaking cited by the California Utilities and noted that the improvement was based on a comparison to a non-optimized system. DOE also considered the NIST simulation study referenced by the California Utilities.[33] In this study, the EER improvement of 3.5 percent occurred for an outdoor temperature of 131 °F. The paper includes performance data for an outdoor temperature condition of 95 °F (which is used in the DOE Test Procedure), for which the EER improvement was 1.0 percent [34] using a SLHX. These results were simulated for systems using reciprocating-type compressors, and the analyzed systems were not optimized to maximize performance of individual fluids. There is no indication in the paper that the simulations address room air conditioners because it does not mention outdoor air moisture content, which would be an important parameter affecting performance of room air conditioners. While the simulations show a potential for slight performance improvement, it is not clear that the simulations are applicable for room air conditioners, and the results were not validated experimentally. DOE therefore concludes that the cited studies do not support the conclusion that SLHXs will significantly improve room air conditioner efficiency.

During interviews conducted during the preliminary and final rule analysis, manufacturers did not indicate that SLHX could be used to improve system performance. Furthermore, use of SLHX's may be inconsistent with the operating temperature limits for compressors. The technology significantly raises the temperature of the suction gas entering the compressor. Because hermetic compressors are cooled by the suction gas, the compressor will overheat if the suction gas temperature exceeds limits specified by the compressor manufacturer. DOE notes that 65 °F is typically the highest allowable suction temperature for R–410A rotary compressors. DOE noted that a SLHX operating at close to 50% effectiveness (as analyzed in the NIST study) would raise suction temperature roughly 20 °F, thus significantly exceeding the specified limit. For additional details of this analysis, see chapter 3 of the TSD. Use of this technology would adversely affect the reliability of the compressor, and consequently, DOE cannot consider SLHX as a design option.

Flooded Evaporator Coils

Flooded evaporator coils are evaporators for which refrigerant flow is higher than the amount that can be evaporated. As a result, a portion of the refrigerant leaves such an evaporator unevaporated (that is, still in the liquid phase). Such a design assures that liquid is available for boiling heat transfer throughout the evaporator. Because boiling heat transfer is much more effective than vapor phase heat transfer, the evaporator's heat transfer characteristics can be improved. However, the liquid refrigerant leaving the evaporator cannot be routed to the compressor, because (1) compressors cannot tolerate significant amounts of liquid without damage; and (2) this would represent lost cooling and lost efficiency. The liquid refrigerant returns to a reservoir from which it can be redirected to the evaporator. The reservoir inventory is controlled to allow low pressure vapor to exit to the compressor, while "fresh" refrigerant from the condenser enters through an expansion valve that may vary flow based on the reservoir liquid level.

The California Utilities stated that DOE should consider flooded evaporator coils as a design option, as this technology is used in some refrigerant systems (California Utilities, No. 31 at p. 14). Oak Ridge National Laboratories (ORNL) tests on window air conditioners found that a flooded evaporator coil setup using R–22 increased cooling capacity by 8 percent.[35]

DOE considered the ORNL study referenced by the California Utilities. The article describes work in which a room air conditioner was tested, modified to have a flooded evaporator, and then retested. Data provided in the article shows that the evaporator of the unmodified unit was very poorly controlled. A plot graph of heat exchanger tube temperature versus evaporator length shows the tube temperature rising after the refrigerant liquid had traveled 60 percent of the heat exchanger tube length, indicating that the refrigerant liquid has evaporated. Air conditioner designs that incorporate flooded evaporator coils are not optimized, and the performance of such designs could have improved significantly with much less costly changes than converting to a flooded evaporator. As a result, DOE does not believe that the cited ORNL study supports analyzing flooded evaporator coils as a technology option in the room air conditioner engineering analysis.

Automatic Timers

The California Utilities stated that DOE should consider automatic timers as a design option in its analysis,

[32] This efficiency increase was described in the source as reduction of an EER loss of 6.5 percent (when comparing R–410A performance to HCFC–22, at 131 °F outdoor temperature) to 3.2 percent.

[33] National Institute of Standards and Technology. *Performance of R–22 and its Alternatives Working at High Outdoor Temperatures.* In Eighth International Refrigeration Conference at Purdue University, 2000. West Lafayette, IN—July 25–28, 2000, pp. 47–54.

[34] Again, expressed as reduction of an EER loss of 2.5 percent (when comparing R–410A performance to HCFC–22, at a 95 °F outdoor temperature) to 1.5 percent.

[35] V.C. Mei and F.C. Chen, *et al. Experimental Analysis of a Window Air Conditioner with R–22 and Zeotropic Mixture of R–32/125/134a.* Energy Renewable and Research Section, Energy Division, Oak Ridge National Laboratory: Oak Ridge, TN. August 1995.

arguing that many room air conditioner models currently feature an automatic timer that shuts off operation after a pre-determined amount of time, thus avoiding unnecessary cooling (California Utilities, No. 31 at p. 14). The California Utilities argued that this is a simple and inexpensive option that can be implemented to improve consumer utility and provide potential energy savings.

DOE notes that automatic timers may save energy by preventing cooling of the space when occupants have left. However, the benefits of automatic timers would not be measured by the current or amended test procedures, unless the test procedure allocation of hours to full-load and standby or off mode were adjusted based on presence of the automatic timer. Information to allow proper allocation of the hours in this fashion is not available, thus the test procedure rulemaking did not establish adjustment of hours to address this technology. DOE acknowledges the importance of conducting appropriate test programs to provide a basis for crediting technologies such as automatic timers. DOE will consider supporting such work to assist in a future test procedure rulemaking. At this time, however, DOE cannot consider automatic timers in the engineering analysis.

B. Screening Analysis

DOE uses the following four screening criteria to determine which technology options are suitable for further consideration in a standards rulemaking:

1. *Technological feasibility.* DOE will consider technologies incorporated in commercial products or in working prototypes to be technologically feasible. (The technological feasibility of options was discussed in the preceding section as part of the market and technology assessment.)

2. *Practicability to manufacture, install, and service.* If mass production and reliable installation and servicing of a technology in commercial products could be achieved on the scale necessary to serve the relevant market at the time the standard comes into effect, then DOE will consider that technology practicable to manufacture, install, and service.

3. *Adverse impacts on product utility or product availability.* If DOE determines a technology would have significant adverse impact on the utility of the product to significant subgroups of consumers, or would 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 United States at the time, it will not consider this technology further.

4. *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.

10 CFR part 430, subpart C, appendix A, (4)(a)(4) and (5)(b).

Technologies that pass through the screening analysis are referred to as "design options" in the engineering analysis. Details of the screening analysis are in chapter 4 of the direct final rule TSD.

1. Clothes Dryers

In the preliminary analysis, DOE identified the following technology options that could improve the efficiency of clothes dryers, as shown in Table IV.5.

TABLE IV.5—TECHNOLOGY OPTIONS FOR RESIDENTIAL CLOTHES DRYERS

Dryer Control or Drum Upgrades:
Improved termination.
Increased insulation.
Modified operating conditions.
Improved air circulation.
Reverse tumble.
Improved drum design.
Methods of Exhaust Heat Recovery (vented models only):
Recycle exhaust heat.
Inlet air preheat.
Inlet air preheat, condensing mode.
Heat Generation Options:
Heat pump, electric only.
Microwave, electric only.
Modulating, gas only.
Water-cooling, ventless electric only.
Indirect heating.
Component Improvements:
Improved motor efficiency.
Improved fan efficiency.
Standby Power Improvements:
Switching power supply.
Transformerless power supply with auto-powerdown.

For the preliminary analysis, DOE considered eliminating the following clothes dryer technology options from consideration:

Microwave, Electric Only

DOE's research suggested that significant technical and safety issues would be introduced with microwave drying by the potential arcing from metallic objects in the fabric load, including zippers, buttons, or "stray" items such as coins. While DOE noted that efforts have been made to mitigate the conditions that are favorable to arcing, or to detect incipient arcing and terminate the cycle, the possibility of fabric damage could not be completely eliminated. Thus, for these reasons of consumer utility and adverse impacts on safety, microwave drying was not considered further for analysis.

Water-Cooling, Ventless Electric Only

DOE noted that water-cooling for ventless electric clothes dryers, which uses water as a cooling fluid to condense the moisture in the air exiting the drum, would require significant plumbing to circulate water through a heat exchanger in the dryer and add to the complexity of maintenance. Such home renovations would require installing a water hook-up and drain in the laundry area, which is not typically done for clothes dryers. Therefore, DOE determined in the preliminary analysis that the water-cooling for ventless electric dryers technology option does not meet the criterion of practicability to install and service on a scale necessary to serve the relevant market at the time of the compliance date of a new standard and proposed screening it out of the analysis. DOE did not receive any comments objecting to this determination. For these reasons, DOE is continuing to screen out water-cooling for ventless electric clothes dryers in today's final rule.

Indirect Heating

DOE tentatively concluded in the preliminary analysis that indirect heating would be viable only in residences which use a hydronic heating system. An energy conservation standard that required indirect heating would require homes without a hydronic heating system to have such a system installed. DOE also notes that there would be added maintenance requirements because the home's hydronic heating system because it would be used more frequently (that is, year-round). Also, to derive dryer heat energy from the home's heating system, significant plumbing work would be required to circulate heated water through a heat exchanger in the dryer. Therefore, DOE determined that this technology option does not meet the criterion of practicability to install on a scale necessary to serve the relevant market at the time of the compliance date of a new standard and did not consider it further in the preliminary analysis.

In response, ACEEE commented that DOE should reconsider its decision to leave water-cooled clothes dryers unregulated because these products are very water-intensive. ACEEE stated that, although water-cooled clothes dryers are currently of very limited use in the

United States, this technology is used overseas and could find a larger market niche in the United States if left unregulated. (ACEEE, No. 24 at pp. 2–3) DOE believes that the current unavailability of such products in the Unites States, along with the reasons noted above, confirms its initial conclusion regarding the failure of this technology to meet the screening criteria of practicability to install and service on the scale necessary to serve the relevant market at the time of the effective date of a new standard. In addition, EPCA does not authorize DOE to set water-efficiency standards for clothes dryers. (42 U.S.C. 6291(6), 6295(g)) Therefore, DOE continues to screen out this technology option.

No other comments were received objecting to the technology options which were screened out in the preliminary analysis, or to the initial determination that the remaining design options met all of the screening criteria listed above. Therefore, DOE considered the same design options in the final rule as those evaluated in the preliminary analysis (see Table IV.6).

TABLE IV.6—RETAINED DESIGN OPTIONS FOR RESIDENTIAL CLOTHES DRYERS

Dryer Control or Drum Upgrades:
Improved termination.
Increased insulation.
Modified operating conditions.
Improved air circulation.
Reverse tumble.
Improved drum design.
Methods of Exhaust Heat Recovery (vented models only):
Recycle exhaust heat.
Inlet air preheat.
Inlet air preheat, condensing mode.
Heat Generation Options:
Heat pump, electric only.
Modulating, gas only.
Component Improvements:
Improved motor efficiency.
Improved fan efficiency.
Standby Power Improvements:
Switching power supply.
Transformerless power supply with auto-powerdown.

2. Room Air Conditioners

In the preliminary analysis, DOE identified the following technology options that could improve the efficiency of room air conditioners, as shown in Table IV.7.

TABLE IV.7—TECHNOLOGY OPTIONS FOR ROOM AIR CONDITIONERS

Increased Heat Transfer Surface Area:
Increased frontal coil area.
Increased depth of coil (add tube rows).
Increased fin density.
Add subcooler to condenser coil.
Increased Heat Transfer Coefficients:
Improved fin design.
Improved tube design.
Hydrophilic film coating on fins.
Spray condensate onto condenser coil.
Microchannel heat exchangers.
Component Improvements:
Improved indoor blower and outdoor fan efficiency.
Improved blower/fan motor efficiency.
Improved compressor efficiency.
Part-Load Technology Improvements:
Two-speed, variable-speed, or modulating-capacity compressors.
Thermostatic or electronic expansion valves.
Thermostatic cyclic controls.
Standby Power Improvements:
Switching power supply.

For the preliminary analysis, DOE tentatively concluded that all room air conditioner technology options met the screening criteria listed above and did not propose to eliminate any of these technology options from consideration. DOE did not receive any comments objecting to this list of technology options and, therefore, retained all of the technologies in Table IV.7 as room air conditioner design options. As described and explained below in section IV.C.1.b below, however, some of the technologies were not considered in the engineering analysis.

C. Engineering Analysis

The engineering analysis develops cost-efficiency relationships to show the manufacturing costs of achieving increased efficiency. DOE has identified the following three methodologies to generate the manufacturing costs needed for the engineering analysis: (1) The design-option approach, which provides the incremental costs of adding to a baseline model design options that will improve its efficiency; (2) the efficiency-level approach, which provides the relative costs of achieving increases in energy efficiency levels, without regard to the particular design options used to achieve such increases; and (3) the cost-assessment (or reverse engineering) approach, which provides "bottom-up" manufacturing cost assessments for achieving various levels of increased efficiency, based on detailed data as to costs for parts and material, labor, shipping/packaging, and investment for models that operate at particular efficiency levels.

DOE conducted the engineering analyses for this rulemaking using the efficiency-level approach for clothes dryers and room air conditioners. For this analysis, DOE relied upon efficiency data published in multiple databases, including those published by CEC, the Consortium for Energy Efficiency (CEE), and ENERGY STAR, which were supplemented with laboratory testing, data gained through engineering analysis, and primary and secondary research. Details of the engineering analysis are in chapter 5 of the direct final rule TSD.

1. Technologies Not Analyzed

In performing the engineering analysis, DOE did not consider for analysis certain technologies that were not evaluated for one or more of the following reasons: (1) Data are not available to evaluate the energy efficiency characteristics of the technology; (2) available data suggest that the efficiency benefits of the technology are negligible; and (3) for the reasons stated in the TP Final Rule, DOE did not amend the test procedure to measure the energy impact of these technologies.

In the preliminary analysis, DOE did not include the following design options:

a. Clothes Dryers

Reverse Tumble

As discussed in section IV.A.5.a, NRDC commented that the DOE clothes dryer test procedure may be underestimating the efficiency improvement associated with reverse tumble due to the composition of the test cloth. (NRDC, Public Meeting Transcript, No. 21.4 at pp. 42–43) Because DOE did not amend the specifications for the test cloth composition in the TP Final Rule (as discussed in section III.A.1.d), and in the absence of comments providing information on the efficacy of reverse tumble for the existing DOE test cloth, DOE continues to conclude that no measurable energy savings are associated with this design option. Thus, this design option was not considered further in the analysis for today's final rule.

Improved Termination

For the reasons noted in section III.A.1.b, DOE did not adopt amendments to its clothes dryer test procedure to better account for automatic cycle termination. Therefore, energy savings due to improved termination technologies cannot be measured according to the test procedure, and this design option was not considered further in the analysis for today's direct final rule.

b. Room Air Conditioners

DOE eliminated the following technologies from further consideration due to the three criteria mentioned above.

1. Improved fin design
2. Improved tube design
3. Hydrophilic-film coating on fins
4. Spray condenser onto condenser coil
5. Improved indoor blower and outdoor fan efficiency
6. Variable speed compressors
7. Thermostatic or electronic expansion valves
8. Thermostatic cyclic controls

Of these technologies, numbers 1 through 4 are used in baseline products. Information indicating efficiency improvement potential is not available for number 5. Any potential energy savings of technologies 6 through 8 cannot be measured with the established energy use metric because those technologies are associated with part-load performance. As discussed in Section III.A.2.d above, DOE did not amend the test procedure to measure part-load performance of room air conditioners. Chapter 5 of the direct final rule TSD discusses these reasons in greater detail.

2. Efficiency Levels and Cost-Efficiency Results

a. Clothes Dryers

In the preliminary analysis, DOE analyzed active mode and standby mode separately to develop integrated cost-efficiency results. For vented clothes dryer product classes, DOE proposed the active mode efficiency levels shown in Table IV.8, which were based on EF values measured using the previous clothes dryer test procedure. For ventless clothes dryer product classes, DOE proposed the active mode efficiency levels shown in Table IV.9, which were based on EF values measured using the previous clothes dryer test procedure without the requirement to install an exhaust simulator. DOE proposed the standby power levels shown in Table IV.10 for all clothes dryer product classes.

TABLE IV.8—CLOTHES DRYER ACTIVE MODE EFFICIENCY LEVELS (EF)—VENTED PRODUCT CLASSES

Level	Efficiency level description	Efficiency level (EF) *lb/kWh*			
		Electric standard	Electric compact (120V)	Electric compact (240V)	Gas
Baseline	DOE Standard	3.01	3.13	2.90	2.67
1	Gap Fill	3.10	3.22	2.98	2.75
2	Gap Fill	3.16	3.29	3.09	2.85
3	Gap Fill/Maximum Available	3.4	3.54	3.2	3.02
4	Max-Tech	4.51	4.70	4.35	.....

TABLE IV.9—CLOTHES DRYER ACTIVE MODE EFFICIENCY LEVELS (EF)—VENTLESS PRODUCT CLASSES

Level	Efficiency level description	Efficiency level (EF) *lb/kWh*	
		Electric compact (240V)	Electric combination washer/dryer
Baseline	DOE Test Data	2.37	1.95
1	Gap Fill	2.39	2.21
2	Gap Fill	2.59	2.42
3	Max-Tech	3.55	3.32

TABLE IV.10—CLOTHES DRYER STANDBY POWER LEVELS

Level	Standby power source	Power Input *W*
Baseline	DOE Test Data and Analysis	2.0
1	DOE Test Data	1.5
2	DOE Test Data (Max-Tech)	0.08

In the preliminary analyses, DOE developed integrated efficiency levels based on the integrated EF (IEF) metric proposed as an alternative option in the TP NOPR. The IEF is calculated as the clothes dryer test load weight in lb divided by the sum of active mode per-cycle energy use and standby/off mode per-cycle energy use in kWh. Table IV.11 through Table IV.13 show the integrated efficiency levels proposed in the preliminary analyses.

TABLE IV.11—CLOTHES DRYER INTEGRATED EFFICIENCY LEVELS (IEF)—VENTED PRODUCT CLASSES

Level	Efficiency level description	Integrated efficiency level (IEF) *lb/kWh*			
		Electric standard	Electric compact (120V)	Electric compact (240V)	Gas
Baseline	DOE Standard + 2.0 W Standby	2.96	3.00	2.79	2.63
1	Gap Fill + 2.0 W Standby	3.04	3.08	2.86	2.71
2	Gap Fill + 2.0 W Standby	3.10	3.15	2.96	2.80
3	Gap Fill/Maximum Available + 2.0 W Standby	3.33	3.37	3.06	2.97
4	Maximum Available + 1.5 W Standby	3.35	3.41	3.10	2.98
5	Maximum Available + 0.08 W Standby	3.40	3.53	3.19	3.02
6	Heat Pump (Max-Tech) + 0.08 W Standby	4.52	4.69	4.34	.....

TABLE IV.12—CLOTHES DRYER INTEGRATED EFFICIENCY LEVELS (IEF)—VENTLESS ELECTRIC COMPACT (240V)

Level	Efficiency level description	Integrated efficiency level (IEF) *lb/kWh*
		Electric compact (240 V)
Baseline	Baseline + 2.0 W Standby	2.29
1	Baseline + 1.5 W Standby	2.31
2	Baseline + 0.08 W Standby	2.37
3	Gap Fill + 0.08 W Standby	2.39
4	Gap Fill + 0.08 W Standby	2.59
5	Heat Pump (Max-Tech) + 0.08 W Standby	3.54

TABLE IV.13—CLOTHES DRYER INTEGRATED EFFICIENCY LEVELS (IEF)—VENTLESS ELECTRIC COMBINATION WASHER/DRYERS

Level	Efficiency level description	Integrated efficiency level (IEF) *lb/kWh*
		Electric combination washer/dryer
Baseline	Baseline + 2.0 W Standby	1.90
1	Gap Fill + 2.0 W Standby	2.15
2	Gap Fill + 2.0 W Standby	2.34
3	Gap Fill + 1.5 W Standby	2.36
4	Gap Fill + 0.08 W Standby	2.42
5	Heat Pump (Max-Tech) + 0.08 W Standby	3.31

DOE also noted that it was considering revisions to the clothes dryer test procedure for active mode, standby mode, and off mode, and that those potential amendments would affect the calculated IEF. (IEF has since been renamed CEF for this direct final rule to avoid confusion with an existing industry standard.) AHAM commented that, to ensure a rigorous analysis and to mitigate confusion, DOE should modify the baseline efficiency level to account for a revised initial RMC in the clothes dryer test procedure. (AHAM, No. 25 at p. 10) The TP Final Rule was published on January 6, 2011, and DOE has adjusted the efficiency levels, including the baseline level, as discussed later in this section to account for the impacts of all test procedure revisions, including those pertaining to initial RMC.

Integrated Efficiency Metric

DOE received comments from interested parties on the adequacy of IEF as the energy efficiency metric for clothes dryer energy conservation standards. AHAM supported the incorporation of standby mode and off mode power into the total energy use of clothes dryers, and commented that the integrated metric is appropriate. (AHAM, No. 25 at p. 2)

Whirlpool commented that standby power technologies should not be considered as separate design options associated with specific TSLs, and that doing so would avoid the requirement that standby power be incorporated into the total energy use of the clothes dryer. Whirlpool also stated that standby levels should not vary by TSL. (Whirlpool, No. 22 at p. 5) DOE notes that the CEF metric at each TSL incorporates a measure of standby power as a contributor to energy use along with energy use in active mode, as required by EPCA. Because CEF does not preferentially weigh the energy use contributions attributable to either active or standby mode, improvements in CEF due to standby power reductions are considered equally to those due to active mode design options. For these reasons, DOE believes that technologies associated with standby power reductions should be considered in the definition of efficiency levels and thus TSLs. In today's direct final rule, DOE

analyzes some TSLs that would require standby power reductions only, and some that would require reductions to both standby power and active mode power, as shown later in this section.

The NRDC/ECOS report stated that the fact that natural gas clothes dryers tend to have lower average energy factors than electric clothes dryers could lead consumers to believe that electric dryers are generally more efficient. NRDC/ECOS report stated that conventional gas clothes dryers that have been available for 30 years have significantly less source energy use and environmental impact than today's efficient electric clothes dryers. The NRDC/ECOS report added that heat pump clothes dryers that may reach the U.S. market in the future have only slightly lower impacts than conventional gas clothes dryers. (NRDC, No. 30 at pp. 17–18) The NRDC/ECOS report further stated that the current EF metric is not intuitive and fails to capture meaningful differences between electric and natural gas models. According to the NRDC/ECOS report, converting natural gas consumption into equivalent electrical consumption on a site basis ignores all of the losses that occur in the electrical generation and transmission process. The NRDC/ECOS report stated that this draws attention from the substantial advantage of most gas clothes dryers—that they convert their fuel directly into heat at the site where it is needed, avoiding upstream losses. According to the NRDC/ECOS report, there are three ways to compare gas and electric clothes dryers more fairly: (1) Source Btu basis, (2) total CO_2 emissions basis, and (3) energy cost basis. The NRDC/ECOS report presented test results which showed that the standard natural gas clothes dryer uses less source energy, costs less, and emits less CO_2 per lb of water removed than any other option except (in some cases) a heat pump clothes dryer. (NRDC, No. 30 at pp. 32–33) NRDC commented that DOE should consider reporting actual kWh and Btu consumption rather than converting to site equivalent kWh. NRDC stated that it would be more useful to consumers to have information on actual kWh of electricity and Btu of gas consumed. According to NRDC, organizations such as EnergyGuide, ENERGY STAR, and Top Ten could use this information to more accurately inform prospective buyers on CO_2 emitted or operating costs of a given clothes dryer. (NRDC, No. 26 at pp. 1, 3)

In response, DOE notes that EPCA defines "energy conservation standard" in relevant part as either: (1) A performance standard which prescribes a minimum level of energy efficiency or a maximum quantity of energy use; or (2) for certain products, including clothes dryers but not including room air conditioners, a design requirement; the term also includes any other requirements that DOE may prescribe under 42 U.S.C. 6295(r). (42 U.S.C. 6291(6)) EPCA also provides definitions for the terms "energy use" and "energy efficiency". Specifically, "energy use" refers to the quantity of energy directly consumed by a consumer product at the point of use, and "energy efficiency" means the ratio of the useful output of services from a consumer product to the energy use of such product. (42 U.S.C. 6291(4)–(5)) Therefore, an energy conservation standard metric based on source energy use, emissions, or annual energy cost would be inconsistent with the definitions set forth in EPCA. In addition, DOE promulgates test procedures for all product classes of clothes dryers that calculate energy use or energy efficiency on a consistent basis, regardless of the type of energy used. The energy content of either the electricity or fossil fuels used at the site of the clothes dryer may be equally and interchangeably expressed in any unit of energy measurement, including kWh and Btu. DOE notes that, for other covered products which may consume gas as well as electricity, such as cooking products, DOE defines an energy efficiency metric (EF) in which any contributory site gas energy use is expressed in equivalent kWh. DOE continues to believe that the measure of CEF in terms of lb of clothes load per kWh is meaningful and representative of the performance for both electric and gas clothes dryers, and thus is not adopting alternative measures of energy use or energy efficiency.

NRDC and the California Utilities recommended that the metric be based on the water removed in the clothes load per kWh. The NRDC/ECOS report stated that the efficiency using this approach would be measured by converting the lbs. of water removed into kWh with a conversion factor of 0.308 (the kWh necessary to evaporate a 1 lb. of water,) then dividing by the measured energy consumption. According to the NRDC/ECOS report, this metric would be more meaningful because it would measure the work actually being performed by the clothes dryer. The NRDC/ECOS report provided as an example the case in which a clothes dryer removed 3 lbs. of water from either a heavily saturated small load of absorbent fabrics such as cotton or a lightly saturated larger load of synthetics. According to the NRDC/ECOS report, testing and reporting the results for both situations would help consumers choose the most efficient clothes dryers. The California Utilities stated that the metric should be based on lbs. of water removed per kWh, and that this metric would correct for small variations in actual test load or moisture content. The California Utilities also stated that this approach would eliminate the need for the 0.66 correction factor (in sections 4.1–4.3 of the current clothes dryer test procedure), which corrects for the RMC change during the test. (California Utilities, No. 31 at pp. 11–12; NRDC, Public Meeting Transcript, No. 21.4 at pp. 49–50; NRDC, No. 26 at pp. 1–3; NRDC, No. 30 at pp. 8, 32)

As noted above, DOE did not amend the clothes dryer test procedure to allow for testing materials other than the current 50–50 cotton-polyester test cloth. In addition, test conditions that would allow the test load size or initial RMC to vary would only be allowable if the resulting measured energy efficiency metric was independent of such variations, implying that the metric would need to be a linear function of these test conditions. DOE testing indicates that the efficacy of moisture removal becomes significantly non-linear as the RMC in the clothes load approaches low values, particularly near the 5-percent maximum allowable RMC for the conclusion of the test cycle according to the clothes dryer test procedure. Therefore, test loads with different initial RMC that are allowed to dry to a range of final RMCs, or differences in test load size, would not produce repeatable and consistent measures of energy efficiency performance due to this non-linearity of efficiency through the drying process. In order for testing results to be comparable, the test procedure would need to be amended to specific an exact starting and ending RMC, which would likely represent a significant testing burden. In addition, DOE does not believe that a metric based on lbs. of water removed per kWh, as commented by NRDC/ECOS, would be more meaningful to consumers, who may not be aware of how much water is contained in their test load. For these reasons, and because DOE has insufficient data to suggest that a metric based on lbs. of water removed per kWh instead of lb of test cloth per kWh is a more accurate or representative measure of clothes dryer energy use, DOE is not amending the clothes dryer energy conservation standards as suggested by NRDC and the California Utilities.

The California Utilities recommended that DOE consider a prescriptive design

requirement that all vented clothes dryers have a standard 4-inch round port for air intake, which would be the same diameter as the exhaust duct. According to the California Utilities, there would be negligible cost associated with this design, and would allow consumers the option to install outdoor intake air in the future. (California Utilities, No. 31 at pp. 8, 12) As noted in section IV.A.5.a, DOE concluded that consideration of HVAC energy use associated with outdoor intake air was inconsistent with EPCA's requirement that a test procedure measure the energy use or energy efficiency of a covered product. As a result, DOE did not consider this technology in its analysis and is not adopting a prescriptive design standard addressing the potential implementation of outdoor intake air.

PG&E inquired whether DOE would consider a performance metric that would include the non-energy benefit of clothing life if such data were available. (PG&E, Public Meeting Transcript, No. 21.4 at p. 129) DOE is not aware of such data and notes that EPCA provides that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use, water use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(3)) DOE believes that a clothes dryer metric incorporating the non-energy benefit of clothing life would be inconsistent with this requirement. Therefore, DOE did not consider such a metric in the TP Final Rule. DOE is required, however, to consider any lessening of utility or performance in establishing energy conservation standards. 42 U.S.C. 6295(o)(2)(B)(i)(IV).

The NRDC/ECOS report stated that, due to the complexity of the current DOE clothes washer test procedure and energy use calculations, it might be simpler for manufacturers to report total energy used to wash and dry one load. (NRDC, No. 30 at p. 32) EPCA provides separate standards for clothes dryers and clothes washers, and directs DOE to consider amended energy conservation standards for each product separately. (42 U.S.C. 6295(g)) Therefore, DOE is unable to adopt a single standard based on overall energy use of the wash and dry cycles in total.

Comments on Preliminary Analysis Integrated Efficiency Levels

DOE also received comments from interested parties on the efficiency levels proposed in the preliminary analysis. The California Utilities stated that, with the low or negative incremental costs of the standby power design options, such design options should be implemented at lower efficiency levels. According to the California Utilities, this implementation would not affect clothes dryers with electromechanical controls, which have zero standby and are thus receiving a "free" benefit of 2.0 W. (California Utilities, No. 31 at pp. 11–12) DOE agrees that the low cost of the standby power design options should result in these technologies being included in the initial efficiency levels above the baseline. Thus, the clothes dryer efficiency levels analyzed in this direct final rule implement the standby power design options at the efficiency levels where they are most cost-effective. As noted by the California Utilities, these changes would impact only those clothes dryers that consume standby power, that is, those products with electronic controls.

Earthjustice commented that EPCA contains an "anti-backsliding provision" that constrains DOE's authority in revising energy efficiency standards. According to Earthjustice, some of the clothes dryer efficiency levels that DOE is considering would violate the anti-backsliding requirement. Earthjustice commented that adding standby power consumption factors into the existing metrics reduces the stringency of each metric. Earthjustice provided an example for vented electric compact (120 V) clothes dryers in which the addition of the 2 W of standby power lowers the EF rating of the baseline efficiency level from 3.13 to 3.00. If DOE adopts efficiency level 1, with an IEF of 3.08, such a standard would violate EPCA's anti-backsliding provision. NRDC commented that if an existing vented electric compact (120V) clothes dryer model with electromechanical controls (which DOE has shown to consume no power in standby mode) has an EF of 3.10, it would be barred from the U.S. market by the existing standard. However, it would meet an IEF standard set at 3.08 (which DOE proposed as efficiency level 1 in the preliminary TSD). Earthjustice commented that implementing an IEF standard set at 3.08 would have the effect of decreasing the minimum required energy efficiency as is prohibited by the anti-backsliding provisions. (EJ, No. 28 at pp. 1–2; EJ, Public Meeting Transcript, No. 21.4 at p. 58) Earthjustice also commented that DOE's proposed approach to the integration of standby and off mode energy consumption into the performance standards for clothes dryers would require DOE to adopt standards that increase EF sufficiently to avoid violating EPCA's anti-backsliding provision. (EJ, No. 28 at p. 1)

EPCA contains what is commonly known as an "anti-backsliding" provision. This provision prohibits DOE from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product or equipment. (42 U.S.C. 6295(o)(1)) Congress also directed DOE to incorporate standby and off mode energy use in a single amended or new standard, or to prescribe a separate standard if such incorporation is not feasible, pursuant to 42 U.S.C. 6295(o). (42 U.S.C. 6295(gg)(3)) Today's final rule incorporates additional measures of energy consumption in the energy conservation standards for clothes dryers (that is, standby and off mode energy use). DOE notes that clothes dryers and room air conditioners that consume energy in standby and off modes have always used energy in these modes, and that today's final rule now accounts for that energy as directed by 42 U.S.C. 6295(gg). Given the Congressional directive to account for standby and off mode energy use, DOE does not believe that accounting for energy use in these modes could result in backsliding under 42 U.S.C. 6295(o)(1). In addition, DOE evaluated the clothes dryer TSLs to ensure that no product currently on the market could be determined compliant with the new energy conservation standards while consuming more energy in active mode than was allowable under the previous standards.

NPCC commented that the clothes dryer test procedure does not measure the efficiency improvement associated with improved automatic termination controls such as moisture sensing. NPCC stated that because moisture sensing would require switching from electromechanical controls to electronic controls, part of the incremental manufacturing cost associated with electronic controls would be accounted for in the improved automatic cycle termination design option. However, NPCC also stated that all clothes dryers have some form of automatic cycle termination for which the current test procedure uses a fixed field use factor. NPCC commented that because moisture sensing requires electronic controls and thus consumes standby power, the cost of the implementing electronic controls is inappropriately accounted for only in the standby power design options

because the test procedure does not measure the efficiency improvement associated with moisture sensing. NPCC stated that part of the costs for implementing electronic controls should be accounted for in the costs associated with improved automatic cycle termination with moisture sensing. (NPCC, Public Meeting Transcript, No. 21.4 at pp. 58–60, 61–62) NPCC commented that if a product is receiving the 1.04 field use factor for automatic cycle termination, then the cost of that type of device (that is, the cost of electronic controls) needs to be in the baseline cost analysis. (NPCC, Public Meeting Transcript, No. 21.4 at p. 60)

DOE first notes that electronic controls are not required to implement automatic cycle termination. Clothes dryers are currently available on the market that use inputs from exhaust air temperature sensors to control or modify the length of the drying cycle without the use of electronic controls. For this reason, DOE did not include the cost of electronic controls in the baseline cost, unless the baseline product already incorporated electronic controls (such as, ventless electronic compact (240V) and ventless electric combination washer/dryers). As discussed below, DOE noted that baseline efficiency clothes dryers implement both electromechanical controls and electronic controls. As a result, DOE analyzed baseline efficiency products available on the market, and weighted the contribution of the 2 W baseline standby power as well as the efficiency improvement and incremental manufacturing cost for standby power design changes based on the percentage of baseline efficiency products that used electronic controls.

BSH commented that DOE should analyze and implement evenly distributed efficiency levels to help consumers make purchasing decisions. BSH also commented that the implementation of the proposed efficiency levels in the preliminary analyses would cause confusion to consumers. According to BSH, with a relatively small improvement in efficiency in the lower efficiency levels, a better rating can be achieved, and at the high end of the efficiency levels, much more effort must be taken to improve the rating. In addition, according to BSH, consumers will not support the higher efficiency level because they cannot see the advantage of paying a significantly higher price for a small change in product efficiency. (BSH, No. 23 at pp. 3–4) BSH also commented that DOE should use the same efficiency scale to analyze ventless and vented clothes dryers. According to BSH, ventless clothes dryers, especially those with heat pump technology, will be penalized by keeping a lower number of efficiency levels. (BSH, No. 23 at p. 4)

DOE notes that the efficiency levels analyzed for the preliminary analyses were derived from the distribution of efficiencies for products available on the market from data provided in the CEC and NRCan product databases. DOE also notes that the efficiency levels for the ventless clothes dryer product classes were based on product testing as well as scaling of the efficiency improvements associated with vented clothes dryer product classes. The efficiency levels analyzed are not being established for a product marketing classification system for consumers to make purchasing decisions (as is done in the European energy class system). As a result, DOE does not intend to create an energy class system for product marketing based on evenly distributed efficiency levels.

BSH commented that a separate classification of heat pump clothes dryers will not be possible because the European market shows large variation within this class of clothes dryers. According to BSH, heat pump clothes dryers in Europe differ by up to 40 percent in energy efficiency. (BSH, No. 23 at pp. 3–4) DOE notes that the efficiency levels established by DOE for the max-tech heat pump design are based on research and discussions with manufacturers. In addition, DOE does not intend to create a marketing classification system that would create a "heat pump" label from which consumers may perceive that all heat pump clothes dryers have the same efficiency. For these reasons, DOE continued to analyze the efficiency levels associated with heat pump clothes dryers presented in the preliminary analyses for today's direct final rule.

BSH commented that the gap between conventional and heat pump dryers is not filled with intermediate levels to show consumers the large improvement in efficiency they would be paying for when making purchasing decisions. (BSH, No. 23 at p. 6) DOE is not aware of products available on the market at efficiency levels between the maximum-available (on the U.S. market) efficiency levels and the max-tech heat pump efficiency level. In addition, DOE does not have any information indicating that design options are available that may be implemented to achieve efficiencies between the maximum-available and max-tech heat pump efficiency levels. As discussed above, DOE is not creating a marketing classification system for consumers to make purchasing decisions. As a result, DOE did not analyze additional intermediate efficiency levels between those associated with conventional and heat pump dryers.

Integrated Efficiency Levels—Final Rule

As discussed in section III.A, DOE recently published the TP Final Rule amending the clothes dryer test procedure. DOE conducted testing on a sample of representative clothes dryers to evaluate the effects of the amendments to the clothes dryer test procedure on the measured EF. As discussed in section III.A.3.a, DOE test results showed that the measured EF according to the amended test procedure resulted in an average increase of about 20.1 percent for vented electric standard clothes dryers. For vented gas clothes dryers, the measured EF increased by an average of about 19.8 percent. For vented electric compact-size 120V and 240V clothes dryers, the measured EF increased by an average of about 15.6 and 12.8 percent, respectively. For the ventless clothes dryer product classes, the preliminary analyses were based on the DOE test procedure with only the proposed amendments to for ventless clothes dryers. DOE also conducted testing according to the final amended test procedure (that is, including changes to the initial RMC, water temperature for test load preparation, etc.). Test results showed that for ventless electric compact 240V clothes dryers and ventless electric combination washer/dryers, the measured EF increased by an average of about 13.6 and 11.4 percent, respectively. DOE applied these results for each product class to adjust the active mode efficiency levels to account for the amendments to the DOE clothes dryer test procedure in the TP Final Rule. In addition, DOE revised the active mode efficiency level 1 for vented electric standard clothes dryers and vented gas clothes dryers from 3.10 EF to 3.11 EF and from 2.75 to 2.76 EF, respectively. The revisions were based on discussions with manufacturers and the efficiency improvement associated with the design options modeled by DOE. See chapter 5 of the direct final rule TSD for more details. DOE subsequently integrated the standby power efficiency levels to convert these EF values to CEF. For the preliminary analyses, DOE only incorporated incremental standby power levels into IEF efficiency levels above which electronic controls would be required as part of the active mode design option changes. At that point, DOE incorporated the incremental standby

power levels where it determined them to be most cost effective. Chapter 5 of the direct final rule TSD provides details of the active mode and standby mode efficiency levels for each product class. The revised CEF efficiency levels for each product class are shown below in Table IV.14 through Table IV.16.

TABLE IV.14—CLOTHES DRYER INTEGRATED EFFICIENCY LEVELS (CEF)—VENTED PRODUCT CLASSES

Level	Efficiency level description	Integrated efficiency level (CEF) *lb/kWh*			
		Electric standard	Electric compact (120V)	Electric compact (240V)	Gas
Baseline	DOE Standard + 2.0 W Standby	3.55	3.43	3.12	3.14
1	DOE Standard + 1.5 W Standby	3.56	3.48	3.16	3.16
2	DOE Standard + 0.08 W Standby	3.61	3.61	3.27	3.20
3	Gap Fill + 0.08 W Standby	3.73	3.72	3.36	3.30
4	Gap Fill + 0.08 W Standby	3.81	3.80	3.48	3.42
5	Gap Fill/Maximum Available + 0.08 W Standby	4.08	4.08	3.60	3.61
6	Heat Pump (Max-Tech) + 0.08 W Standby	5.42	5.41	4.89	.....

TABLE IV.15—CLOTHES DRYER INTEGRATED EFFICIENCY LEVELS (CEF)—VENTLESS ELECTRIC COMPACT (240V)

Level	Efficiency level description	Integrated efficiency level (CEF) *lb/kWh*
		Electric compact (240 V)
Baseline	Baseline + 2.0 W Standby	2.55
1	Baseline + 1.5 W Standby	2.59
2	Baseline + 0.08 W Standby	2.69
3	Gap Fill + 0.08 W Standby	2.71
4	Gap Fill + 0.08 W Standby	2.80
5	Heat Pump (Max-Tech) + 0.08 W Standby	4.03

TABLE IV.16—CLOTHES DRYER INTEGRATED EFFICIENCY LEVELS (CEF)—VENTLESS ELECTRIC COMBINATION WASHER/DRYERS

Level	Efficiency level description	Integrated efficiency level (CEF) *lb/kWh*
		Electric combination washer/dryer
Baseline	Baseline + 2.0 W Standby	2.08
1	Gap Fill + 2.0 W Standby	2.35
2	Gap Fill + 1.5 W Standby	2.38
3	Gap Fill + 0.08 W Standby	2.46
4	Gap Fill + 0.08 W Standby	2.56
5	Heat Pump (Max-Tech) + 0.08 W Standby	3.69

Cost-Efficiency Results—Preliminary Analysis

For the preliminary analysis, DOE first analyzed design options separately for active mode and standby mode and developed the cost-efficiency relationships based on product teardowns and cost modeling. Details of the active mode and standby mode cost-efficiency relationships for each product class are presented in chapter 5 of the preliminary TSD. DOE then developed overall cost-efficiency relationships for the IEF efficiency levels presented in the preliminary analyses. Table IV.17 through Table IV.22 shows DOE's estimates of incremental manufacturing cost for improvement of clothes dryer IEF above the baseline. Also shown below are the technologies DOE analyzed for each efficiency level to develop incremental manufacturing costs. Detailed descriptions of the design options associated with each efficiency level are also presented in chapter 5 of the preliminary TSD. DOE used an efficiency level approach, noting that different manufacturers may implement different design changes to achieve certain efficiency levels.

TABLE IV.17—PRELIMINARY ANALYSIS: COST-EFFICIENCY RELATIONSHIP FOR VENTED ELECTRIC STANDARD CLOTHES DRYERS

Integrated efficiency level (IEF), *lb/kWh*	Technology	Incremental manufacturing cost
Baseline (2.96)	DOE Standard + 2.0 W Standby	$0
1 (3.04)	DOE Standard + Change in Airflow Patterns, Dedicated Heater Duct, Open-Cylinder Drum.	11.89
2 (3.10)	IEL 2 + Inlet Air Pre-Heating	63.56
3 (3.33)	IEL 2 + Modulating Heat	97.48
4 (3.35)	IEL 3 + 1.5 W Standby	98.78
5 (3.40)	IEL 3 + 0.08 W Standby	98.14
6 (4.52)	Heat Pump + 0.08 W Standby	259.13

TABLE IV.18—PRELIMINARY ANALYSIS: COST-EFFICIENCY RELATIONSHIP FOR VENTED ELECTRIC COMPACT (120V) CLOTHES DRYERS

Integrated efficiency level (IEF), *lb/kWh*	Technology	Incremental manufacturing cost
Baseline (3.00)	DOE Standard + 2.0 W Standby	$0
1 (3.08)	DOE Standard + Change in Airflow Patterns, Dedicated Heater Duct, Open-Cylinder Drum.	10.95
2 (3.15)	IEL 2 + Inlet Air Pre-Heating	63.37
3 (3.37)	IEL 2 + Modulating Heat	96.45
4 (3.41)	IEL 3 + 1.5 W Standby	97.75
5 (3.53)	IEL 3 + 0.08 W Standby	97.11
6 (4.69)	Heat Pump + 0.08 W Standby	246.35

TABLE IV.19—PRELIMINARY ANALYSIS: COST-EFFICIENCY RELATIONSHIP FOR VENTED ELECTRIC COMPACT (240V) CLOTHES DRYERS

Integrated efficiency level (IEF), *lb/kWh*	Technology	Incremental manufacturing cost
Baseline (2.79)	DOE Standard + 2.0 W Standby	$0
1 (2.86)	DOE Standard + Change in Airflow Patterns, Dedicated Heater Duct, Open-Cylinder Drum.	10.95
2 (2.96)	IEL 2 + Inlet Air Pre-Heating	63.37
3 (3.06)	IEL 2 + Modulating Heat	96.45
4 (3.10)	IEL 3 + 1.5 W Standby	97.75
5 (3.19)	IEL 3 + 0.08 W Standby	97.11
6 (4.34)	Heat Pump + 0.08 W Standby	246.35

TABLE IV.20—PRELIMINARY ANALYSIS: COST-EFFICIENCY RELATIONSHIP FOR VENTED GAS CLOTHES DRYERS

Integrated efficiency level (IEF), *lb/kWh*	Technology	Incremental manufacturing cost
Baseline (2.63)	DOE Standard + 2.0 W Standby	$0
1 (2.71)	DOE Standard + Change in Airflow Patterns, Dedicated Heater Duct, Open-Cylinder Drum.	14.79
2 (2.80)	IEL 2 + Inlet Air Pre-Heating	65.36
3 (2.97)	IEL 2 + Modulating Heat	156.01
4 (2.98)	IEL 3 + 1.5 W Standby	157.31
5 (3.02)	IEL 3 + 0.08 W Standby	156.67

TABLE IV.21—PRELIMINARY ANALYSIS: COST-EFFICIENCY RELATIONSHIP FOR VENTLESS ELECTRIC COMPACT (240V) CLOTHES DRYERS

Integrated efficiency level (IEF), *lb/kWh*	Technology	Incremental manufacturing cost
Baseline (2.29)	Baseline + 2.0 W Standby	$0
1 (2.31)	Baseline + 1.5 W Standby	1.30
2 (2.37)	Baseline + 0.08 W Standby	0.66

TABLE IV.21—PRELIMINARY ANALYSIS: COST-EFFICIENCY RELATIONSHIP FOR VENTLESS ELECTRIC COMPACT (240V) CLOTHES DRYERS—Continued

Integrated efficiency level (IEF), *lb/kWh*	Technology	Incremental manufacturing cost
3 (2.39)	IEL 2 + Change in Airflow Patterns, Open-Cylinder Drum	13.01
4 (2.59)	IEL 3 + Modulating Heat	69.02
5 (3.54)	Heat Pump + 0.08 W Standby	216.37

TABLE IV.22—PRELIMINARY ANALYSIS: COST-EFFICIENCY RELATIONSHIP FOR VENTLESS ELECTRIC COMBINATION WASHER/DRYERS

Integrated efficiency level (IEF), *lb/kWh*	Technology	Incremental manufacturing cost
Baseline (1.90)	Baseline + 2.0 W Standby	$0
1 (2.15)	Baseline + 2.0 W Standby + Baseline Automatic Termination	0.81
2 (2.34)	IEL 1 + Modulating Heat	54.04
3 (2.36)	IEL 2 + 1.5 W Standby	55.34
4 (2.42)	IEL 2 + 0.08 W Standby	54.70
5 (3.31)	Heat Pump + 0.08 W Standby	230.83

DOE received comments from interested parties on the whether the baseline clothes dryer manufacturing costs should be adjusted to reflect the cost of complying with the Underwriters Laboratory (UL) Standard 2158 "Electric Clothes Dryers" (UL 2158) fire containment requirements. AHAM commented that it would need to look into and understand how the fire containment regulation in UL 2158 would affect the cost similar to the refrigerant change from R–22 to R–410a for room air conditioners. (AHAM, Public Meeting Transcript, No. 21.4 at p. 153) AHAM commented that when manufacturers submitted incremental clothes dyer manufacturing cost estimates to DOE in late 2008, costs to comply with UL 2158 were not included. According to AHAM, while the new UL requirements may not directly impact energy efficiency, the requirements place significant cumulative regulatory burden on clothes dryer manufacturers. AHAM commented that DOE should evaluate an additional step for clothes dryers, where the costs to implement the UL fire containment requirements are incorporated into the baseline analysis, similar to the approach used to evaluate the phase-out of R–22 to R–410A for room air conditioners. AHAM commented that DOE should evaluate these costs through manufacturer interviews and determine how this cost affects the incremental costs to reach higher efficiency. (AHAM, No. 25 at p. 5) DOE notes that it attempted to obtain data on the incremental manufacturing cost associated with complying with the fire containment requirements in UL 2158 during manufacturing interviews. While manufacturers noted that different manufacturers will be required to make different changes to their product design to meet the fire containment requirements, DOE did not receive sufficient data to determine the incremental manufacturing costs to baseline clothes dryers to comply with the fire containment requirements of UL 2158. In addition, DOE did not receive sufficient information to indicate that the cost associated with complying with UL 2158 would vary at efficiency levels above the baseline. As a result, DOE did not include additional cost to comply with UL 2158 in the baseline manufacturing production cost. As discussed below in section IV.I.3.b, DOE has investigated the costs of complying with the fire containment requirements in UL 2158 in the cumulative regulatory burden for the MIA.

Cost-Efficiency Results—Final Rule

For today's final rule, DOE updated the cost-efficiency analysis from the preliminary analyses by updating the costs of raw materials and purchased components, as well as updating costs for manufacturing equipment, labor, and depreciation.

In addition, based on discussions with clothes dryer manufacturers, DOE revised the design options analyzed for each integrated efficiency level in the preliminary analyses. Based on these discussions, DOE believes that manufacturers would apply a two-stage modulating heater design (which would also require moisture sensing and multi-speed airflow) to achieve integrated efficiency level 4 for all clothes dryer product classes. In addition, based on discussions with manufacturers, DOE believes that inlet-air preheating (which would require better airflow control and more advanced control systems), along with the design options for the lower efficiency levels (that is, changes in airflow patterns, open cylinder drum, dedicated heater duct, two-stage modulating heat, and standby power changes), would be applied to achieve integrated efficiency level 5 (maximum-available) for vented clothes dryer product classes. As a result, the max-tech efficiency level for vented gas clothes dryers would correspond to inlet air pre-heating.

As discussed above, DOE also believes that the low cost of the standby power design options should result in these technologies being included in the initial efficiency levels above the baseline. As a result, DOE revised the order of the design options and efficiency levels presented in the preliminary analyses. As discussed above in this section, DOE previously incorporated incremental standby power levels into integrated efficiency levels above which electronic controls would be required as part of the active mode design option changes. At that point, DOE incorporated the incremental standby power levels where it determined them to be most cost effective. For today's final rule, DOE applied the standby power levels immediately above the baseline level because they were determined to be the most cost-effective design option. The revised order of design options are shown below in Table IV.23 through

Table IV.28. DOE also noted that for the integrated efficiency levels where electronic controls are not required for the design changes, the standby power level changes would impact only those clothes dryers that consume standby power, that is, those products with electronic controls. As a result, DOE analyzed baseline efficiency products available on the market, and weighted the efficiency improvement and incremental manufacturing cost based on the percentage of baseline efficiency products that have electronic controls.[36] For the integrated efficiency levels for which electronic controls would be required as part of the active mode design changes, DOE assumed that the standby power levels and incremental manufacturing costs affected 100 percent of clothes dryer models.

Table IV.23 through Table IV.28 shows the cost-efficiency results, along with the technologies DOE analyzed for each efficiency level to develop incremental manufacturing costs. Details of the cost-efficiency analysis and descriptions of the technologies associated with each design change are presented in chapter 5 of the direct final rule TSD.

TABLE IV.23—COST-EFFICIENCY RELATIONSHIP FOR VENTED ELECTRIC STANDARD CLOTHES DRYERS

Integrated efficiency level (CEF), *lb/kWh*	Technology	Incremental manufacturing cost
Baseline (3.55)	DOE Standard + 2.0 W Standby	$0
1 (3.56)	DOE Standard + 1.5 W Standby	0.68
2 (3.61)	DOE Standard + 0.08 W Standby	0.82
3 (3.73)	IEL 2 + Change in Airflow Patterns, Dedicated Heater Duct, Open-Cylinder Drum	8.74
4 (3.81)	IEL 3 + 2-Stage Modulating Heat	50.67
5 (4.08)	IEL 4 + Inlet Air Pre-Heating	88.89
6 (5.42)	Heat Pump + 0.08 W Standby	280.54

TABLE IV.24—COST-EFFICIENCY RELATIONSHIP FOR VENTED ELECTRIC COMPACT (120V) CLOTHES DRYERS

Integrated efficiency level (CEF), *lb/kWh*	Technology	Incremental manufacturing cost
Baseline (3.43)	DOE Standard + 2.0 W Standby	$0
1 (3.48)	DOE Standard + 1.5 W Standby	0.68
2 (3.61)	DOE Standard + 0.08 W Standby	0.82
3 (3.72)	IEL 2 + Change in Airflow Patterns, Dedicated Heater Duct, Open-Cylinder Drum	21.46
4 (3.80)	IEL 3 + 2-Stage Modulating Heat	62.76
5 (4.08)	IEL 4 + Inlet Air Pre-Heating	109.31
6 (5.41)	Heat Pump + 0.08 W Standby	267.48

TABLE IV.25—COST-EFFICIENCY RELATIONSHIP FOR VENTED ELECTRIC COMPACT (240V) CLOTHES DRYERS

Integrated efficiency level (CEF), *lb/kWh*	Technology	Incremental manufacturing cost
Baseline (3.12)	DOE Standard + 2.0 W Standby	$0
1 (3.16)	DOE Standard + 1.5 W Standby	0.68
2 (3.27)	DOE Standard + 0.08 W Standby	0.82
3 (3.36)	IEL 2 + Change in Airflow Patterns, Dedicated Heater Duct, Open-Cylinder Drum	21.46
4 (3.48)	IEL 3 + 2-Stage Modulating Heat	62.76
5 (3.60)	IEL 4 + Inlet Air Pre-Heating	109.31
6 (4.89)	Heat Pump + 0.08 W Standby	267.48

TABLE IV.26—COST-EFFICIENCY RELATIONSHIP FOR VENTED GAS CLOTHES DRYERS

Integrated efficiency level (CEF), *lb/kWh*	Technology	Incremental manufacturing cost
Baseline (3.14)	DOE Standard + 2.0 W Standby	$0
1 (3.16)	DOE Standard + 1.5 W Standby	0.68
2 (3.20)	DOE Standard + 0.08 W Standby	0.82
3 (3.30)	IEL 2 + Change in Airflow Patterns, Dedicated Heater Duct, Open-Cylinder Drum	9.12
4 (3.42)	IEL 3 + 2-Stage Modulating Heat	72.32
5 (3.61)	IEL 4 + Inlet Air Pre-Heating	109.98

[36] DOE's review of currently available models with baseline efficiency showed that roughly 74 percent of models have electronic controls.

TABLE IV.27—COST-EFFICIENCY RELATIONSHIP FOR VENTLESS ELECTRIC COMPACT (240V) CLOTHES DRYERS

Integrated efficiency level (CEF), *lb/kWh*	Technology	Incremental manufacturing cost
Baseline (2.55)	Baseline + 2.0 W Standby	$0
1 (2.59)	Baseline + 1.5 W Standby	0.93
2 (2.69)	Baseline + 0.08 W Standby	1.11
3 (2.71)	IEL 2 + Change in Airflow Patterns, Open-Cylinder Drum	26.42
4 (2.80)	IEL 3 + 2-Stage Modulating Heat	57.80
5 (4.03)	Heat Pump + 0.08 W Standby	242.36

TABLE IV.28—COST-EFFICIENCY RELATIONSHIP FOR VENTLESS ELECTRIC COMBINATION WASHER/DRYERS

Integrated efficiency level (CEF), *lb/kWh*	Technology	Incremental manufacturing cost
Baseline (2.08)	Baseline + 2.0 W Standby	$0
1 (2.35)	Baseline + 2.0 W Standby + Baseline Automatic Termination	1.51
2 (2.38)	IEL 1 + 1.5 W Standby	2.44
3 (2.46)	IEL 2 + 0.08 W Standby	2.62
4 (2.56)	IEL 3 + 2-Stage Modulating Heat	31.69
5 (3.69)	Heat Pump + 0.08 W Standby	297.54

b. Room Air Conditioners

During the preliminary analysis, DOE performed the room air conditioner engineering analysis as follows:

- Reverse engineering and teardown for 21 room air conditioners across 6 product classes.
- Interviews with room air conditioner manufacturers to obtain greater insight into design strategies and their associated costs to improve efficiency, including designs incorporating R–410A refrigerant.
- Energy modeling for room air conditioner designs using R–410A refrigerant.

DOE selected teardown products covering the range of available efficiency levels at a group of selected capacities. The products selected for teardown were designed for HCFC–22 refrigerant because DOE conducted this work before the January 1, 2010 phaseout of this refrigerant for new products was required. 74 FR 66450 (Dec. 19, 2009) DOE modeled the 21 HCFC–22 teardown units to calibrate the model before modeling the R–410A efficiency levels. DOE also identified one R–410A room air conditioner during the preliminary analysis and analyzed it in the reverse engineering analysis.

From these analyses, DOE produced R–410A cost-efficiency curves for each of the analyzed product classes. Details of the engineering analysis are provided in the direct final rule TSD chapter 5.

DOE received several comments from interested parties on its approach to the engineering analysis, as described below. Stakeholders commented on (1) the availability of R–410A products and data for incorporation into the engineering analysis, and (2) limitations on the maximum size of room air conditioners.

Conversion to R–410a

During the preliminary analysis public meeting, DOE requested comments on the approach for the engineering analysis for room air conditioners, specifically on the use of both energy modeling and manufacturer cost modeling. DOE explained that this was the best approach for the preliminary engineering analysis. An efficiency level analysis based on only teardowns of specific products at different efficiency levels would have been based on HCFC–22 and would not have been representative of the R–410A products that would be available on the compliance date for the rule.

ACEEE suggested that DOE's analysis should be updated due to the transition from HCFC–22 refrigerant (ACEEE, No. 24 at p. 4). ACEEE and the California Utilities recommended that DOE revise its analysis using current R–410A models for product teardowns, as it would enable DOE to more accurately determine the energy use of new room air conditioners (ACEEE, No. 24 at p. 4; California Utilities, No. 31 at p. 17). In addition, the California Utilities recommended that DOE conduct testing of products that contain R–410A refrigerant. (California Utilities, No. 31 at p. 17)

During the preliminary analysis phase of this rulemaking, DOE indicated that there was only one R–410A product available on the market for analysis. Subsequently, however, DOE examined information associated with commercialized R–410A products and made appropriate adjustments based on the new information, as described below.

In the engineering analysis supporting today's final rule, DOE purchased and conducted teardowns on four R–410A products to update and validate the analysis performed during the preliminary analysis. Table IV.29 lists the R–410A products used. DOE focused this effort on the largest and most efficient units.

TABLE IV.29—R–410A ROOM AIR CONDITIONERS SELECTED FOR TEARDOWN

Product class	Capacity *Btu/hr*	EER
1	5000	9.7
2	6,000	12.0
3	12,000	10.8
5B	28,500	8.5

The new information obtained from the four R–410A product teardowns, and examination of product information of available R–410A products, confirmed that the baseline product designs, design option costs, and design pathways chosen during the preliminary analysis, developed based on teardowns of HCFC–22 units, provided accurate results for calculating the cost-efficiency curves for R–410A designs.

SCE noted that a study conducted by NIST for split systems indicated that R–410A dropped in efficiency compared with R–22 only in systems with condensing temperatures above 95 °F.

(SCE, Public Meeting Transcript, No. 21.4 at p. 69)

DOE notes that its modeling of room air conditioners indicates that they operate with condensing temperatures between 110 °F and 130 °F under DOE test conditions, depending on the sizes of the heat exchangers. DOE's analysis confirms that the impact of the switch to R–410A is more severe as condensing temperatures increase above 95 °F, and that additional improvements in efficiency (larger heat exchangers, more efficient components, and similar improvements) are required to reach comparable efficiencies to HCFC–22. Energy modeling of R–410A and HCFC–22 room air conditioners shows that a system modeled with HCFC–22 experiences an efficiency reduction if a "drop-in" of R–410A is considered (that is, switch refrigerant and make no other system changes).

As discussed previously, DOE conducted the engineering analysis based on use of R–410A refrigerant. DOE sought information on the performance of R–410A rotary compressors of varying efficiency levels for all of the products under analysis. In many cases, the range of efficiency for which compressor vendors were able to provide performance data was limited. Because conducting the analysis generally required knowledge not just of design point capacity and EER, DOE requested performance data for a representative range of evaporating and condensing conditions. In some cases, the trends of compressor performance as a function of operating conditions were extrapolated from the trends exhibited by a compressor of the same refrigerant of nearly the same capacity. During the preliminary analysis, DOE considered the available performance data for R–410A rotary compressors, noting that discussions with compressor vendors revealed that many vendors were still developing their R–410A compressor lines and could only provide preliminary data. The compressors for which performance data was available varied significantly in EER, depending on their capacity. DOE did not consider increases in compressor efficiency as a design option, because no higher-efficiency compressor data was available.

The California Utilities commented that concern over the cost and availability of R–410A compressors may be mitigated as designs and efficiency of these compressors improve, and as the market grows and availability of compressors increases. (California Utilities, No. 31 at p. 17) EEI asked whether DOE conducted testing on R–410A compressors during its analysis. (EEI, Public Meeting Transcript, No. 21.4 at pp. 67–68)

DOE did not conduct tests on R–410A compressors during the engineering analysis, but has no reason to believe that the manufacturers' performance data is incorrect. During the final rule analyses, however, DOE obtained additional data regarding R–410A compressor performance and did consider EER improvement, as described below.

During interviews conducted during the final rule phase of today's final rule, individual manufacturers reported that vendor selections of R–410A rotary compressors were still limited, and that compressor vendors, where they had once offered up to three different efficiency tiers of compressors, now only offered one or two tiers. One manufacturer reported a need to source from many different vendors to achieve performance goals. Individual manufacturers identified 10 EER as the maximum available efficiency for R–410A compressors, but reported testing of higher efficiency compressors.

DOE also reviewed R–410A compressor options available on compressor vendors' Web sites, and also contacted compressor vendors to discuss their current R–410A compressor options.

In the analysis for today's final rule, DOE added a design option to its engineering analysis for increasing compressor efficiency to the identified maximum compressor EER level.

During the preliminary analysis, DOE sought information on the performance of R–410A rotary compressors of varying efficiency levels for all of the products under analysis. In many cases, the range of efficiency for which vendors provided performance data for R–410A compressors was limited. In most cases, compressor vendors had developed sufficiently for use in products compressors at only one efficiency level at each of the relevant capacities that DOE examined. These efficiency levels varied widely, depending on the available compressors. Due to the lack of maturity of the R–410A rotary compressor market at that time, DOE could not confidently project that higher efficiency levels would be made available.

During the final rule analysis, DOE again reviewed the R–410A compressor market and the available compressors and found that many more R–410A rotary compressor options at varying efficiency levels had been developed. The highest available nominal EER for R–410A rotary compressors with capacities less than 18,000 Btu/h is 10 EER, while the highest available EER for compressors with capacities greater than 18,000 Btu/h is 10.3 EER. Interviews with individual manufacturers supported these observations.

Consequently, DOE has concluded that 10 EER is a reasonable maximum available EER for rotary R–410A compressors in capacities suitable for product classes 1 (room air conditioners without reverse cycle, with louvered sides, and capacity less than 6,000 Btu/h); 3 (room air conditioners without reverse cycle, with louvered sides, and capacities 8,000 to 13,999 Btu/h); 8A (room air conditioners without reverse cycle, without louvered sides, and capacities 8,000 to 10,999 Btu/h); and 8B (room air conditioners without reverse cycle, without louvered sides, and capacities 11,000 to 13,999 Btu/h). Also, DOE concluded that 10.3 EER is a reasonable maximum available EER for rotary R–410A compressors in capacities suitable for product classes 5A (room air conditioners without reverse cycle, with louvered sides, and capacities 20,000 to 27,999 Btu/h) and 5B (room air conditioners without reverse cycle, with louvered sides, and capacity 28,000 Btu/h or more). Thereby, DOE selected 10.0 EER as the maximum EER compressor level for the analysis of product classes 1, 3, 8A, and 8B; and 10.3 EER as the maximum compressor level for the analysis of product classes 5A and 5B.

During the analysis for today's final rule, in cases where compressor data was unavailable for the two maximum EER levels selected by DOE (as discussed above), the trends of compressor performance as a function of operating conditions were extrapolated. Compressor performance was extrapolated from the trends exhibited by a compressor currently offered on the market that used the same refrigerant of nearly the same capacity. DOE extrapolated compressor data for 10 EER compressors from similar compressors with ratings ranging from 9.4 EER to 9.7 EER, and compressor data for 10.3 EER compressor from similar compressor with 10 EER ratings. DOE noted the rapid pace of development of R–410A compressors (over the course of this rulemaking); manufacturer interviews suggested that this rapid development is on-going and is likely to continue. Thus, the data suggests that manufacturers will be able to incorporate R–410A rotary compressors of capacities for which data was not available into air conditioners by the new energy standard's compliance date in 2014. DOE notes that compressors at the selected max-tech EER levels (for some capacity levels analyzed) are already available on the market, and some

products may already use these compressors. DOE has determined that such compressors are currently manufactured at many more capacity levels than were observed during the preliminary analysis. Additional details of this analysis are available in chapter 5 of the direct final rule TSD.

The greater availability of rotary compressors also caused DOE to eliminate consideration of scroll compressors. DOE had used scroll compressors as a design option during the preliminary analysis. However, the higher EER of high-capacity rotary compressors that are now available shifts the economic attractiveness of scroll compressor technology such that it is no longer cost effective.

Size Increases

In the preliminary analysis, DOE considered chassis size increases to increase the efficiency of window units, which corresponded to product classes 1, 3, and 5. DOE believes increases in coil frontal area and package size are among the primary factors contributing to EER improvements in the higher-efficiency teardown units for product classes 1, 3, and 5.

DOE selected baseline, medium, and large chassis sizes based on the range of sizes of available room air conditioners. DOE did not consider chassis size increases beyond the range of available products, and considered both the physical volume and the weight of the unit. DOE performed cost modeling and energy modeling of these larger chassis sizes to calculate cost and efficiency impacts due to chassis size increases, based on product teardowns.

During the preliminary analysis public meeting, DOE requested comment on the approach for determining appropriate maximum sizes for different product classes and capacities. DOE received stakeholder comments on both non-louvered room air conditioner sizes and louvered room air conditioner sizes.

Non-Louvered Room Air Conditioner Sizes

PG&E commented that the size of through-the-wall room air conditioners (products without louvers) would not necessarily be constrained if allowed to project into the outdoor space. (PG&E, Public Meeting Transcript, No. 21.4 at p. 77) In response, GE stated that existing wall sleeves do not allow for additional growth in depth, and through-the-wall units are typically slid into an existing wall sleeve. (GE, Public Meeting Transcript, No. 21.4 at p. 77) To achieve additional depth, the existing wall sleeve would need to be replaced. AHAM also noted that while additional heat exchanger coils may increase efficiency, placing these coils too deep within the unit will actually decrease the heat transfer efficiency. (AHAM, No. 25 at p. 7)

DOE did not consider chassis size growths as a design option for product class 8 (room air conditioners without reverse cycle, without louvered sides, and capacities 8,000 to 13,999 Btu/h) in the preliminary analysis. According to manufacturer interviews, the majority of non-louvered products are replacement products that must fit into existing building sleeves. Building sleeves are often built into the existing structure and are fixed components. Replacing them would require altering the size of the opening, which would generally be cost-prohibitive. Due to these constraints, replacement products must fit into existing sleeves, which clearly limit product height and width. Increases in product depth can be limited by the design of the sleeve, and consumers may be unwilling to accept products that extend further into the interior. DOE also notes that any increases in product depth would present very limited potential in improvement, because it would not allow for the unit's heat exchangers to grow in width or height.

For these reasons, DOE has chosen to retain the preliminary analysis assumption for non-louvered products that size increase cannot be used to increase efficiency.

Louvered Room Air Conditioner Sizes

DOE received the following comments from stakeholders on room air conditioner sizes for louvered products. AHAM commented that there are a range of product depths and weights, which may suggest that increased depths and weights may be feasible. (AHAM, No. 25 at pp. 6–7) AHAM noted, however, that UL requirements are an issue when considering increases in room air conditioner depth, as the units require that mounting brackets be designed to ensure that the room air conditioner remains in the window. Ensuring that these brackets are used in each installation can be a potential safety concern, in particular for smaller units installed by consumers. *Id.* AHAM also noted that smaller products (especially those in product classes 1 (room air conditioners without reverse cycle, with louvered sides, and capacities less than 6,000 Btu/h) and 2 (room air conditioners without reverse cycle, with louvered sides, and capacities 6,000 to 7,999 Btu/h)) would be most negatively impacted by an increase in weight. AHAM indicated that the Occupational Safety and Health Administration (OSHA) recommends an additional person for lifting and installing products weighing over 50 lbs. AHAM stated that the 50-lb. limit is expected to influence consumer acceptance of these products. *Id.*

NPCC recommended that DOE compare the maximum unit dimensions in each analyzed product class to the dimensions of the highest efficiency model available on the market. (NPCC, No. 32 at pp. 4–5) NPCC recommended that, if these two product dimensions are similar, DOE assume that all units can be equally as large. NPCC also recommended that, if the market unit is smaller than the unit proposed by DOE, that DOE determine whether a redesign of the proposed unit would eliminate the size constraint. (Id.) DOE received no additional stakeholder comments addressing maximum acceptable product sizes for louvered products.

DOE has chosen to use the 50-lb. weight limitation for product class 1 (room air conditioners without reverse cycle, without louvered sides, and capacities less than 6,000 Btu/h). The National Institute for Occupational Safety and Health (NIOSH) and OSHA guidance recommends against handling loads greater than 50 lbs. for a single person. NIOSH lists among its hazard evaluation checklist the handling of loads exceeding 50 lbs. as a risk factor used to identify potential problems.[37] OSHA, in its "Ergonomics eTool: Solutions for Electrical Contractors," states that lifting loads heavier than 50 lbs will increase the risk of injury, and recommends use of more than one person to lift weights larger than 50 lbs.[38] These guidelines calling for additional personnel for product lifting represent distinct changes in consumer utility for products that currently weigh less than 50 lbs. This would not be true for products that already exceed this limit. DOE notes that all but the smallest room air conditioners weigh more than 50 lbs. The baseline R–410A designs of the analyses were all determined to have weights greater than this limit, except for product class 1 (room air conditioners without reverse cycle, with louvered sides, and capacities less than 6,000 Btu/h). DOE adjusted the analysis for product class 1 to limit its weight to 50 lbs., but did not make similar adjustments for any of the other product classes. Additional details regarding these adjustments for the product class

[37] *http://www.cdc.gov/niosh/docs/2007-131/.*

[38] *http://www.osha.gov/SLTC/etools/electricalcontractors/materials/heavy.html.*

1 analysis is presented in chapter 5 of the direct final rule TSD.

For the other product classes with louvered sides, the maximum height and width considered is consistent with these dimensions for max-tech available products. These are the dimensions that determine that available size for heat exchangers; DOE's analysis of product classes with louvered sides contains heat exchangers with the same dimensions as max-tech available units. DOE observed that all max-tech products for room air conditioners are produced primarily by one manufacturer, and that the depth of these max-tech available products was much greater in proportion to other dimensions than the depths observed in other manufacturers' products. DOE's analysis indicated that depths consistent with the proportions observed in these other manufacturers' non-max-tech products are sufficient to provide max-tech performance. In particular, DOE's analysis indicated that the smaller depth was enough to achieve the requisite condenser airflow, enabling appropriate heat transfer by the larger heat exchangers. Thus, DOE's analyses did not use the larger product depths observed in the max-tech available products. Instead, DOE used smaller product depths, consistent with the proportions observed in other products. This approach was adopted for product classes 3 (room air conditioners without reverse cycle, with louvered sides, and capacities 8,000 to 13,999 Btu/h); 5A (room air conditioners without reverse cycle, with louvered sides, and capacities 20,000 to 27,999 Btu/h); and 5B (room air conditioners without reverse cycle, with louvered sides, and capacities 28,000 Btu/h or more). Additional details of this analysis are available in chapter 5 of the direct final rule TSD.

Engineering Analysis Adjustments

A summary table of the key adjustments made to the product class structure and the engineering analysis during the final rule phase of the rulemaking is presented in Table IV.30.

TABLE IV.30—SUMMARY OF KEY ADJUSTMENTS TO THE ENGINEERING ANALYSIS FOR ROOM AIR CONDITIONERS

Parameter	Preliminary	Changes for the direct final rule
Product Classes	No changes considered	Split of product classes 5 and 8 into two product classes each (5A, 5B, 8A, 8B) based on stakeholder comments.
Compressor Efficiency	Based on available compressor data during preliminary analysis.	Max-efficiency increased to 10 EER for product classes 1, 3, 8A, and 8B, and 10.3 EER for product classes 5A and 5B.
50 lbs Limit	Not considered	Introduced a 50 lb weight limit for the analysis of design options for product class 1.
Chassis Sizes for Louvered Products	Based on analysis of HCFC–22 units	Adjusted based on additional market research and teardowns of R–410A units.
Scroll Compressors	Considered for product class 5 analysis	Not considered, since they provide no additional improvement over 10.3 EER rotary compressors, and are much more expensive. This design option is less cost-effective than the design options selected by DOE for analysis, so it was not considered.

D. Markups Analysis

The markups analysis develops appropriate markups in the distribution chain to convert the estimates of manufacturer cost derived in the engineering analysis to consumer prices. At each step in the distribution channel, companies mark up the price of the product to cover business costs and profit margin. DOE estimated the markups associated with the main parties in the distribution channel. For clothes dryers and room air conditioners, these are manufacturers and retailers.

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 clothes dryers and room air conditioners.

For retailers, DOE developed separate markups for baseline products (baseline markups) and for the incremental cost of more-efficient products (incremental markups). Incremental markups are coefficients that relate the change in the manufacturer sales price of higher-efficiency models to the change in the retailer sales price.

Commenting on the preliminary TSD, AHAM filed comments that criticized DOE's application of "incremental" markups to the incremental manufacturer selling price of products more efficient than the baseline products. (AHAM, No. 25 at p. 3) In Exhibit B accompanying this comment, AHAM stated that (1) DOE provides no empirical evidence to validate that retailers obtain only incremental markups on products with greater features and costs; and (2) DOE is asserting a normative approach without any support showing that its model reflects actual retail practices. These comments criticized two of the key assumptions in DOE's theoretical construct: (1) That the costs incurred by appliance retailers can be divided into costs that vary in proportion to the MSP (variable costs), and costs that do not vary with the MSP (fixed costs); (2) that retailer prices vary in proportion to retailer costs included in the balance sheets.

Regarding the first assumption, AHAM stated that DOE has offered no evidence that the fixed/variable cost mix of a retailer has anything to do in practice with the markups that will be earned by a retailer on products that meet a new energy conservation standard. It added that DOE uses an incorrect analogy to HVAC contractors as a basis for considering the costs of a retailer, and that DOE did not analyze the actual drivers of retail costs. The retail cost structure has considerably different characteristics than those of an HVAC contractor. AHAM stated that DOE has not presented any data or analysis that would yield a fixed versus variable cost allocation applicable to retailers. Regarding DOE's second assumption, AHAM stated that DOE's approach depends on the presence of a relatively high level of competition in the retail industry. AHAM presented data showing that the four firm

concentration ratio (FFCR) of the sectors that sell major appliances ranges from 42 to 65 percent, which does not support DOE's assumption of a high level of competition in the retail industry.[39]

In conclusion, AHAM viewed DOE's incremental markup approach as lacking a credible theoretical underpinning and demonstrated reliability and asserted that the data required for the approach are not available. AHAM stated that DOE should return to its traditional practice of using average markups for both the baseline products and for the added costs of efficiency improvements. In AHAM's view, the stability of markups in the retailing sectors leads to the reasonable inference that such markups will continue and apply to higher-efficiency products in the future when they become the bulk of sales under amended standards. (AHAM, No. 34, Exhibit B, p. 12)

In response to the above comments, DOE extensively reviewed its incremental markup approach. DOE assembled and analyzed relevant data from other retail sectors and found that empirical evidence is lacking with respect to appliance retailer markup practices when a product increases in cost due to increased efficiency or other factors. DOE understands that real-world retailer markup practices vary depending on market conditions and on the magnitude of the change in cost of goods sold (CGS) associated with an increase in appliance efficiency.

Given this uncertainty with respect to actual markup practices in appliance retailing, DOE uses an approach that reflects two key concepts. First, changes in the efficiency of the appliances sold are not expected to increase retailers' economic profits. Thus, DOE calculates markups/gross margins to allow cost recovery for retailers (including changes in the cost of capital) without changes in company profits. Second, efficiency improvements only impact some distribution costs. DOE sets markups to cover only the variable costs expected to change with efficiency.

Market competition is another reason why DOE believes that profit margins would not change in a significant way. Regarding AHAM's assertion that the degree of competition in appliance retailing is not sufficient to support DOE's model, DOE believes that AHAM's measure of competition is inaccurate. AHAM measured the FFCR of three retail channels: Electronics and appliance stores, building material and supplies dealers, and general merchandise stores. These values represent competitiveness within each sector, but clothes dryers and room air conditioners are sold across all three sectors, preventing major retailers in each sector from exercising significant market power. To properly measure the competitiveness within appliance retailing, DOE believes that one should measure the FFCR for only the appliance subsector within the above channels and accordingly estimated the "appliance sales" FFCR as equal to the sector FFCR times the percent of appliance sales within each sector. DOE estimated that these sub-sector FFCRs are under the 40 percent threshold. Furthermore, "Household Appliance Stores," a subsector of the electronics and appliance stores sector that specifically represents appliance retailers, rather than computer or other electronics stores, has an FFCR of 17 percent, signifying an unconcentrated sector.

DOE's separation of operating expenses into fixed and variable components to estimate an incremental markup follows from the above concepts. In separating retailer costs, DOE did not directly use information from the HVAC contractor industry. Instead, DOE defined fixed expenses as including labor and occupancy expenses because these costs are not likely to increase as a result of a rise in CGS due to amended efficiency standards. All other expenses, as well as the net profit, are assumed to vary in proportion to the change in CGS. DOE's method results in an outcome in which retailers are assumed to cover their costs while maintaining their profit margins when the CGS of appliances changes. DOE seeks additional information from interested parties to help refine its allocation approach.

Regarding AHAM's observation about the relative stability of average markups for the major retail channels that sell home appliances, DOE believes that the usefulness of this information for estimating markups on specific product lines is limited. The markups implied by gross margin at the level of major retail channels[40] are averaged over multiple product lines and many different store types. The empirical data at this level do not provide useful guidance for estimating what happens to the markup on specific products when their costs change. Applying the same markup as CGS increases, as AHAM recommends, would mean that the increase in CGS associated with higher-efficiency products would translate into higher retail gross margins for that product line. Because the majority of operating expenses would not be affected by the increase in CGS, the result would be an increase in net profit as a share of sales. While such an outcome could occur in the short run, DOE believes that competitive forces in the market would tend to decrease the profit margin over time.

Based on the above considerations, DOE has decided to continue to apply an incremental markup to the incremental MSP of products with higher efficiency than the baseline products. As part of its review, DOE developed a new breakdown into fixed and variable components using the latest expense data provided by the U.S. Census for Electronics and Appliance Stores, which cover 2002. The newly-derived incremental markup, which would be applied to an incremental change in CGS, is 1.17, which is slightly higher than the value of 1.15 that DOE used in the preliminary analysis. Chapter 6 of the direct final rule TSD provides a description of both the method and its current application using the aforementioned data.

E. Energy Use Analysis

DOE's analysis of the energy use of clothes dryers and room air conditioners estimated the energy use of these products in the field, that is, as they are actually used by consumers. The energy use analysis provided the basis for other analyses DOE performed, particularly assessments of the energy savings and the savings in consumer operating costs that could result from DOE's adoption of amended standards. In contrast to the DOE test procedure, which provides a measure of the energy use, energy efficiency or annual operating cost of a covered product during a representative average use cycle or period of use, the energy use analysis seeks to capture the range of operating conditions for clothes dryers and room air conditioners in U.S. homes.

To determine the field energy use of products that would meet possible amended standard levels, DOE used data from the EIA's 2005 RECS, which was the most recent such survey

[39] The FFCR represents the market share of the four largest firms in the relevant sector. Generally, an FFCR of less than 40 percent indicates that a sector is not concentrated and an FFCR of more than 70 percent indicates that a sector is highly concentrated.

[40] The channels for which AHAM provided gross margin data for 1993–2007 are electronics and appliance stores, general merchandise stores, and building material and supplies dealers. According to AHAM, these channels accounted for 43 percent, 31 percent and 17 percent of major appliance sales in 2007, respectively.

available at the time of DOE's analysis.[41] 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. RECS provides sufficient information to establish the type (product class) of clothes dryer or room air conditioner used in each household. As a result, DOE was able to develop household samples for each of the considered product classes. DOE developed a separate building sample for commercial-sector use of room air conditioners and accounted for the distinct features of room air conditioner utilization in commercial buildings.

A more detailed description of DOE's energy use analysis for clothes dryers and room air conditioners is contained in chapter 7 of the direct final rule TSD.

1. Clothes Dryers

For clothes dryers with a specific efficiency, the annual energy consumption depends on the annual number of cycles. In the preliminary analysis, DOE used a distribution of values with an average of 283 cycles/year based on RECS data. Whirlpool stated that a range of 278–300 annual dryer cycles is reasonable, based on P&G data which indicate 278 annual dryer cycles, and internal data which indicate 288 annual dryer cycles. (Whirlpool, No. 22 at p. 3) AHAM stated that P&G data indicate 278 annual dryer loads, which verifies the RECS data. (AHAM, No. 25 at p. 9) DOE acknowledges the above comments and has retained the approach used in the preliminary analysis, which resulted in an average of 283 cycles/year, for its final rule analysis. This average value matches the number of cycles/yr in the most current DOE clothes dryers test procedure and is within the range of the values submitted by the commenters.

In the preliminary analysis, DOE estimated that clothes dryers take on average 60 minutes to complete a cycle. EEI stated that DOE should consider manufacturer data, consumer reports, or data from other third parties to determine typical cycle time for clothes dryers. (EEI, Public Meeting Transcript, No. 21.4 at pp. 106–107) ALS stated that cycle time should be derived based on RMC, assuming that a sensor will be included in all future models. (ALS, Public Meeting Transcript, No. 21.4 at pp. 110–111) NRDC stated that there is a 20-minute variation in cycle time, based on whether the sensors work accurately. (NRDC, Public Meeting Transcript, No. 21.4 at p. 106) The NRDC/ECOS report stated that a typical drying cycle is much different than the constant drying cycle duration fixed at 60 minutes that is used in the LCC. (NRDC, No. 30 at p. 11)

DOE acknowledges that there is variation in cycle time and that it is dependent on the RMC and the sensors' accuracy. In the final rule analysis, DOE revised the cycle time to match the most current DOE test procedure average value of 30 minutes. Overall, the cycle time has very little impact on the calculation of energy use because it is only used for the determination of standby energy use.

In the preliminary analysis, DOE assigned an RMC value to each sample unit using a distribution of clothes washer RMC values from the CEC directory[42] ranging from 30 percent to 61 percent, with an average of 46 percent. In response, AHAM suggested DOE use a RMC value of 47 percent because it is representative of products likely to be sold in the 2015 timeframe. (AHAM, No. 25 at pp. 9–10) Whirlpool stated that they support the use of AHAM data, which indicate a shipment-weighted average RMC of 47 percent. (Whirlpool, No. 22 at p. 4)

In its analysis for the final rule, DOE incorporated new information about the RMC value developed during DOE's recent clothes dryers test procedure rulemaking. In response to comments on the clothes dryers test procedure NOPR, DOE issued an SNOPR in which it proposed a revision of the average RMC value. FR 75 37594 (June 29, 2010). The revision addresses the fact that the RMC values listed in the CEC directory are multiplied by a correction factor and therefore do not represent the actual cloth moisture content at the end of the clothes washer spin cycle. In keeping with this revision, for the final rule analysis DOE used a distribution of clothes washer RMC values from the CEC directory multiplied by a correction factor to match the average RMC value of 57.5 percent assumed in the proposed test procedure.

In the preliminary analysis, DOE assigned load weights to each sample household by developing a distribution based on the CEC directory. The average load weights for standard-size units ranged from 5.1 lbs. to 10 lbs., with a mean value of 8.1 lbs.

AHAM stated that the shipment-weighted residential clothes washer drum volume for standard size products in 2008 was 3.24 ft^3, which corresponds to an average load size of 8.15 lbs., which is consistent with the value proposed by DOE, using the alternative CEC approach. AHAM also stated that the load size should be 4.70 lbs. for compact clothes dryers, based on the shipment-weighted drum volume of 1.5 ft^3. (AHAM, No. 25 at p. 10) BSH stated that load size should increase linearly with drum size. (BSH, No. 23 at p. 5) The NRDC/ECOS Report suggested that the values used in the preliminary analysis may be too low. It stated that today's dryers can comfortably accommodate loads between 10 and 17 lbs., and that there are more dryer models on the market today between 7 and 8 ft^3 than there are models smaller than 7 ft^3. (NRDC, No. 30 at p. 35)

In its analysis for the final rule, DOE used the average load size value of 8.45 lbs. from the TP Final Rule. To represent a range of load size values in the field, DOE used a distribution of load sizes ranging from 3.80 to 13.7 lbs., with a mean value of 8.45 lbs. Chapter 7 of the TSD presents the details of the DOE's load size analysis.

DOE received several comments recommending that it use the same values for number of cycles, RMC, and load weights in both the engineering analysis and the LCC and PBP analysis, and that it revise the test procedure to reflect the values used in its analysis. (AHAM, No. 25 at pp. 9–10; Whirlpool, No. 22 at pp. 3–4) The California Utilities stated that DOE should consider all changes in the test procedure in additional analysis of clothes dryer energy use. (California Utilities, No. 31 at p. 13)

For its LCC and payback period analysis DOE developed distributions of values for number of cycles, RMC, and load weights that reflect its best estimate of the range of practices found in U.S. homes. In the engineering analysis, DOE uses the test procedure to evaluate the relative improvement in energy efficiency provided by different design options. As discussed in section III.A, DOE has modified the clothes dryer test procedure to reflect current field conditions, and these changes are also incorporated in the analysis for the final rule.

In the preliminary analysis, DOE estimated an average energy use of 519 kWh per year for the baseline vented electric standard clothes dryer. ACEEE stated that DOE should revisit the approach to determining annual energy consumption, and it noted that the baseline average unit energy consumption (UEC) of 519 kWh/year in DOE's analysis is much lower than the values found in field studies and

[41] For information on RECS, *see http://www.eia.doe.gov/emeu/recs/.*

[42] California Energy Commission. Appliance Efficiency Database: Clothes Washers. July 2010. URL: *http://www.appliances.energy.ca.gov/.*

metered evaluations of clothes dryer models. (ACEEE, No. 24 at p. 2) The California Utilities stated that a Florida Solar Energy Center survey found that field-average UEC for electric standard clothes dryers was around 900 kWh/year, the 2001 RECS lists 1079 kWh/year, and a 1999 Progress Energy Florida study shows 885 kWh/year. They noted that these numbers are significantly higher than DOE's average UEC. (California Utilities, No. 31 at p. 12)

As described above, DOE made several changes to its approach for estimating clothes dryer energy use for the final rule (increased initial RMC value and clothes dryer load size). As a result, the average annual energy use for the baseline vented electric clothes dryer derived for the final rule is 718 kWh. This value is lower than those found in the surveys mentioned above primarily because it reflects more recent clothes washer technology and clothes dryer utilization than the surveys discussed in the comment. In particular, this value reflects the lower initial RMC associated with newer clothes washers and the lower number of clothes dryer cycles per year seen in recent P&G data and 2005 RECS data. The value from 2001 RECS was derived using conditional demand analysis that utilized assumptions based on the previous clothes dryer test procedure. The Florida surveys date from 1999, when initial RMC and annual number of dryer cycles were higher significantly higher than the values used in the final rule analysis. In addition, the sample size of these surveys is small and not necessarily representative of the nation.

In the preliminary analysis, DOE considered the impact of clothes dryer operation on home heating and cooling loads. A clothes dryer releases heat to the surrounding environment. If the dryer is located indoors, its use will tend to slightly reduce the heating load during the heating season and slightly increase the cooling load during the cooling season. DOE believed that the effect is the same for all of the considered efficiency levels because the amount of air passing through the clothes dryer does not vary, and thus it did not include this factor in its preliminary analysis.

ACEEE, NRDC, NEEP and NPCC and the California Utilities stated that DOE should consider the impact on space conditioning loads from clothes dryer use. (ACEEE, No. 24 at p. 2; NRDC, No. 26 at p. 2; NEEP, No. 27 at p. 3; NPCC, No. 32 at p. 3; California Utilities, No. 31 at p. 9) The California Utilities stated that the HVAC load created by dryers can amount to as much as 3 kWh/cycle. (California Utilities, No. 31 at p. 9)

As discussed in section III.A.1, DOE believes that accounting for the effects of clothes dryers on HVAC energy use in a DOE test procedure is inconsistent with the EPCA requirement that a test procedure measure the energy efficiency, energy use, or estimated annual operating cost of a covered product. As a result, DOE did not consider the impact of standards on HVAC energy use, is permissible under 42 U.S.C. 6295(o) in developing the energy conservation standards established in today's direct final rule.

To calculate this impact, DOE first estimated whether the clothes dryer in a RECS sample home is located in conditioned space (referred to as indoors) or in unconditioned space (such as garages, unconditioned basements, outdoor utility closets, or attics). Based on the 2005 RECS and the 2009 American Housing Survey (AHS), DOE assumed that 50 percent of vented standard electric and gas dryers are located indoors, while 100 percent of compact and ventless clothes dryers are located indoors. For these installations, DOE utilized the results from a European Union study about the impacts of clothes dryers on home heating and cooling loads to determine a the appropriate factor to apply to the total clothes dryer energy use.[43] This study reported that for vented dryers there is a factor of negative 3 to 9 percent (average 6 percent) and for ventless dryers there is a factor of positive 7 to 15 percent (average 11 percent). For the reasons stated earlier, DOE assumed that the effect is the same for all considered efficiency levels.

2. Room Air Conditioners

For room air conditioners with a specific size and EER, the annual energy use depends on the annual hours of operation. In the preliminary analysis, for units in the residential sector, DOE calculated the number of operating hours for each room air conditioner in the residential sample using the reported energy use for room air conditioning in the 2005 RECS, along with estimates of the EER of the room air conditioner(s) in each sample home. DOE based the latter on the reported age of the unit and historical data on shipment-weighted average EER.

For units used in the commercial sector, DOE calculated the number of operating hours for each room air conditioner in the commercial sample by establishing a relationship between cooling degree-days and operating hours for a number of building types and building schedule combinations. DOE assumed that a room air conditioner is operated when the outdoor air conditions are above the comfort zone described by ANSI/ASHRAE Standard 55–2004 Thermal Environmental Conditions for Human Occupancy. For a given location, the number of annual hours above the ASHRAE Standard 55 comfort zone varies by building operating schedule, which refers to the time that a building is in operation.

AHAM stated that it opposes the use of RECS and CBECS data to estimate energy consumption of room air conditioners in the LCC and payback period calculations, and it requested confirmation that DOE's estimates for both residential and commercial room air conditioner use are realistic. (AHAM, No. 25 at pp. 8–9) AHAM questioned the validity of DOE's analysis for residential use of room air conditioners. AHAM stated that RECS data do not provide information on room air conditioner capacity or a direct measurement of room air conditioner energy use. (AHAM, No. 25 at p. 2) AHAM also questioned DOE's estimate of the capacity of the unit (or units) based on the reported total cooled area, as well as the approach DOE used to distribute the capacity sizes among the various product classes evaluated. (AHAM, No. 25 at pp. 8–9)

Regarding the use of RECS data to estimate the capacity of the unit (or units), DOE believes that the reported total cooled area is an important indicator of the capacity of the unit (or units). The reason is that for room air conditioners this is the primary sizing criteria used by manufacturers, contractors, and programs such as ENERGY STAR. Therefore, DOE continued to use reported total cooled area to estimate the room air conditioner capacity. To improve the accuracy of the estimate, for the final rule DOE also considered additional factors that are likely to influence the capacity selection: The number of occupants, local weather, and building characteristics such as envelope insulation and shading. In addition, for the final rule analysis DOE revised its criteria for assigning room air conditioner units for the RECS household sample associated with each product class. DOE took into consideration AHAM's suggestion and did not assign smaller-size units in the sample for the largest product class.

In addition to the above changes, DOE applied an adjustment to the values for annual operating hours derived from the

[43] Rüdenauer, Ina and Gensch, Carl-Otto. *Energy demand of tumble dryers with respect to differences in technology and ambient conditions.* Report commissioned by European Committee of Domestic Equipment Manufacturers (CECED). January 13, 2004.

2005 RECS to account for the warmer-than-average weather in 2005. (DOE used long-term national average cooling degree-day values as a basis for the adjustment). DOE also adjusted the values to account for the fact that the stock of homes in 2014 is likely to have slightly more floor area and have better insulation than homes in 2005. DOE based the adjustment on projections in *AEO2010.* These modifications are described in chapter 7 of the direct final rule TSD.

Regarding DOE's use of CBECS for estimating the commercial use of room air conditioners, AHAM stated that (1) DOE made substantial assumptions regarding the number of room air conditioners per commercial application and the room air conditioner capacities employed at these locations; and (2) it appears that DOE, to obtain enough data for statistical analysis, overlapped the units in each product class. (That is, units calculated as having > 20,000 Btu/hr capacity have also been included in the analysis of the < 6,000 Btu/hr and 8,000–13,999 Btu/hr product classes.) It stated that the latter approach is misleading and unacceptable. (AHAM, No. 25 at p. 3)

DOE believes that the assumptions made in the preliminary analysis are consistent with the CBECS and AHAM shipments data that are available for evaluating commercial use of room air conditioners. Therefore, DOE retained the approach used in the preliminary analysis for the final rule analysis. Regarding the overlapping of units among product classes, DOE believes that its approach is reasonable given that there is no information available on the number of air conditioner units in a building, so a building could have one or more units in any of the considered product classes.

AHAM stated that DOE's approach for estimating room air conditioner energy use is not consistent with the law, which requires that the test procedure be used to determine energy use and energy savings. (AHAM, No. 25 at p. 2) AHAM elaborated on this statement and made arguments that can be summarized as follows (AHAM, No. 25 at pp. 7–8):

1. While use of RECS data has proven useful over the years to provide general guidance to DOE on residential energy use, this is the first time that DOE proposes to use it to estimate actual energy consumption in the field and to justify a new energy efficiency standard;

2. It is inconsistent for DOE to use RECS data and statistical regression techniques to estimate energy use for determining the life cycle cost and payback period used to justify an appliance standard, while it uses the applicable test procedure as the sole source of energy use data for purposes of determining compliance with the standard.

3. Reliance on the test procedure for the energy data used in LCC and payback period calculations to set new appliance standards is the tried and true method that has a clear statutory basis.

4. The law on labeling prohibits manufacturers, distributors, and retailers from making energy use representations about their products based on anything other than the results of a test procedure, so it is irrational if DOE's analysis makes energy claims that sellers cannot make.

AHAM also stated that DOE should use 750 annual operating hours (the value in the current test procedure) to maintain consistency while additional surveys or testing are completed to determine a representative number of annual operating hours. (AHAM, No. 25 at p. 9)

In response, DOE notes that EPCA specifies particular uses of the applicable test procedure, such as when DOE ascertains whether the consumer costs associated with the purchase of a product that complies with the proposed standard level is less than three times the value of the energy savings the consumer will receive during the first year of ownership. (42 U.S.C. 6295(o)(2)(B)(iii)) This calculation is separate from the payback periods calculated in the LCC and payback period analysis. The latter analysis helps DOE to evaluate two of the factors that EPCA directs DOE to consider in determining whether an energy conservation standard for a particular covered product is economically justified. The first of these is the economic impact of potential standards on the manufacturers and the consumers of the covered products. (42 U.S.C. 6295(o)(2)(B)(i)(I)) The second factor is the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard. (42 U.S.C. 6295(o)(2)(B)(i)(II))

To evaluate economic impacts on consumers and the savings in operating costs as accurately as possible, DOE needs to determine the energy savings that are likely to result from a given standard. Such a determination requires knowledge of the range of actual use of covered products by consumers. Because it is a recent nationally-representative survey of U.S. households, RECS provides information that helps DOE to determine such use. In addition, DOE uses RECS data because it is consistent with the guidance contained in 10 CFR part 430, subpart C, appendix A—"Procedures, Interpretations and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer Products." Specifically, section 11 of appendix A lists variation in consumer impacts as one of the principles for the analysis of impacts on consumers. Because RECS provides considerable information about each household in the sample, it allows DOE to evaluate factors that contribute to variation in the energy use of covered products. In turn, this allows DOE to estimate the fraction of consumers that will benefit from standards at various efficiency levels.

Consistent with the EPCA and DOE's regulatory guidance, DOE has used RECS data in a variety of ways over the past decade. In most cases, DOE has used the relevant DOE test procedure or a similar procedure as the basis for the energy use calculation, and used RECS data to provide a range for key input variables concerning the operation of covered products. Examples include the standards rulemaking for water heaters concluded in 2001 (66 FR 4474 (Jan. 17, 2001)), and the recently-concluded rulemaking that amended standards for water heaters. 75 FR 20112, 20112–20236 (Apr. 16, 2010). In both rulemakings, DOE used data for each of the households in the RECS sample to estimate the amount of household daily hot water use, and to specify certain factors that affect water heater operating conditions. Additionally, DOE's 2001 final rule for central air conditioners and heat pumps relied on annual energy use based on the annual end-use energy consumption values in RECS. 66 FR 7070, 7170–7200 (Jan. 22, 2001). DOE determined that basing the energy use on RECS household data provided an accurate measure of the savings possible from more-efficient equipment, and accounted for variability due to climatic conditions and consumer behavior.

Regarding AHAM's suggestion that DOE should use the test procedure only to estimate energy use for the purposes of its analysis of standards, DOE notes that test procedures must be designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(3)) For the purposes of evaluating two of the factors that EPCA directs DOE to consider in determining whether an energy conservation

standard for covered products is economically justified, determining energy use based on only a representative average use cycle or period of use does not provide an accurate measure of the range of possible energy savings. Thus, doing so would not be consistent with EPCA and the above-cited guidance of appendix A to subpart C of part 430.

In addition, EPCA requires that manufacturers and DOE use the DOE test procedures prescribed pursuant to 42 U.S.C. 6293 in determining compliance. Determining compliance requires a metric that provides repeatable and consistent results for appliances in a given product class, a purpose best served by the test procedure. Similarly, energy labeling of appliances is designed to provide consumers with information that allows comparison of the technical performance of different products with respect to energy efficiency. Measurement of such performance is best conducted with a standard metric such as the applicable test procedure. The LCC and PBP analysis, in contrast, seeks to estimate the impact of alternative standard levels on consumers. This requires an evaluation of variation in energy use in the field, which is provided by analysis of the RECS data.

DOE included a "rebound effect" in its analysis of room air conditioner energy use. A rebound effect could occur when a piece of equipment that is more efficient is used more intensively, so that the expected energy savings from the efficiency improvement may not fully materialize. A rebound effect of 10 percent implies that 90 percent of the expected energy savings from more efficient equipment will actually occur. Based on the data available,[44] DOE incorporated a rebound effect of 15 percent for room air conditioners in the analysis for the final rule.

F. Life-Cycle Cost and Payback Period Analyses

DOE conducts LCC and PBP analyses to evaluate the economic impacts on individual consumers of potential energy conservation standards for clothes dryers and room air conditioners. The LCC is the total consumer expense over the life of a product, consisting of purchase and installation costs plus operating costs (expenses for energy use, maintenance, and repair). To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the product. The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost (normally higher) due to a more stringent standard by the change in average annual operating cost (normally lower) that results from the standard.

For any given efficiency level, DOE measures the PBP and the change in LCC relative to an estimate of the base-case appliance efficiency levels. The base-case estimate reflects the market in the absence of new or amended energy conservation standards, including the market for products that exceed the current energy conservation standards.

For each considered efficiency level in each product class, DOE calculated the LCC and PBP for a nationally representative set of housing units. For the preliminary analysis and the analysis for today's rule, DOE developed household samples from the 2005 RECS. For each sample household, DOE determined the energy consumption for the clothes dryer or room air conditioner and the appropriate electricity or natural gas price. By developing a representative sample of households, the analysis captured the variability in energy consumption and energy prices associated with the use of residential clothes dryers and room air conditioners. DOE developed a separate building sample for commercial-sector use of room air conditioners and accounted for the distinct features of room air conditioner utilization in commercial buildings.

Inputs to the calculation of total installed cost include the cost of the product—which includes manufacturer costs, manufacturer markups, retailer and distributor markups, and sales taxes—and installation costs. Inputs to the calculation of operating expenses include annual energy consumption, energy prices and price projections, repair and maintenance costs, product lifetimes, discount rates, and the year that compliance with standards is required. DOE created distributions of values for some inputs, with probabilities attached to each value, to account for their uncertainty and variability. DOE used probability distributions to characterize product lifetime, discount rates, and sales taxes.

The computer model DOE uses to calculate the LCC and PBP, which incorporates Crystal Ball (a commercially available software program) relies on a Monte Carlo simulation to incorporate uncertainty and variability into the analysis. The Monte Carlo simulations randomly sample input values from the probability distributions and clothes dryer and room air conditioner user samples. The model calculated the LCC and PBP for products at each efficiency level for 10,000 housing units per simulation run. Details of the spreadsheet model, and of all the inputs to the LCC and PBP analyses, are contained in chapter 8 of the direct final rule TSD and its appendices.

Table IV.31 summarizes the approach and data DOE used to derive inputs to the LCC and PBP calculations. The table provides the data and approach DOE used for the preliminary TSD, as well as the changes made for today's direct final rule. The subsections that follow discuss the initial inputs and methods and the changes DOE made for the final rule.

TABLE IV.31—SUMMARY OF INPUTS AND METHODS IN THE LCC AND PBP ANALYSIS *

Inputs	Preliminary TSD	Changes for the final rule
Installed Costs		
Product Cost	Derived by multiplying manufacturer cost by manufacturer and retailer markups and sales tax, as appropriate.	Used a product-specific price/cost adjustment factor based on experience curves that forecasts changes in price relative to inflation in the over-all economy.

[44] S. Sorrell, J. Dimitropoulos, and M. Sommerville Empirical estimates of the direct rebound effect: A review *Energy Policy,* 2009 37, pp. 1356–71.

TABLE IV.31—SUMMARY OF INPUTS AND METHODS IN THE LCC AND PBP ANALYSIS *—Continued

Inputs	Preliminary TSD	Changes for the final rule
Installation Costs	Based on RS Means, assumed no change with efficiency level.	Based on RS Means; included additional installation cost for heat pump dryers and higher-efficiency room air conditioners due to their larger dimensions and weight.
Operating Costs		
Annual Energy Use	Clothes Dryers: Used DOE test procedure with data on cycles from the 2005 RECS, market data on RMC, and load weights from test procedure.	Clothes Dryers: Same approach, but RMC and load weight revised to account for proposed changes in DOE test procedure.
	Room Air Conditioners: Based on calculation of operating hours for each 2005 RECS sample unit.	Room Air Conditioners: No change.
Energy Prices	Electricity (clothes dryers): Based on EIA's Form 861 data for 2007.	Electricity (clothes dryers): Updated using Form 861 data for 2008.
	Electricity (room air conditioners): Used utility tariff data to develop monthly marginal electricity prices for each sample household.	Electricity (room air conditioners): No change.
	Natural gas: Based on EIA's Natural Gas Monthly data for 2007.	Natural gas: Updated using Natural Gas Monthly data for 2009.
	Variability: Regional energy prices determined for 13 regions for clothes dryers; tariffs determined for sample households for room air conditioners.	Variability: No change.
Energy Price Trends	Forecasted using *AEO2009* price forecasts	Forecasts updated using *AEO2010.*
Repair and Maintenance Costs	Not included	Derived annualized maintenance and repair frequencies and costs per service call based on RS Means and equipment cost.
Present Value of Operating Cost Savings		
Product Lifetime	Estimated using survey results from RECS (1990, 1993, 1997, 2001, 2005) and the U.S. Census American Housing Survey (2005, 2007), along with historic data on appliance shipments.	No change.
	Variability: Characterized using Weibull probability distributions.	
Discount Rates	Identified all possible debt or asset classes that might be used to purchase the considered appliances, or might be affected indirectly. Primary data source was the Federal Reserve Board's SCF** for 1989, 1992, 1995, 1998, 2001, 2004 and 2007.	No change.
Compliance Date	2014	No change.

* References for the data sources mentioned in this table are provided in the sections following the table or in chapter 8 of the direct final rule TSD.

** Survey of Consumer Finances.

As discussed in section IV.E, DOE takes into account the rebound effect associated with more efficient room air conditioners. The take-back in energy consumption associated with the rebound effect provides consumers with increased value (for example, a cooler or warmer indoor environment). The net impact on consumers is thus the sum of the change in the cost of owning the room air conditioner (that is, life-cycle cost) and the increased value for the more comfortable indoor environment. The consumer effectively pays for the increased value of a more comfortable environment in his or her utility bill. Because the monetary cost of this added value is equivalent to the value of the foregone energy savings, the economic impacts on consumers measured in the LCC analysis are the same regardless of the rebound effect.

1. Product Cost

To calculate consumer product costs, DOE multiplied the manufacturer selling prices developed in the engineering analysis by the supply-chain markups described above (along with sales taxes). DOE used different markups for baseline products and higher-efficiency products because, as discussed previously, DOE applies an incremental markup to the MSP increase associated with higher efficiency products.

On February 22, 2011, DOE published a Notice of Data Availability (NODA, 76 FR 9696) stating that DOE may consider improving regulatory analysis by addressing equipment price trends. Consistent with the NODA, DOE examined historical producer price indices (PPI) for room air conditioners and household laundry equipment and found a consistent, long-term declining real price trend for both products. Consistent with the method proposed in the NODA, DOE used experience curve fits to forecast a price scaling index to forecast product costs into the future for this rulemaking. DOE also considered the public comments that were received in response to the NODA and refined

the evaluation of its experience curve trend forecasting estimates. Many commenters were supportive of DOE moving from an assumption-based equipment price trend forecasting method to a data-driven methodology for forecasting price trends. Other commenters were skeptical that DOE could accurately forecast price trends given the many variables and factors that can complicate both the estimation and the interpretation of the numerical price trend results and the relationship between price and cost. DOE evaluated these concerns and determined that retaining the assumption-based approach of a constant real price trend was not consistent with the historical data for the products covered in this rule though this scenario does represent a reasonable upper bound on the future equipment price trend. DOE also performed an initial evaluation of the possibility of other factors complicating the estimation of the long-term price trend, and developed a range of potential price trend values that were consistent with the available data and justified by the amount of data available to DOE. DOE recognizes that its price trend forecasting methods are likely to be modified as more data and information becomes available to enhance the statistical certainty of the trend estimate and the completeness of the model. Additional data should enable an improved evaluation of the potential impacts of more of the factors that can influence equipment price trends over time.

To evaluate the impact of the uncertainty of the price trend estimates, DOE performed price trend sensitivity calculations in the national impact analysis to examine the dependence of the analysis results—specifically annualized net national benefits—on different analytical assumptions. DOE also included a zero real price trend assumption as a sensitivity scenario representing an upper bound on the forecast price trend DOE found that for the selected standard levels the benefits outweighed the burdens under all scenarios.

A more detailed discussion of price trend modeling and calculations is provided in Appendix 8–J of the TSD.

2. Installation Cost

Installation cost includes labor, overhead, and any miscellaneous materials and parts needed to install the equipment. For the preliminary analysis, DOE derived baseline installation costs for clothes dryers and room air conditioners from data in the RS Means 2008. DOE found no evidence that installation costs would be impacted with increased efficiency levels. Commenting on DOE's assumption, Whirlpool stated that heat pump dryers would be considerably heavier than conventional dryers, leading to increased installation costs. (Whirlpool, No. 22 at p. 4) AHAM made a similar comment. (AHAM, Public Meeting Transcript, No. 21.4 at pp. 89–90)

For the final rule analysis, DOE included an additional installation cost for heat pump dryers due to their larger dimensions and weight. DOE added 0.5 hour of additional labor (or about $20) to the installation cost. For room air conditioners, DOE also added additional labor hours for higher efficiency equipment with significant larger dimensions and/or weight based on RS Means labor hour estimates for room air conditioners with different capacities.

3. Annual Energy Consumption

For each sampled household, DOE determined the energy consumption for a clothes dryer or room air conditioner at different efficiency levels using the approach described above in section IV.E.

4. Energy Prices

For clothes dryers, DOE derived average annual energy 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 excluding the data for the large state.

DOE calculated average residential electricity prices for each of the 13 geographic areas using data from EIA's Form EIA–861 Database (based on "Annual Electric Power Industry Report").[45] DOE calculated an average annual regional residential price by: (1) Estimating an average residential price for each utility (by dividing the residential revenues by residential sales); and (2) weighting each utility by the number of residential consumers it served in that region. For the preliminary TSD, DOE used the data for 2007. The final rule analysis updated the data for 2008, the most recent data available.

DOE calculated average residential natural gas prices for each of the 13 geographic areas using data from EIA's "Natural Gas Monthly."[46] DOE calculated average annual regional residential prices by: (1) Estimating an average residential price for each state; and (2) weighting each state by the number of residential consumers. For the preliminary TSD, DOE used EIA data for 2007. The final rule analysis updated the data for 2009, the most recent data available.

For the preliminary analysis, for room air conditioners DOE used utility tariff data to develop monthly marginal electricity prices for each sample household used in the LCC analysis. The marginal prices were calculated by taking account of the difference between the household's electricity expenditures for the base case electricity use and for a candidate standard level, in combination with the associated change in energy use expected as a result of a particular standard level. The price used was based on the default (non-TOU) tariffs, because TOU tariffs are optional and very few customers opt for such rates. DOE then applied the monthly prices to the estimated electricity use by the room air conditioner in each corresponding month. This approach applies summer rates to the estimated consumption in summer months. DOE also used tariff data to develop marginal electricity prices for each commercial building in the LCC sample. DOE used the same approach for today's final rule.

5. Energy Price Projections

To estimate energy prices in future years for the preliminary TSD, DOE multiplied the above average regional energy prices by the forecast of annual average residential energy price changes in the Reference Case from *AEO2009*.[47] *AEO2009* forecasted prices through 2030. For today's proposed rule, DOE updated its energy price forecasts using *AEO2010,* which has an end year of 2035.[48] To estimate the price trends after 2035, DOE used the average annual rate of change in prices from 2020 to 2035.

6. Maintenance and Repair Costs

Repair costs are associated with repairing or replacing components that have failed in the appliance, whereas maintenance costs are associated with maintaining the operation of the equipment. In its preliminary analysis, DOE did not have information suggesting that these costs would change with higher efficiency levels.

[45] Available at: *http://www.eia.doe.gov/cneaf/electricity/page/eia861.html.*

[46] Available at: *http://www.eia.gov/oil_gas/natural_gas/data_publications/natural_gas_monthly/ngm.html.*

[47] The spreadsheet tool that DOE used to conduct the LCC and PBP analyses allows users to select price forecasts from either *AEO*'s High Economic Growth or Low Economic Growth Cases. Users can thereby estimate the sensitivity of the LCC and PBP results to different energy price forecasts.

[48] U.S. Energy Information Administration. *Annual Energy Outlook 2010.* Washington, DC. April 2010.

Commenting on DOE's approach, AHAM stated that repair costs are typically estimated using a 1:1 ratio with part costs, so if component costs increase by 10 percent, repair costs are expected to also increase by 10 percent. AHAM stated that DOE should incorporate these higher repair costs into its analysis of clothes dryers and room air conditioners to provide a more representative evaluation of total consumer cost for higher efficiency products. (AHAM, No. 25 at p. 12)

For clothes dryers, Whirlpool stated that the repair and maintenance costs generally do not vary by efficiency, but for heat pump dryers, this assumption is not valid. Whirlpool stated that new technologies such as these would cost two to three times more to repair than conventional dryers due to their complex nature and the cost of disconnecting and reconnecting water sources. (Whirlpool, No. 22 at p. 4) AHAM stated that maintenance costs generally will not vary by efficiency level, but a heat pump clothes dryer is expected to have higher maintenance costs because of the heat pump and the addition of refrigerant. AHAM stated that maintenance for these units would be similar to that for standard air conditioning equipment or heat pump water heaters. (AHAM, No. 25 at p. 11)

For the final rule analysis, DOE modified the maintenance and repair costs for both clothes dryers and room air conditioners. For clothes dryers, DOE derived annualized maintenance and repair frequencies based on Consumer Reports data on repair and maintenance issues for clothes dryers during the first 4 years of ownership. DOE estimated that on average 1.5 percent of electric and 1.75 percent of gas clothes dryers are maintained or repaired each year. Based on RS Means Facilities Maintenance & Repair 2010 Cost Data,[49] DOE also estimated that an average service call and any necessary repair or maintenance takes about 2.5 hours. DOE further estimated that the average material cost is equal to one-half of the equipment cost. The values for cost per service call were then annualized by multiplying by the frequencies and dividing by the average equipment lifetime of 16 years.

For room air conditioners, based on data on repair frequencies for central air conditioners, DOE assumed that repair frequencies are low and increase for the higher-capacity units due to their more expensive equipment cost. DOE assumed that 1 percent of small sized units (below 6,000 Btu/hr), 2.5 percent of medium sized units (8,000 to 14,000 Btu/hr), and 5 percent of large sized units (above 20,000 Btu/hr) are maintained or repaired each year. Based on the above-cited RS Means data, DOE also estimated that an average service call and any necessary repair or maintenance takes about 1 hour for small and medium-sized units and 2 hours for large units. DOE further estimated that the average material cost is equal to one-half of the incremental equipment cost. The values for cost per service call were then annualized by multiplying by the frequencies and dividing by the average equipment lifetime of 10.5 years.

7. Product Lifetime

Because the lifetime of appliances varies depending on utilization and other factors, DOE develops a distribution of lifetimes from which specific values are assigned to the appliances in the samples. In the preliminary analysis, DOE conducted an analysis of actual lifetime in the field using a combination of shipments data, the stock of the considered appliances, and responses in RECS on the age of the appliances in the homes. The data allowed DOE to estimate a survival function, which provides a distribution of lifetimes. This analysis yielded an average lifetime of approximately 16 years for clothes dryers and approximately 10.5 years for room air conditioners.

For clothes dryers, the ECOS report (prepared for NRDC) stated that the typical lifetime of a clothes dryer is about 12 years. (NRDC, No. 30 at p. 8) AHAM stated that DOE should modify average clothes dryer lifetime to 13 years because both Appliance Magazine and confidential industry data support that value. (AHAM, No. 25 at p. 11) Whirlpool stated that Appliance Magazine shows 12 years as the expected lifetime for clothes dryers, which is largely consistent with their internal estimates. (Whirlpool, No. 22 at p. 5)

For the final rule analysis, DOE retained the approach used to estimate clothes dryer lifetime in the preliminary analysis because it relies on field data, and because the sources used by Appliance Magazine and the confidential industry data were unavailable for analysis by DOE.

For room air conditioners, AHAM stated that the average lifetime of 10.5 years from the preliminary analysis appears reasonable, and is consistent with the value of 10 years reported by Appliance Magazine. (AHAM, No. 25 at p. 11) AHAM stated, however, that there could be a very large difference in room air conditioner lifetime between product classes. (AHAM, Public Meeting Transcript, No. 21.4 at p. 126) While DOE acknowledges that there may be differences in room air conditioner lifetime among the product classes, DOE continued to use the same lifetime distribution for all room air conditioner product classes because it is not aware of any data that would provide a basis for using different lifetimes.

See chapter 8 of the direct final rule TSD for further details on the method and sources DOE used to develop product lifetimes.

8. Discount Rates

In the calculation of LCC, DOE applies discount rates to estimate the present value of future operating costs. DOE estimated a distribution of residential discount rates for clothes dryers and room air conditioners, and also estimated a distribution of commercial discount rates for commercial users of room air conditioners. *See* chapter 8 in the direct final rule TSD for further details on the development of consumer discount rates.

a. Residential Discount Rates

In its preliminary analysis, to establish residential discount rates for the LCC analysis, DOE identified all debt or asset classes that might be used to purchase refrigeration products, including household assets that might be affected indirectly. It estimated the average percentage shares of the various debt or asset classes for the average U.S. household using data from the Federal Reserve Board's "Survey of Consumer Finances" (SCF) for 1989, 1992, 1995, 1998, 2001, 2004, and 2007. Using the SCF and other sources, DOE then developed a distribution of rates for each type of debt and asset to represent the rates that may apply in the year in which amended standards would take effect. DOE assigned each sample household a specific discount rate drawn from one of the distributions. The average rate across all types of household debt and equity, weighted by the shares of each class, is 5.1 percent. DOE used the same approach for today's final rule.

b. Commercial Discount Rates

In its preliminary analysis, DOE derived discount rates for commercial-sector customers from the cost of capital of publicly-traded firms in the sectors that purchase room air conditioners. The firms typically finance equipment purchases through debt, equity capital, or both. DOE estimated the cost of the firms' capital as the weighted average of

[49] Available at: *http://rsmeans.reedconstructiondata.com/60300.aspx.*

the cost of equity financing and the cost of debt financing for recent years for which data were available (2001 through 2008). The estimated average discount rate for companies that purchase room air conditioners is 5.7 percent. DOE used the same approach for today's final rule.

9. Compliance Date of Amended Standards

DOE is required by consent decree to publish a final rule establishing any amended energy conservation standards by June 30, 2011. In the absence of any adverse comment on today's direct final rule that may provide a reasonable basis for withdrawing the rule, compliance with amended standards for clothes dryers and room air conditioners will be required on April 21, 2014. DOE calculated the LCC and PBP for clothes dryers and room air conditioners as if consumers would purchase new products in the year compliance with the standard is required. If adverse comment that may provide a reasonable basis for withdrawing the rule is received, DOE will proceed with the NOPR published elsewhere in today's **Federal Register**, and compliance with any amended standards would be required 3 years after the date of publication of any final standards. As noted above, DOE is required by consent decree to publish a final rule establishing any amended standards by June 30, 2011.

10. Base Case Efficiency Distribution

To accurately estimate the share of consumers that would be affected by a standard at a particular efficiency level, DOE's LCC analysis considered the projected distribution of product efficiencies that consumers purchase under the base case (that is, the case without new energy efficiency standards). DOE refers to this distribution of product of efficiencies as a base-case efficiency distribution.

In the preliminary analysis, DOE primarily relied on data submitted by AHAM to estimate the efficiency distributions in recent years for each of the product classes that were analyzed in the LCC and PBP analysis. DOE assumed that these market shares would remain constant through 2014. Whirlpool supported DOE's approach to forecast base-case market shares. (Whirlpool, No. 22 at p. 5)

For the final rule analysis, DOE retained the approach used in the preliminary analysis for clothes dryers. For room air conditioners, however, DOE modified its approach for estimating base-case efficiency distributions for the final rule analysis based on historical trends of penetration of ENERGY STAR models. DOE believes that this data support a constant growth rate of energy efficiency of 0.25 percent per year. For further information on DOE's estimate of base-case efficiency distributions, see chapter 8 of the direct final rule TSD.

11. Inputs To Payback Period Analysis

The payback period is the amount of time it takes the consumer to recover the additional installed cost of more efficient products, compared to baseline products, through energy cost savings. The simple payback period does not account for changes in operating expense over time or the time value of money. Payback periods are expressed in years. Payback periods that exceed the life of the product mean that the increased total installed cost is not recovered in reduced operating expenses.

The inputs to the PBP calculation are the total installed cost of the equipment to the customer for each efficiency level and the average annual operating expenditures for each efficiency level. The PBP calculation uses the same inputs as the LCC analysis, except that discount rates are not used.

12. Rebuttable-Presumption Payback Period

As noted above, EPCA, as amended, establishes a rebuttable presumption that a standard is economically justified if 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 (and, as applicable, water) savings during the first year that the consumer will receive as a result of the standard, as calculated under the test procedure in place for that standard. (42 U.S.C. 6295(o)(2)(B)(iii)) For each considered efficiency level, DOE determined the value of the first year's energy savings by calculating the quantity of those savings in accordance with the applicable DOE test procedure, and multiplying that amount by the average energy price forecast for the year in which compliance with the amended standard would be required. The results of the rebuttable payback period analysis are summarized in section V.B.1.c of this notice.

G. National Impact Analysis—National Energy Savings and Net Present Value Analysis

The NIA assesses the national energy savings (NES) and the NPV of total consumer costs and savings that would be expected to result from new or amended standards at specific efficiency levels. ("Consumer" in this context refers to consumers of the product being regulated.) DOE calculates the NES and NPV based on projections of annual appliance shipments, along with the annual energy consumption and total installed cost data from the energy use and LCC analyses. For the final rule analysis, DOE forecasted the energy savings, operating cost savings, product costs, and NPV of consumer benefits for products sold from 2014 through 2043.

DOE evaluates the impacts of new and amended standards by comparing base-case projections with standards-case projections. The base-case projections characterize energy use and consumer costs for each product class in the absence of new or amended energy conservation standards. DOE compares these projections with projections characterizing the market for each product class if DOE adopted new or amended standards at specific energy efficiency levels (that is, the TSLs or standards cases) for that class. For the base case forecast, DOE considers historical trends in efficiency and various forces that are likely to affect the mix of efficiencies over time. For the standards cases, DOE also considers how a given standard would likely affect the market shares of efficiencies greater than the standard.

DOE uses an MS Excel spreadsheet model to calculate the energy savings and the national consumer costs and savings from each TSL. The direct final rule TSD and other documentation that DOE provides during the rulemaking help explain the models and how to use them, and interested parties can review DOE's analyses by changing various input quantities within the spreadsheet. The NIA spreadsheet model uses typical values as inputs (as opposed to probability distributions).

For the current analysis, the NIA used projections of energy prices and housing starts from the *AEO2010* Reference case. In addition, DOE analyzed scenarios that used inputs from the *AEO2010* Low Economic Growth and High Economic Growth cases. These cases have higher and lower energy price trends compared to the Reference case, as well as higher and lower housing starts, which result in higher and lower appliance shipments to new homes. NIA results based on these cases are presented in appendix 10–A of the direct final rule TSD.

Table IV–32 summarizes the inputs and key assumptions DOE used for the NIA analysis for the preliminary analysis and the changes to the analyses for the direct final rule. Discussion of these inputs and changes follows the

table. See chapter 10 of the direct final rule TSD for further details.

TABLE IV.32—SUMMARY OF INPUTS AND KEY ASSUMPTIONS FOR THE NATIONAL IMPACT ANALYSIS

Inputs	Preliminary TSD	Changes for the proposed rule
Shipments	Annual shipments from shipments model	No change in approach.
Compliance Date of Standard	2014	No change.
Base-Case Forecasted Efficiencies	For clothes dryers and room air conditioners, efficiency distributions are maintained unchanged during the forecast period.	For clothes dryers, no change in basic approach; modified efficiency distributions based on new information. For room air conditioners, used an efficiency trend based on historical market data.
Standards-Case Forecasted Efficiencies	For clothes dryers and air conditioners, used a "roll-up" scenario.	For clothes dryers, no change in basic approach; modified efficiency distributions based on new information. For room air conditioners, used a "roll-up + shift" scenario to establish the distribution of efficiencies.
Annual Energy Consumption per Unit	Annual weighted-average values as a function of CEF* (clothes dryers) and SWCEER** (room air conditioners).	No change.
Total Installed Cost per Unit	Annual weighted-average values as a function of CEF* (clothes dryers) and SWCEER** (room air conditioners).	No change.
Annual Energy Cost per Unit	Annual weighted-average values as a function of the annual energy consumption per unit and energy prices.	No change.
Repair and Maintenance Cost per Unit	Annual values as a function of efficiency level	No change.
Energy Prices	*AEO2009* forecasts (to 2035) and extrapolation through 2043.	Updated using *AEO2010* forecasts.
Energy Site-to-Source Conversion Factor	Varies yearly and is generated by NEMS–BT	No change.
Discount Rate	Three and seven percent real	No change.
Present Year	Future expenses discounted to 2011, when the final rule is published.	No change.

*Combined Energy Factor
**Shipments-Weighted (stand by) Combined Energy Efficiency Ratio.

1. Shipments

Forecasts of product shipments are needed to calculate the national impacts of standards on energy use, NPV, and future manufacturer cash flows. DOE develops shipment forecasts based on an analysis of key market drivers for each considered product. In DOE's shipments model, shipments of products are driven by new construction, stock replacements, and other types of purchases. The shipments models take an accounting approach, tracking market shares of each product class and the vintage of units in the existing stock. Stock accounting uses product shipments as inputs to estimate the age distribution of in-service product stocks for all years. The age distribution of in-service product stocks is a key input to calculations of both the NES and NPV, because operating costs for any year depend on the age distribution of the stock. DOE also considers the impacts on shipments from changes in product purchase price and operating cost associated with higher energy efficiency levels.

Commenting on the preliminary analysis, Whirlpool stated that clothes dryer base case shipments will not grow linearly as DOE assumes. Clothes dryers are a highly saturated product today, and homes without dryers are generally multi-family units that lack sufficient space for these products. Whirlpool stated that saturation of clothes dryers will not change. Hence, growth in this product category cannot exceed the growth of the housing stock. (Whirlpool, No. 22 at p. 7)

For the final rule analysis, DOE reviewed its approach for forecasting dryer purchases for first-time owners, which include consumers that currently do not have a dryer and consumers in new homes who purchase a dryer. To better account for constraints on purchase, such as those mentioned by Whirlpool, DOE reduced its estimate of the number of purchases by first-time owners. As a result, its forecast for the final rule analysis shows shipments growing more slowly over the forecast period (an average of 0.8 percent per year) than in the forecast in the preliminary analysis. The average growth rate of 0.8 percent is slightly less than the average annual growth rate in the number of households projected in *AEO2010* (1.0 percent in 2008–2035).

To estimate the effects on product shipments from increases in product price projected to accompany amended standards at higher efficiency levels, DOE applied a price elasticity parameter. It estimated this parameter with a regression analysis that used purchase price and efficiency data specific to residential refrigerators, clothes washers, and dishwashers over the period 1980–2002. The estimated "relative price elasticity" incorporates the impacts from purchase price, operating cost, and household income, and it also declines over time. DOE estimated shipments in each standards case using the relative price elasticity along with the change in the relative price between a standards case and the base case.

For details on the shipments analysis, see chapter 9 of the direct final rule TSD.

2. Forecasted Efficiency in the Base Case and Standards Cases

A key component of the NIA is the trend in energy efficiency forecasted for the base case (without new or amended standards) and each of the standards cases. Section IV.F.10 described how DOE developed a base-case energy efficiency distribution (which yields a shipment-weighted average efficiency)

for each of the considered product classes for the first year of the forecast period. To project the trend in efficiency over the entire forecast period, DOE considered recent trends and programs such as ENERGY STAR. For clothes dryers, DOE assumed no improvement of energy efficiency in the base case and held the base-case energy efficiency distribution constant throughout the forecast period. For room air conditioners, DOE applied a constant growth rate of energy efficiency of 0.25 percent per year, based on historical trends of penetration of ENERGY STAR products.

To estimate efficiency trends in the standards cases, DOE has used "roll-up" and/or "shift" scenarios in its standards rulemakings. Under the roll-up scenario, DOE assumes: (1) Product efficiencies in the base case that do not meet the standard level under consideration would roll-up to meet the new standard level; and (2) product efficiencies above the standard level under consideration would not be affected. Under the shift scenario, DOE re-orients the distribution above the new minimum energy conservation standard.

In the preliminary analysis, DOE used a roll-up scenario in developing its forecasts of efficiency trends in the standards cases. The California Utilities stated that DOE should consider a "roll-up and market shift" scenario for room air conditioners in standards cases because, if the ENERGY STAR level is revised above the new standard, it may create a market incentive that increases the share of higher efficiency products. (California Utilities, No. 31 at p. 19)

DOE agrees that amended standards for room air conditioners would likely result in changes to ENERGY STAR levels that would increase the share of products with energy efficiency above the standard based on the historical data reviewed for room air conditioners. Therefore, for the final rule analysis, DOE applied a "roll-up and shift" scenario that accounts for such increase in share. For clothes dryers, DOE retained the approach used in the preliminary analysis for the final rule. For further details about the forecasted efficiency distributions, see chapter 10 of the direct final rule TSD.

3. National Energy Savings

For each year in the forecast period, DOE calculates the NES for each standard level by multiplying the stock of equipment affected by the energy conservation standards by the per-unit annual energy savings. As discussed in section IV.E, DOE incorporated the rebound effect utilized in the energy use analysis into its calculation of national energy savings for room air conditioners.

To estimate the national energy savings expected from appliance standards, DOE uses a multiplicative factor to convert site energy consumption (at the home or commercial building) into primary or source energy consumption (the energy required to convert and deliver the site energy). These conversion factors account for the energy used at power plants to generate electricity and losses in transmission and distribution, as well as for natural gas losses from pipeline leakage and energy used for pumping. For electricity, the conversion factors vary over time due to projected changes in generation sources (that is, the power plant types projected to provide electricity to the country). The factors that DOE developed are marginal values, which represent the response of the system to an incremental decrease in consumption associated with appliance standards.

In the preliminary analysis, DOE used annual site-to-source conversion factors based on the version of NEMS that corresponds to *AEO2009.* For today's rule, DOE updated its conversion factors based on the NEMS that corresponds to *AEO2010,* which provides energy forecasts through 2035. For 2036–2043, DOE used conversion factors that remain constant at the 2035 values.

Section 1802 of the Energy Policy Act of 2005 (EPACT 2005) directed DOE to contract a study with the National Academy of Science (NAS) to examine whether the goals of energy efficiency standards are best served by measurement of energy consumed, and efficiency improvements, at the actual point-of-use or through the use of the full-fuel-cycle, beginning at the source of energy production. (Pub. L. 109–58 (August 8, 2005)). NAS appointed a committee on "Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards" to conduct the study, which was completed in May 2009. The NAS committee defined full-fuel-cycle energy consumption as including, in addition to site energy use, the following: energy consumed in the extraction, processing, and transport of primary fuels such as coal, oil, and natural gas; energy losses in thermal combustion in power generation plants; and energy losses in transmission and distribution to homes and commercial buildings.[50]

In evaluating the merits of using point-of-use and full-fuel-cycle measures, the NAS committee noted that DOE uses what the committee referred to as "extended site" energy consumption to assess the impact of energy use on the economy, energy security, and environmental quality. The extended site measure of energy consumption includes the energy consumed during the generation, transmission, and distribution of electricity but, unlike the full-fuel-cycle measure, does not include the energy consumed in extracting, processing, and transporting primary fuels. A majority of the NAS committee concluded that extended site energy consumption understates the total energy consumed to make an appliance operational at the site. As a result, the NAS committee recommended that DOE consider shifting its analytical approach over time to use a full-fuel-cycle measure of energy consumption when assessing national and environmental impacts, especially with respect to the calculation of greenhouse gas emissions. The NAS committee also recommended that DOE provide more comprehensive information to the public through labels and other means, such as an enhanced Web site. For those appliances that use multiple fuels (such as water heaters), the NAS committee indicated that measuring full-fuel-cycle energy consumption would provide a more complete picture of energy consumed and permit comparisons across many different appliances, as well as an improved assessment of impacts.

In response to the NAS committee recommendations, DOE issued, on August 20, 2010 a Notice of Proposed Policy proposing to incorporate a full-fuel cycle analysis into the methods it uses to estimate the likely impacts of energy conservation standards on energy use and emissions. FR 75 51423. Specifically, DOE proposed to use full-fuel-cycle (FFC) measures of energy and greenhouse gas (GHG) emissions, rather than the primary (extended site) energy measures it currently uses. Additionally, DOE proposed to work collaboratively with the Federal Trade Commission (FTC) to make FFC energy and GHG emissions data available to the public to enable consumers to make cross-class comparisons. On October 7th, DOE held an informal public meeting to discuss and receive comments on its planned approach. The Notice, a transcript of the public meeting and all public comments received by DOE are available at:

[50] The National Academies, Board on Energy and Environmental Systems, Letter to Dr. John Mizroch, Acting Assistant Secretary, U.S. DOE, Office of EERE from James W. Dally, Chair, Committee on Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards, May 15, 2009.

http://www.regulations.gov/search/Regs/home.html#docketDetail?R=EERE-2010-BT-NOA-0028. DOE intends to develop a final policy statement on these subjects and then take steps to begin implementing that policy in future rulemakings and other activities.

4. Net Present Value of Consumer Benefit

The inputs for determining the NPV of the total costs and benefits experienced by consumers of the considered appliances are: (1) Total annual installed cost, (2) total annual savings in operating costs, and (3) a discount factor. DOE calculates net savings each year as the difference between the base case and each standards case in total savings in operating costs and total increases in installed costs. DOE calculates operating cost savings over the life of each product shipped in the forecast period.

DOE multiplies the net savings in future years by a discount factor to determine their present value. For the preliminary analysis and today's final rule, DOE estimated the NPV of appliance consumer benefits using both a 3-percent and a 7-percent real discount rate. 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.[51] The 7-percent real value is an estimate of the average before-tax rate of return to private capital in the U.S. economy. The 3-percent real value represents the "societal rate of time preference," which is the rate at which society discounts future consumption flows to their present value.

As noted above, DOE is accounting for the rebound effect associated with more efficient room air conditioners in its determination of national energy savings. The take-back in energy consumption associated with the rebound effect provides consumers with increased value (that is, a cooler or warmer indoor environment). The net impact on consumers is thus the sum of the change in the cost of owning the room air conditioner (that is, life-cycle cost) and the increased value for the more comfortable indoor environment. The consumer effectively pays for the increased value of a more comfortable environment in his or her utility bill. Because the monetary cost of this added value is equivalent to the value of the foregone energy savings, the economic impacts on consumers, as measured in the NPV are the same regardless of the rebound effect.

5. Benefits From Effects of Standards on Energy Prices

Reduction in electricity consumption associated with amended standards for clothes dryers and room air conditioners could reduce the electricity prices charged to consumers in all sectors of the economy and thereby reduce their electricity expenditures. In chapter 2 of the preliminary TSD, DOE explained that, because the power industry is a complex mix of fuel and equipment suppliers, electricity producers and distributors, it did not plan to estimate the value of potentially reduced electricity costs for all consumers associated with amended standards for refrigeration products. In response, NEEP urged DOE to quantify electricity demand reductions achieved by these updated standards in financial terms. (NEEP, No. 27 at p. 1)

For this rule, DOE used NEMS–BT to assess the impacts of the reduced need for new electric power plants and infrastructure projected to result from standards. In NEMS–BT, changes in power generation infrastructure affect utility revenue requirements, which in turn affect electricity prices. DOE estimated the impact on electricity prices associated with each considered TSL. Although the aggregate benefits for electricity users are potentially large, there may be negative effects on some of the actors involved in electricity supply, particularly power plant providers and fuel suppliers. Because there is uncertainty about the extent to which the benefits for electricity users from reduced electricity prices would be a transfer from actors involved in electricity supply to electricity consumers, DOE has concluded that, at present, it should not give a heavy weight to this factor in its consideration of the economic justification of new or amended standards. DOE is continuing to investigate the extent to which electricity price changes projected to result from standards represent a net gain to society.

H. Consumer Subgroup Analysis

In analyzing the potential impact of new or amended standards on consumers, DOE evaluates the impact on identifiable subgroups of consumers (such as low-income households) that may be disproportionately affected by a national standard. DOE evaluates impacts on particular subgroups of consumers primarily by analyzing the LCC impacts and PBP for those particular consumers from alternative standard levels. For this rule, DOE analyzed the impacts of the considered standard levels on low-income consumers and senior citizens. Section V.B.1.b summarizes the results of the consumer subgroup analysis, and chapter 11 in the direct final rule TSD describes the analysis method.

I. Manufacturer Impact Analysis

The following sections address the various steps taken to analyze the impacts of the amended standards on manufacturers. These steps include conducting a series of analyses, interviewing manufacturers, and evaluating the comments received from interested parties during this rulemaking.

1. Overview

In determining whether an amended energy conservation standard for residential clothes dryers and room air conditioners subject to this rulemaking is economically justified, DOE is required to consider "the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard." (42 U.S.C. 6295(o)(2)(B)(i)(I)) The statute also calls for an assessment of the impact of any lessening of competition as determined by the Attorney General that is likely to result from the adoption of a standard. (42 U.S.C. 6295(o)(2)(B)(i)(V)) DOE conducted the MIA to estimate the financial impact of amended energy conservation standards on manufacturers of clothes dryers and room air conditioners, and to assess the impacts of such standards on employment and manufacturing capacity.

The MIA is both a quantitative and qualitative analysis. The quantitative part of the MIA relies on the Government Regulatory Impact Model (GRIM), an industry cash-flow model customized for the clothes dryer and room air conditioners covered in this rulemaking. See section IV.I.2 below, for details on the GRIM analysis. The qualitative part of the MIA addresses factors such as product characteristics, characteristics of particular firms, and market trends. The qualitative discussion also includes an assessment of the impacts of standards on manufacturer subgroups. The complete MIA is discussed in chapter 12 of the direct final rule TSD. DOE conducted the MIA in the three phases described below.

a. Phase 1, Industry Profile

In Phase 1 of the MIA, DOE prepared a profile of the clothes dryers and room air conditioner industries based on the

[51] OMB Circular A–4 (Sept. 17, 2003), section E, "Identifying and Measuring Benefits and Costs. Available at: *http://www.whitehouse.gov/omb/memoranda/m03-21.html.*

market and technology assessment prepared for this rulemaking. Before initiating the detailed impact studies, DOE collected information on the present and past structure and market characteristics of each industry. This information included market share data, product shipments, manufacturer markups, and the cost structure for various manufacturers. The industry profile includes: (1) Further detail on the overall market and product characteristics; (2) estimated manufacturer market shares; (3) financial parameters such as net plant, property, and equipment; selling, general and administrative (SG&A) expenses; cost of goods sold, and other similar information; and (4) trends in the number of firms, market, and product characteristics. The industry profile included a top-down cost analysis of manufacturers in each industry that DOE used to derive preliminary financial inputs for the GRIM (such as revenues, depreciation, SG&A, and research and development (R&D) expenses). DOE also used public sources of information to further calibrate its initial characterization of each industry, including Security and Exchange Commission 10–K filings,[52] Standard & Poor's stock reports,[53] and corporate annual reports. DOE supplemented this public information with data released by privately held companies.

b. Phase 2, Industry Cash Flow Analysis

Phase 2 focused on the financial impacts of potential amended energy conservation standards on each industry as a whole. Amended energy conservation standards can affect manufacturer cash flows in three distinct ways: (1) By creating a need for increased investment, (2) by raising production costs per unit, and (3) by altering revenue due to higher per-unit prices and/or possible changes in sales volumes. DOE used the GRIMs to perform two cash-flow analyses: One for the clothes dryers industry and one for room air conditioners. In performing these analyses, DOE used the financial values derived during Phase 1 and the shipment assumptions from the NIA.

c. Phase 3, Sub-Group Impact Analysis

Using average cost assumptions to develop an industry-cash-flow estimate may not adequately assess differential impacts of amended energy conservation standards among manufacturer subgroups. For example, small manufacturers, niche players, or manufacturers exhibiting a cost structure that differs significantly from the industry average could be more negatively affected. To address this possible impact, DOE used the results of the industry characterization analysis in Phase 1 to group manufacturers that exhibit similar production and cost structure characteristics. During the manufacturer interviews, DOE discussed financial topics specific to each manufacturer and obtained each manufacturer's view of the industry as a whole.

DOE reports the MIA impacts of amended energy conservation standards by grouping together the impacts on manufacturers of certain product classes. While DOE did not identify any other subgroup of manufacturers of clothes dryers or room air conditioners that would warrant a separate analysis, DOE specifically investigated impacts on small business manufacturers. See section VI.B for more information.

2. GRIM Analysis

DOE uses the GRIM to quantify the changes in cash flow that result in a higher or lower industry value. The GRIM analysis is a standard, annual cash-flow analysis that incorporates manufacturer costs, manufacturer selling prices, shipments, and industry financial information as inputs, and models changes in costs, distribution of shipments, investments, and manufacturer margins that would result from amended energy conservation standards. The GRIM spreadsheet uses the inputs to arrive at a series of annual cash flows, beginning with the base year of the analysis, 2011 (which accounts for the investments needed to bring products into compliance by 2014), and continuing to 2043. DOE calculated INPVs by summing the stream of annual discounted cash flows during this period. For clothes dryers and room air conditioners, DOE uses a real discount rate of 7.2 percent for all products.

DOE used the GRIM to calculate cash flows using standard accounting principles and to compare changes in INPV between a base case and various TSLs (the standards cases). The difference in INPV between the base and standards cases represents the financial impact of the amended standard on manufacturers. DOE collected this information from a number of sources, including publicly available data and interviews with a number of manufacturers (described in the next section). Additional details about the GRIM can be found in chapter 12 of the direct final rule TSD.

a. GRIM Key Inputs

Manufacturer Production Costs

DOE used the manufacturer production costs (MPCs) calculated in the engineering analysis for each efficiency level for the year 2009, as described in section IV.C above, and further detailed in chapter 5 of the direct final rule TSD. For both clothes dryers and room air conditioners, DOE calculated the 2009 MPCs using cost models based on product tear downs. The cost models also provide a breakdown of MPCs into material, labor, overhead, and depreciation. Manufacturing a higher-efficiency product is typically more expensive than manufacturing a baseline product due to the use of more complex components and higher-cost raw materials. The changes in the MPCs of the analyzed products can affect revenues, gross margins, and cash flow of the industry, making these product cost data key GRIM inputs for DOE's analysis.

Base-Case Shipments Forecast

The GRIM estimates manufacturer revenues based on total unit shipment forecasts and the distribution of these values by efficiency level. Changes in the efficiency mix at each standard level affect manufacturer finances. For this analysis, the GRIM uses the NIA shipments forecasts from 2011 to 2043, the end of the analysis period.

In the shipments analysis, DOE also estimated the distribution of efficiencies in the base case for all product classes. For clothes dryers, DOE held the base-case energy efficiency distribution constant throughout the forecast period. For the room air conditioner industry, DOE assumed a migration of the market toward higher efficiency over time. See section IV.G.1, above, for additional details.

Product and Capital Conversion Costs

Amended energy conservation standards will cause manufacturers to incur conversion costs to bring their production facilities and product designs into compliance. For the MIA, DOE classified these costs into two major groups: (1) Product conversion costs and (2) capital conversion costs. Product conversion costs are investments in research, development, testing, marketing, and other non-capitalized costs focused on making product designs comply with the amended energy conservation standard. Capital conversion costs are investments in property, plant, and equipment to adapt or change existing production

[52] Available online at *http://www.sec.gov*.

[53] Available online at *http://www2.standardandpoors.com*.

facilities so that new product designs can be fabricated and assembled.

For both clothes dryers and room air conditioners, DOE based its conversion cost estimates that would be required to meet each TSL on information obtained from manufacturer interviews, the design pathways analyzed in the engineering analysis, and market information about the number of products that would require modification at each efficiency level. Because no energy label is currently prescribed for clothes dryers, and because clothes dryers are not part of the ENERGY STAR program, the best source of clothes dryer efficiency information is the CEC product database. DOE segmented each product on the CEC Web site into its appropriate product class using energy source, drum capacity, voltage, and combination unit information. DOE then searched manufacturer Web sites and numerous retail Web sites to determine which clothes dryers were current products. DOE assigned each product currently produced into efficiency levels using the reported energy factor. Finally, DOE assigned each of these products into product lines, classifying each group of products made by same manufacturer with identical drum capacities and energy factors into the same product line.

DOE calculated the product and capital conversion costs at each efficiency level for every product class by multiplying the total number of product lines that fell below the required efficiency by an estimate of the conversion costs to reach that efficiency level. DOE calculated the total product development required at each efficiency level by estimating the necessary engineering resources required to implement the design options in the engineering analysis at the efficiency level across a product line. DOE calculated the total capital conversion costs required at each efficiency level by estimating the additional equipment and changes to existing equipment that would be required to implement the design option in the engineering analysis at that efficiency level across a product line.

While DOE's calculation of conversion costs for room air conditioners was similar to the calculation of conversion costs for clothes dryers, DOE used a slightly different approach to determine the number of product lines at each efficiency level. DOE used the CEC appliance database to determine what models currently exist on the market for room air conditioners and verified these current products through manufacturer and retail Web sites. DOE eliminated products in the database that were discontinued due to the recent refrigerant switch to R–410A. DOE segmented each product from the CEC database into its appropriate product class using cooling capacity, the existence of louvers, and type of room air conditioner. DOE assigned each product currently produced into efficiency levels using the reported EER. Finally, DOE determined a representative distribution of the industry by extrapolating the information for manufacturers for which it had complete efficiency information to account for the product lines of all manufacturers.

Like its method for clothes dryers, DOE calculated the industry wide conversion costs by multiplying the number of product lines in each product class that fell below the required efficiency by its estimate of the product and capital conversion costs. DOE's estimate was based on the design options at each efficiency level in the engineering analysis. DOE's per line product conversion costs were calculated by estimating the product development time required to make the design change across a product family. For component switch outs, DOE assumed that design changes for components that interacted with other parts of the room air conditioner would be more costly than one-for-one switch outs because these components would require greater engineering effort to be adapted into new product designs. For capital conversion costs, DOE assumed based on manufacturer feedback that the only design changes that would require changes to existing equipment were larger chassis volumes, evaporator changes, and condenser changes.

DOE's estimates of the total capital conversion and production conversion costs for clothes dryer and room air conditioners by TSL can be found in section V.B.2 of today's direct final rule. The estimates of the total capital conversion and product conversion costs by product class and efficiency level can be found in chapter 12 of the direct final rule TSD.

b. GRIM Scenarios

Clothes Dryer Standards-Case Shipment Forecasts

The GRIM used the shipments developed in the NIA for clothes dryers. To determine efficiency distributions for the standards case, DOE used a roll-up scenario. In this scenario, products that fall below the amended energy conservation standard are assumed to "roll-up" to the new standard in 2014. DOE also assumed there was a relative price elasticity in the clothes dryers market, meaning amended energy conservation standards that increase the first cost of clothes dryers would result in lower total shipments. *See* section IV.G.1 of this direct final rule, and chapter 10 of the direct final rule TSD for more information on the clothes dryer standards-case shipment scenarios.

Room Air Conditioner Standards-Case Shipment Forecasts

The GRIM used the shipments developed in the NIA for room air conditioners. As stated in IV.I.2.a, the base case shipments assume that there is a migration over time to more efficient products based on historical trends of penetration of ENERGY STAR products. In the standards case, DOE used a "roll-up + shift" scenario. In this scenario, DOE assumed that amended standards for room air conditioners would likely result in changes to ENERGY STAR levels that would increase the share of products with energy efficiency above the standard. DOE also assumed there was a relative price elasticity in the room air conditioner market, meaning that amended energy conservation standards that increase the first cost of room air conditioners would result in lower total shipments. See section IV.G.1 of this direct final rule and chapter 10 of the direct final rule TSD for more information on the room air conditioner standards-case shipment scenarios.

Markup Scenarios

In the GRIM, DOE used the MSPs calculated in the engineering analysis for each product class and efficiency level. MSPs include direct manufacturing production costs (that is, labor, material, and overhead estimated in DOE's MPCs) and all non-production costs (that is, SG&A, R&D, and interest), along with profit. For clothes dryers, DOE did not separate shipping costs from the manufacturer markup because shipping costs are not a function of the design options analyzed. The MSP for clothes dryers is equal to the MPC times the manufacturer markup. For room air conditioners, DOE separated the shipping costs from the markup multiplier for the analysis to explicitly account for the design options that would result in higher shipping costs due to weight increases. DOE calculated the MSP for room air conditioners by multiplying the MPC by the manufacturer markup and adding shipping costs.

For the MIA, DOE modeled two standards-case markup scenarios to

represent the uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of amended energy conservation standards: (1) A flat markup scenario, and (2) a preservation of operation profit scenario. Modifying these markups from the base case to the standards cases yields different sets of impacts on manufacturers' changing industry revenue and cash flow.

The flat markup scenario assumes that the cost of goods sold for each product is marked up by a flat percentage to cover standard SG&A expenses, R&D expenses, and profit. The flat markup scenario uses the baseline manufacturer markup (discussed in chapter 6 of the direct final rule TSD) for all products in both the base case and the standards case. To derive this percentage, DOE evaluated publicly available financial information for manufacturers of major household appliances whose product offerings include clothes dryers and room air conditioners. DOE also requested feedback on this value during manufacturer interviews. This scenario represents the upper bound of industry profitability in the standards case because under this scenario, manufacturers are able to fully pass through additional costs due to standards to their customers.

DOE also modeled a lower bound profitability scenario. In this scenario, the manufacturer markups are lowered such that, in the standards case, manufacturers are able to maintain only the base-case total operating profit in absolute dollars, despite higher product costs and investment. DOE implemented this scenario in GRIM by lowering the manufacturer markups at each TSL to yield approximately the same earnings before interest and taxes in the standards case in the year after the compliance date of the amended standards as in the base case. For clothes dryers in the preservation of operating profit scenario, DOE assumed that the industry wide impacts would occur under the new minimum efficiency levels. DOE altered the markups only for the minimally compliant products in this scenario, with margin impacts not occurring for products that already exceed the amended energy conservation standard. For room air conditioners, DOE assumed that the margin impacts would affect the minimally compliant products at the amended energy conservation standards and the next highest efficiency level. The NIA analyzed an efficiency migration in both the base case and the standards case due to the assumption that manufacturers will produce increasingly more efficient room air conditioners as ENERGY STAR levels for these products change over time. Therefore, under amended energy conservation standards the shipment weighted average efficiency increases from the new minimum standard to higher efficiency levels. DOE assumed this market shift caused by standards would impact margins on products that also become the de facto minimally efficient product over time. For both clothes dryers and room air conditioners, the preservation of operating profit represents the lower bound of industry profitability following amended energy conservation standards because under this scenario, higher production costs and the investments required to comply with the amended energy conservation standard do not yield additional operating profit.

While DOE used the same markup scenarios for clothes dryers and room air conditioners, DOE captured different concerns for each industry by modeling the preservation of operating profit scenario. For clothes dryers, manufacturers were particularly concerned about the inability to markup the full cost of production. Because there is currently no energy label requirement or ENERGY STAR program for clothes dryers, the lack of consumer information makes it more difficult for customers to calculate individual payback and energy savings. Consequently, the manufacturing cost for more efficient clothes dryers could not be fully marked up because energy efficiency, unlike price and other features, is not a factor in the purchasing decision of most consumers. Manufacturers also cited the highly competitive market, the concentrated retail market that represents the majority of sales, and price points that are fixed partly by paired washing machines as other reasons that additional production costs would not yield higher profits in the standards case. For room air conditioners, manufacturers stated that higher production costs could severely harm profitability. Manufacturers already earn very little profit on the small, high-volume window units due to the enormous price pressure retailers exert because of their purchasing power, and due to fierce competition within the room air conditioner industry. Manufacturers accept lower absolute profit on these units with the expectation of making a larger per unit profit on other more costly products. They also do so because maintaining high production volumes of these units allows manufacturers to keep factories utilized and to achieve purchasing economies. In addition, because many purchases are impulse buys during periods of atypically warm weather for products that are used sparingly, any increase in first cost could impact these types of sales. Therefore, manufacturers were skeptical that customers would accept the full additional cost of production.

3. Discussion of Comments

During the March 2010 public meeting, interested parties commented on the assumptions and results of the manufacturer impacts presented in the preliminary analysis. Oral and written comments discussed several topics, including the classification of small business manufacturers, the cumulative regulatory burden on manufacturers, the impact of R–410A conversion, and direct employment impacts. DOE addresses these comments below.

a. Small Businesses

In the preliminary analysis, DOE stated it did not identify any small business manufacturers of residential clothes dryers but that it did identify at least one room air conditioner manufacturer that was designated as a small business by the U.S. Small Business Administration criteria. DOE requested comment on this assertion. AHAM stated that it agreed with DOE's assessment regarding the number of small businesses for room air conditioners and clothes dryers. (AHAM, No. 25 at p. 12) Whirlpool similarly stated that it did not know of any qualifying small businesses for residential clothes dryers. (Whirlpool, No. 22 at p. 4) HTC, however, stated that it is a small business registered under the Central Contracting Registration and the appropriate NAICS code for the residential clothes dryers covered by this rulemaking (335224—household laundry equipment manufacturers). HTC requested consideration by DOE as a small business and asserted that it would be negatively impacted if DOE decided not to include its technologies in the standards for residential clothes dryers (HTC, No. FDMS DRAFT 0068 at pp. 6, 10)

For clothes dryers, DOE notes that it could not locate HTC as a small business on the SBA Web site (*http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm*) or under the Central Contracting Registration (*https://www.bpn.gov/CCRSearch/Search.aspx*). DOE does not question HTC's assertion that it is a small business, but DOE does not believe that HTC would be directly impacted by this rule. HTC has developed a technology that can be

incorporated into clothes dryers. DOE acknowledges in section IV.A.5.a that HTC's technology is a potential design option but also notes this technology is not commercially available. DOE does not believe this rulemaking would affect HTC's ability to commercialize or sell its technology. Therefore, DOE does not believe HTC will be impacted by this rulemaking.

For room air conditioners, DOE amends its conclusion of the number of small manufacturers in today's direct final rule. The one manufacturer previously identified by DOE as a small business was since acquired by a company and exceeds the 750-employee threshold under NAICS code 333415 (air conditioning and warm air heating equipment manufacturers and commercial and industrial refrigeration equipment manufacturers). As such, DOE believes there are no qualifying small business manufacturers in the room air conditioner industry.

For more information on the potential impact on small business manufacturers, see section VI.B.

b. Cumulative Regulatory Burden

Several interested parties responded to DOE's request for comment during the preliminary analysis period on regulations that could impose a burden on manufacturers of clothes dryers and room air conditioners. BSH stated that DOE should consider potential greenhouse gas regulations and the EPA ban on hydrochlorofluorocarbon (HCFC) refrigerants in new products since these regulations are relevant for heat pump clothes dryers. (BSH, No. 23 at p. 5) In contrast, NPCC stated that DOE should not include the cost of converting to alternative refrigerants such as R–410A in its manufacturer impact analysis for room air conditioners since the HCFC ban has already taken effect. (NPCC, No. 32 at p. 4)

DOE acknowledges that the phase-out of hydrofluorocarbons (HFC) or similar refrigerants could necessitate changes to heat pump clothes dryers if current products offered on the market have to be redesigned. DOE also notes that the most efficient electric clothes dryers on the U.S. market today do not use heat pump technology, so a change in the available refrigerants would not currently impact products on the U.S. market. Because heat pump technology passed the screening criteria, it is analyzed as in technology that could increase the efficiency of residential clothes dryers. DOE has analyzed heat pump clothes dryers as the max-tech units for electric clothes dryer product classes. In its engineering analysis for these relevant product classes, DOE assumed that these products would utilize refrigerants that are currently available on the market. However, DOE does not include the impacts of a potential change in available refrigerant for heat pump clothes dryers because it would be speculative to predict the passage of legislation or the outcome of future rulemakings that would alter available refrigerants.

In response to the inclusion of the ban on HCFC refrigerants, DOE notes that the ban is relevant to both heat pump clothes dryer manufactures and room air conditioner manufacturers. The ban on R–22 became effective on January 1, 2010, so all products currently produced must comply with this regulation. This ban, which required manufacturers to cease using virgin R–22 in new equipment, necessitated substantial product design changes and capital investments. DOE accounts for these design changes in its engineering analysis by basing its analysis for room air conditioners on the use of R–410A refrigerant, as described in section IV.C.2.b. This allows DOE to capture the impacts of the refrigerant change on product cost and efficiency.

The ban also caused manufacturers to incur significant product and capital conversion costs. Manufacturers had to redesign units for new compressors and other new components and conduct extensive testing, and in some cases manufacturers devoted full-time engineering resources to this conversion for up to 2 years. Additionally, manufacturers had to purchase new heat exchanger equipment and make other capital investments. DOE did not include the costs of converting to alternative refrigerants in the GRIM because these changes were not driven by the standards established in today's final rule. DOE describes the HCFC ban in further detail as part of the cumulative regulatory burden in chapter 12 of the direct final rule TSD.

Several manufacturers also responded to DOE's request for comment on the UL fire safety regulation for clothes dryers. Whirlpool stated that this regulation has no effect on energy efficiency, but added that DOE should include it as a regulatory burden. (Whirlpool, No. 22 at p. 2) BSH noted that the regulation takes effect in 2013. (BSH, No. 23 at p. 6) ALS speculated that each clothes dryer manufacturer will have its own concerns about this regulation and its impacts. (ALS, Public Meeting Transcript, No. 21.4 at p. 154) HTC stated that it has successfully passed UL 2158 safety guidelines for electric clothes dryers and requested consideration of this compliance. (HTC, No. FDMS DRAFT 0068 at p. 7)

DOE appreciates this input on the UL fire safety regulations for clothes dryers. While DOE did not receive enough information to calculate the cost of changes to baseline clothes dryers to comply with UL 2158 in the engineering analysis, DOE agrees with Whirlpool that this regulation would not impact energy efficiency and consequently would not change the incremental costs calculated in the engineering analysis. While the UL 2158 is not a Federal regulation, UL certification is a *de facto* requirement for selling products in the U.S. because of local building codes requiring all installed products meet safety regulations and to avoid litigation. DOE included the conversion costs for manufacturers to comply with UL 2158 as part of the cumulative regulatory burden.

Additional information on the cumulative regulatory burden on clothes dryer and room air conditioner manufacturers is included in chapter 12 of the direct final rule TSD, including details on how DOE treated the conversion costs for the UL 2158 regulation.

c. Employment Impacts

Two interested parties commented on DOE's characterization of the domestic employment impacts for room air conditioner manufacturers. EEI stated that if DOE concluded no room air conditioner production remains in the United States, there should be no domestic impacts on employment. EEI stated that further analysis may be necessary to capture impacts on these manufacturers. (EEI, Public Meeting Transcript, No. 21.4 at pp. 31–34) To follow up on this issue, GE stated that revenue from non-domestic manufacturing helps fund the R&D and domestic production of other products that room air conditioner manufacturers produce. Therefore, the effects of room air conditioner manufacturing spill over into other industries. (GE, Public Meeting Transcript, No. 21.4 at pp. 33–34)

DOE's direct employment impact assessment focuses on domestic employment impacts. These employment impacts are calculated in the GRIM based on the domestic expenditures and labor content of room air conditioner production. Because all room air conditioners are manufactured abroad, any change in labor content resulting from amended standards would impact labor requirements in non-domestic facilities and would not be quantified in DOE's direct employment impact assessment. While many room air conditioner manufacturers produce other products

and a company's revenues in one industry may impact its overall revenues and operations, DOE does not analyze spillover effects among different business segments in its direct employment impact assessment. DOE does analyze indirect employment impacts in the domestic economy in section IV.J.

4. Manufacturer Interviews

DOE interviewed manufacturers representing more than 90 percent of clothes dryer sales and approximately 50 percent of room air conditioner sales. These interviews were in addition to those DOE conducted as part of the engineering analysis. DOE used these interviews to tailor the GRIM to incorporate unique financial characteristics for each industry. All interviews provided information that DOE used to evaluate the impacts of potential amended energy conservation standards on manufacturer cash flows, manufacturing capacities, and employment levels. See appendix 12–A of the direct final rule TSD for additional information on the MIA interviews.

The following sections describe the most significant issues identified by manufacturers.

a. Clothes Dryer Key Issues

Test Procedure

Manufacturers indicated that a key concern for this rulemaking was ensuring that the test procedure accurately measured actual energy use. In particular, manufacturers indicated that proposed changes to the RMC value and the average number of annual cycles needed to be updated. Manufacturers indicated that without these changes, consumers could be negatively impacted by amended energy conservation standards because clothes dryers have a limited number of improvements that would be cost effective for most consumers.

UL Fire Containment Standard

Most manufacturers indicated that they had not fully investigated the exact technical changes that will be required to meet the UL fire containment regulation (UL 2158). However, manufacturers were concerned that this regulation would require changes to all their products around the same time that they would be required to meet the amended energy conservation standard. Most manufacturers agreed that even if the exact approach of meeting UL 2158 is different or unknown by individual manufactures, DOE should still treat the regulation as an overall burden.

Heat Pump Technology

Manufacturers indicated that the high capital conversion and product conversion costs for clothes dryers at the second gap fill levels or the maximum available units were significant and would represent a substantial burden. Manufacturers also indicated that the pathways to meeting those levels, while potentially costly, were well-defined, proven in the market, and could be made within their existing production facilities. Manufacturers also indicated, however, that heat pump technology at the max-tech levels for electric product classes would represent a significant departure from current products and add significantly to the product and capital conversion costs. A heat pump standard would require a total renovation of existing facilities. The changes required to manufacture heat pumps would require revamping most existing production equipment and redesigning a new platform. The capital conversion costs would include equipment for new drum lines, assembly line testing equipment, stamping equipment for cabinets, and other production equipment to manufacturer the sealed systems. In addition to the large development costs to develop new platforms, manufacturers would have the additional expense of developing the sealed system. Other increases to the product development costs for heat pump clothes dryers that concerned manufacturers were the significant retraining costs for their servicers and the marketing costs to educate consumers and ensure they accept the new technology. With the substantial change that would be required to develop, manufacture, and educate consumers about heat pump clothes dryers, manufacturers were concerned they might not be able to make all the required changes with a 3-year lead time between the announcement of the final rule and the compliance date of the amended energy conservation.

Manufacturers also indicated that an energy conservation standard at a level that effectively required a heat pump clothes dryer would force them to consider off-shoring any remaining production in the United States. Besides the significant capital and product conversion costs, manufacturers indicated that the much higher labor content of a heat pump clothes dryer would put additional pressure on moving production out of the United States. Finally, manufacturers believed that repair and maintenance costs would increase if an energy conservation standard effectively required heat pump clothes dryers. Repair and maintenance costs would increase due to the more expensive components, potential lint management problems, and some manufacturers' inexperience with the technology.

Impacts on Profitability

Manufacturers indicated that an amended energy conservation standard would likely impact profits in the clothes dryer market. Because there is currently no energy label requirement and no ENERGY STAR program for clothes dryers, manufacturers indicated that, unlike clothes washers, efficiency does not command any premium in the market (either in percentage or absolute terms). Because it is difficult to communicate any energy benefit to consumers, it is very unlikely that they could benefit from higher production costs caused by amended energy conservation standards.

In addition, manufacturers indicated that the large incremental cost jumps at some of the higher efficiency levels, including heat pump clothes dryers, were unlikely to be fully passed on to their customers. Beside the inability to show the energy benefit of the products, manufacturers indicated that the concentrated number of players in the retail market would put pressure on all manufacturers to keep costs down in response to amended energy conservation standards. Manufacturers also indicated that many of their sales are from pairs of clothes washers and dryers that have similar price points. If the cost of clothes dryers increased, manufacturers felt that retailers would not accept any price increase to keep the retail prices of the matched pair similar.

b. Room Air Conditioner Key Issues

Impact on Manufacturer Profitability

Several manufacturers stated that they expect amended energy conservation standards to negatively impact the profitability of room air conditioners. Higher component, tooling, and development costs for more efficient products would increase MPCs, but manufacturers believed these higher costs could not necessarily be passed on to consumers due to the nature of the industry. A few large retailers dominate the industry and exert downward pressure on prices. Retailers demand low prices because consumers have come to expect room air conditioners at particular price points. For example, consumers expect many product offerings of product class 1 for under $100, and retailers have successfully maintained that price point through competitive bidding. This has resulted

in price pressure on the most popular units as manufacturers accept lower absolute profit on those units in the hopes of making a larger per unit profit on other more costly products. Many room air conditioner purchases are weather-dependent, so consumers could easily forgo the purchase of a room air conditioner unit altogether if prices increased. Consequently, manufacturers believed that cost increases would be at least partly absorbed by manufacturers to keep retail prices from rising sharply.

If amended energy conservation standards led to a significant reduction in profitability, some manufacturers could exit the market (as a number of large players have in recent years). Many manufacturers source room air conditioner lines from overseas and do not own the production equipment. This arrangement would allow manufacturers to exit the industry without stranded assets.

Impact on Product Utility

Manufacturers believed a negative profitability impact could also indirectly affect product utility. Several manufacturers indicated that other features that do not affect efficiency could be removed or component quality could be sacrificed to meet amended standard levels and maintain product prices at levels that would be acceptable to consumers.

Manufacturers also expressed concern that the energy savings from more stringent energy conservation standards would not be great enough to justify passing through the added costs to consumers. Currently, manufacturers bundle higher efficiency with other desirable features to justify higher prices for ENERGY STAR models. According to manufacturers, if amended standards caused prices to increase, the lower operating costs would not justify higher prices because the energy savings would be low compared to the initial price of the unit. Therefore, the increased cost of meeting the amended efficiency requirements may cause manufacturers to reduce the number of features to retain a reasonable price point.

The value of future ENERGY STAR levels is also a concern for manufacturers. Many retailers and other distribution channels require ENERGY STAR products. Because the features bundled with ENERGY STAR products are the selling point to consumers, manufacturers were concerned that a higher ENERGY STAR level after amended standards would result in products with fewer features.

Manufacturers also stated that the financial burden of developing products to meet amended energy conservation standards has an opportunity cost due to limited capital and R&D dollars. Investments incurred to meet amended energy conservation standards reflect foregone investments in innovation and the development of new features that consumers value and on which manufacturers earn higher absolute profit.

Component Availability

Several manufacturers stated they were concerned about component availability. Compressor availability since the conversion to R–410A was the main problem cited by manufacturers. Some manufacturers stated that component suppliers do not give priority to room air conditioning because the market is exclusive to North America and smaller than some of the other markets they supply. Since the conversion R–410A, manufacturers noted the total production capacity of compressor suppliers has not fully rebounded. In addition, compressor suppliers have yet to offer the same range of compressor capacities and efficiency tiers.

Size Constraints

A number of manufacturers expressed concerns about physical limitations of how large room air conditioners could grow. Most residential buildings have standardized window openings. Because a large portion of air conditioners are installed in these standardized openings, products must still fit in these typical windows after they have been redesigned. Manufacturers were largely concerned that the limited opportunity for growth also limited opportunities for efficiency improvements. Increasing the size of units also presents a problem for smaller air conditioners, which typically operate at under 10,000 Btu/hr. Much of the appeal of these units is that they can be lifted and installed by one person. Increasing the size of these units would greatly alter the market and may cause consumers to purchase less efficient portable air-conditioning units.

Manufacturers mentioned refrigerant charge as another reason why room air conditioners are constrained by size. If manufacturers used increased coil size and a smaller compressor capacity to improve efficiency, the larger heat exchangers combined with the reduced nominal compressor capacity could lead to a system refrigerant charge amount that exceeds the recommended level. Exceeding recommended charge levels could damage the compressor, thereby limiting the extent of efficiency improvements associated with coil size growth. To counteract the increase in charge levels, some manufacturers have used smaller tubing in their heat exchangers. However, North American suppliers are not currently properly equipped to support smaller tube sizes and might not be willing to make the investment required to do so.

Several manufacturers stated that size is also a concern because moving from a smaller chassis to larger chassis would cause material costs to increase dramatically due to more costly components and the potential capital costs required for development. If the adopted standards required significant rather than incremental increases in efficiency, the largest units in each capacity range would likely have to move to the next largest or a new chassis in order to meet the required efficiency levels. This is a notable concern for capacities above 28,000 Btu/hr because manufacturers could choose to no longer offer these product lines due to the conversion cost.

Numerous manufacturers stated that size constraints pose a problem for non-louvered units in particular. Non-louvered units inherently have less room for efficiency improvement because they need to fit into the existing sleeves in buildings. They are also constrained by air flow, increasing the depth does not result in significant efficiency gains because air on the condenser side must still flow through the rear face. Additionally, increasing depth creates a product that is less aesthetically pleasing and could decrease the available space in the room.

Product Switching

Some manufacturers noted that higher consumer prices after an amended energy conservation standard could result in product switching along the upper capacity boundaries of a product class if efficiency requirements are not implemented proportionally across product classes. For example, if after energy conservation standards are amended the first cost of units in product class 1 is not proportionally lower than units in product class 3, consumers who would have purchased product class 1 units are likely to purchase less efficient, slightly higher capacity units in product class 3. Without a significant price differential between product classes, consumers would be more likely to buy units with higher capacity, potentially lowering the calculated energy savings.

J. Employment Impact Analysis

DOE considers employment impacts in the domestic economy as one factor in selecting a proposed standard.

Employment impacts consist of direct and indirect impacts. Direct employment impacts are any changes in the number of employees of manufacturers of the appliance products that are the subject of this rulemaking, their suppliers, and related service firms. Indirect employment impacts are changes in national employment that occur due to the shift in expenditures and capital investment caused by the purchase and operation of more efficient appliances. The MIA discussed above in Section IV.I. addresses the direct employment impacts that concern manufacturers of clothes dryers and room air conditioners. The employment impact analysis addresses the indirect employment impacts.

Indirect employment impacts from standards consist of the net jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, due to: (1) Reduced spending by end users on energy; (2) reduced spending on new energy supply by the utility industry; (3) increased spending on new products to which the new standards apply; and (4) the effects of those three factors throughout the economy. DOE expects the net monetary savings from standards to be redirected to other forms of economic activity. DOE also expects these shifts in spending and economic activity to affect the demand for labor in the short term, as explained below.

One method for assessing the possible effects on the demand for labor of such shifts in economic activity is to compare sectoral employment statistics developed by the Labor Department's Bureau of Labor Statistics (BLS).[54] The BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. Data from BLS indicate that expenditures in the utility sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy. There are many reasons for these differences, including wage differences and the fact that the utility sector is more capital intensive and less labor intensive than other sectors.[55]

Energy conservation standards have the effect of reducing consumer utility bills. Because reduced consumer expenditures for energy likely lead to increased expenditures in other sectors of the economy, the general effect of efficiency standards is to shift economic activity from a less labor-intensive sector (*i.e.,* the utility sector) to more labor-intensive sectors (*e.g.,* the retail and service sectors). Thus, based on the BLS data alone, DOE believes net national employment will increase due to shifts in economic activity resulting from amended standards for clothes dryers and room air conditioners.

For the standard levels considered in today's direct final rule, DOE estimated indirect national employment impacts using an input/output model of the U.S. economy called Impact of Sector Energy Technologies (ImSET). ImSET is a spreadsheet model of the U.S. economy that focuses on 187 sectors most relevant to industrial, commercial, and residential building energy use.[56] 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. The ImSET software includes a computer-based I–O model with structural coefficients to characterize economic flows among the 187 sectors. ImSET's national economic I–O structure is based on a 2002 U.S. benchmark table, specially aggregated to the 187 sectors. DOE estimated changes in expenditures using the NIA spreadsheet. Using ImSET, DOE then estimated the net national, indirect employment impacts by sector of potential amended efficiency standards for clothes dryers and room air conditioners.

For more details on the employment impact analysis and the results of this analysis, see direct final rule TSD chapter 13.

K. Utility Impact Analysis

The utility impact analysis estimates several important effects on the utility industry of the adoption of new or amended standards. For this analysis, DOE used the NEMS–BT model to generate forecasts of electricity consumption, electricity generation by plant type, and electric generating capacity by plant type, that would result from each TSL. DOE obtained the energy savings inputs associated with efficiency improvements to considered products from the NIA. DOE conducts the utility impact analysis as a scenario that departs from the latest *AEO* Reference case. In the analysis for today's rule, the estimated impacts of standards are the differences between values forecasted by NEMS–BT and the values in the *AEO2010* Reference case.

As part of the utility impact analysis, DOE used NEMS–BT to assess the impacts on electricity prices of the reduced need for new electric power plants and infrastructure projected to result from the considered standards. In NEMS–BT, changes in power generation infrastructure affect utility revenue requirements, which in turn affect electricity prices. DOE estimated the change in electricity prices projected to result over time from each TSL. For further discussion, see section IV.G.5.

For more details on the utility impact analysis and the results of this analysis, see chapter 14 of the direct final rule TSD.

L. Environmental Assessment

Pursuant to the National Environmental Policy Act and the requirements of 42 U.S.C. 6295(o)(2)(B)(i)(VI), DOE prepared an environmental assessment (EA) of the impacts of the standards for clothes dryers and room air conditioners in today's direct final rule, which it has included as chapter 15 of the direct final rule TSD. DOE found that the environmental effects associated with the standards for clothes dryers and room air conditioners were not significant. Therefore, DOE issued a Finding of No Significant Impact (FONSI) pursuant to NEPA, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and DOE's regulations for compliance with NEPA (10 CFR part 1021). The FONSI is available in the docket for this rulemaking.

In the EA, DOE estimated the reduction in power sector emissions of CO_2, NO_X, and Hg using the NEMS–BT computer model. In the EA, NEMS–BT is run similarly to the *AEO* NEMS, except that clothes dryer and room air conditioner energy use is reduced by the amount of energy saved (by fuel type) due to each TSL. The inputs of national energy savings come from the NIA spreadsheet model, while the output is the forecasted physical emissions. The net benefit of each TSL in today's direct final rule is the difference between the forecasted emissions estimated by NEMS–BT at each TSL and the *AEO 2010* Reference Case. NEMS–BT tracks CO_2 emissions using a detailed module that provides results with broad

[54] Data on industry employment, hours, labor compensation, value of production, and the implicit price deflator for output for these industries are available upon request by calling the Division of Industry Productivity Studies (202–691–5618) or by sending a request by e-mail to *dipsweb@bls.gov.* Available at: *http://www.bls.gov/news.release/prin1.nr0.htm.*

[55] See: Bureau of Economic Analysis. *Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II).* 1192. U.S. Department of Commerce: Washington, DC.

[56] J.M. Roop, M.J. Scott, and R.W. Schultz. *ImSET 3.1: Impact of Sector Energy Technologies.* 2009. Pacific Northwest National Laboratory: Richland, WA. PNNL–18412. Available at: *http://www.pnl.gov/main/publications/external/technical_reports/PNNL-18412.pdf.*

coverage of all sectors and inclusion of interactive effects. Because the on-site operation of gas clothes dryers requires use of fossil fuels and results in emissions of CO_2, NO_X and sulfur dioxide (SO_2), DOE also accounted for the reduction in these emissions due to standards at the sites where these appliances are used.

DOE has determined that SO_2 emissions from affected fossil fuel fired combustion devices (also known as Electric Generating Units (EGUs)) are subject to nationwide and regional emissions cap and trading programs that create uncertainty about the standards' impact on SO_2 emissions. Title IV of the Clean Air Act, 42 U.S.C. 7401–7671q, sets an annual emissions cap on SO_2 for affected EGUs in the 48 contiguous states and the District of Columbia (DC). SO_2 emissions from 28 eastern States and DC are also limited under the Clean Air Interstate Rule (CAIR, 70 FR 25162 (May 12, 2005)), which created an allowance-based trading program. Although CAIR has been remanded to the EPA by the U.S. Court of Appeals for the District of Columbia (DC Circuit), see *North Carolina* v. *EPA,* 550 F.3d 1176 (DC Cir. 2008), it remains in effect temporarily, consistent with the DC Circuit's earlier opinion in *North Carolina* v. *EPA,* 531 F.3d 896 (DC Cir. 2008). On July 6, 2010, EPA issued the Transport Rule proposal, a replacement for CAIR, which would limit emissions from EGUs in 32 states, potentially through the interstate trading of allowances, among other options. 75 FR 45210 (Aug. 2, 2010).

The attainment of the emissions caps is typically flexible among EGUs and is enforced through the use of emissions allowances and tradable permits. Under existing EPA regulations, and under the Transport Rule if it is finalized, any excess SO_2 emission allowances resulting from the lower electricity demand caused by the imposition of an efficiency standard could be used to permit offsetting increases in SO_2 emissions by any regulated EGU. However, if the standard resulted in a permanent increase in the quantity of unused emission allowances, there would be an overall reduction in SO_2 emissions from the standards. While there remains some uncertainty about the ultimate effects of efficiency standards on SO_2 emissions covered by the existing cap and trade system, the NEMS–BT modeling system that DOE uses to forecast emissions reductions currently indicates that no physical reductions in power sector emissions would occur for SO_2.

A cap on NO_X emissions, affecting electric generating units in the CAIR region, means that standards on clothes dryers and room air conditioners may have little or no physical effect on NO_X emissions in the 28 eastern States and the DC covered by CAIR, or any states covered by the proposed Transport Rule if the Transport Rule is finalized. The standards would, however, reduce NO_X emissions in those 22 States not affected by the CAIR. As a result, DOE used NEMS–BT to forecast emission reductions from the standards considered for today's direct final rule.

Similar to emissions of SO_2 and NO_X, future emissions of Hg would have been subject to emissions caps. In May 2005, EPA issued the Clean Air Mercury Rule (CAMR). 70 FR 28606 (May 18, 2005). CAMR would have permanently capped emissions of mercury for new and existing coal-fired power plants in all States by 2010. However, on February 8, 2008, the DC Circuit issued its decision in *New Jersey* v. *Environmental Protection Agency,* in which it vacated CAMR. 517 F.3d 574 (DC Cir. 2008). EPA has decided to develop emissions standards for power plants under the Clean Air Act (Section 112), consistent with the DC Circuit's opinion on the CAMR. *See http://www.epa.gov/air/mercuryrule/pdfs/certpetition_withdrawal.pdf.* Pending EPA's forthcoming revisions to the rule, DOE is excluding CAMR from its environmental assessment. In the absence of CAMR, a DOE standard would likely reduce Hg emissions and DOE plans to use NEMS–BT to estimate these emission reductions. However, DOE continues to review the impact of rules that reduce energy consumption on Hg emissions, and may revise its assessment of Hg emission reductions in future rulemakings.

The operation of gas clothes dryers requires use of fossil fuels and results in emissions of CO_2, NO_X, and SO_2 at the sites where these appliances are used. NEMS–BT provides no means for estimating such emissions. DOE calculated the effect of the standards in today's rule on the above site emissions based on emissions factors derived from the literature.

Commenting on the preliminary TSD, AHAM stated that if DOE includes values for CO_2 reductions, it should also include CO_2 emissions that result indirectly from changes in a standard, including increased manufacturing emissions, increased transportation emissions, and reduced carbon emissions from peak load reductions. (AHAM, No. 25 at p. 12) In response, DOE notes that the inputs to the EA for national energy savings come from the NIA. In the NIA, DOE accounts for only the primary energy savings associated with considered standards. In so doing, EPCA directs DOE to consider (when determining whether a standard is economically justified) "the total projected amount of energy * * * savings likely to result directly from the imposition of the standard." 42 U.S.C. 6295(o)(2)(B)(i)(III) DOE interprets "directly from the imposition of the standard" to include energy used in the generation, transmission, and distribution of fuels used by appliances. In addition, DOE is evaluating the full-fuel-cycle measure, which includes the energy consumed in extracting, processing, and transporting primary fuels (see section IV.G.3). Both DOE's current accounting of primary energy savings and the full-fuel-cycle measure are directly linked to the energy used by appliances. In contrast, energy used in manufacturing and transporting appliances is a step removed from the energy used by appliances. Thus, DOE did not consider such energy use in either the NIA or the EA. DOE did include CO_2 emissions reductions resulting from projected impacts of revised standards on electricity demand.

M. Monetizing Carbon Dioxide and Other Emissions Impacts

As part of the development of this direct final rule, DOE considered the estimated monetary benefits likely to result from the reduced emissions of CO_2 NO_X that are expected to result from each of the TSLs considered. In order to make this calculation similar to the calculation of the NPV of consumer benefit, DOE considered the reduced emissions expected to result over the lifetime of products shipped in the forecast period for each TSL. This section summarizes the basis for the monetary values used for each of these emissions and presents the benefits estimates considered.

For today's direct final rule, DOE is relying on a set of values for the social cost of carbon (SCC) that was developed by an interagency process. A summary of the basis for these values is provided below, and a more detailed description of the methodologies used is provided in appendix 15–A of the direct final rule TSD.

1. Social Cost of Carbon

Under Executive Order 12866, agencies must, to the extent permitted by law, "assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs." The purpose of the SCC estimates

presented here is to allow agencies to incorporate the monetized social benefits of reducing CO_2 emissions into cost-benefit analyses of regulatory actions that have small, or "marginal," impacts on cumulative global emissions. The estimates are presented with an acknowledgement of the many uncertainties involved and with a clear understanding that they should be updated over time to reflect increasing knowledge of the science and economics of climate impacts.

As part of the interagency process that developed these SCC estimates, technical experts from numerous agencies met on a regular basis to consider public comments, explore the technical literature in relevant fields, and discuss key model inputs and assumptions. The main objective of this process was to develop a range of SCC values using a defensible set of input assumptions grounded in the existing scientific and economic literatures. In this way, key uncertainties and model differences transparently and consistently inform the range of SCC estimates used in the rulemaking process.

a. Monetizing Carbon Dioxide Emissions

The SCC is an estimate of the monetized damages associated with an incremental increase in carbon emissions in a given year. It is intended to include (but is not limited to) changes in net agricultural productivity, human health, property damages from increased flood risk, and the value of ecosystem services. Estimates of the SCC are provided in dollars per metric ton of carbon dioxide.

When attempting to assess the incremental economic impacts of carbon dioxide emissions, the analyst faces a number of serious challenges. A recent report from the National Research Council [57] points out that any assessment will suffer from uncertainty, speculation, and lack of information about (1) future emissions of greenhouse gases, (2) the effects of past and future emissions on the climate system, (3) the impact of changes in climate on the physical and biological environment, and (4) the translation of these environmental impacts into economic damages. As a result, any effort to quantify and monetize the harms associated with climate change will raise serious questions of science, economics, and ethics and should be viewed as provisional.

Despite the serious limits of both quantification and monetization, SCC estimates can be useful in estimating the social benefits of reducing carbon dioxide emissions. Consistent with the directive quoted above, the purpose of the SCC estimates presented here is to make it possible for agencies to incorporate the social benefits from reducing carbon dioxide emissions into cost-benefit analyses of regulatory actions that have small, or "marginal," impacts on cumulative global emissions. Most Federal regulatory actions can be expected to have marginal impacts on global emissions.

For such policies, the agency can estimate the benefits from reduced (or costs from increased) emissions in any future year by multiplying the change in emissions in that year by the SCC value appropriate for that year. The net present value of the benefits can then be calculated by multiplying each of these future benefits by an appropriate discount factor and summing across all affected years. This approach assumes that the marginal damages from increased emissions are constant for small departures from the baseline emissions path, an approximation that is reasonable for policies that have effects on emissions that are small relative to cumulative global carbon dioxide emissions. For policies that have a large (non-marginal) impact on global cumulative emissions, there is a separate question of whether the SCC is an appropriate tool for calculating the benefits of reduced emissions. DOE does not attempt to answer that question here.

At the time of the preparation of this notice, the most recent interagency estimates of the potential global benefits resulting from reduced CO_2 emissions in 2010, expressed in 2009$, were $4.9, $22.1, $36.3, and $67.1 per metric ton avoided. For emission reductions that occur in later years, these values grow in real terms over time. Additionally, the interagency group determined that a range of values from 7 percent to 23 percent should be used to adjust the global SCC to calculate domestic effects,[58] although preference is given to consideration of the global benefits of reducing CO_2 emissions.

It is important to emphasize that the interagency process is committed to updating these estimates as the science and economic understanding of climate change and its impacts on society improves over time. Specifically, the interagency group has set a preliminary goal of revisiting the SCC values within 2 years or at such time as substantially updated models become available, and to continue to support research in this area. In the meantime, the interagency group will continue to explore the issues raised by this analysis and consider public comments as part of the ongoing interagency process.

b. Social Cost of Carbon Values Used in Past Regulatory Analyses

To date, economic analyses for Federal regulations have used a wide range of values to estimate the benefits associated with reducing carbon dioxide emissions. In the final model year 2011 CAFE rule, the Department of Transportation (DOT) used both a "domestic" SCC value of $2 per ton of CO_2 and a "global" SCC value of $33 per ton of CO_2 for 2007 emission reductions (in 2007 dollars), increasing both values at 2.4 percent per year.[59] *See Average Fuel Economy Standards Passenger Cars and Light Trucks Model Year 2011,* 74 FR 14196 (March 30, 2009); Final Environmental Impact Statement Corporate Average Fuel Economy Standards, Passenger Cars and Light Trucks, Model Years 2011–2015 at 3–90 (Oct. 2008) (Available at: *http://www.nhtsa.gov/fuel-economy*). It also included a sensitivity analysis at $80 per ton of CO_2. A domestic SCC value is meant to reflect the value of damages in the United States resulting from a unit change in carbon dioxide emissions, while a global SCC value is meant to reflect the value of damages worldwide.

A 2008 regulation proposed by DOT assumed a domestic SCC value of $7 per ton of CO_2 (in 2006 dollars) for 2011 emission reductions (with a range of $0–$14 for sensitivity analysis), also increasing at 2.4 percent per year. *See Average Fuel Economy Standards, Passenger Cars and Light Trucks, Model Years 2011–2015,* 73 FR 24352 (May 2, 2008); Draft Environmental Impact Statement Corporate Average Fuel Economy Standards, Passenger Cars and Light Trucks, Model Years 2011–2015 at 3–58 (June 2008) (Available at: *http://www.nhtsa.gov/fuel-economy*). A regulation for packaged terminal air conditioners and packaged terminal heat pumps finalized by DOE in October of 2008 used a domestic SCC range of $0 to $20 per ton CO_2 for 2007 emission reductions (in 2007 dollars). 73 FR 58772, 58814 (Oct. 7, 2008) In addition, EPA's 2008 Advance Notice of Proposed Rulemaking for Greenhouse Gases

[57] National Research Council. *Hidden Costs of Energy: Unpriced Consequences of Energy Production and Use.* National Academies Press: Washington, DC. 2009.

[58] It is recognized that this calculation for domestic values is approximate, provisional, and highly speculative. There is no a priori reason why domestic benefits should be a constant fraction of net global damages over time.

[59] Values per ton of CO_2 given in this section refer to metric tons.

identified what it described as "very preliminary" SCC estimates subject to revision. *See Regulating Greenhouse Gas Emissions Under the Clean Air Act,* 73 FR 44354 (July 30, 2008). EPA's global mean values were $68 and $40 per ton CO_2 for discount rates of approximately 2 percent and 3 percent, respectively (in 2006 dollars for 2007 emissions).

In 2009, an interagency process was initiated to offer a preliminary assessment of how best to quantify the benefits from reducing carbon dioxide emissions. To ensure consistency in how benefits are evaluated across agencies, the Administration sought to develop a transparent and defensible method, specifically designed for the rulemaking process, to quantify avoided climate change damages from reduced CO_2 emissions. The interagency group did not undertake any original analysis. Instead, it combined SCC estimates from the existing literature to use as interim values until a more comprehensive analysis could be conducted. The outcome of the preliminary assessment by the interagency group was a set of five interim values: Global SCC estimates for 2007 (in 2006 dollars) of $55, $33, $19, $10, and $5 per ton of CO_2.

These interim values represent the first sustained interagency effort within the U.S. government to develop an SCC for use in regulatory analysis. The results of this preliminary effort were presented in several proposed and final rules and were offered for public comment in connection with proposed rules, including the joint EPA–DOT fuel economy and CO_2 tailpipe emission proposed rules. See CAFE Rule for Passenger Cars and Light Trucks Draft EIS and Final EIS, cited above.

c. Current Approach and Key Assumptions

Since the release of the interim values, the interagency group reconvened on a regular basis to generate improved SCC estimates, which were used in this direct final rule. Specifically, the group considered public comments and further explored the technical literature in relevant fields.

The interagency group relied on three integrated assessment models (IAMs) commonly used to estimate the SCC: The FUND, DICE, and PAGE models.[60] These models are frequently cited in the peer-reviewed literature and were used in the last assessment of the Intergovernmental Panel on Climate Change. Each model was given equal weight in the SCC values that were developed.

Each model takes a slightly different approach to model how changes in emissions result in changes in economic damages. A key objective of the interagency process was to enable a consistent exploration of the three models while respecting the different approaches to quantifying damages taken by the key modelers in the field. An extensive review of the literature was conducted to select three sets of input parameters for these models: Climate sensitivity, socio-economic and emissions trajectories, and discount rates. A probability distribution for climate sensitivity was specified as an input into all three models. In addition, the interagency group used a range of scenarios for the socio-economic parameters and a range of values for the discount rate. All other model features were left unchanged, relying on the model developers' best estimates and judgments.

The interagency group selected four SCC values for use in regulatory analyses. Three values are based on the average SCC from three integrated assessment models, at discount rates of 2.5, 3, and 5 percent. The fourth value, which represents the 95th percentile SCC estimate across all three models at a 3-percent discount rate, is included to represent higher-than-expected impacts from temperature change further out in the tails of the SCC distribution. For emissions (or emission reductions) that occur in later years, these values grow in real terms over time, as depicted in Table IV–33.

TABLE IV–33—SOCIAL COST OF CO_2, 2010–2050

[In 2007 dollars per metric ton]

	Discount rate			
	5% Avg	3% Avg	2.5% Avg	3% 95th
2010	4.7	21.4	35.1	64.9
2015	5.7	23.8	38.4	72.8
2020	6.8	26.3	41.7	80.7
2025	8.2	29.6	45.9	90.4
2030	9.7	32.8	50.0	100.0
2035	11.2	36.0	54.2	109.7
2040	12.7	39.2	58.4	119.3
2045	14.2	42.1	61.7	127.8
2050	15.7	44.9	65.0	136.2

It is important to recognize that a number of key uncertainties remain, and that current SCC estimates should be treated as provisional and revisable since they will evolve with improved scientific and economic understanding. The interagency group also recognizes that the existing models are imperfect and incomplete. The National Research Council report mentioned above points out that there is tension between the goal of producing quantified estimates of the economic damages from an incremental ton of carbon and the limits of existing efforts to model these effects. There are a number of concerns and problems that should be addressed by the research community, including research programs housed in many of the agencies participating in the interagency process to estimate the SCC.

The U.S. government intends to periodically review and reconsider estimates of the SCC used for cost-benefit analyses to reflect increasing knowledge of the science and economics of climate impacts, as well as improvements in modeling. In this context, statements recognizing the

[60] The models are described in appendix 15–A of the final rule TSD.

limitations of the analysis and calling for further research take on exceptional significance. The interagency group offers the new SCC values with all due humility about the uncertainties embedded in them and with a sincere promise to continue work to improve them.

In summary, in considering the potential global benefits resulting from reduced CO_2 emissions, DOE used the most recent values identified by the interagency process, adjusted to 2009$ using the GDP price deflator values for 2008 and 2009. For each of the four cases specified, the values used for emissions in 2010 were $4.9, $22.1, $36.3, and $67.1 per metric ton avoided (values expressed in 2009$). To monetize the CO_2 emissions reductions expected to result from amended standards for clothes dryers and room air conditioners in 2014–2043, DOE used the values identified in Table A1 of the "Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866," which is reprinted in appendix 16–A of the direct final rule TSD, appropriately adjusted to 2009$.[61] To calculate a present value of the stream of monetary values, DOE discounted the values in each of the four cases using the specific discount rate that had been used to obtain the SCC values in each case.

2. Valuation of Other Emissions Reductions

DOE investigated the potential monetary benefit of reduced NO_X emissions from the TSLs it considered. As noted above, amended energy conservation standards would reduce NO_X emissions in those 22 States that are not affected by the CAIR, in addition to the reduction in site NO_X emissions nationwide. DOE estimated the monetized value of NO_X emissions reductions resulting from each of the TSLs considered for today's direct final rule based on environmental damage estimates from the literature. Available estimates suggest a very wide range of monetary values, ranging from $370 per ton to $3,800 per ton of NO_X from stationary sources, measured in 2001$ (equivalent to a range of $447 to $4,591 per ton in 2009$).[62] In accordance with OMB guidance, DOE conducted two calculations of the monetary benefits derived using each of the economic values used for NO_X, one using a real discount rate of 3 percent and another using a real discount rate of 7 percent.[63]

DOE is aware of multiple agency efforts to determine the appropriate range of values used in evaluating the potential economic benefits of reduced Hg emissions. DOE has decided to await further guidance regarding consistent valuation and reporting of Hg emissions before it once again monetizes Hg in its rulemakings.

Commenting on the preliminary TSD, Whirlpool stated that CO_2 emissions should not be monetized because the market value cannot be readily determined, the impact is negligible, and it is already included in energy savings. (Whirlpool, No. 22 at p. 6) DOE acknowledges that the market value of future CO_2 emissions reductions is uncertain, and for this reason it uses a wide range of potential values, as described above. The impact of revised standards for room air conditioners and clothes dryers on future CO_2 emissions, described in section V.6 of this notice, is not negligible. In addition, the value of CO_2 emissions reductions is not included in energy cost savings because the energy prices that DOE used to calculate those savings do not include any taxes or other charges to account for the CO_2 emissions associated with the use of electricity or natural gas by the considered appliances.

V. Analytical Results

The following section addresses the results from DOE's analyses with respect to potential energy conservation standards for the products examined as part of this rulemaking. It addresses the TSLs examined by DOE, the projected impacts of each of these levels if adopted as energy conservation standards for clothes dryers and room air conditioners, and the standards levels that DOE sets forth in today's direct final rule. Additional details regarding the analyses conducted by the agency are contained in the publicly available direct final rule TSD supporting this notice.

A. Trial Standard Levels

DOE analyzed the benefits and burdens of a number of TSLs for the products that are the subject of today's direct final rule. A description of each TSL DOE analyzed is provided below. DOE attempted to limit the number of TSLs considered for the final rule by excluding efficiency levels that do not exhibit significantly different economic or engineering characteristics from the efficiency levels already selected as a TSL. While DOE presents the results for only those efficiency levels in TSL combinations, DOE presents the results for all efficiency levels that it analyzed in chapter 10 of the direct final rule TSD.

Table V–1 presents the TSLs and the corresponding product class efficiency levels for clothes dryers. TSL 1 consists of the efficiency levels with the largest market share with a positive NPV (at a 3-percent discount rate). TSL 2 consists of the efficiency levels with the highest NPV (at a 3-percent discount rate). TSL 3 consists of the efficiency levels with the highest energy savings and a positive NPV (at a 3-percent discount rate). TSL 4 consists of the efficiency levels that reflect 5-percent efficiency increase above the baseline. TSL 4 also corresponds to the standards recommended by the Joint Petitioners. TSL 5 consists of non heat pump design efficiency levels with the highest energy savings. TSL 6 consists of the max-tech efficiency levels.

TABLE V–1—TRIAL STANDARD LEVELS FOR CLOTHES DRYERS

Product class	CEF					
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Vented Electric Standard	3.56	3.61	3.73	3.73	4.08	5.42
Vented Electric Compact 120V	3.43	3.61	3.61	3.61	4.08	5.41
Vented Electric Compact 240V	3.12	3.27	3.27	3.27	3.60	4.89
Vented Gas	3.16	3.20	3.20	3.30	3.61	3.61
Ventless Electric Compact 240V	2.55	2.69	2.69	2.55	2.80	4.03
Ventless Electric Combination Washer/Dryer	2.08	2.56	2.56	2.08	2.56	3.69

[61] Table A1 presents SCC values through 2050. For DOE's calculation, it derived values after 2050 using the 3-percent per year escalation rate used by the interagency group.

[62] For additional information, refer to U.S. Office of Management and Budget, Office of Information and Regulatory Affairs. *2006 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities.* 2006. Washington, DC.

[63] OMB, Circular A–4: Regulatory Analysis (Sept. 17, 2003).

Table V–2 presents the TSLs and the corresponding product class efficiency levels for room air conditioners. TSL 1 consists of the efficiency levels with the largest market share with a positive NPV (at a 3-percent discount rate). TSL 2 consists of the ENERGY STAR levels for each product class. TSL 3 consists of the efficiency levels with the highest NPV (at a 3-percent discount rate). TSL 4 consists of the efficiency levels set forth in the Joint Petition presented to DOE. TSL 5 consists of the efficiency levels with the highest energy savings and a positive NPV (at a 7-percent discount rate). TSL 6 consists of the max-tech efficiency levels.

TABLE V–2—TRIAL STANDARD LEVELS FOR ROOM AIR CONDITIONERS

Product class	CEER					
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Group 1—includes PC 1	10.10	10.60	10.10	11.10	11.10	11.67
Group 2—includes PC 2, 3, 4, 11	10.70	10.70	10.90	10.90	11.50	11.96
Group 3—includes PC 5A, 9, 13	9.40	9.40	8.47	9.40	8.47	10.15
Group 4—includes PC 5B, 10	9.40	9.40	8.48	9.00	8.48	9.80
Group 5—includes PC 6, 7, 8A, 12	9.30	9.30	9.60	9.60	10.00	10.35
Group 6—includes PC 8B, 14, 15, 16	9.30	9.30	9.50	9.50	9.50	10.02

B. Economic Justification and Energy Savings

1. Economic Impacts on Individual Consumers

a. Life-Cycle Cost and Payback Period

Consumers affected by new or amended standards usually experience higher purchase prices and lower operating costs. Generally, these impacts on individual consumers are best captured by changes in life-cycle costs and by the payback period. Therefore, DOE calculated the LCC and PBP analyses for the potential standard levels considered in this rulemaking. DOE's LCC and PBP analyses provided key outputs for each TSL, which are reported by clothes dryer product class in Table V–3 through Table V–8, and by room air conditioner product class in Table V–9 through Table V–14. Each table includes the average total LCC and the average LCC savings, as well as the fraction of product consumers for which the LCC will either decrease (net benefit), or increase (net cost), or exhibit no change (no impact) relative to the base-case forecast. The last output in the tables is the median PBP for the consumer purchasing a design that complies with the TSL. DOE presents the median PBP because it is the most statistically robust measure of the PBP. The results for each potential standard level are relative to the efficiency distribution in the base case (no amended standards). DOE based the LCC and PBP analyses on the range of energy consumption under conditions of actual product use.

TABLE V–3—LCC AND PAYBACK PERIOD RESULTS FOR ELECTRIC STANDARD DRYERS

TSL	CEF	Life-cycle cost *2009$*			LCC savings				Payback period *years*
		Installed cost	Discounted operating cost	LCC	Average savings *2009$*	Percent of households that experience			Median
						Net cost	No impact	Net benefit	
1	3.56	$455	$867	$1,323	$0	0.7	97.6	1.7	3.9
2	3.61	456	856	1,311	2	0.3	78.7	21.0	0.2
3, 4	3.73	467	829	1,296	14	19.0	24.8	56.3	5.3
5	4.08	583	761	1,343	−30	75.3	1.0	23.7	19.1
6	5.42	879	580	1,459	−146	81.0	0.0	19.0	22.1

TABLE V–4—LCC AND PAYBACK PERIOD RESULTS FOR ELECTRIC COMPACT 120V DRYERS

TSL	CEF	Life-cycle cost *2009$*			LCC savings				Payback period *years*
		Installed cost	Discounted operating cost	LCC	Average savings *2009$*	Percent of households that experience			Median
						Net cost	No impact	Net benefit	
1	3.43	$470	$384	$854	n/a	0	100	0	n/a
2, 3, 4	3.61	471	369	840	$14	4.0	0.0	96.0	0.9
5	4.08	627	325	953	−99	95.5	0.0	4.5	36.1
6	5.41	875	243	1,118	−264	95.4	0.0	4.6	40.1

TABLE V–5—LCC AND PAYBACK PERIOD RESULTS FOR ELECTRIC COMPACT 240V DRYERS

TSL	CEF	Life-cycle cost *2009$*			LCC savings				Payback period *years*
		Installed cost	Discounted operating cost	LCC	Average savings *2009$*	Percent of households that experience			Median
						Net cost	No impact	Net benefit	
1	3.12	$470	$427	$896	n/a	0	100	0	n/a
2, 3, 4	3.27	471	411	882	$8	2.3	41.4	56.3	0.9
5	3.60	627	373	1,000	−99	93.3	4.2	2.5	45.1
6	4.89	875	272	1,147	−246	94.5	0.0	5.5	38.2

TABLE V–6—LCC AND PAYBACK PERIOD RESULTS FOR GAS DRYERS

TSL	CEF	Life-cycle cost *2009$*			LCC savings				Payback period *years*
		Installed cost	Discounted operating cost	LCC	Average savings *2009$*	Percent of households that experience			Median
						Net cost	No impact	Net benefit	
1	3.16	$554	$445	$999	n/a	0	100	0	n/a
2, 3	3.20	555	440	995	$0	0.5	92.9	6.6	2.2
4	3.30	555	427	983	2	0.3	84.5	15.2	0.5
5, 6	3.61	658	404	1,062	−69	87.7	10.5	1.8	73.3

TABLE V–7—LCC AND PAYBACK PERIOD RESULTS FOR VENTLESS 240V DRYERS

TSL	CEF	Life-cycle cost *2009$*			LCC savings				Payback period *years*
		Installed cost	Discounted operating cost	LCC	Average savings *2009$*	Percent of households that experience			Median
						Net cost	No impact	Net benefit	
1, 4	2.55	$1,093	$452	$1,545	n/a	0	100	0	n/a
2, 3	2.69	1,094	431	1,525	$20	0.0	0.0	100.0	0.9
5	2.80	1,176	411	1,587	−42	92.5	0.0	7.5	25.3
6	4.03	1,462	261	1,722	−177	88.5	0.0	11.5	26.9

TABLE V–8—LCC AND PAYBACK PERIOD RESULTS FOR VENTLESS COMBINATION WASHER/DRYERS

TSL	CEF	Life-cycle cost *2009$*			LCC savings				Payback period *years*
		Installed cost	Discounted operating cost	LCC	Average savings *2009$*	Percent of households that experience			Median
						Net cost	No impact	Net benefit	
1, 4	2.08	$1,533	$565	$2,098	n/a	0	100	0	n/a
2, 3, 5	2.56	1,579	446	2,025	$73	20.6	0.0	79.4	5.3
6	3.69	1,981	282	2,263	−166	82.4	0.0	17.6	22.4

TABLE V–9—LCC AND PAYBACK PERIOD RESULTS FOR ROOM AIR CONDITIONERS, < 6,000 Btu/h, WITH LOUVERS

TSL	CEER	Life-cycle cost *2009$*			LCC savings				Payback period *years*
		Installed cost	Discounted operating cost	LCC	Average savings *2009$*	Percent of households that experience			Median
						Net cost	No impact	Net benefit	
1, 3	10.10	$361	$357	$718	$9	21.2	30.7	48.1	4.1
2	10.60	374	341	715	11	32.8	30.7	36.6	5.8
4, 5	11.10	393	326	719	7	64.6	1.2	34.2	8.6
6	11.67	472	311	784	−58	90.4	0.0	9.6	20.9

TABLE V–10—LCC AND PAYBACK PERIOD RESULTS FOR ROOM AIR CONDITIONERS, 8,000–13,999 Btu/h, WITH LOUVERS

TSL	CEER	Life-cycle cost *2009$*			LCC savings				Payback period *years*
		Installed cost	Discounted operating cost	LCC	Average savings *2009$*	Percent of households that experience			Median
						Net cost	No impact	Net benefit	
1, 2	10.70	$493	$557	$1,050	$16	9.3	60.5	30.2	0.0
3, 4	10.90	497	547	1,045	22	33.6	2.2	64.1	2.8
5	11.50	525	519	1,044	22	55.7	0.8	43.4	7.1
6	11.96	605	500	1,104	−38	77.3	0.5	22.2	14.7

TABLE V–11—LCC AND PAYBACK PERIOD RESULTS FOR ROOM AIR CONDITIONERS, 20,000–24,999 Btu/h, WITH LOUVERS

TSL	CEER	Life-cycle cost *2009$*			LCC savings				Payback period *years*
		Installed cost	Discounted operating cost	LCC	Average savings *2009$*	Percent of households that experience			Median
						Net cost	No impact	Net benefit	
3, 5	8.47	$857	$750	$1,607	n/a	0	100	0	n/a
1, 2, 4	9.40	887	672	1,559	$6	5.1	85.3	9.6	4.3
6	10.15	1,159	626	1,785	−214	97.6	2.1	0.3	73.8

TABLE V–12—LCC AND PAYBACK PERIOD RESULTS FOR ROOM AIR CONDITIONERS, > 25,000 Btu/h, WITH LOUVERS

TSL	CEER	Life-cycle cost *2009$*			LCC savings				Payback period *years*
		Installed cost	Discounted operating cost	LCC	Average savings *2009$*	Percent of households that experience			Median
						Net cost	No impact	Net benefit	
3, 5	8.48	$979	$823	$1,802	n/a	0	100	0	n/a
4	9.00	1,019	777	1,796	$1	8.9	87.6	3.5	10.1
1, 2	9.40	1,058	739	1,797	1	11.0	85.3	3.7	10.3
6	9.80	1,313	712	2,025	−227	99.8	0.0	0.2	107.7

TABLE V–13—LCC AND PAYBACK PERIOD RESULTS FOR ROOM AIR CONDITIONERS, 8,000–10,999 Btu/h, WITHOUT LOUVERS

TSL	CEER	Life-cycle cost *2009$*			LCC savings				Payback period *years*
		Installed cost	Discounted operating cost	LCC	Average savings *2009$*	Percent of households that experience			Median
						Net cost	No impact	Net benefit	
1, 2	9.30	%495	$490	$986	$4	0.9	89.9	9.2	1.5
3, 4	9.60	498	476	974	13	12.3	25.2	62.5	2.1
5	10.00	512	454	966	20	38.0	5.6	56.3	4.9
6	10.35	615	440	1,055	−66	91.8	1.9	6.2	25.2

TABLE V–14—LCC AND PAYBACK PERIOD RESULTS FOR ROOM AIR CONDITIONERS, > 11,000 Btu/h, WITHOUT LOUVERS

TSL	CEER	Life-cycle cost *2009$*			LCC savings				Payback period *years*
		Installed cost	Discounted operating cost	LCC	Average savings *2009$*	Percent of households that experience			Median
						Net cost	No impact	Net benefit	
1, 2	9.30	$590	$698	$1,288	$5	2.2	89.9	7.9	2.6
3, 4, 5	9.50	596	684	1,279	11	22.7	30.6	46.6	3.7
	9.80	611	660	1,271	18	36.0	17.3	46.6	5.3

TABLE V–14—LCC AND PAYBACK PERIOD RESULTS FOR ROOM AIR CONDITIONERS, > 11,000 Btu/h, WITHOUT LOUVERS—Continued

TSL	CEER	Life-cycle cost *2009$*			LCC savings				Payback period *years*
		Installed cost	Discounted operating cost	LCC	Average savings *2009$*	Percent of households that experience			
						Net cost	No impact	Net benefit	Median
6	10.02	707	647	1,354	−64	92.6	0.0	7.3	25.9

b. Consumer Subgroup Analysis

As described in section IV.H, DOE determined the impact of the considered TSLs on low-income households and senior-only households.

Table V–15 and Table V–16 compare the average LCC savings at each efficiency level for the two consumer subgroups with the average LCC savings for the entire sample for each product class for clothes dryers and room air conditioners, respectively. DOE found that the average LCC savings for low-income households and senior-only households at the considered efficiency levels are not substantially different from the average for all households. Chapter 11 of the direct final rule TSD presents the complete LCC and PBP results for the two subgroups.

TABLE V–15—CLOTHES DRYERS: COMPARISON OF AVERAGE LCC SAVINGS FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS

Electric standard				Vented 120V				Vented 240V			
CEF	Senior	Low-income	All	CEF	Senior	Low-income	All	CEF	Senior	Low-income	All
3.56	$0	$0	$0	3.48	$3	$3	$4	3.16	$2	$2	$2
3.61	2	2	2	3.61	14	13	14	3.27	9	8	8
3.73	7	12	14	3.72	−8	−5	−5	3.36	−8	−6	−5
3.81	−40	−30	−27	3.80	−63	−57	−56	3.48	−54	−47	−47
4.08	−62	−38	−30	4.08	−113	−99	−99	3.60	−110	−99	−99
5.42	−245	−170	−146	5.41	−306	−262	−264	4.89	−291	−243	−246
Gas				Ventless 240V				Ventless Combination			
CEF	Senior	Low-income	All	CEF	Senior	Low-income	All	CEF	Senior	Low-income	All
3.16	$0	$0	$0	2.59	$5	$5	$5	2.35	$49	$76	$75
3.20	2	2	2	2.69	20	19	20	2.38	54	80	79
3.30	−1	2	2	2.71	−14	−14	−13	2.46	68	93	93
3.41	−76	−69	−69	2.80	−49	−42	−42	2.56	41	73	73
3.61	−115	−100	−100	4.03	−234	−175	−177	3.69	−253	−162	−166

TABLE V–16—ROOM AIR CONDITIONERS: COMPARISON OF AVERAGE LCC SAVINGS FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS

< 6,000 Btu/h, with louvers				8,000–13,999 Btu/h, with louvers				20,000–24,999 Btu/h, with louvers			
CEER	Senior	Low-income	All	CEER	Senior	Low-income	All	CEER	Senior	Low-income	All
10.10	$5	$12	$9	10.20	$8	$10	$9	9.00	$1	$7	$3
10.60	4	17	11	10.70	13	18	16	9.40	3	13	6
11.10	−5	17	7	10.90	17	24	22	9.80	−17	8	−10
11.38	−17	9	−3	11.50	14	27	22	10.15	−223	−187	−214
11.67	−75	−44	−58	11.96	−49	−31	−38	.....	.....	.....	.....
> 25,000 Btu/h, with louvers				8,000–10,999 Btu/h, without louvers				> 11,000 Btu/h, without louvers			
CEER	Senior	Low-income	All	CEER	Senior	Low-income	All	CEER	Senior	Low-income	All
9.00	$0	$4	$1	9.30	$4	$5	$4	9.30	$4	$6	$5
9.40	−1	7	1	9.60	11	15	13	9.50	9	13	11
9.80	−234	−209	−227	10.00	16	23	20	9.80	13	21	18
.....	.....	.....	.....	10.35	−73	−62	−66	10.02	−71	−60	−64

c. Rebuttable Presumption Payback

As discussed above, EPCA provides a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for a product that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. In calculating a rebuttable presumption payback period for the considered standard levels, DOE used discrete values rather than distributions for input values, and, as required by EPCA, based the energy use calculation on the DOE test procedures for the considered products. As a result, DOE calculated a single rebuttable presumption payback value, and not a distribution of payback periods, for each efficiency level. Table V–17 and Table V–18 present the average rebuttable presumption payback periods for those efficiency levels where the increased

purchase cost for a product that meets a standard at that level is less than three times the value of the first-year energy savings resulting from the standard.

TABLE V–17—CLOTHES DRYERS: EFFICIENCY LEVELS WITH REBUTTABLE PAYBACK PERIOD LESS THAN THREE YEARS

Product class	CEF	PBP *(years)*
Electric standard	3.61	0.95
Electric compact 120V	3.48	2.49
	3.61	0.86
Electric compact 240V	3.16	2.57
	3.27	0.85
Gas	3.20	1.81
Ventless compact 240V	2.59	2.33
	2.69	0.83
Ventless combination washer/dryers	2.46	0.42
	2.46	0.68
	2.46	0.74

TABLE V–18—ROOM AIR CONDITIONERS: EFFICIENCY LEVELS WITH REBUTTABLE PAYBACK PERIOD LESS THAN THREE YEARS

Product class	CEER	PBP *(years)*
Room Air Conditioners (8000–13,999 Btu/h), with Louvers	10.2	1.1
	10.7	1.6
	10.9	1.8
Room Air Conditioners (20,000–24,999 Btu/h), with Louvers	9.0	0.9
	9.4	1.1
	9.8	1.9
Room Air Conditioners (> 25,000 Btu/h), with Louvers	9.0	2.1
	9.4	2.4
Room Air Conditioners (8000–10,999 Btu/h), without Louvers	9.3	0.6
	9.6	0.7
	10.0	1.3
Room Air Conditioners (> 11,000 Btu/h), without Louvers	9.3	1.3
	9.5	1.4
	9.8	1.9

While DOE examined the rebuttable-presumption criterion, it considered whether the standard levels considered for today's rule are economically justified through a more detailed analysis of the economic impacts of these levels pursuant to 42 U.S.C. 6295(o)(2)(B)(i). The results of this analysis serve as the basis for DOE to definitively evaluate the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification).

2. Economic Impacts on Manufacturers

DOE performed an MIA to estimate the impact of amended energy conservation standards on manufacturers of clothes dryers and room air conditioners. The section below describes the expected impacts on manufacturers at each TSL. Chapter 12 of the direct final rule TSD explains the analysis in further detail.

a. Industry Cash Flow Analysis Results

The tables below depict the financial impacts on manufacturers (represented by changes in INPV) and the conversion costs DOE estimates manufacturers would incur at each TSL. Each set of results below shows two tables of INPV impacts: The first table reflects the lower (less severe) bound of impacts and the second represents the upper bound. To evaluate this range of cash-flow impacts on each industry, DOE modeled two different scenarios using different markup assumptions. These assumptions correspond to the bounds of a range of market responses that DOE anticipates could occur in the standards case. Each scenario results in a unique set of cash flows and corresponding industry value at each TSL.

The INPV results refer to the difference in industry value between the base case and the standards case, which DOE calculated by summing the discounted industry cash flows from the base year (2011) through the end of the analysis period. The discussion also notes the difference in cash flow between the base case and the standards case in the year before the compliance date of potential amended energy conservation standards. This figure provides a proxy for the magnitude of the required conversion costs, relative to the cash flow generated by the industry in the base case.

Cash Flow Analysis Results for Clothes Dryers

To assess the lower (less severe) end of the range of potential impacts on the residential clothes dryer industry, DOE modeled the flat markup scenario. The flat markup scenario assumes that in the standards case manufacturers would be able to pass the higher productions costs required for more efficient products on to their customers. Specifically, the industry would be able to maintain its average base-case gross margin, as a percentage of revenue, despite higher product costs. In general, the larger the product price increases, the less likely manufacturers are to achieve the cash flow from operations calculated in this scenario because the less likely it is that

manufacturers would be able to fully markup these larger cost increases.

To assess the higher (more severe) end of the range of potential impacts on the residential clothes dryer industry, DOE modeled the preservation of operating profit markup scenario. The scenario represents the upper end of the range of potential impacts on manufacturers because no additional operating profit is earned on the higher production costs, eroding profit margins as a percentage of total revenue.

DOE used the main NIA shipment scenario for the both the lower- and higher-bound MIA scenarios that were used to characterize the potential INPV impacts. The shipment forecast is an important driver of the INPV results below (Table V–19 and Table V–20). The main NIA shipment scenario includes a price elasticity effect, meaning higher prices in the standards case result in lower shipments. Lower shipments also reduce industry revenue, and, in turn, INPV.

TABLE V–19—MANUFACTURER IMPACT ANALYSIS FOR CLOTHES DRYERS—FLAT MARKUP SCENARIO

	Units	Base case	Trial standard level					
			1	2	3	4	5	6
INPV	*2009$ millions*	1,003.6	1,001.1	1,000.0	962.5	939.2	827.1	699.7
Change in INPV	*2009$ millions*		−2.6	−3.6	−41.13	−64.46	−176.5	−303.9
	%		−0.3%	−0.4%	−4.1%	−6.4%	−17.6%	−30.3%
Product Conversion Costs	*2009$ millions*		4	5	18	24	166	383
Capital Conversion Costs	*2009$ millions*		0	2	48	71	328	536
Total Conversion Costs	*2009$ millions*		4	7	66	95	494	919

TABLE V–20—MANUFACTURER IMPACT ANALYSIS FOR CLOTHES DRYERS—PRESERVATION OF OPERATING PROFIT MARKUP SCENARIO

	Units	Base case	Trial standard level					
			1	2	3	4	5	6
INPV	*2009$ millions*	1,003.6	1,001.0	998.7	948.2	923.0	606.2	273.6
Change in INPV	*2009$ millions*		−2.6	−4	−55.46	−80.63	−397.4	−730.0
	%		−0.3%	−0.5%	−5.5%	−8.0%	−39.6%	−72.7%
Product Conversion Costs	*2009$ millions*		4	5	18	24	166	383
Capital Conversion Costs	*2009$ millions*		0	2	48	71	328	536
Total Conversion Costs	*2009$ millions*		4	7	66	95	494	919

TSL 1 represents the baseline CEF for 120V electric compact clothes dryers (product class 2), 240V electric compact clothes dryers (product class 3), 240V compact ventless clothes dryers (product class 5), and electric combination ventless clothes dryers (product class 6). TSL 1 represents a CEF of 3.56 for standard-size vented electric clothes dryers (product class 1) and a CEF of 3.16 for gas vented clothes dryers (product class 4). At TSL 1, DOE estimates impacts on INPV to range −$2.55 million to −$2.62 million, or a change in INPV of −0.3 percent. At this proposed level, industry free cash flow is estimated to decrease by approximately 1.6 percent to $68.6 million, compared to the base-case value of $69.7 million in the year leading up to the proposed energy conservation standards.

The design options DOE analyzed for product class 1 and 4 include lowering standby power consumption only. Standby power changes would result in only minor changes to baseline products and would take a minimal effort by manufacturers to comply with the amended energy conservation standards. The standby power changes at TSL 1 would require relatively small product development efforts to reach the CEF levels and would not change the assembly of currently products, greatly limiting the necessary capital conversion costs. In addition, the design options for standby power do not add significant costs to existing products. Therefore, the impact on manufacturers is very small at TSL 1.

TSL 2 represents a CEF of 3.61 for product class 1, a CEF of 3.61 for product class 2, a CEF of 3.27 for product class 3, a CEF of 3.20 for product class 4, a CEF of 2.69 for product class 5, and a CEF of 2.56 for product class 6. At TSL 2, DOE estimates impacts on INPV to range −$3.6 million to −$4.9 million, or a change in INPV of −0.4 percent to −0.5 percent. At this proposed level, industry free cash flow is estimated to decrease by approximately 3.0 percent to $67.6 million, compared to the base-case value of $69.7 million in the year leading up to the proposed energy conservation standards.

The design options analyzed at TSL 2 for product classes 1 through 5 represent improvements to standby power consumption only. The changes required at TSL 2 would not greatly alter baseline products for these product classes because these analyzed design options are small component changes for standby power for product classes 1 through 5. The design options analyzed for product class 6 include changes to active mode power consumption. However, these active mode changes for product class 6 are also relatively minor and would take a minimal effort by manufacturers to comply with the amended energy conservation standards. For product class 6, the analyzed design option for active mode is automatic cycle termination technology which adds very little cost to the product and takes minimal capital and product conversion costs to implement. Because the changes for product class 1 through 5 only include standby power changes and the active mode changes for product class 6 are minor, the impact on manufacturers is very small at TSL 2.

The efficiency requirements for product classes 2 to 6 are the same at TSL 3 as at TSL 2. TSL 3, however, represents a further improvement to a CEF of 3.73 for product class 1. At TSL 3, DOE estimates impacts on INPV to range from −$41.1 million to −$55.5 million, or a change in INPV of −4.1 percent to −5.5 percent. At this proposed level, industry free cash flow is estimated to decrease by approximately 34.2 percent to $45.9

million, compared to the base-case value of $69.7 million in the year leading up to the proposed energy conservation standards.

The design options DOE analyzed for product class 1 include improvements to standby and active power consumption (airflow improvements, a dedicated heater duct, and an open cylinder drum). While the actual design path taken by manufacturers could vary at TSL 3, these technologies represent incremental improvements and are well known in the industry. The changes for design options analyzed for product class 1 would require both changes to production equipment and product development costs. These design options would not greatly alter the production process for product class 1 and could be made within most existing products. The conversion costs to implement these changes are also relatively low compared to the total value of the industry. The industry impacts would increase at TSL 3, however, because for product class 1, manufacturers would have to make changes for a large volume of the common standard-size electric models.

TSL 4 represents the baseline efficiency for product classes 5 and 6. TSL 4 also represents the same efficiency requirements for product classes 2 and 3 as TSL 2 and TSL 3. TSL 4 also has the same efficiency requirements for product class 1 as TSL 3, but represents a 3.30 CEF for product class 4. At TSL 4, DOE estimates impacts on INPV to range −$64.5 million to −$80.6 million, or a change in INPV of −6.4 percent to −8.0 percent. At this proposed level, industry free cash flow is estimated to decrease by approximately 49.8 percent to $35.0 million, compared to the base-case value of $69.7 million in the year leading up to the proposed energy conservation standards.

The impacts at TSL 4 are due primarily to the efficiency requirements for product classes 1 and 4 because all other product classes are at baseline efficiency or could be met with changes to standby power consumption. For both product classes 1 and 4, DOE analyzed changes to standby power consumption and the same improvements to active mode power consumption for both gas and electric units (airflow improvements, a dedicated heater duct, and an open cylinder drum). As with TSL 3, while the actual design path taken by manufacturers could vary at TSL 4, these technologies represent incremental improvements to most products and are well known in the industry. Industry impacts would increase at TSL 4, however, because for both product classes 1 and 4, the changes would require improvements in the most common standard-size gas and electric products on the market today. The changes for design options analyzed for product class 1 and 4 would require both changes to production equipment and product development costs. These design options would not greatly alter the production processes for either product class and could be made within most existing products. The conversion costs to implement these changes for both product class 1 and 4 are still relatively low compared to the total value of the industry.

TSL 5 represents a CEF of 4.08 for product class 1, a CEF of 4.08 for product class 2, a CEF of 3.60 for product class 3, a CEF of 3.61 for product class 4, a CEF of 2.80 for product class 5, and a CEF of 2.56 for product class 6. At TSL 5, DOE estimates impacts on INPV to range −$176.5 million to −$397.4 million, or a change in INPV of −17.6 percent to −39.6 percent. At this proposed level, industry free cash flow is estimated to decrease by approximately 249.7 percent to −$104.4 million, compared to the base-case value of $69.7 million in the year leading up to the proposed energy conservation standards.

Most of the impacts on INPV at TSL 5 are due to the efficiency requirements for product classes 1 through 4. Very few products on the market today meet the efficiency requirements at TSL 5, and for product classes 1 through 4, TSL 5 represents the most efficient units currently on the market. The design options DOE analyzed for these product classes included similar design options for all product classes as for product classes 1 and 4 at TSL 4 (airflow improvements, a dedicated heater duct, and an open cylinder drum) plus additional changes. In addition to airflow improvements, a dedicated heater duct, and an open cylinder drum, the design options analyzed by DOE also include modulating heat, inlet air preheating, and a more efficient fan motor. Out of all these design options used the reach the required efficiencies at TSL 5, inlet air preheating would require the most substantial changes to existing products because it would change the ducting system. This change would impact drum stamping equipment and, possibly, the fabrication of the cabinets for some product lines. The impacts also increase dramatically at TSL 5 due to the large increase in production costs for the additional design options beyond those needed to reach the required efficiencies at TSL 4. The large incremental costs result in lower shipments due to the price elasticity. These additional costs also cause a greater impact on INPV if manufactures are unable to earn additional profit on these added costs (under the preservation of operating profit markup scenario).

TSL 6 represents the max-tech level for all product classes. The max-tech level corresponds to a CEF of 5.42 for product class 1, a CEF of 5.41 for product class 2, a CEF of 4.89 for product class 3, a CEF of 3.61 for product class 4, a CEF of 4.03 for product class 5, and a CEF of 3.69 for product class 6. At TSL 6, DOE estimates impacts on INPV to range −$303.9 million to −$730.0 million, or a change in INPV of −30.3 percent to −72.7 percent. At this proposed level, industry free cash flow is estimated to decrease by approximately 467.5 percent to −$256.2 million, compared to the base-case value of $69.7 million in the year leading up to the proposed energy conservation standards.

At TSL 6, the efficiency requirements for all electric clothes dryers would effectively require a heat pump clothes dryer. Currently, there are no heat pump clothes dryers on the market in the United States. Manufacturing exclusively heat pump clothes dryers would be extremely disruptive to existing manufacturing facilities. A heat pump standard would require a total renovation of existing facilities and would force the industry to design completely new clothes dryer platforms. The capital conversion costs for these changes are extremely large—more than double the capital conversion costs calculated for these products to meet TSL 5. The product development costs to manufacturer heat pump clothes dryers also increase substantially because manufacturers must not only redesign clothes washer platforms, but also design the heat pump system. Manufacturers also indicated that training their service and installation network to use a completely different technology would be extremely costly, as would the cost to educate consumers. Finally, the impacts on INPV are also great at TSL 6 because the cost of a heat pump clothes dryer is more than double a minimally compliant clothes dryer in the market today. If manufactures are unable to earn additional profit on these production costs, profitability is severely impacted.

Cash Flow Analysis Results for Room Air Conditioners

To assess the lower (less severe) end of the range of potential impacts on the room air conditioner industry, DOE modeled the flat markup scenario. The

flat markup scenario assumes that in the standards case manufacturers would be able to pass the higher productions costs required for more efficient products on to their customers. Specifically, the industry would be able to maintain its average base-case gross margin, as a percentage of revenue, despite higher product costs. In general, the larger the product price increases, the less likely manufacturers are to achieve the cash flow from operations calculated in this scenario because the less likely it is that manufacturers would be able to fully markup these larger cost increases.

To assess the higher (more severe) end of the range of potential impacts on the room air conditioner industry, DOE modeled the preservation of operating profit markup scenario. Through its discussion with manufacturers, DOE found that manufacturers are faced with significant market pressure to keep prices low. Consumers are accustomed to certain price points for room air conditioners, and they could forgo their purchases if prices increased significantly because many purchases are weather-dependent impulse buys. As a result, several key retailers exert their purchasing power to pressure manufacturers to offer product lines at low prices. Higher efficiency units that earn a premium in the base case are bundled with additional features that drive higher prices. Thus, manufacturers are skeptical that customers would accept higher prices for increased energy efficiency because it does not command higher margins in the current market. Under such a scenario, it follows that the large retailers that compose the relatively concentrated customer base of the industry would not accept manufacturers fully passing through the additional cost of improved efficiency because consumers would be wary of higher prices. Therefore, to assess the higher (more severe) end of the range of potential impacts, DOE modeled the preservation of operating profit markup scenario in which higher energy conservation standards result in lower manufacturer markups. This markup is applied to both the minimum standard level and the de facto minimally efficient products due to the modeled efficiency migration over time. This scenario models manufacturers' concerns that the higher costs of more efficient technology would harm profitability if the full cost increases cannot be passed on. The scenario represents the upper end of the range of potential impacts on manufacturers because no additional operating profit is earned on the investments required to meet the proposed amended energy conservation standards, while higher production costs erode profit margins and result in lower cash flows from operations.

DOE used the main NIA shipment scenario for the both the lower- and higher-bound MIA scenarios that were used to characterize the potential INPV impacts. The shipment forecast is an important driver of the INPV results below (Table V–21 and Table V–22). The main NIA shipment scenario includes a price elasticity effect, meaning higher prices in the standards case result in lower shipments. Lower shipments also reduce industry revenue, and, in turn, INPV.

TABLE V–21—MANUFACTURER IMPACT ANALYSIS FOR ROOM AIR CONDITIONERS—FLAT MARKUP SCENARIO

	Units	Base case	Trial standard level					
			1	2	3	4	5	6
INPV	*2009$ millions*	956.0 ..	911.8	890.6	890.3	844.7	869.5	875.9
Change in INPV	*2009$ millions*	.....	(44.2)	(65.4)	(65.7)	(111.3)	(86.6)	(80.2)
	%	.....	−4.6%	−6.8%	−6.9%	−11.6%	−9.1%	−8.4%
Product Conversion Costs	*2009$ millions*	.....	22	29	41	61	74	117
Capital Conversion Costs	*2009$ millions*	.....	46	69	61	109	101	193
Total Conversion Costs	*2009$ millions*	.....	68	98	102	171	176	310

TABLE V–22—MANUFACTURER IMPACT ANALYSIS FOR ROOM AIR CONDITIONERS—PRESERVATION OF OPERATING PROFIT MARKUP SCENARIO

	Units	Base case	Trial standard level					
			1	2	3	4	5	6
INPV	*2009$ millions*	956.0 ..	871.1	843.3	843.6	778.4	771.6	611.5
Change in INPV	*2009$ millions*	.....	(84.9)	(112.7)	(112.4)	(177.6)	(184.4)	(344.5)
	%	.....	−8.9%	−11.8%	−11.8%	−18.6%	−19.3%	−36.0%
Product Conversion Costs	*2009$ millions*	.....	22	29	41	61	74	117
Capital Conversion Costs	*2009$ millions*	.....	46	69	61	109	101	193
Total Conversion Costs	*2009$ millions*	.....	68	98	102	171	176	310

TSL 1 represents a CEER of 9.30 for product class 8A (without reverse cycle and without louvered sides—8,000 to 10,999 Btu/h) and product class 8B (without reverse cycle and without louvered sides—11,000 to 13,999 Btu/h); 9.40 for product class 5A (without reverse cycle and with louvered sides—20,000 to 24,999 Btu/h) and product class 5B (without reverse cycle and with louvered sides—25,000 Btu/h and more); 10.10 for product class 1 (without reverse cycle and with louvered sides—less than 6,000 Btu/h); and 10.70 for product class 3 (without reverse cycle and with louvered sides—8,000 to 13,999 Btu/h). At TSL 1, DOE estimates impacts on INPV to range from −$44.2 million to −$84.9 million, or a change in INPV of −4.6 percent to −8.9 percent. At this proposed level, industry free cash flow is estimated to decrease by approximately 27.7 percent to $62.4 million, compared to the base-case value of $86.3 million in the year leading up to the proposed energy conservation standards.

The INPV impacts at TSL 1 are relatively minor, in part because the vast majority of manufacturers produce

units that exceed this level (such as, ENERGY STAR and other high efficiency units) in significant volumes. Approximately 60 percent of product class 3 shipments, 85 percent of product class 5A and 5B shipments, and 90 percent of product class 8A and 8B shipments currently meet this TSL. By contrast, the vast majority of product class 1 shipments are baseline units. Although most of the design options DOE analyzed at this proposed level are one-for-one component swaps, some more complex design options that would be required at TSL 1 necessitate more substantial changes. These design options that have a significant impact on conversion costs at TSL 1 are heat exchanger changes and increased chassis volumes. Changes to the condenser or evaporator require machinery for new dies for every product line and require greater design effort than component swaps. Increased chassis volumes require a complete redesign of the product and substantial tooling to make the unit larger. Although some room air conditioners, particularly those in product class 1, will require these changes at TSL 1, these changes would not be required across the entire industry because the majority of units in most product classes already meet TSL 1. As such, DOE estimated total product conversion costs of $22 million and capital conversion costs of $46 million, which is relatively low compared to the industry value of $956 million.

The efficiency requirements for product class 3, product class 5A, product class 5B, product class 8A, and product class 8B are the same at TSL 2 as TSL 1. Thus, the only change from TSL 1 occurs for product class 1, which requires a CEER of 10.60 at TSL 2. DOE estimates the INPV impacts at TSL 2 range from −$65.4 million to −$112.7 million, or a change in INPV of −6.8 percent to −11.8 percent. At this proposed level, the industry cash flow is estimated to decrease by approximately 40.5 percent to $51.4 million, compared to the base-case value of $86.3 million in the year leading up to the proposed energy conservation standard.

The additional impacts at TSL 2 relative to TSL 1 result from the further improvements manufacturers must make to meet a CEER of 10.6 for product class 1. Most units in product class 1 would need to increase their chassis size even further than at TSL 1 in order to meet TSL 2, resulting in estimated product and capital conversion costs of $29 million and $69 million, respectively.

TSL 3 represents different efficiency levels for every product class compared to TSL 2. TSL 3 represents the baseline CEERs of 8.47 and 8.48 for product classes 5A and 5B, respectively, meaning that no amended standards would be set and no impacts on INPV would occur. TSL 3 represents a CEER of 9.50 for product class 8B, 9.60 for product class 8A, 10.10 for product class 1, and 10.90 for product class 3. DOE estimates the INPV impacts at TSL 3 to range from −$65.7 million to −$112.4 million, or a change in INPV of −6.9 percent to −11.8 percent. At this proposed level, the industry cash flow is estimated to decrease by approximately 40.5 percent to $51.4 million, compared to the base-case value of $86.3 million in the year leading up to the standards.

At TSL 3, several product classes require design options that increase conversion costs. For product class 1, some units would require increased chassis volumes, though not as substantially as at TSL 2. For product class 3, all smaller units would require chassis changes, driving the majority of the conversion costs at TSL 3. For product classes 8A and 8B, some changes to the heat exchangers would be required. However, no conversion costs would be applied to product classes 5A and 5B, resulting in total product and capital conversion costs at TSL 3 of $41 million and $61 million, respectively.

TSL 4 represents the same efficiency requirements as TSL 3 for product classes 3, 8A, and 8B. For product class 5B, TSL 4 represents a CEER of 9.00. For product class 5A, TSL 4 represents a CEER of 9.40, and for product class 1, TSL 4 represents a CEER of 11.10. DOE estimates the INPV impacts at TSL 4 to range from −$111.3 million to −$177.6 million, or a change in INPV of −11.6 percent to −18.6 percent. At this proposed level, the industry cash flow is estimated to decrease by approximately 69.1 percent to $26.7 million, compared to the base-case value of $86.3 million in the year leading up to the proposed energy conservation standards.

At TSL 4, significant changes to the manufacturing process would be required. Product classes 1, 5A, and 5B would all require increased chassis volumes, and product classes 1 and 5A would also require heat exchanger changes. These design options drive increases of $20 million in product conversion costs and $48 million in capital conversion costs compared to TSL 3.

TSL 5 represents the same efficiency requirements as TSL 4 for product classes 1 and 8B. For product classes 5A and 5B, TSL 5 represents the baseline CEERs of 8.47 and 8.48, respectively, so all impacts of TSL 4 on these product classes, such as chassis changes, would not be required. For product class 8A, TSL 5 represents a CEER of 10.00, and for product class 3, TSL 5 represents a CEER of 11.50. DOE estimates the INPV impacts at TSL 5 to range from −$86.6 million to −$184.4 million, or a change in INPV of −9.1 percent to −19.3 percent. At this proposed level, the industry cash flow is estimated to decrease by approximately 69.3 percent to $26.5 million, compared to the base-case value of $86.3 million in the year leading up to the proposed energy conservation standards.

At TSL 5, impacts are negative under both scenarios due to the high conversion costs that exist at TSL 5. Although capital conversion costs would be $8 million lower at TSL 5 than at TSL 4 due to the removal of any capital costs associated with product classes 5A and 5B (despite higher capital costs for product class 3), product conversion costs are $13 million higher at TSL 5 compared to TSL 4 because a greater number of product lines would need to be redesigned at this level.

TSL 6 represents max-tech for all room air conditioners. The max-tech level corresponds to CEERs of 9.80, 10.02, 10.15, 10.35, 11.67, and 11.96 for product classes 5B, 8B, 5A, 8A, 1, and 3, respectively. DOE estimates the INPV impacts at TSL 6 to range from −$80.2 million to −$344.5 million, or a change in INPV of −8.4 percent to −36.0 percent. At this proposed level, the industry cash flow is estimated to decrease by 124.8 percent to −$21.4 million, compared to the base-case value of $86.3 million in the year leading up to the proposed energy conservation standards.

At TSL 6, all products would need to be fully redesigned, resulting in large product and capital conversion costs of $117 million and $193 million, respectively. These conversion costs are mostly driven by the high-volume product classes 1 and 3 and their associated chassis and heat exchanger changes.

b. Impacts on Employment

Clothes Dryer Employment Impacts

For clothes dryers, DOE used the GRIM to estimate the domestic labor expenditures and number of domestic production workers in the base case and at each TSL from 2011 to 2043. DOE used statistical data from the most recent U.S. Census Bureau's 2008

"Annual Survey of Manufacturers," the results of the engineering analysis, and interviews with manufacturers to determine the inputs necessary to calculate industry-wide labor expenditures and domestic employment levels. Labor expenditures for the manufacture of a product are a function of the labor intensity of the product, the sales volume, and an assumption that wages in real terms remain constant.

In the GRIM, DOE used the labor content of each product and the manufacturing production costs from the engineering analysis to estimate the annual labor expenditures in the clothes dryers and room air conditioner industries. DOE used Census data and interviews with manufacturers to estimate the portion of the total labor expenditures that is attributable to domestic labor.

The production worker estimates in this section only cover workers up to the line-supervisor level who are directly involved in fabricating and assembling a product within an Original Equipment Manufacturer (OEM) facility. Workers performing services that are closely associated with production operations, such as material handing with a forklift, are also included as production labor. DOE's estimates account only for production workers who manufacture the specific products covered by this rulemaking.

The employment impacts shown in Table V–23 represent the potential production employment that could result following amended energy conservation standards. The upper end of the results in this table estimates the total potential increase in the number of production workers after amended energy conservation standards. To calculate the total potential increase, DOE assumed that manufacturers continue to produce the same scope of covered products in domestic production facilities and domestic production is not shifted to lower-labor-cost countries. Because there is a real risk of manufacturers evaluating sourcing decisions in response to amended energy conservation standards, the lower end of the range of employment results in Table V–23 includes the estimated total number of U.S. production workers in the industry who could lose their jobs if all existing production were moved outside of the United States. While the results present a range of employment impacts following the compliance date of amended energy conservation standards, the discussion below also includes a qualitative discussion of the likelihood of negative employment impacts at the various TSLs. Finally, the employment impacts shown are independent of the employment impacts from the broader U.S. economy, which are documented in chapter 13 of the direct final rule TSD.

Using the GRIM, DOE estimates that in the absence of amended energy conservation standards, there would be 4,426 domestic production workers involved in manufacturing residential clothes dryers in 2014. Using 2008 Census Bureau data and interviews with manufacturers, DOE estimates that approximately three-quarters of clothes dryers sold in the United States are manufactured domestically. Table V–23 shows the range of the impacts of potential amended energy conservation standards on U.S. production workers in the clothes dryer industry.

TABLE V–23—POTENTIAL CHANGES IN THE TOTAL NUMBER OF DOMESTIC CLOTHES DRYER PRODUCTION WORKERS IN 2014

	Base case	1	2	3	4	5	6
Total Number of Domestic Production Workers in 2014 (without changes in production locations)	3,962	3,962	3,965	4,370	4,420	5,040	6,218
Potential Changes in Domestic Production Workers in 2014 *	.....	0–(3,962)	3–(3,962)	408–(3,962)	458–(3,962)	1,078–(3,962)	2,256–(3,962)

* DOE presents a range of potential employment impacts. Numbers in parentheses indicate negative numbers.

All examined TSLs show relatively minor impacts on domestic employment levels at the lower end of the range. In particular, the design options used in the engineering analysis for TSL 1 and TSL 2 almost exclusively involve changes to standby power. These TSLs would not measurably impact domestic employment levels.

At TSL 3 through TSL 5, DOE analyzed design options for the most common product classes that would add labor content to the final product. If manufacturers continue to produce these more complex products in house, it is likely that employment would increase in response to the energy conservation standards. At TSL 3 through 5, greater levels of domestic production employment are also likely because, while requiring more labor, the product changes could be made within existing platforms. The ability to make product changes within existing platforms mitigates some of the pressure to find lower labor costs because this decision would add disruptions with suppliers and add capital costs. However, TSL 6 would effectively require heat pump clothes dryers for all electric units. Manufacturers indicated that such a drastic change to existing products could force them to consider moving domestic production to countries with lower labor costs. Besides the large capital conversion costs, the much higher labor content in heat pump clothes dryers would also put pressure on manufacturers to consider a lower-labor-cost country.

Room Air Conditioner Employment Impacts

DOE's research suggests that currently no room air conditioners are made domestically. All manufacturers or their domestic distributors do maintain offices in the United States to handle design, technical support, training, certification, and other requirements. As amended energy conservation standards for room air conditioners are implemented, however, DOE does not anticipate any changes in domestic employment levels.

c. Impacts on Manufacturing Capacity

Clothes Dryers

At TSL 1 through TSL 5, manufacturers could maintain capacity levels and continue to meet market demand under amended energy conservation standards. While the changes required at these TSLs would require changes that could be made within most existing designs, TSL 6, which would effectively require heat pump technology, could result in short-term capacity constraints. Significant changes to production facilities would be required if amended energy conservation standards effectively

mandated heat pump clothes dryers at TSL 6. Several manufacturers stated that they could move all or part of their production if they were required to exclusively manufacture heat pump clothes dryers. Because of these drastic changes, a 3-year time period between the announcement of the final rule and the compliance date of the amended energy conservation standard might not be sufficient to design and manufacture products that have yet to be introduced in the United States and which would require new dryer designs from each manufacturer that continued to offer electric clothes dryers for the United States market.

Room Air Conditioners

DOE anticipates that amended energy conservation standards would not significantly affect the production capacity of room air conditioner manufacturers. Manufacturers mentioned two issues that could potentially constrain capacity. One is the availability of high efficiency compressors, which are currently difficult to obtain. Because amended energy conservation standards would cause the demand for high efficiency compressors to increase, manufacturers worried that they would not be able to obtain the quantities they need to maintain desired production levels. DOE understands that compressor availability is a concern at present. DOE does not believe this shortage will continue when amended standards take effect in 2014 because the number of R–410A compressors available for the room air conditioner industry has already greatly expanded since the ban on R–22 took effect. Because there is a 3-year delay between the announcement of the final rule and the compliance date of the amended energy conservation standard, DOE believes suppliers will have sufficient time to anticipate demand and ramp up production of high efficiency compressors for room air conditioners.

The second potential capacity constraint involves changes to existing chassis sizes, which could be required by amended energy conservation standards. Manufacturers stated that increasing chassis volume requires significant product development and capital investments, which could severely disrupt production at their facilities. DOE understands that increasing chassis volume causes substantial conversion costs, which are quantified in the GRIM. DOE does not believe, however, that the proposed standards would significantly affect production capacity. Even though chassis size increases require large capital and product conversion costs, this design option is not required across all analyzed product classes. In addition, manufacturers were more concerned about the capital and product conversion costs to make these changes than having a three year implementation period to do so, and DOE has accounted for these costs in the establishment of the room air conditioner standards. DOE believes that room air conditioner manufacturers will be able to increase chassis volumes by 2014 while maintaining production capacity levels and continuing to meet market demand for all room air conditioner standard levels.

d. Impacts on Sub-Groups of Manufacturers

Using average cost assumptions to develop an industry cash-flow estimate is not adequate for assessing differential impacts among manufacturer subgroups. Small manufacturers, niche equipment manufacturers, and manufacturers exhibiting a cost structure substantially different from the industry average could be affected disproportionately. While DOE analyzed the impacts to small business in section VI.B, DOE did not identify any other subgroups for clothes dryers or room air conditioners for this rulemaking based on the results of the industry characterization.

e. Cumulative Regulatory Burden

While any one regulation may not impose a significant burden on manufacturers, the combined effects of several impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. In addition to energy conservation standards, other regulations can significantly affect manufacturers' financial operations. Multiple regulations affecting the same manufacturer can strain profits and can lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part of its rulemakings pertaining to appliance efficiency.

During previous stages of this rulemaking DOE identified a number of requirements, in addition to amended energy conservation standards for clothes dryers and room air conditioners, with which manufacturers of these products will be required to comply. Manufacturers provided comment on some of these regulations during the preliminary analysis period, including UL 2158, which deals with fire containment in electric clothes dryers, and the Montreal Protocol, which banned R–22 refrigerant in new room air conditioners. DOE summarizes and addresses these comments in section IV.I.3.b and provides additional details of the cumulative regulatory burden analysis in chapter 12 of the direct final rule TSD.

3. National Impact Analysis

a. Significance of Energy Savings

To estimate the energy savings through 2043 attributable to potential standards for clothes dryers and room air conditioners, DOE compared the energy consumption of these products under the base case to their anticipated energy consumption under each TSL. As discussed in section IV.E, the results account for a rebound effect of 15 percent for room air conditioners (that is, 15 percent of the total savings from higher product efficiency are "taken back" by consumers through more intensive use of the product).

Table V–24 and Table V–25 present DOE's forecasts of the national energy savings for each TSL for clothes dryers and room air conditioners, respectively. The savings were calculated using the approach described in section IV.G. Chapter 10 of the direct final rule TSD presents tables that also show the magnitude of the energy savings if the savings are discounted at rates of 7 and 3 percent. Discounted energy savings represent a policy perspective in which energy savings realized farther in the future are less significant than energy savings realized in the nearer term.

TABLE V–24—CLOTHES DRYERS: CUMULATIVE NATIONAL ENERGY SAVINGS IN QUADS

Product class	Trial standard level					
	1	2	3	4	5	6
Vented Electric Standard	0.000	0.038	0.347	0.347	1.268	2.923
Vented Electric Compact 120V	0.000	0.000	0.000	0.000	0.002	0.003

TABLE V–24—CLOTHES DRYERS: CUMULATIVE NATIONAL ENERGY SAVINGS IN QUADS—Continued

Product class	Trial standard level					
	1	2	3	4	5	6
Vented Electric Compact 240V	0.000	0.001	0.001	0.001	0.006	0.016
Vented Gas	0.000	0.009	0.009	0.038	0.164	0.164
Ventless Electric Compact 240V	0.000	0.002	0.002	0.000	0.004	0.016
Ventless Electric Combination Washer/Dryer	0.000	0.011	0.011	0.000	0.011	0.023
Total	0.00	0.062	0.37	0.386	1.455	3.145

TABLE V–25—ROOM AIR CONDITIONERS: CUMULATIVE NATIONAL ENERGY SAVINGS IN QUADS

Product class	Trial standard level					
	1	2	3	4	5	6
Group 1—includes PC 1	0.046	0.083	0.046	0.133	0.133	0.171
Group 2—includes PC 2, 3, 4, 11	0.051	0.115	0.161	0.161	0.327	0.445
Group 3—includes PC 5A, 9, 13	0.001	0.001	0.000	0.001	0.000	0.008
Group 4—includes PC 5B, 10	0.000	0.000	0.000	0.000	0.000	0.003
Group 5—includes PC 6, 7, 8A, 12	0.004	0.004	0.006	0.006	0.014	0.021
Group 6—includes PC 8B, 14, 15, 16	0.002	0.002	0.004	0.004	0.004	0.016
Total	0.105	0.205	0.218	0.305	0.477	0.665

DOE also performed a sensitivity to investigate the impact of adding the rebound effect on the NES for the six energy efficiency TSLs for clothes dryers in appendix 10–C of the TSD. As described in more detail in the TSD, at least one study estimated a potential rebound effective of 5 percent for clothes dryers. The NES results for this sensitively show a consistent, small decrease in potential energy savings from a standard. (Refer to section IV.E for a discussion of the rebound effect.)

DOE recognizes that there may be forms of direct consumer rebound that have not been measured in previous studies. For example, if automatic termination of clothes dryer cycles leaves clothes feeling humid or damp, then consumers may change to longer timed drying cycles. DOE is addressing this type of rebound effect in updates of its clothes dryer test procedure which provides for a field use factor that relates tested clothes dryer energy use to in-field energy use. If DOE detects a significant rebound effect from changing characteristics of clothes dryers, DOE will consider such effects in updates of its test procedure regulations and in future amendments to the energy conservation standards, as appropriate.

b. Net Present Value of Consumer Costs and Benefits

DOE estimated the cumulative NPV to the nation of the total costs and savings for consumers that would result from particular standard levels for clothes dryers and room air conditioners. In accordance with the OMB's guidelines on regulatory analysis (OMB Circular A–4, section E, September 17, 2003), DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. The 7-percent rate is an estimate of the average before-tax rate of return to private capital in the U.S. economy, and reflects the returns to real estate and small business capital as well as corporate capital. DOE used this discount rate to approximate the opportunity cost of capital in the private sector, since recent OMB analysis has found the average rate of return to capital to be near this rate. In addition, DOE used the 3-percent rate to capture the potential effects of standards on private consumption (for example, through higher prices for products and the purchase of reduced amounts of energy). This rate represents the rate at which society discounts future consumption flows to their present value. This rate can be approximated by the real rate of return on long-term government debt (that is, yield on Treasury notes minus annual rate of change in the Consumer Price Index), which has averaged about 3 percent on a pre-tax basis for the last 30 years.

Table V–26 through Table V–29 show the consumer NPV results for each TSL DOE considered for clothes dryers and room air conditioners, using both a 7-percent and a 3-percent discount rate. In each case, the impacts cover the lifetime of products purchased in 2014–2043. See chapter 10 of the direct final rule TSD for more detailed NPV results.

TABLE V–26—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR CLOTHES DRYERS, 3-PERCENT DISCOUNT RATE

Product class	Trial standard level					
	1	2	3	4	5	6
	Billion 2009$					
Vented Electric Standard	0.00	0.40	2.779	2.779	2.125	0.563
Vented Electric Compact 120V	0.00	0.005	0.005	0.005	−0.013	−0.029
Vented Electric Compact 240V	0.00	0.014	0.014	0.014	−0.066	−0.12
Vented Gas	0.00	0.094	0.094	0.215	−1.906	−1.906
Ventless Electric Compact 240V	0.00	0.019	0.019	0.00	−0.010	−0.036

TABLE V–26—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR CLOTHES DRYERS, 3-PERCENT DISCOUNT RATE—Continued

Product class	Trial standard level					
	1	2	3	4	5	6
	Billion 2009$					
Ventless Electric Combination Washer/Dryer	0.00	0.086	0.086	0.00	0.086	0.00
Total	0.00	0.619	2.998	3.013	0.216	−1.528

TABLE V–27—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR CLOTHES DRYERS, 7-PERCENT DISCOUNT RATE

Product class	Trial standard level					
	1	2	3	4	5	6
	Billion 2009$					
Vented Electric Standard	0.00	0.168	1.017	1.017	−1.079	−5.025
Vented Electric Compact 120V	0.00	0.002	0.002	0.002	−0.011	−0.024
Vented Electric Compact 240V	0.00	0.006	0.006	0.006	−0.051	−0.101
Vented Gas	0.00	0.039	0.039	0.051	−1.474	−1.474
Ventless Electric Compact 240V	0.00	0.008	0.008	0.00	−0.013	−0.050
Ventless Electric Combination Washer/Dryer	0.00	0.031	0.031	0.00	0.031	−0.043
Total	0.00	0.254	1.104	1.076	−2.596	−6.716

TABLE V–28—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR ROOM AIR CONDITIONERS, 3-PERCENT DISCOUNT RATE

Product class	Trial standard level					
	1	2	3	4	5	6
	Billion 2009$					
Group 1—includes PC 1	0.276	0.362	0.276	0.245	0.245	−1.838
Group 2—includes PC 2, 3, 4, 11	0.427	0.902	1.162	1.162	1.121	−2.374
Group 3—includes PC 5A, 9, 13	−0.001	−0.003	0.00	−0.003	0.00	−0.481
Group 4—includes PC 5B, 10	−0.002	−0.008	0.00	−0.002	0.00	−0.229
Group 5—includes PC 6, 7, 8A, 12	0.036	0.036	0.049	0.049	0.066	−0.379
Group 6—includes PC 8B, 14, 15, 16	0.011	0.011	0.024	0.024	0.024	−0.314
Total	0.747	1.30	1.511	1.474	1.456	−5.616

TABLE V–29—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR ROOM AIR CONDITIONERS, 7-PERCENT DISCOUNT RATE

Product class	Trial standard level					
	1	2	3	4	5	6
	Billion 2009$					
Group 1—includes PC 1	0.117	0.12	0.117	−0.02	−0.02	−1.386
Group 2—includes PC 2, 3, 4, 11	0.21	0.438	0.558	0.558	0.307	−2.084
Group 3—includes PC 5A, 9, 13	−0.002	−0.003	0.00	−0.003	0.00	−0.317
Group 4—includes PC 5B, 10	−0.002	−0.006	0.00	−0.002	0.00	−0.169
Group 5—includes PC 6, 7, 8A, 12	0.019	0.019	0.025	0.025	0.029	−0.262
Group 6—includes PC 8B, 14, 15, 16	0.006	0.006	0.012	0.012	0.012	−0.223
Total	0.349	0.575	0.712	0.57	0.328	−4.441

DOE investigated the impact of different learning rates on the NPV for the six energy efficiency TSLs for room air conditioners and clothes dryers. The NPV results presented above in Table V.26 to Table V.29 are based on learning rates of 38.9% for room air conditioners and 41.6% for clothes dryers, both of which are referred to as the "default" learning rates. DOE considered three learning rate sensitivities: (1) A "high learning" rate; (2) a "low learning" rate;

and (3) a "no learning" rate. In addition, for clothes dryers there is a fourth sensitivity: "Clothes Dryers Only". The "high learning" rates are 41.4-percent for room air conditioners and 42.9-percent for clothes dryers. The "low learning' rates are 31.0-percent for room air conditioners and 33.9-percent for clothes dryers. The "no learning" rate sensitivity, which is zero-percent for all products, assumes constant real prices over the entire forecast period. For clothes dryers, "clothes dryers only" is based on limited set of historical price data specifically for clothes dryers and the learning rate is 52.2-percent. Refer to section IV.F.1 for details on the development of the above learning rates.

For room air conditioners, Table V.31 provides the annualized NPV of consumer benefits at a 7-percent discount rate for each of the six energy efficiency TSLs for the "default" learning rate and the three sensitivity cases. Table V.32 provides the same annualized NPVs but at a 3-percent discount rate. For clothes dryers, Table V.33 provides the annualized NPV of consumer benefits at a 7-percent discount rate for each of the six energy efficiency TSLs for the "default" learning rate and the four sensitivity cases. Table V.34 provides the same annualized NPVs but at a 3-percent discount rate. Included as part of the annualized NPV in Table V.31 through Table V.34 is the annualized present value of monetized benefits from CO_2 and NO_X emissions reductions. Section V.B.6 below provides a complete description and summary of the monetized benefits from CO_2 and NO_X emissions reductions. For details on the development of the learning rate sensitivities and the corresponding NPV results, see appendix 10–C of the final rule TSD.

TABLE V–30—ROOM AIR CONDITIONERS: ANNUALIZED NET PRESENT VALUE OF CONSUMER BENEFITS INCLUDING ANNUALIZED PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS FOR ENERGY EFFICIENCY TSLS FOR PRODUCTS SHIPPED IN 2014–2043

[3 Percent discount rate]

Trial standard level	Learning rate (LR)			
	Default: LR_{RoomAC} = 38.9%	Low sensitivity: LR_{RoomAC} = 31.0%	High sensitivity: LR_{RoomAC} = 41.4%	No learning: LR = 0% (constant real prices)
	Billion 2009$			
1	0.079	0.075	0.081	0.059
2	0.080	0.076	0.082	0.061
3	0.092	0.088	0.093	0.072
4	0.096	0.088	0.098	0.061
5	0.106	0.091	0.111	0.037
6	(0.241)	(0.289)	(0.226)	(0.463)

Parentheses indicate negative (−) values.

TABLE V–31—ROOM AIR CONDITIONERS: ANNUALIZED NET PRESENT VALUE OF CONSUMER BENEFITS INCLUDING ANNUALIZED PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS FOR ENERGY EFFICIENCY TSLS FOR PRODUCTS SHIPPED IN 2014–2043

[7 Percent discount rate]

Trial standard level	Learning rate (LR)			
	Default: LR_{RoomAC} = 38.9%	Low sensitivity: LR_{RoomAC} = 31.0%	High sensitivity: LR_{RoomAC} = 41.4%	No learning: LR = 0% (constant real prices)
	Billion 2009$			
1	0.059	0.055	0.060	0.041
2	0.060	0.057	0.061	0.043
3	0.072	0.068	0.073	0.056
4	0.066	0.060	0.069	0.037
5	0.058	0.045	0.062	(0.000)
6	(0.313)	(0.355)	(0.300)	(0.502)

Parentheses indicate negative (−) values.

TABLE V–32—CLOTHES DRYER: ANNUALIZED NET PRESENT VALUE OF CONSUMER BENEFITS INCLUDING ANNUALIZED PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS FOR ENERGY EFFICIENCY TSLS FOR PRODUCTS SHIPPED IN 2014–2043

[3 Percent discount rate]

Trial standard level	Learning rate (LR)				
	Default: LR_{CD} = 41.6%	Low sensitivity: LR_{CD} = 33.9%	High sensitivity: LR_{CD} = 42.9%	No learning: LR = 0% (constant real prices)	Sensitivity (Clothes dryers only): LR = 52.2%
	Billion 2009$				
1	0.001	0.001	0.001	0.001	0.001
2	0.036	0.036	0.036	0.035	0.036
3	0.178	0.173	0.179	0.158	0.183
4	0.180	0.175	0.181	0.156	0.186
5	0.110	0.033	0.121	(0.220)	0.199
6	0.185	0.018	0.209	(0.531)	0.378

Parentheses indicate negative (−) values.

TABLE V–33—CLOTHES DRYER: ANNUALIZED NET PRESENT VALUE OF CONSUMER BENEFITS INCLUDING ANNUALIZED PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS FOR ENERGY EFFICIENCY TSLS FOR PRODUCTS SHIPPED IN 2014–2043

[7 Percent discount rate]

Trial standard level	Learning rate (LR)				
	Default: LR_{CD} = 41.6%	Low Sensitivity: LR_{CD} = 33.9%	High Sensitivity: LR_{CD} = 42.9%	No Learning: LR = 0% (constant real prices)	Sensitivity (Clothes Dryers Only): LR = 52.2%
	Billion 2009$				
1	0.001	0.001	0.001	0.001	0.001
2	0.025	0.024	0.025	0.024	0.025
3	0.114	0.110	0.114	0.098	0.118
4	0.113	0.108	0.113	0.094	0.118
5	(0.111)	(0.176)	(0.103)	(0.375)	(0.041)
6	(0.282)	(0.421)	(0.263)	(0.853)	(0.130)

Parentheses indicate negative (−) values.

c. Impacts on Employment

DOE develops estimates of the indirect employment impacts of potential standards on the economy in general. As discussed above, DOE expects energy conservation standards for clothes dryers and room air conditioners to reduce energy bills for consumers of these products, and the resulting net savings to be redirected to other forms of economic activity. These expected shifts in spending and economic activity could affect the demand for labor. As described in section IV.J, to estimate these effects DOE used an input/output model of the U.S. economy. Table V–34 presents the estimated net indirect employment impacts in 2020 and 2043 for the TSLs that DOE considered in this rulemaking. Chapter 13 of the direct final rule TSD presents more detailed results.

TABLE V–34—NET INCREASE IN JOBS FROM INDIRECT EMPLOYMENT EFFECTS UNDER CLOTHES DRYER AND ROOM AIR CONDITIONER TRIAL STANDARD LEVELS

	Thousands					
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Residential Clothes Dryers:						
2020	0.00	0.00	0.41	0.36	−1.37	−3.16
2043	0.01	0.01	1.82	1.75	4.25	9.30
Room Air Conditioners:						
2020	0.90	0.88	0.97	1.34	2.04	3.22
2043	0.74	0.73	0.74	1.16	1.94	3.07

The input/output model suggests that today's proposed standards are likely to increase the net demand for labor in the economy. The projected gains are very small, however, relative to total national employment (currently approximately 120 million). Moreover, neither the BLS data nor the input/output model DOE

uses includes the quality or wage level of the jobs.

4. Impact on Utility or Performance of Products

As presented in section III.D.1.d of this notice, DOE concluded that none of the TSLs considered in this notice would reduce the utility or performance of the clothes dryers or room air conditioners under consideration in this rulemaking. DOE also notes that manufacturers of these products currently offer clothes dryers and room air conditioners that meet or exceed today's standards. (42 U.S.C. 6295(o)(2)(B)(i)(IV))

5. Impact of Any Lessening of Competition

DOE has also considered any lessening of competition that is likely to result from amended standards. The Attorney General determines the impact, if any, of any lessening of competition likely to result from a proposed standard, and transmits such determination to DOE, together with an analysis of the nature and extent of such impact. (42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii))

DOE published an NOPR containing energy conservation standards identical to those set forth in today's direct final rule and transmitted a copy of today's direct final rule and the accompanying TSD to the Attorney General, requesting that the DOJ provide its determination on this issue. DOE will consider DOJ's comments on the rule in determining whether to proceed with the direct final rule. DOE will also publish and respond to DOJ's comments in the **Federal Register** in a separate notice.

6. Need of the Nation To Conserve Energy

An improvement in the energy efficiency of the products subject to today's rule is likely to improve the security of the nation's energy system by reducing overall demand for energy. Reduced electricity demand may also improve the reliability of the electricity system. As a measure of this reduced demand, Table V–35 presents the estimated reduction in electricity generating capacity in 2043 for the TSLs that DOE considered in this rulemaking.

TABLE V–35—REDUCTION IN ELECTRIC GENERATING CAPACITY IN 2043 UNDER CLOTHES DRYER AND ROOM AIR CONDITIONER TRIAL STANDARD LEVELS

	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
	Gigawatts					
Clothes Dryers	0.002	0.060	0.358	0.345	1.27	2.27
Room Air Conditioners	0.348	0.429	0.436	0.632	1.01	1.46

Energy savings from amended standards for clothes dryers and room air conditioners are expected to produce environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with electricity production. Table V–36 provides DOE's estimate of cumulative CO_2, NO_X, and Hg emissions reductions that would be expected to result from the TSLs considered in this rulemaking. In the environmental assessment (chapter 15 of the direct final rule TSD), DOE reports annual CO_2, NO_X, and Hg emissions reductions for each TSL.

As discussed in section IV.L, DOE has not reported SO_2 emissions reductions from power plants because there is uncertainty about the effect of energy conservation standards on the overall level of SO_2 emissions in the United States due to SO_2 emissions caps. DOE also did not include NO_X emissions reduction from power plants in States subject to CAIR because an energy conservation standard would not affect the overall level of NO_X emissions in those States due to the emissions caps mandated by CAIR.

TABLE V–36—EMISSIONS REDUCTION ESTIMATED FOR CLOTHES DRYER AND ROOM AIR CONDITIONER TRIAL STANDARD LEVELS

[Cumulative for 2014 through 2043]

	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Clothes Dryers:						
CO_2 *million metric tons*	0.119	2.99	17.75	18.67	70.47	186.6
NO_X *thousand tons*	0.097	2.41	14.26	15.14	57.26	151.3
Hg *tons*	0.000	0.009	0.053	0.051	0.188	0.569
Room Air Conditioners:						
CO_2 *million metric tons*	9.83	11.88	12.49	17.4	26.89	37.68
NO_X *thousand tons*	8.02	9.69	10.2	14.2	21.91	30.69
Hg *tons*	0.012	0.015	0.017	0.022	0.032	0.044

DOE also estimated monetary benefits likely to result from the reduced emissions of CO_2 and NO_X that DOE estimated for each of the TSLs considered for clothes dryers and room air conditioners. In order to make this calculation similar to the calculation of the NPV of consumer benefit, DOE considered the reduced emissions expected to result over the lifetime of products shipped in 2014–2043. Thus, the emissions reductions extend past 2043.

As discussed in section IV.M, DOE used values for the SCC developed by an interagency process. The four values for CO_2 emissions reductions resulting from that process (expressed in 2009$) are $4.9/ton (the average value from a distribution that uses a 5-percent discount rate), $22.1/ton (the average value from a distribution that uses a 3-percent discount rate), $36.3/ton (the average value from a distribution that uses a 2.5-percent discount rate), and $67.1/ton (the 95th-percentile value from a distribution that uses a 3-percent

discount rate). These values correspond to the value of emission reductions in 2010; the values for later years are higher due to increasing damages as the magnitude of climate change increases. For each of the four cases, DOE calculated a present value of the stream of annual values using the same discount rate as was used in the studies upon which the dollar-per-ton values are based. Table V–37 and Table V–38 present the global values of CO_2 emissions reductions at each TSL. DOE calculated domestic values as a range from 7 percent to 23 percent of the global values, and these results are presented in Table V–39 and Table V–40.

TABLE V–37—CLOTHES DRYERS: ESTIMATES OF GLOBAL PRESENT VALUE OF CO_2 EMISSIONS REDUCTION UNDER TRIAL STANDARD LEVELS

TSL	*Million 2009$*			
	5% discount rate, average *	3% discount rate, average *	2.5% discount rate, average *	3% discount rate, 95th percentile *
1	1	3	5	10
2	15	79	134	239
3	88	465	793	1417
4	93	489	834	1490
5	351	1848	3148	5626
6	929	4894	8339	14902

* Columns are labeled by the discount rate used to calculate the SCC and whether it is an average value or drawn from a different part of the distribution. Values presented in the table incorporate the escalation of the SCC over time.

TABLE V–38—ROOM AIR CONDITIONERS: ESTIMATES OF GLOBAL PRESENT VALUE OF CO_2 EMISSIONS REDUCTION UNDER TRIAL STANDARD LEVELS

TSL	*Million 2009$*			
	5% discount rate, average *	3% discount rate, average *	2.5% discount rate, average *	3% discount rate, 95th percentile *
1	43	212	357	648
2	52	259	436	790
3	55	271	455	826
4	77	382	642	1164
5	118	591	996	1803
6	166	833	1404	2541

* Columns are labeled by the discount rate used to calculate the SCC and whether it is an average value or drawn from a different part of the distribution. Values presented in the table incorporate the escalation of the SCC over time.

TABLE V–39—CLOTHES DRYERS: ESTIMATES OF DOMESTIC PRESENT VALUE OF CO_2 EMISSIONS REDUCTION UNDER TRIAL STANDARD LEVELS

TSL	*Million 2009$ **			
	5% discount rate, average **	3% discount rate, average **	2.5% discount rate, average **	3% discount rate, 95th percentile **
1	0.042 to 0.14	0.22 to 0.72	0.37 to 1.22	0.67 to 2.19.
2	1.04 to 3.43	5.50 to 18.1	9.37 to 30.8	16.7 to 55.0.
3	6.19 to 20.3	32.6 to 107	55.5 to 182	99.2 to 326.
4	6.51 to 21.4	34.3 to 113	58.4 to 192	104 to 343.
5	24.6 to 80.7	129 to 425	220 to 724	394 to 1294.
6	65.1 to 214	343 to 1126	584 to 1918	1043 to 3428.

* Domestic values are presented as a range between 7 percent and 23 percent of the global values.
** Columns are labeled by the discount rate used to calculate the SCC and whether it is an average value or drawn from a different part of the distribution. Values presented in the table incorporate the escalation of the SCC over time.

TABLE V–40—ROOM AIR CONDITIONERS: ESTIMATES OF DOMESTIC PRESENT VALUE OF CO_2 EMISSIONS REDUCTION UNDER TRIAL STANDARD LEVELS

TSL	*Million 2009$*			
	5% discount rate, average **	3% discount rate, average **	2.5% discount rate, average **	3% discount rate, 95th percentile **
1	3.00 to 9.85	14.9 to 48.8	25.0 to 82.1	45.4 to 149.
2	3.64 to 12.0	18.1 to 59.6	30.5 to 100	55.3 to 182.
3	3.83 to 12.6	18.9 to 62.3	31.9 to 105	57.8 to 190.
4	5.36 to 17.6	26.7 to 87.8	45.0 to 148	81.5 to 268.
5	8.29 to 27.2	41.4 to 136	69.7 to 229	126 to 415.

TABLE V–40—ROOM AIR CONDITIONERS: ESTIMATES OF DOMESTIC PRESENT VALUE OF CO_2 EMISSIONS REDUCTION UNDER TRIAL STANDARD LEVELS—Continued

TSL	*Million 2009$**			
	5% discount rate, average **	3% discount rate, average **	2.5% discount rate, average **	3% discount rate, 95th percentile **
6	11.6 to 38.3	58.3 to 192	98.3 to 323	178 to 584.

* Domestic values are presented as a range between 7 percent and 23 percent of the global values.
** Columns are labeled by the discount rate used to calculate the SCC and whether it is an average value or drawn from a different part of the distribution. Values presented in the table incorporate the escalation of the SCC over time.

DOE is well aware that scientific and economic knowledge about the contribution of CO_2 and other GHG emissions to changes in the future global climate and the potential resulting damages to the world economy continues to evolve rapidly. Thus, any value placed in this rulemaking on reducing CO_2 emissions is subject to change. DOE, together with other Federal agencies, will continue to review various methodologies for estimating the monetary value of reductions in CO_2 and other GHG emissions. This ongoing review will consider the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues. However, consistent with DOE's legal obligations, and taking into account the uncertainty involved with this particular issue, DOE has included in this final rule the most recent values and analyses resulting from the ongoing interagency review process.

DOE also estimated a range for the cumulative monetary value of the economic benefits associated with NO_X emissions reductions anticipated to result from amended standards for clothes dryers and room air conditioners. The dollar-per-ton values that DOE used are discussed in section IV.M. Table V–41 and Table V–42 present the cumulative present values for each TSL calculated using seven-percent and three-percent discount rates.

TABLE V–41—CLOTHES DRYERS: ESTIMATES OF PRESENT VALUE OF NO_X EMISSIONS REDUCTION UNDER TRIAL STANDARD LEVELS

TSL	3% discount rate *Million 2009$*	7% discount rate *Million 2009$*
1	0.031 to 0.314	0.013 to 0.136.
2	0.759 to 7.8	0.328 to 3.37.
3	4.49 to 46.2	1.94 to 19.98.
4	4.77 to 49.02	2.06 to 21.2.
5	18.0 to 185	7.8 to 80.2.
6	47.6 to 490	20.6 to 212.

TABLE V–42—ROOM AIR CONDITIONERS: ESTIMATES OF PRESENT VALUE OF NO_X EMISSIONS REDUCTION UNDER TRIAL STANDARD LEVELS

TSL	3% discount rate *Million 2009$*	7% discount rate *Million 2009$*
1	2.34 to 24.0	1.25 to 12.9.
2	2.83 to 29.1	1.50 to 15.4.
3	2.99 to 30.7	1.61 to 16.6.
4	4.16 to 42.7	2.2 to 22.6.
5	6.40 to 65.8	3.35 to 34.4.
6	8.96 to 92.1	4.64 to 47.7.

The NPV of the monetized benefits associated with emissions reductions can be viewed as a complement to the NPV of the consumer savings calculated for each TSL considered in this rulemaking. Table V–43 shows an example of the calculation of the combined NPV including benefits from emissions reductions for the case of TSL 4 for clothes dryers. Table V–44 through Table V–47 present the NPV values that result from adding the estimates of the potential economic benefits resulting from reduced CO_2 and NO_X emissions in each of four valuation scenarios to the NPV of consumer savings calculated for each TSL considered in this rulemaking, at both a 7-percent and 3-percent discount rate. The CO_2 values used in the columns of each table correspond to the four scenarios for the valuation of CO_2 emission reductions presented in section IV.M.

TABLE V–43—ADDING NET PRESENT VALUE OF CONSUMER SAVINGS TO PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS AT TSL 4 FOR CLOTHES DRYERS

Category	Present value *billion 2009$*	Discount rate (percent)
Benefits:		
Operating Cost Savings	1.726	7%
	4.099	3%
CO_2 Reduction Monetized Value (at $4.9/metric ton) *	0.093	5
CO_2 Reduction Monetized Value (at $22.1/metric ton) *	0.489	3
CO_2 Reduction Monetized Value (at $36.3/metric ton) *	0.834	2.5
CO_2 Reduction Monetized Value (at $67.1/metric ton) *	1.49	3
NO_X Reduction Monetized Value (at $2,519/ton) *	0.012	7
	0.027	3
Total Monetary Benefits **	2.227	7
	4.615	3
Costs:		
Total Incremental Installed Costs	0.65	7
	1.086	3
Net Benefits/Costs:		
Including CO_2 and NO_X **	1.58	7
	3.53	3

* These values represent global values (in 2009$) of the SCC in 2010 under several scenarios. The values of $4.9, $22.1, and $36.3 per ton are the averages of SCC distributions calculated using 5-percent, 3-percent, and 2.5-percent discount rates, respectively. The value of $67.1 per ton represents the 95th percentile of the SCC distribution calculated using a 3-percent discount rate. *See* section IV.M for details. The value for NO_X (in 2009$) is the average of the low and high values used in DOE's analysis.

** Total Monetary Benefits for both the 3-percent and 7-percent cases utilize the central estimate of social cost of CO_2 emissions calculated at a 3% discount rate, which is equal to $22.1/ton in 2010 (in 2009$).

TABLE V–44—RESULTS OF ADDING NET PRESENT VALUE OF CONSUMER SAVINGS (AT 7-PERCENT DISCOUNT RATE) TO NET PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS UNDER TRIAL STANDARD LEVELS FOR CLOTHES DRYERS

TSL	Consumer NPV at 7% discount rate added with:			
	SCC Value of $4.9/metric ton CO_2* and Low Value for NO_X** *billion 2009$*	SCC Value of $22.1/metric ton CO_2* and Medium Value for NO_X** *billion 2009$*	SCC Value of $36.3/metric ton CO_2* and Medium Value for NO_X** *billion 2009$*	SCC Value of $67.1/metric ton CO_2* and High Value for NO_X** *billion 2009$*
1	0.00061	0.00320	0.00540	0.00965
2	0.0152	0.0804	0.136	0.243
3	0.0903	0.476	0.804	1.437
4	0.0950	0.501	0.846	1.512
5	0.359	1.892	3.192	5.707
6	0.950	5.010	8.455	15.114

* These label values represent the global SCC in 2010, in 2009$. Their present values have been calculated with scenario-consistent discount rates. See section IV.M for a discussion of the derivation of these values.

** Low Value corresponds to $447 per ton of NO_X emissions. Medium Value corresponds to $2,519 per ton of NO_X emissions. High Value corresponds to $4,591 per ton of NO_X emissions.

TABLE V–45—RESULTS OF ADDING NET PRESENT VALUE OF CONSUMER SAVINGS (AT 3-PERCENT DISCOUNT RATE) TO NET PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS UNDER TRIAL STANDARD LEVELS FOR CLOTHES DRYERS

TSL	Consumer NPV at 3% discount rate added with:			
	SCC Value of $4.9/metric ton CO_2* and Low Value for NO_X** *billion 2009$*	SCC Value of $22.1/metric ton CO_2* and Medium Value for NO_X** *billion 2009$*	SCC Value of $36.3/metric ton CO_2* and Medium Value for NO_X** *billion 2009$*	SCC Value of $67.1/metric ton CO_2* and High Value for NO_X** *billion 2009$*
1	0.00062	0.00330	0.00550	0.00983
2	0.0157	0.0829	0.138	0.247
3	0.0929	0.491	0.818	1.463
4	0.0977	0.516	0.861	1.539
5	0.369	1.949	3.250	5.812
6	0.977	5.163	8.608	15.392

* These label values represent the global SCC in 2010, in 2009$. Their present values have been calculated with scenario-consistent discount rates. See section IV.M for a discussion of the derivation of these values.

** Low Value corresponds to $447 per ton of NO_X emissions. Medium Value corresponds to $2,519 per ton of NO_X emissions. High Value corresponds to $4,591 per ton of NO_X emissions.

TABLE V–46—RESULTS OF ADDING NET PRESENT VALUE OF CONSUMER SAVINGS (AT 7-PERCENT DISCOUNT RATE) TO NET PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS UNDER TRIAL STANDARD LEVELS FOR ROOM AIR CONDITIONERS

TSL	Consumer NPV at 7% discount rate added with:			
	SCC Value of $4.9/metric ton CO_2* and Low Value for NO_X** *billion 2009$*	SCC Value of $22.1/metric ton CO_2* and Medium Value for NO_X** *billion 2009$*	SCC Value of $36.3/metric ton CO_2* and Medium Value for NO_X** *billion 2009$*	SCC Value of $67.1/metric ton CO_2* and High Value for NO_X** *billion 2009$*
1	0.044	0.219	0.364	0.661
2	0.054	0.267	0.444	0.805
3	0.0563	0.280	0.464	0.843
4	0.0788	0.394	0.655	1.187
5	0.122	0.610	1.015	1.838
6	0.171	0.859	1.430	2.588

* These label values represent the global SCC in 2010, in 2009$. Their present values have been calculated with scenario-consistent discount rates. See section IV.M for a discussion of the derivation of these values.

** Low Value corresponds to $447 per ton of NO_X emissions. Medium Value corresponds to $2,519 per ton of NO_X emissions. High Value corresponds to $4,591 per ton of NO_X emissions.

TABLE V–47—RESULTS OF ADDING NET PRESENT VALUE OF CONSUMER SAVINGS (AT 3-PERCENT DISCOUNT RATE) TO NET PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS UNDER TRIAL STANDARD LEVELS FOR ROOM AIR CONDITIONERS

TSL	Consumer NPV at 3% discount rate added with:			
	SCC Value of $4.9/metric ton CO_2* and Low Value for NO_X** *billion 2009$*	SCC Value of $22.1/metric ton CO_2*and Medium Value for NO_X** *billion 2009$*	SCC Value of $36.3/metric ton CO_2* and Medium Value for NO_X** *billion 2009$*	SCC Value of $67.1/metric ton CO_2* and High Value for NO_X** *billion 2009$*
1	0.045	0.226	0.370	0.672
2	0.055	0.275	0.452	0.819
3	0.0576	0.288	0.472	0.857
4	0.0807	0.405	0.666	1.207
5	0.125	0.627	1.032	1.869
6	0.175	0.884	1.454	2.633

* These label values represent the global SCC in 2010, in 2009$. Their present values have been calculated with scenario-consistent discount rates. See section IV.M for a discussion of the derivation of these values.

** Low Value corresponds to $447 per ton of NO_X emissions. Medium Value corresponds to $2,519 per ton of NO_X emissions. High Value corresponds to $4,591 per ton of NO_X emissions.

Although adding the value of consumer savings to the values of emission reductions provides a valuable perspective, two issues should be considered. First, the national operating cost savings are domestic U.S. consumer monetary savings that occur as a result of market transactions, while the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and the SCC are performed with different methods that use quite different time frames for analysis. The national operating cost savings is measured for the lifetime of products shipped in 2014–2043. The SCC values, on the other hand, reflect the present value of future climate-related impacts resulting from the emission of one ton of carbon dioxide in each year. These impacts continue well beyond 2100.

7. Other Factors

The Secretary of Energy, in determining whether a standard is economically justified, may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VI))) In developing the direct final rule, DOE has also considered the Joint Petition submitted to DOE. DOE recognizes the value of consensus agreements submitted by parties in accordance with 42 U.S.C. 6295(p)(4) and has weighed the value of such consensus in establishing the standards set forth in today's final rule. DOE has encouraged the submission of consensus agreements as a way to get diverse stakeholders together, to develop an independent and probative analysis useful in DOE standard setting, and to expedite the rulemaking process. DOE also believes that standard levels recommended in the consensus agreement may increase the likelihood for regulatory compliance, while decreasing the risk of litigation.

C. Proposed Standards

When considering proposed standards, the new or amended energy conservation standard that DOE adopts for any type (or class) of covered product shall be designed to achieve the maximum improvement in energy efficiency that DOE determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In determining whether a standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens to the greatest extent practicable, in light of the seven statutory factors discussed previously. (42 U.S.C. 6295(o)(2)(B)(i)) The new or amended standard must also "result in significant conservation of energy." (42 U.S.C. 6295(o)(3)(B))

The Department considered the impacts of standards at each trial

standard level, beginning with maximum technologically feasible level, to determine whether that level was economically justified. Where the max-tech level was not economically justified, DOE then considered the next most efficient level and undertook the same evaluation until it reached the highest efficiency level that is both technologically feasible and economically justified and saves a significant amount of energy.

To aid the reader as DOE discusses the benefits and burdens of each trial standard level, DOE has included tables that present a summary of the results of DOE's quantitative analysis for each TSL. In addition to the quantitative results presented in the tables, DOE also considers other burdens and benefits that affect economic justification. These include the impacts on identifiable subgroups of consumers, such as low-income households and seniors, who may be disproportionately affected by a national standard. Section V.B.1 presents the estimated impacts of each TSL for these subgroups.

DOE also notes that the economics literature provides a wide-ranging discussion of how consumers trade off upfront costs and energy savings in the absence of government intervention. Much of this literature attempts to explain why consumers appear to undervalue energy efficiency improvements. This undervaluation suggests that regulation that promotes energy efficiency can produce significant net private gains (as well as producing social gains by, for example, reducing pollution). There is evidence that consumers undervalue future energy savings as a result of (1) a lack of information; (2) a lack of sufficient salience of the long-term or aggregate benefits; (3) a lack of sufficient savings to warrant delaying or altering purchases (for example, an inefficient ventilation fan in a new building or the delayed replacement of a water pump); (4) excessive focus on the short term, in the form of inconsistent weighting of future energy cost savings relative to available returns on other investments; (5) computational or other difficulties associated with the evaluation of relevant tradeoffs; and (6) a divergence in incentives (that is, renter versus owner; builder vs. purchaser). Other literature indicates that with less than perfect foresight and a high degree of uncertainty about the future, consumers may trade off these types of investments at a higher than expected rate between current consumption and uncertain future energy cost savings.

In its current regulatory analysis, potential changes in the benefits and costs of a regulation due to changes in consumer purchase decisions are included in two ways: (1) If consumers forego a purchase of a product in the standards case, this decreases sales for product manufacturers and the cost to manufacturers is included in the MIA, and (2) DOE accounts for energy savings attributable only to products actually used by consumers in the standards case; if a regulatory option decreases the number of products used by consumers, this decreases the potential energy savings from an energy conservation standard. DOE provides detailed estimates of shipments and changes in the volume of product purchases in chapter 9 of the TSD. However, DOE's current analysis does not explicitly control for heterogeneity in consumer preferences, preferences across subcategories of products or specific features, or consumer price sensitivity variation according to household income (Reiss and White 2004).

While DOE is not prepared at present to provide a fuller quantifiable framework for estimating the benefits and costs of changes in consumer purchase decisions due to an energy conservation standard, DOE seeks comments on how to more fully assess the potential impact of energy conservation standards on consumer choice and how to quantify this impact in its regulatory analysis in future rulemakings.

1. Benefits and Burdens of TSLs Considered for Clothes Dryers

Table V–48 and Table V–49 present a summary of the quantitative impacts estimated for each TSL for clothes dryers. The efficiency levels contained in each TSL are described in section V.A.

TABLE V–48—SUMMARY OF RESULTS FOR CLOTHES DRYER TRIAL STANDARD LEVELS: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
National Energy Savings (*quads*)	0.00	0.062	0.37	0.39	1.45	3.14.
NPV of Consumer Benefits (*2009$ billion*)						
3% discount rate	0.00	0.62	3.00	3.01	0.22	(1.53).
7% discount rate	0.01	0.25	1.10	1.08	(2.60)	(6.72).
Cumulative Emissions Reduction						
CO_2 (*million metric tons*)	0.119	2.99	17.75	18.67	70.47	186.6.
NO_X (*thousand tons*)	0.097	2.41	14.26	15.14	57.26	151.3.
Hg (*ton*)	0.000	0.009	0.053	0.051	0.188	0.569.
Value of Emissions Reduction						
CO_2 (*2009$ million*) *	1 to 10	15 to 239	88 to 1417	93 to 1490	351 to 5626	929 to 14902.
NO_X—3% discount rate (*2009 million*).	0.031 to 0.314	0.759 to 7.8	4.49 to 46.2	4.77 to 49.0	18.0 to 185	47.6 to 490.
NO_X—7% discount rate (*2009$ million*).	0.013 to 0.136	0.328 to 3.37	1.94 to 20.0	2.06 to 21.2	7.8 to 80.2	20.6 to 212.
Generation Capacity Reduction (*GW*)**.	0.002	0.060	0.358	0.345	1.27	2.27.
Employment Impacts						
Total Potential Change in Domestic Production Workers in 2014 (*thousands*).	0.00 to (3.96)	0.00 to (3.96)	0.41 to (3.96)	0.46 to (3.96)	1.08 to (3.96)	2.26 to (3.96).

TABLE V–48—SUMMARY OF RESULTS FOR CLOTHES DRYER TRIAL STANDARD LEVELS: NATIONAL IMPACTS—Continued

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Indirect Domestic Jobs (*thousands*)**	0.01	0.01	1.82	1.75	4.25	9.30.

Parentheses indicate negative (−) values.
* Range of the economic value of CO_2 reductions is based on estimates of the global benefit of reduced CO_2 emissions.
** Changes in 2043.

TABLE V–49—SUMMARY OF RESULTS FOR CLOTHES DRYER TRIAL STANDARD LEVELS: CONSUMER AND MANUFACTURER IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Manufacturer Impacts						
Industry NPV (*2009$ million*)	(2.5) to (2.5)	(3.6) to (4.9)	(41.1) to (55.5)	(64.5) to (80.6)	(176.5) to (397.4).	(303.9) to (730.0).
Industry NPV (*% change*)	(0.3) to (0.3)	(0.4) to (0.5)	(4.1) to (5.5)	(6.4) to (8.0)	(17.6) to (39.6)	(30.3) to (72.7).
Consumer Mean LCC Savings* (*2009$*)						
Electric Standard	$0	$2	$14	$14	($30)	($146).
Compact 120V	$0	$14	$14	$14	($99)	($264).
Compact 240V	$0	$8	$8	$8	($99)	($246).
Gas	$0	$2	$2	$2	($100)	($100).
Ventless 240V	$0	$20	$20	$0	($42)	($177).
Ventless Combination Washer/Dryer	$0	$73	$73	$0	$73	($166).
Consumer Median PBP (*years*)**						
Electric Standard	3.9	0.2	5.3	5.3	19.1	22.1.
Compact 120V	n/a	0.9	0.9	0.9	36.1	40.1.
Compact 240V	0.0	0.9	0.9	0.9	45.1	38.2.
Gas	2.2	0.5	0.5	11.7	49.5	49.5.
Ventless 240V	n/a	0.9	0.9	n/a	25.3	26.9.
Ventless Combination Washer/Dryer	n/a	5.3	5.3	n/a	5.3	22.4.
Distribution of Consumer LCC Impacts						
Electric Standard:						
Net Cost (%)	1%	0%	19%	19%	75%	81%.
No Impact (%)	98%	79%	25%	25%	1%	0%.
Net Benefit (%)	2%	21%	56%	56%	24%	19%.
Compact 120V:						
Net Cost (%)	0%	4%	4%	4%	95%	95%.
No Impact (%)	100%	0%	0%	0%	0%	0%.
Net Benefit (%)	0%	96%	96%	96%	5%	5%.
Compact 240V:						
Net Cost (%)	0%	2%	2%	2%	93%	95%.
No Impact (%)	100%	41%	41%	41%	4%	0%.
Net Benefit (%)	0%	56%	56%	56%	3%	5%.
Gas:						
Net Cost (%)	1%	0%	0%	32%	95%	95%.
No Impact (%)	93%	85%	85%	42%	1%	1%.
Net Benefit (%)	7%	15%	15%	26%	4%	4%.
Ventless 240V:						
Net Cost (%)	0%	0%	0%	0%	92%	88%.
No Impact (%)	100%	0%	0%	100%	0%	0%.
Net Benefit (%)	0%	100%	100%	0%	8%	12%.
Ventless Combination Washer/Dryer:						
Net Cost (%)	0%	21%	21%	0%	21%	82%.
No Impact (%)	100%	0%	0%	100%	0%	0%.
Net Benefit (%)	0%	79%	79%	0%	79%	18%.

Parentheses indicate negative (−) values.
* For LCCs, a negative value means an increase in LCC by the amount indicated.
** In some cases the standard level is the same as the baseline efficiency level, so no consumers are impacted and therefore calculation of a payback period is not applicable.

DOE first considered TSL 6, which represents the max-tech efficiency levels. TSL 6 would save 3.14 quads of energy, an amount DOE considers significant. Under TSL 6, the NPV of consumer benefit would be −$6.72 billion, using a discount rate of 7 percent, and −$1.53 billion, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 6 are 186.6 Mt of CO_2, 151.3

thousand tons of NO_X, and 0.569 ton of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 6 ranges from $929 million to $14,902 million. Total generating capacity in 2043 is estimated to decrease by 2.27 GW under TSL 6.

At TSL 6, the average LCC impact is a cost (LCC increase) of $146 for electric standard clothes dryers, a cost of $264 for 120V compact clothes dryers, a cost of $246 for 240V compact clothes dryers, a cost of $100 for gas clothes dryers, a cost of $177 for ventless 240V clothes dryers, and a cost of $166 for combination washer/dryers. The median payback period is 22.1 years for electric standard clothes dryers, 40.1 years for 120Vcompact clothes dryers, 38.2 years for 240V compact clothes dryers, 49.5 years for gas clothes dryers, 26.9 years for ventless 240V clothes dryers, and 22.4 years for combination washer/dryers. The fraction of consumers experiencing an LCC benefit is 19 percent for electric standard clothes dryers, 5 percent for 120V compact clothes dryers, 5 percent for 240V compact clothes dryers, 4 percent for gas clothes dryers, 12 percent for ventless 240V clothes dryers, and 18 percent for combination washer/dryers. The fraction of consumers experiencing an LCC cost is 81 percent for electric standard clothes dryers, 95 percent for 120Vcompact clothes dryers, 95 percent for 240V compact clothes dryers, 95 percent for gas clothes dryers, 88 percent for ventless 240V clothes dryers, and 82 percent for combination washer/dryers.

At TSL 6, the projected change in INPV ranges from a decrease of $303.9 million to a decrease of $730.0 million. TSL 6 would effectively require heat pump clothes dryers for all electric clothes dryer product classes. Changing all electric models to use heat pump technology would be extremely disruptive to current manufacturing facilities and would require substantial product and capital conversion costs. In addition, the large cost increases would greatly harm manufacturer profitability if they were unable to earn additional operating profit on these additional costs. At TSL 6, DOE recognizes the risk of very large negative impacts if manufacturers' expectations concerning reduced profit margins and large conversion costs are realized. If the high end of the range of impacts is reached as DOE expects, TSL 6 could result in a net loss of 72.6 percent in INPV to clothes dryer manufacturers.

DOE concludes that at TSL 6 for residential clothes dryers, the benefits of energy savings, generating capacity reductions, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the negative NPV of consumer benefits, the economic burden on a significant fraction of consumers due to the large increases in product cost, and the conversion costs and profit margin impacts that could result in a very large reduction in INPV for the manufacturers. Consequently, the Secretary has concluded that TSL 6 is not economically justified.

DOE next considered TSL 5. TSL 5 would save 1.45 quads of energy, an amount DOE considers significant. Under TSL 5, the NPV of consumer benefit would be −$2.60 billion, using a discount rate of 7 percent, and $0.22 billion, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 5 are 70.47 Mt of CO_2, 57.26 thousand tons of NO_X, and 0.188 tons of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 5 ranges from $351 million to $5,626 million. Total generating capacity in 2043 is estimated to decrease by 1.27 GW under TSL 5.

At TSL 5, the average LCC impact is a cost (LCC increase) of $30 for electric standard clothes dryers, a cost of $99 for 120Vcompact clothes dryers, a cost of $99 for 240V compact clothes dryers, a cost of $100 for gas clothes dryers, a cost of $42 for ventless 240V clothes dryers, and a savings of $73 for combination washer/dryers. The median payback period is 19.1 years for electric standard clothes dryers, 36.1 years for 120Vcompact clothes dryers, 45.1 years for 240V compact clothes dryers, 49.5 years for gas clothes dryers, 25.3 years for ventless 240V clothes dryers, and 5.3 years for combination washer/dryers. The fraction of consumers experiencing an LCC benefit is 24 percent for electric standard clothes dryers, 5 percent for 120Vcompact clothes dryers, 3 percent for 240V compact clothes dryers, 4 percent for gas clothes dryers, 8 percent for ventless 240V clothes dryers, and 79 percent for combination washer/dryers. The fraction of consumers experiencing an LCC cost is 75 percent for electric standard clothes dryers, 95 percent for 120Vcompact clothes dryers, 93 percent for 240V compact clothes dryers, 95 percent for gas clothes dryers, 92 percent for ventless 240V clothes dryers, and 21 percent for combination washer/dryers.

At TSL 5, the projected change in INPV ranges from a decrease of $176.5 million to a decrease of $397.4 million. While most changes at TSL 5 could be made within existing product design, redesigning units to the most efficient technologies on the market today would take considerable capital and product conversion costs. At TSL 5, DOE recognizes the risk of very large negative impacts if manufacturers are not able to earn additional operating profit from the additional production costs to reach TSL 5. If the high end of the range of impacts is reached as DOE expects, TSL 5 could result in a net loss of 39.6 percent in INPV to clothes dryer manufacturers.

The Secretary concludes that at TSL 5 for residential clothes dryers, the benefits of energy savings, generating capacity reductions, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the negative NPV of consumer benefits, the economic burden on a significant fraction of consumers due to the large increases in product cost, and the conversion costs and profit margin impacts that could result in a large reduction in INPV for the manufacturers. Consequently, the Secretary has concluded that TSL 5 is not economically justified.

DOE then considered TSL 4. TSL 4 would save 0.39 quads of energy, an amount DOE considers significant. Under TSL 4, the NPV of consumer benefit would be $1.08 billion, using a discount rate of 7 percent, and $3.01 billion, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 4 are 18.67 Mt of CO_2, 15.14 thousand tons of NO_X, and 0.051 ton of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 4 ranges from $93 million to $1,490 million. Total generating capacity in 2043 is estimated to decrease by 0.345 GW under TSL 4.

At TSL 4, DOE projects that the average LCC impact is a savings (LCC decrease) of $14 for electric standard clothes dryers, a savings of $14 for 120V compact clothes dryers, a savings of $8 for 240V compact clothes dryers, a savings of $2 for gas clothes dryers, and no change for ventless 240V clothes dryers and combination washer/dryers. The median payback period is 5.3 years for electric standard clothes dryers, 0.9 years for 120V compact clothes dryers, 0.9 years for 240V compact clothes dryers, 11.7 years for gas clothes dryers, and is not applicable for ventless 240V clothes dryers and combination washer/dryers.[64] The fraction of consumers experiencing an LCC benefit is 56 percent for electric standard clothes dryers, 96 percent for 120V compact

[64] For these product classes, the efficiency level at TSL 4 is the same as the baseline efficiency level, so no consumers are impacted and therefore calculation of a payback period is not applicable.

clothes dryers, 56 percent for 240V compact clothes dryers, 26 percent for gas clothes dryers, zero percent for ventless 240V clothes dryers, and zero percent for combination washer/dryers. The fraction of consumers experiencing an LCC cost is 19 percent for electric standard clothes dryers, 4 percent for 120V compact clothes dryers, 2 percent for 240V compact clothes dryers, 32 percent for gas clothes dryers, zero percent for ventless 240V clothes dryers, and zero percent for combination washer/dryers.

At TSL 4, the projected change in INPV ranges from a decrease of $64.5 million to a decrease of $80.6 million. The design changes required at TSL 4 for the most common standard-size gas and electric products are incremental improvements that are well known in the industry but would still require moderate product and capital conversion costs to implement. At TSL 4, DOE recognizes the risk of negative impacts if manufacturers' expectations concerning reduced profit margins are realized. If the high end of the range of impacts is reached as DOE expects, TSL 4 could result in a net loss of 8.0 percent in INPV to clothes dryer manufacturers.

DOE concludes that at TSL 4 for residential clothes dryers, the benefits of energy savings, generating capacity reductions, emission reductions and the estimated monetary value of the CO_2 emissions reductions, and positive NPV of consumer benefits outweigh the economic burden on some consumers due to the increases in product cost and the profit margin impacts that could result in a reduction in INPV for the manufacturers.

In addition, the efficiency levels in TSL 4 correspond to the recommended levels in the consensus agreement, which DOE believes sets forth a statement by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates) and contains recommendations with respect to an energy conservation standard that are in accordance with 42 U.S.C. 6295(o). Moreover, DOE has encouraged the submission of consensus agreements as a way to get diverse stakeholders together, to develop an independent and probative analysis useful in DOE standard setting, and to expedite the rulemaking process. DOE also believes that standard levels recommended in the consensus agreement may increase the likelihood for regulatory compliance, while decreasing the risk of litigation.

After considering the analysis, comments to the preliminary TSD, and the benefits and burdens of TSL 4, the Secretary concludes that this trial standard level will offer the maximum improvement in efficiency that is technologically feasible and economically justified, and will result in the significant conservation of energy. Therefore, DOE today adopts TSL 4 for residential clothes dryers. The amended energy conservation standards for clothes dryers, expressed as CEF, are shown in Table V–50 .

TABLE V–50—AMENDED ENERGY CONSERVATION STANDARDS FOR CLOTHES DRYERS

Residential clothes dryers	
Product class	Minimum CEF levels *lb/kWh*
1. Vented Electric, Standard (4.4 ft^3 or greater capacity)	3.73
2. Vented Electric, Compact (120 V) (less than 4.4 ft^3 capacity)	3.61
3. Vented Electric, Compact (240 V) (less than 4.4 ft^3 capacity)	3.27
4. Vented Gas	3.30
5. Ventless Electric, Compact (240 V) (less than 4.4 ft^3 capacity)	2.55
6. Ventless Electric Combination Washer/Dryer	2.08

2. Benefits and Burdens of TSLs Considered for Room Air Conditioners

Table V–51 and Table V–52 present a summary of the quantitative impacts estimated for each TSL for room air conditioners. The efficiency levels contained in each TSL are described in section V.A.

TABLE V–51—SUMMARY OF RESULTS FOR ROOM AIR CONDITIONER TRIAL STANDARD LEVELS: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
National Energy Savings (*quads*)	0.105	0.205	0.218	0.305	0.477	0.665.
NPV of Consumer Benefits (*2009$ billion*)						
3% discount rate	0.75	1.30	1.51	1.47	1.46	(5.62).
7% discount rate	0.35	0.57	0.71	0.57	0.33	(4.44).
Cumulative Emissions Reduction						
CO_2 (*million metric tons*)	9.83	11.9	12.5	17.4	26.9	37.7.
NO_X (*thousand tons*)	8.02	9.69	10.2	14.2	21.9	30.7.
Hg (*ton*)	0.012	0.015	0.017	0.022	0.032	0.044.
Value of Emissions Reduction						
CO_2 (*2009$ million*) *	43 to 648	52 to 790	55 to 826	77 to 1164	118 to 1803	166 to 2541.
NO_X—3% discount rate (*2009$ million*).	2.34 to 24.0	2.83 to 29.1	2.99 to 30.7	4.16 to 42.7	6.40 to 65.8	8.96 to 92.1.

TABLE V–51—SUMMARY OF RESULTS FOR ROOM AIR CONDITIONER TRIAL STANDARD LEVELS: NATIONAL IMPACTS—Continued

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
NO_X—7% discount rate (*2009$ million*).	1.25 to 12.9	1.50 to 15.4	1.61 to 16.6	2.2 to 22.6	3.35 to 34.4	4.64 to 47.7.
Generation Capacity Reduction (*GW*) **.	0.348	0.429	0.436	0.632	1.01	1.46.
Employment Impacts						
Total Potential Changes in Domestic Production Workers in 2014 (*thousands*).	N/A	N/A	N/A	N/A	N/A	N/A.
Indirect Domestic Jobs (*thousands*) **.	0.74	0.73	0.74	1.16	1.94	3.07.

Parentheses indicate negative (−) values.
* Range of the economic value of CO_2 reductions is based on estimates of the global benefit of reduced CO_2 emissions.
** Changes in 2043.

TABLE V–52—SUMMARY OF RESULTS FOR ROOM AIR CONDITIONER TRIAL STANDARD LEVELS: CONSUMER AND MANUFACTURER IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Manufacturer Impacts						
Industry NPV (*2009$ million*).	(44.2) to (84.9)	(65.4) to (112.7) ..	(65.7) to (112.4) ..	(111.3) to (177.6)	(86.6) to (184.4) ..	(80.2) to (344.5).
Industry NPV (*% change*).	(4.6) to (8.9)	(6.8) to (11.8)	(6.9) to (11.8)	(11.6) to (18.6)	(9.1) to (19.3)	(8.4) to (36.0).
Consumer Mean LCC Savings * (*2009$*)						
< 6,000 Btu/h, with Louvers.	$9	$11	$9	$7	$7	($58).
8,000–13,999 Btu/h, with Louvers.	$16	$16	$22	$22	$22	($38).
20,000–24,999 Btu/h, with Louvers.	$6	$6	$0	$6	$0	($214).
> 25,000 Btu/h, with Louvers.	$1	$1	$0	$1	$0	($227).
8,000–10,999 Btu/h, without Louvers.	$4	$4	$13	$13	$20	($66).
> 11,000 Btu/h, without Louvers.	$5	$5	$11	$11	$11	($64).
Consumer Median PBP (*years*) **						
<6,000 Btu/h, with Louvers.	4.1	5.8	4.1	8.6	8.6	20.9.
8,000–13,999 Btu/h, with Louvers.	0.0	0.0	2.8	2.8	7.1	14.7.
20,000–24,999 Btu/h, with Louvers.	4.3	4.3	n/a	4.3	n/a	73.8.
> 25,000 Btu/h, with Louvers.	10.3	10.3	n/a	10.1	n/a	107.7.
8,000–10,999 Btu/h, without Louvers.	1.5	1.5	2.1	2.1	4.9	25.2.
> 11,000 Btu/h, without Louvers.	2.6	2.6	3.7	3.7	3.7	25.9.
Distribution of Consumer LCC Impacts						
< 6,000 Btu/h, with Louvers:						
Net Cost (%)	21%	33%	21%	65%	65%	90%.
No Impact (%) ...	31%	31%	31%	1%	1%	0%.
Net Benefit (%) ..	48%	37%	48%	34%	34%	10%.
8,000–13,999 Btu/h, with Louvers:						
Net Cost (%)	9%	9%	34%	34%	56%	77%.
No Impact (%) ...	60%	60%	2%	2%	1%	0%.
Net Benefit (%) ..	30%	30%	64%	64%	43%	22%.

TABLE V–52—SUMMARY OF RESULTS FOR ROOM AIR CONDITIONER TRIAL STANDARD LEVELS: CONSUMER AND MANUFACTURER IMPACTS—Continued

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
20,000–24,999 Btu/h, with Louvers:						
Net Cost (%)	5%	5%	0%	5%	0%	98%.
No Impact (%)	85%	85%	0%	85%	0%	2%.
Net Benefit (%)	10%	10%	0%	10%	0%	0%.
> 25,000 Btu/h, with Louvers:						
Net Cost (%)	11%	11%	0%	9%	0%	100%.
No Impact (%)	85%	85%	0%	88%	0%	0%.
Net Benefit (%)	4%	4%	0%	4%	0%	0%.
8,000–10,999 Btu/h, without Louvers:						
Net Cost (%)	1%	1%	12%	12%	38%	92%.
No Impact (%)	90%	90%	25%	25%	6%	2%.
Net Benefit (%)	9%	9%	62%	62%	56%	6%.
> 11,000 Btu/h, without Louvers:						
Net Cost (%)	2%	2%	23%	23%	23%	93%.
No Impact (%)	90%	90%	31%	31%	31%	0%.
Net Benefit (%)	8%	8%	47%	47%	47%	7%.

Parentheses indicate negative (-) values.
* For LCCs, a negative value means an increase in LCC by the amount indicated.
** In some cases the standard level is the same as the baseline efficiency level, so no consumers are impacted and therefore calculation of a payback period is not applicable.

DOE first considered TSL 6, which represents the max-tech efficiency levels. TSL 6 would save 0.665 quads of energy, an amount DOE considers significant. Under TSL 6, the NPV of consumer benefit would be -$4.44 billion, using a discount rate of 7 percent, and −$5.62 billion, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 6 are 37.7 Mt of CO_2, 30.7 thousand tons of NO_X, and 0.044 tons of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 6 ranges from $166 million to $2,541 million. Total generating capacity in 2043 is estimated to decrease by 1.46 GW under TSL 6.

At TSL 6, the average LCC impact is a cost (LCC increase) of $58 for room air conditioners < 6,000 Btu/h, with louvers; a cost of $38 for room air conditioners 8,000–13,999 Btu/h, with louvers; a cost of $214 for room air conditioners 20,000–24,999 Btu/h, with louvers; a cost of $227 for room air conditioners > 25,000 Btu/h, with louvers; a cost of $66 for room air conditioners 8,000–10,999 Btu/h, without louvers; and a cost of $64 for room air conditioners > 11,000 Btu/h, without louvers. The median payback period is 20.9 years for room air conditioners < 6,000 Btu/h, with louvers; 14.7 years for room air conditioners 8,000–13,999 Btu/h, with louvers; 73.8 years for room air conditioners 20,000–24,999 Btu/h, with louvers; 107.7 years for room air conditioners > 25,000 Btu/h, with louvers; 25.2 years for room air conditioners 8,000–10,999 Btu/h, without louvers; and 25.9 years for room air conditioners > 11,000 Btu/h, without louvers. The fraction of consumers experiencing an LCC benefit is 10 percent for room air conditioners < 6,000 Btu/h, with louvers; 22 percent for room air conditioners 8,000–13,999 Btu/h, with louvers; zero percent for room air conditioners 20,000–24,999 Btu/h, with louvers; zero percent for room air conditioners > 25,000 Btu/h, with louvers; 6 percent for room air conditioners 8,000–10,999 Btu/h, without louvers; and 7 percent for room air conditioners > 11,000 Btu/h, without louvers. The fraction of consumers experiencing an LCC cost is 90 percent for room air conditioners < 6,000 Btu/h, with louvers; 77 percent for room air conditioners 8,000–13,999 Btu/h, with louvers; 98 percent for room air conditioners 20,000–24,999 Btu/h, with louvers; 100 percent for room air conditioners > 25,000 Btu/h, with louvers; 92 percent for room air conditioners 8,000–10,999 Btu/h, without louvers; and 93 percent for room air conditioners > 11,000 Btu/h, without louvers.

At TSL 6, the projected change in INPV ranges from a decrease of $80.2 million to a decrease of $344.5 million. At TSL 6, DOE recognizes the risk of large negative impacts if manufacturers' expectations concerning reduced profit margins are realized. If the high end of the range of impacts is reached as DOE expects, TSL 6 could result in a net loss of 36.0 percent in INPV to room air conditioner manufacturers.

The Secretary concludes that at TSL 6 for room air conditioners, the benefits of energy savings, generating capacity reductions, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the negative NPV of consumer benefits, the economic burden on a significant fraction of consumers due to the large increases in product cost, and the capital conversion costs and profit margin impacts that could result in a large reduction in INPV for the manufacturers. Consequently, the Secretary has concluded that TSL 6 is not economically justified.

DOE next considered TSL 5. TSL 5 would save 0.477 quads of energy, an amount DOE considers significant. Under TSL 5, the NPV of consumer benefit would be $0.33 billion, using a discount rate of 7 percent, and $1.46 billion, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 5 are 26.9 Mt of CO_2, 21.9 thousand tons of NO_X, and 0.032 ton of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 5 ranges from $118 million to $1,803 million. Total generating capacity in 2043 is estimated to decrease by 1.01 GW under TSL 5.

At TSL 5, the average LCC impact is a savings (LCC decrease) of $7 for room air conditioners < 6,000 Btu/h, with louvers; a savings of $22 for room air conditioners 8,000–13,999 Btu/h, with

louvers; a savings of $0 for room air conditioners 20,000–24,999 Btu/h, with louvers; a savings of $0 for room air conditioners > 25,000 Btu/h, with louvers; a savings of $20 for room air conditioners 8,000–10,999 Btu/h, without louvers; and a savings of $11 for room air conditioners > 11,000 Btu/h, without louvers. The median payback period is 8.6 years for room air conditioners < 6,000 Btu/h, with louvers; 7.1 years for room air conditioners 8,000–13,999 Btu/h, with louvers; not applicable for room air conditioners 20,000–24,999 Btu/h, with louvers or for room air conditioners > 25,000 Btu/h, with louvers; [65] 4.9 years for room air conditioners 8,000–10,999 Btu/h, without louvers; and 3.7 years for room air conditioners > 11,000 Btu/h, without louvers. The fraction of consumers experiencing an LCC benefit is 34 percent for room air conditioners <6,000 Btu/h, with louvers; 43 percent for room air conditioners 8,000–13,999 Btu/h, with louvers; zero percent for room air conditioners 20,000–24,999 Btu/h, with louvers; zero percent for room air conditioners > 25,000 Btu/h, with louvers; 56 percent for room air conditioners 8,000–10,999 Btu/h, without louvers; and 47 percent for room air conditioners > 11,000 Btu/h, without louvers. The fraction of consumers experiencing an LCC cost is 65 percent for room air conditioners <6,000 Btu/h, with louvers; 56 percent for room air conditioners 8,000–13,999 Btu/h, with louvers; zero percent for room air conditioners 20,000–24,999 Btu/h, with louvers; zero percent for room air conditioners > 25,000 Btu/h, with louvers; 38 percent for room air conditioners 8,000–10,999 Btu/h, without louvers; and 23 percent for room air conditioners > 11,000 Btu/h, without louvers.

At TSL 5, the projected change in INPV ranges from a decrease of $86.6 million to a decrease of $184.4 million. At TSL 5, DOE recognizes the risk of moderately negative impacts if manufacturers' expectations concerning reduced profit margins are realized. If the high end of the range of impacts is reached as DOE expects, TSL 5 could result in a net loss of 19.3 percent in INPV to room air conditioner manufacturers.

The Secretary concludes that at TSL 5 for room air conditioners, the benefits of energy savings, positive NPV of consumer benefits, generating capacity reductions, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the economic burden on a significant fraction of consumers in some product classes due to the large increases in product cost, and the capital conversion costs and profit margin impacts that could result in a moderate reduction in INPV for the manufacturers. In particular, the fraction of consumers experiencing an LCC cost is 56 percent for room air conditioners with 8,000–13,999 Btu/h, with louvers, which is the product class with the largest market share. Based on the above findings, the Secretary has concluded that TSL 5 is not economically justified.

DOE then considered TSL 4. TSL 4 would save 0.305 quads of energy, an amount DOE considers significant. Under TSL 4, the NPV of consumer benefit would be $0.57 billion, using a discount rate of 7 percent, and $1.47 billion, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 4 are 17.4 Mt of CO_2, 14.2 thousand tons of NO_X, and 0.022 ton of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 4 ranges from $77 million to $1,164 million. Total generating capacity in 2043 is estimated to decrease by 0.632 GW under TSL 4.

At TSL 4, DOE projects that the average LCC impact is a savings (LCC decrease) of $7 for room air conditioners < 6,000 Btu/h, with louvers; a savings of $22 for room air conditioners 8,000–13,999 Btu/h, with louvers; a savings of $6 for room air conditioners 20,000–24,999 Btu/h, with louvers; a savings of $1 for room air conditioners > 25,000 Btu/h, with louvers; a savings of $13 for room air conditioners 8,000–10,999 Btu/h, without louvers; and a savings of $11 for room air conditioners > 11,000 Btu/h, without louvers. The median payback period is 8.6 years for room air conditioners < 6,000 Btu/h, with louvers; 2.8 years for room air conditioners 8,000–13,999 Btu/h, with louvers; 4.3 years for room air conditioners 20,000–24,999 Btu/h, with louvers; 10.1 years for room air conditioners > 25,000 Btu/h, with louvers; 2.1 years for room air conditioners 8,000–10,999 Btu/h, without louvers; and 3.7 years for room air conditioners > 11,000 Btu/h, without louvers. The fraction of consumers experiencing an LCC benefit is 34 percent for room air conditioners < 6,000 Btu/h, with louvers; 64 percent for room air conditioners 8,000–13,999 Btu/h, with louvers; 10 percent for room air conditioners 20,000–24,999 Btu/h, with louvers; 4 percent for room air conditioners > 25,000 Btu/h, with louvers; 62 percent for room air conditioners 8,000–10,999 Btu/h, without louvers; and 47 percent for room air conditioners > 11,000 Btu/h, without louvers. The fraction of consumers experiencing an LCC cost is 65 percent for room air conditioners < 6,000 Btu/h, with louvers; 34 percent for room air conditioners 8,000–13,999 Btu/h, with louvers; 5 percent for room air conditioners 20,000–24,999 Btu/h, with louvers; 9 percent for room air conditioners > 25,000 Btu/h, with louvers; 12 percent for room air conditioners 8,000–10,999 Btu/h, without louvers; and 23 percent for room air conditioners > 11,000 Btu/h, without louvers.

At TSL 4, the projected change in INPV ranges from a decrease of $111.3 million to a decrease of $177.6 million. DOE recognizes the risk of moderately negative impacts if manufacturers' expectations concerning reduced profit margins are realized. If the high end of the range of impacts is reached as DOE expects, TSL 4 could result in a net loss of 18.6 percent in INPV to room air conditioner manufacturers.

The Secretary concludes that at TSL 4 for room air conditioners, the benefits of energy savings, generating capacity reductions, emission reductions and the estimated monetary value of the CO_2 emissions reductions, positive NPV of consumer benefits and positive average consumer LCC savings outweigh the economic burden on some consumers (a significant fraction for one product class but small to moderate fractions for the other product classes) due to the increases in product cost, and the capital conversion costs and profit margin impacts that could result in a moderate reduction in INPV for the manufacturers.

In addition, the efficiency levels in TSL 4 correspond to the recommended levels in the consensus agreement, which DOE believes sets forth a statement by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates) and contains recommendations with respect to an energy conservation standard that are in accordance with 42 U.S.C. 6295(o). Moreover, DOE has encouraged the submission of consensus agreements as a way to get diverse stakeholders together, to develop an independent and probative analysis useful in DOE standard setting, and to expedite the rulemaking process. DOE also believes that standard levels recommended in the consensus agreement may increase the likelihood for regulatory

[65] In these cases the standard level is the same as the baseline efficiency level, so no consumers are impacted and therefore calculation of a payback period is not applicable.

compliance, while decreasing the risk of litigation.

After considering the analysis, comments on the preliminary TSD, and the benefits and burdens of TSL 4, DOE concludes that this trial standard level will offer the maximum improvement in efficiency that is technologically feasible and economically justified, and will result in the significant conservation of energy. Therefore, DOE today adopts TSL 4 for room air conditioners. The amended energy conservation standards for room air conditioners, expressed as CEER, are shown in Table V–53.

TABLE V–53—AMENDED ENERGY CONSERVATION STANDARDS FOR ROOM AIR CONDITIONERS

Room air conditioners	
Product class	Minimum CEER levels *Btu/Wh*
1. Without reverse cycle, with louvered sides, and less than 6,000 Btu/h	11.0
2. Without reverse cycle, with louvered sides, and 6,000 to 7,999 Btu/h	11.0
3. Without reverse cycle, with louvered sides, and 8,000 to 13,999 Btu/h	10.9
4. Without reverse cycle, with louvered sides, and 14,000 to 19,999 Btu/h	10.7
5a. Without reverse cycle, with louvered sides, and 20,000 to 24,999 Btu/h	9.4
5b. Without reverse cycle, with louvered sides, and 25,000 Btu/h or more	9.0
6. Without reverse cycle, without louvered sides, and less than 6,000 Btu/h	10.0
7. Without reverse cycle, without louvered sides, and 6,000 to 7,999 Btu/h	10.0
8a. Without reverse cycle, without louvered sides, and 8,000 to 10,999 Btu/h	9.6
8b. Without reverse cycle, without louvered sides, and 11,000 to 13,999 Btu/h	9.5
9. Without reverse cycle, without louvered sides, and 14,000 to 19,999 Btu/h	9.3
10. Without reverse cycle, without louvered sides, and 20,000 Btu/h or more	9.4
11. With reverse cycle, with louvered sides, and less than 20,000 Btu/h	9.8
12. With reverse cycle, without louvered sides, and less than 14,000 Btu/h	9.3
13. With reverse cycle, with louvered sides, and 20,000 Btu/h or more	9.3
14. With reverse cycle, without louvered sides, and 14,000 Btu/h or more	8.7
15. Casement-Only	9.5
16. Casement-Slider	10.4

3. Summary of Benefits and Costs (Annualized) of the Standards

The benefits and costs of today's standards can also be expressed in terms of annualized values. The annualized monetary values are the sum of (1) the annualized national economic value, expressed in 2009$, of the benefits from operating products that meet the proposed standards (consisting primarily of operating cost savings from using less energy, minus increases in equipment purchase costs, which is another way of representing consumer NPV), and (2) the monetary value of the benefits of emission reductions, including CO_2 emission reductions.[66] The value of the CO_2 reductions, otherwise known as the Social Cost of Carbon (SCC), is calculated using a range of values per metric ton of CO_2 developed by a recent interagency process. The monetary costs and benefits of cumulative emissions reductions are reported in 2009$ to permit comparisons with the other costs and benefits in the same dollar units.

Although combining the values of operating savings and CO_2 reductions provides a useful perspective, two issues should be considered. First, the national operating savings are domestic U.S. consumer monetary savings that occur as a result of market transactions while the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and CO_2 savings are performed with different methods that use quite different time frames for analysis. The national operating cost savings is measured for the lifetime of products shipped in 2014–2043. The SCC values, on the other hand, reflect the present value of future climate-related impacts resulting from the emission of one ton of carbon dioxide in each year. These impacts go well beyond 2100.

Table V–54 and Table V–55 show the annualized values for clothes dryers and room air conditioners, respectively. Using a 7-percent discount rate and the SCC value of $22.1/ton in 2010 (in 2009$), the cost of the standards for clothes dryers in today's rule is $52.3 million per year in increased equipment costs, while the annualized benefits are $139.1 million per year in reduced equipment operating costs, $25.0 million in CO_2 reductions, and $0.9 million in reduced NO_X emissions. In this case, the net benefit amounts to $112.7 million per year. DOE has calculated that the annualized increased equipment cost can range from $50.5 to $66.6 million per year depending on assumptions and modeling of equipment price trends. The high end of this range corresponds to a constant real equipment price trend. Using the central estimate of energy-related benefits, DOE estimates that calculated net benefits can range from $98.4 to $114.5 million per year. Using a 3-percent discount rate and the SCC value of $22.1/ton in 2010 (in 2009$), the cost of the standards for clothes dryers in today's rule is $55.4 million per year in increased equipment costs, while the benefits are $209.1 million per year in reduced operating costs, $25.0 million in CO_2 reductions, and $1.4 million in reduced NO_X emissions. In this case, the net benefit amounts to $180.1 million per year. DOE has calculated that the range in the annualized increased equipment cost can range from $53.1 to $73.5 million per year depending on assumptions and modeling of equipment price trends. The high end of this range corresponds to a constant real equipment price trend. Using the central estimate of energy-

[66] DOE used a two-step calculation process to convert the time-series of costs and benefits into annualized values. First, DOE calculated a present value in 2011, the year used for discounting the NPV of total consumer costs and savings, for the time-series of costs and benefits using discount rates of three and seven percent for all costs and benefits except for the value of CO_2 reductions. For the latter, DOE used a range of discount rates, as shown in Table V.50. From the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in 2011, that yields the same present value. The fixed annual payment is the annualized value. Although DOE calculated annualized values, this does not imply that the time-series of cost and benefits from which the annualized values were determined would be a steady stream of payments.

related benefits, DOE estimates that calculated net benefits can range from $162.0 to $182.4 million per year.

Using a 7-percent discount rate and the SCC value of $22.1/ton in 2010 (in 2009$), the cost of the standards for room air conditioners in today's rule is $107.7 million per year in increased equipment costs, while the annualized benefits are $153.7 million per year in reduced equipment operating costs, $19.5 million in CO_2 reductions, and $0.999 million in reduced NO_X emissions. In this case, the net benefit amounts to $66.4 million per year. DOE has calculated that the annualized increased equipment cost can range from $105.7 to $136.6 million per year depending on assumptions and modeling of equipment price trends. The high end of this range corresponds to a constant real equipment price trend. Using the central estimate of energy-related benefits, DOE estimates that calculated net benefits can range from $37.5 to $68.4 million per year. Using a 3-percent discount rate and the SCC value of $22.1/ton in 2010 (in 2009$), the cost of the standards for room air conditioners in today's rule is $111.0 million per year in increased equipment costs, while the benefits are $186.2 million per year in reduced operating costs, $19.5 million in CO_2 reductions, and $1.20 million in reduced NO_X emissions. In this case, the net benefit amounts to $95.9 million per year. DOE has calculated that the range in the annualized increased equipment cost can range from $108.0 to $146.0 million per year depending on assumptions and modeling of equipment price trends. The high end of this range corresponds to a constant real equipment price trend. Using the central estimate of energy-related benefits, DOE estimates that calculated net benefits can range from $60.9 to $98.9 million per year.

TABLE V–54—ANNUALIZED BENEFITS AND COSTS OF AMENDED STANDARDS (TSL 4) FOR CLOTHES DRYERS SOLD IN 2014–2043

	Discount rate	Monetized *(million 2009$/year)*		
		Primary estimate>*	Low estimate>*	High estimate>*
Benefits				
Operating Cost Savings	7%	139.1	120.6	158.3
	3%	209.1	177.4	241.3
CO_2 Reduction at $4.9/t**	5%	6.0	6.0	6.0
CO_2 Reduction at $22.1/t**	3%	25.0	25.0	25.0
CO_2 Reduction at $36.3/t**	2.5%	39.8	39.8	39.8
CO_2 Reduction at $67.1/t**	3%	76.0	76.0	76.0
NO_X Reduction at $2,519/ton**	7%	0.9	0.9	0.9
	3%	1.4	1.4	1.4
Total†	7% plus CO_2 range	146.1 to 216.1	127.6 to 197.6	165.3 to 235.3
	7%	165.0	146.5	184.3
	3%	235.4	203.7	267.6
	3% plus CO_2 range	216.5 to 286.5	184.8 to 254.8	248.7 to 318.7
Costs				
Incremental Product Costs	7%	52.3	66.6	50.5
	3%	55.4	73.5	53.1
Total Net Benefits				
Total†	7% plus CO_2 range	93.7 to 163.7	61.0 to 131.0	114.8 to 184.8
	7%	112.7	79.9	133.8
	3%	180.1	130.2	214.5
	3% plus CO_2 range	161.1 to 231.1	111.3 to 181.3	195.6 to 265.6

*The Primary, Low, and High Estimates utilize forecasts of energy prices and housing starts from the *AEO2010* Reference case, Low Economic Growth case, and High Economic Growth case, respectively. Low estimate corresponds to the low net benefit estimate and uses the zero real price trend sensitivity for equipment prices, and the high estimate corresponds to the high net benefit estimate and utilizes the high technological learning rate sensitivity for the equipment price trend.

**The CO_2 values represent global values (in 2009$) of the social cost of CO_2 emissions in 2010 under several scenarios. The values of $4.9, $22.1, and $36.3 per ton are the averages of SCC distributions calculated using 5-percent, 3-percent, and 2.5-percent discount rates, respectively. The value of $67.1 per ton represents the 95th percentile of the SCC distribution calculated using a 3-percent discount rate. The value for NO_X (in 2009$) is the average of the low and high values used in DOE's analysis.

†Total Benefits for both the 3-percent and 7-percent cases are derived using the SCC value calculated at a 3-percent discount rate, which is $22.1/ton in 2010 (in 2009$). In the rows labeled as "7% plus CO_2 range" and "3% plus CO_2 range," the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

TABLE V–55—ANNUALIZED BENEFITS AND COSTS OF AMENDED STANDARDS (TSL 4) FOR ROOM AIR CONDITIONERS SOLD IN 2014–2043

	Discount rate	Monetized *(million 2009$/year)*		
		Primary estimate*	Low estimate*	High estimate*
Benefits				
Operating Cost Savings	7%	153.7	145.1	161.9
	3%	186.2	174.2	197.3
CO_2 Reduction at $4.9/t**	5%	5.0	5.0	5.0
CO_2 Reduction at $22.1/t**	3%	19.5	19.5	19.5

TABLE V–55—ANNUALIZED BENEFITS AND COSTS OF AMENDED STANDARDS (TSL 4) FOR ROOM AIR CONDITIONERS SOLD IN 2014–2043—Continued

	Discount rate	Monetized *(million 2009$/year)*		
		Primary estimate *	Low estimate *	High estimate *
CO_2 Reduction at $36.3/t **	2.5%	30.7	30.7	30.7
CO_2 Reduction at $67.1/t **	3%	59.4	59.4	59.4
NO_X Reduction at $2,519/ton **	7%	0.999	0.999	0.999
	3%	1.197	1.197	1.197
Total †	7% plus CO_2 range	159.6 to 214.0	151.1 to 205.5	167.9 to 222.3
	7%	174.1	165.5	182.4
	3%	206.8	194.9	218.0
	3% plus CO_2 range	192.3 to 246.7	180.4 to 234.8	203.5 to 257.9
Costs				
Incremental Product Costs	7%	107.7	136.6	105.7
	3%	111.0	146.0	108.0
Total Net Benefits				
Total †	7% plus CO_2 range	51.9 to 106.3	43.4 to 97.8	62.2 to 116.6
	7%	66.4	28.9	76.7
	3%	95.9	48.9	110.0
	3% plus CO_2 range	81.4 to 135.8	34.4 to 88.8	95.5 to 149.9

* The Primary, Low, and High Estimates utilize forecasts of energy prices and housing starts from the *AEO2010* Reference case, Low Economic Growth case, and Low Economic Growth case, respectively. Low estimate corresponds to the low net benefit estimate and uses the zero real price trend sensitivity for equipment prices, and the high estimate corresponds to the high net benefit estimate and utilizes the high technological learning rate sensitivity for the equipment price trend.

** The CO_2 values represent global values (in 2009$) of the social cost of CO_2 emissions in 2010 under several scenarios. The values of $4.9, $22.1, and $36.3 per ton are the averages of SCC distributions calculated using 5-percent, 3-percent, and 2.5-percent discount rates, respectively. The value of $67.1 per ton represents the 95th percentile of the SCC distribution calculated using a 3-percent discount rate. The value for NO_X (in 2009$) is the average of the low and high values used in DOE's analysis.

† Total Benefits for both the 3-percent and 7-percent cases are derived using the SCC value calculated at a 3-percent discount rate, which is $22.1/ton in 2010 (in 2009$). In the rows labeled as "7% plus CO_2 range" and "3% plus CO_2 range," the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Section 1(b)(1) of Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (Oct. 4, 1993), requires each agency to identify the problem that it intends to address, including, where applicable, the failures of private markets or public institutions that warrant new agency action, as well as to assess the significance of that problem. The problems that today's standards address are as follows:

(1) There is a lack of consumer information and/or information processing capability about energy efficiency opportunities in clothes dryer and room air conditioner market.

(2) There is 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).

(3) There are external benefits resulting from improved energy efficiency of clothes dryers and room air conditioners that are not captured by the users of such equipment. These benefits include externalities related to environmental protection and energy security that are not reflected in energy prices, such as reduced emissions of greenhouse gases.

In addition, DOE has determined that today's regulatory action is an "economically significant regulatory action" under section 3(f)(1) of Executive Order 12866. Accordingly, section 6(a)(3) of the Executive Order requires that DOE prepare a regulatory impact analysis (RIA) on today's rule and that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) review this rule. DOE presented to OIRA for review the draft rule and other documents prepared for this rulemaking, including the RIA, and has included these documents in the rulemaking record. The assessments prepared pursuant to Executive Order 12866 can be found in the technical support document for this rulemaking. They are available for public review in the Resource Room of DOE's Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011 (76 FR 3281, Jan. 21, 2011). EO 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing

economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

We emphasize as well that Executive Order 13563 requires agencies "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." In its guidance, the Office of Information and Regulatory Affairs has emphasized that such techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes." For the reasons stated in the preamble, DOE believes that today's direct final rule is consistent with these principles, including that, to the extent permitted by law, agencies adopt a regulation only upon a reasoned determination that its benefits justify its costs and select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a final regulatory flexibility analysis (FRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking" 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site (*http://*www.gc.doe.gov*).*

For the manufacturers of residential clothes dryers and room air conditioners, the Small Business Administration (SBA) has set a size threshold, which defines those entities classified as "small businesses" for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. 65 FR 30836, 30850 (May 15, 2000), as amended at 65 FR 53533, 53545 (Sept. 5, 2000) and codified at 13 CFR part 121. The size standards are listed by NAICS code and industry description and are available at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.* Residential clothes dryer manufacturing is classified under NAICS Code 335224, "Household Laundry Equipment Manufacturing" and room air conditioner manufacturing is classified under NAICS Code 333415, "Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing." The SBA sets a threshold of 1,000 employees or less and 750 employees or less, respectively, for these categories in order for an entity to be considered as a small business, as shown in Table VI–1.

TABLE VI–1—SBA CLASSIFICATION OF SMALL BUSINESSES POTENTIALLY AFFECTED BY THIS RULE

Industry description	Revenue limit	Employee limit	NAICS
Household Laundry Equipment Manufacturing	N/A	1,000	335224
Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.	N/A	750	333415

DOE reviewed the potential standard levels considered in today's notice under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. To estimate the number of small businesses that could be impacted by the amended energy conservation standards, DOE conducted a market survey using all available public information to identify potential small manufacturers. DOE's research included the AHAM membership directory, product databases (the AHRI, AHAM, CEC, and ENERGY STAR databases), individual company Web sites, and the SBA dynamic small business search to find potential small business manufacturers. DOE also asked stakeholders and industry representatives if they were aware of any other small business manufacturers during manufacturer interviews and at previous DOE public meetings. DOE reviewed all publicly available data and contacted various companies, as necessary, to determine whether they met the SBA's definition of a small business manufacturer of covered residential clothes dryers or room air conditioners. DOE screened out companies that did not offer products covered by this rulemaking, did not meet the definition of a "small business," or are foreign owned and operated.

1. Residential Clothes Dryer Industry

The majority of residential clothes dryers are currently manufactured in the United States by one corporation that accounts for over 70 percent of the market. Two additional large manufacturers with foreign and domestic production hold much of the remaining share of the market. The small portion of the remaining residential clothes dryer market is supplied by a combination of international and domestic companies, all of which have small market shares.

Based on its review of the dynamic small business search on the SBA Web site (*http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm*), the Central Contracting Registration (*https://www.bpn.gov/CCRSearch/Search.aspx*), and input from commenters, DOE identified only one manufacturer who could potentially be considered a small business under NAICS Code 335224, "Household Laundry Equipment Manufacturing." DOE does not believe, however, that this company would be directly impacted by the standards established for clothes dryers in today's final rule. DOE notes that while the potential small business manufacturer has developed a highly efficient technology that could be used by other manufacturers to increase the efficiency of clothes dryers, the company does not produce clothes dryers and the technology is not yet commercially available. DOE acknowledges that the technology developed by this small business is a potential design option for clothes dryers, but DOE does not believe this rulemaking would in any way affect the ability of this company to commercialize or sell its technology.

2. Room Air Conditioner Industry

No room air conditioners are manufactured in the United States. Most manufacturing takes place in Asia, primarily China, with limited production in Mexico. In recent years at least two major manufacturers have exited the market. At least three major

corporations supply a majority of the market. The remaining market share is held by several large companies. DOE did not identify any small business manufacturers of room air conditioners.

For room air conditioners, DOE initially identified at least 11 distinct manufacturers of room air conditioners sold in the United States. DOE initially determined that 10 of these were large or foreign-owned and operated. DOE determined that the one room air conditioner manufacturer that was previously designated as a small business manufacturer was acquired by another company and now exceeds SBA's employment threshold for consideration as a small business under the appropriate NAICS code. As such, DOE did not identify any small business manufacturers of room air conditioners.

Based on the discussion above, DOE certifies that the standards for clothes dryers and room air conditioners set forth in today's rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE will transmit this certification to SBA as required by 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

Manufacturers of clothes dryers and room air conditioners must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for clothes dryers and room air conditioners, including any amendments adopted for those test procedures. DOE has proposed regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including clothes dryers and room air conditioners. 75 FR 56796 (Sept. 16, 2010). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for the certification is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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

D. Review Under the National Environmental Policy Act

DOE has prepared an environmental assessment (EA) of the impacts of the direct final rule pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and DOE's regulations for compliance with the National Environmental Policy Act (10 CFR part 1021). This assessment includes an examination of the potential effects of emission reductions likely to result from the rule in the context of global climate change, as well as other types of environmental impacts. The EA has been incorporated into the direct final rule TSD as chapter 15. DOE found that the environmental effects associated with the standards for clothes dryers and room air conditioners were not significant. Therefore, DOE is issuing a Finding of No Significant Impact (FONSI), pursuant to NEPA, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and DOE's regulations for compliance with NEPA (10 CFR part 1021). The FONSI is available in the docket for this rulemaking.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's direct final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform" imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. 61 FR 4729 (February 7, 1996). Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this direct final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law. 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal

governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *http://www.gc.doe.gov.*

Although today's rule does not contain a Federal intergovernmental mandate, it may impose expenditures of $100 million or more on the private sector. Specifically, the final rule could impose expenditures of $100 million or more. Such expenditures may include (1) investment in research and development and in capital expenditures by home appliance manufacturers in the years between the final rule and the compliance date for the new standard, and (2) incremental additional expenditures by consumers to purchase higher efficiency home appliances.

Section 202 of UMRA authorizes an agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the proposed rule. 2 U.S.C. 1532(c). The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The Supplementary Information section of this notice and the "Regulatory Impact Analysis" section of the direct final rule TSD for this rule respond to those requirements.

Under section 205 of UMRA, the Department is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. 2 U.S.C. 1535(a). DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the rule unless DOE publishes an explanation for doing otherwise or the selection of such an alternative is inconsistent with law. As required by 42 U.S.C. 6295(h) and (o), 6313(e), and 6316(a), today's rule would establish energy conservation standards for clothes dryers and room air conditioners that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified. A full discussion of the alternatives considered by DOE is presented in the "Regulatory Impact Analysis" section of the direct final rule TSD.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

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

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

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has concluded that today's regulatory action, which sets forth energy conservation standards for clothes dryers and room air conditioners, is not a significant energy action because the proposed standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on the direct final rule.

L. Review Under the Information Quality Bulletin for Peer Review

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

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The "Energy Conservation Standards Rulemaking Peer Review Report" dated February 2007 has been

disseminated and is available at the following Web site: *http://www1.eere.energy.gov/buildings/appliance_standards/peer_review.html.*

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

VII. Public Participation

A. Submission of Comments

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

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

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

Do not submit to regulations.gov information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through regulations.gov cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

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

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

Include contact information each time you submit comments, data, documents, and other information to DOE. Email submissions are preferred. If you submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

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

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

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: one copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. 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.

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

VIII. Approval of the Office of the Secretary

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

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Reporting and recordkeeping requirements, and Small businesses.

Issued in Washington, DC, on April 8, 2011.

Kathleen Hogan,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE amends chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

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

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

■ 2. Revise § 430.32 paragraphs (b), and (h) to read as follows:

§ 430.32 Energy and water conservation standards and effective dates.

* * * * *

(b) *Room air conditioners.*

Product class	Energy efficiency ratio, effective from Oct. 1, 2000 to April 20, 2014	Combined energy efficiency ratio, effective as of April 21, 2014
1. Without reverse cycle, with louvered sides, and less than 6,000 Btu/h	9.7	11.0
2. Without reverse cycle, with louvered sides, and 6,000 to 7,999 Btu/h	9.7	11.0
3. Without reverse cycle, with louvered sides, and 8,000 to 13,999 Btu/h	9.8	10.9
4. Without reverse cycle, with louvered sides, and 14,000 to 19,999 Btu/h	9.7	10.7
5a. Without reverse cycle, with louvered sides, and 20,000 to 24,999 Btu/h	8.5	9.4
5b. Without reverse cycle, with louvered sides, and 25,000 Btu/h or more	8.5	9.0
6. Without reverse cycle, without louvered sides, and less than 6,000 Btu/h	9.0	10.0
7. Without reverse cycle, without louvered sides, and 6,000 to 7,999 Btu/h	9.0	10.0
8a. Without reverse cycle, without louvered sides, and 8,000 to 10,999 Btu/h	8.5	9.6
8b. Without reverse cycle, without louvered sides, and 11,000 to 13,999 Btu/h	8.5	9.5
9. Without reverse cycle, without louvered sides, and 14,000 to 19,999 Btu/h	8.5	9.3
10. Without reverse cycle, without louvered sides, and 20,000 Btu/h or more	8.5	9.4
11. With reverse cycle, with louvered sides, and less than 20,000 Btu/h	9.0	9.8
12. With reverse cycle, without louvered sides, and less than 14,000 Btu/h	8.5	9.3
13. With reverse cycle, with louvered sides, and 20,000 Btu/h or more	8.5	9.3
14. With reverse cycle, without louvered sides, and 14,000 Btu/h or more	8.0	8.7
15. Casement-Only	8.7	9.5
16. Casement-Slider	9.5	10.4

* * * * *

(h) *Clothes dryers.* (1) Gas clothes dryers manufactured after January 1, 1988 shall not be equipped with a constant burning pilot.

(2) Clothes dryers manufactured on or after May 14, 1994 and before April 21, 2014, shall have an energy factor no less than:

Product class	Energy factor (lbs/kWh)
i. Electric, Standard (4.4 ft^3 or greater capacity)	3.01
ii. Electric, Compact (120V) (less than 4.4 ft^3 capacity)	3.13
iii. Electric, Compact (240V) (less than 4.4 ft^3 capacity)	2.90
iv. Gas	2.67

(3) Clothes dryers manufactured on or after April 21, 2014, shall have a combined energy factor no less than:

Product class	Combined energy factor (lbs/kWh)
i. Vented Electric, Standard (4.4 ft^3 or greater capacity)	3.73
ii. Vented Electric, Compact (120V) (less than 4.4 ft^3 capacity)	3.61
iii. Vented Electric, Compact (240V) (less than 4.4 ft^3 capacity)	3.27
iv. Vented Gas	3.30
v. Ventless Electric, Compact (240V) (less than 4.4 ft^3 capacity)	2.55
vi. Ventless Electric, Combination Washer-Dryer	2.08

* * * * *

[FR Doc. 2011–9040 Filed 4–20–11; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL REGISTER

Vol. 76 Thursday,
No. 77 April 21, 2011

Part III

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins; Marine Tank Vessel Loading Operations; Pharmaceuticals Production; and the Printing and Publishing Industry; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2010–0600; FRL–9291–3]

RIN 2060–AO91

National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins; Marine Tank Vessel Loading Operations; Pharmaceuticals Production; and the Printing and Publishing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action for four national emission standards for hazardous air pollutants (NESHAP) that regulate 12 industrial source categories evaluated in our risk and technology review. The four NESHAP include: National Emissions Standards for Group I Polymers and Resins (Butyl Rubber Production, Epichlorohydrin Elastomers Production, Ethylene Propylene Rubber Production, Hypalon™ Production, Neoprene Production, Nitrile Butadiene Rubber Production, Polybutadiene Rubber Production, Polysulfide Rubber Production, and Styrene Butadiene Rubber and Latex Production); Marine Tank Vessel Loading Operations; Pharmaceuticals Production; and The Printing and Publishing Industry.

For some source categories, EPA is finalizing our decisions concerning the residual risk and technology reviews. For the Marine Tank Vessel Loading Operations NESHAP and the Group I Polymers and Resins NESHAP, EPA is finalizing emission standards to address certain emission sources not previously regulated under the NESHAP. EPA is also finalizing changes to the Pharmaceuticals Production NESHAP to correct an editorial error. For each of the four NESHAP, EPA is finalizing revisions to the regulatory provisions related to emissions during periods of startup, shutdown, and malfunction and promulgating provisions addressing electronic submission of emission test results.

DATES: This final action is effective on April 21, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2010–0600. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet, and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov*, or in hard copy at the EPA Docket Center, EPA West Building, Room Number 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Ms. Mary Tom Kissell, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Refining and Chemicals Group (E143–01), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–4516; fax number: (919) 685–3219; and e-mail address: *kissell.mary@epa.gov.* For additional contact information, see the following **SUPPLEMENTARY INFORMATION** section.

SUPPLEMENTARY INFORMATION: For specific information regarding the modeling methodology, contact Ms. Elaine Manning, Office of Air Quality Planning and Standards, Health and Environmental Impacts Division, Air Toxics Assessment Group (C539–02), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–5499; fax number: (919) 541–0840; and e-mail address: *manning.elaine@epa.gov.* For information about the applicability of these four NESHAP to a particular entity, contact the appropriate person listed in Table 1 to this preamble.

TABLE 1—LIST OF EPA CONTACTS FOR THE NESHAP ADDRESSED IN THIS ACTION

NESHAP for:	OECA contact [1]	OAQPS contact [2]
Group I Polymers and Resins	Marcia Mia (202) 564–7042, *mia.marcia@epa.gov.*	Nick Parsons, (919) 541–5372, *parsons.nick@epa.gov.*
Marine Tank Vessel Loading Operations	Maria Malave, (202) 564–7027, *malave.maria@epa.gov.*	Steve Shedd, (919) 541–5397, *shedd.steve@epa.gov.*
Pharmaceuticals Production	Marcia Mia, (202) 564–7042, *mia.marcia@epa.gov.*	Nick Parsons, (919) 541–5372, *parsons.nick@epa.gov.*
The Printing and Publishing Industry	Rafael Sanchez, (202) 564–7028, *sanchez.rafael@epa.gov.*	David Salman, (919) 541–5402, *salman.dave@epa.gov.*

[1] OECA stands for EPA's Office of Enforcement and Compliance Assurance.
[2] OAQPS stands for EPA's Office of Air Quality Planning and Standards.

Background Information Document. On October 21, 2010 (75 FR 65068), EPA proposed revisions to six NESHAP that regulate 16 industrial source categories evaluated in our risk and technology review. The six NESHAP and industrial source categories are: National Emissions Standards for Hazardous Air Pollutant Emissions: Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks; Group I Polymers and Resins; Marine Tank Vessel Loading Operations; Pharmaceuticals Production; The Printing and Publishing Industry; and Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration. In this action, we are finalizing decisions for four of these NESHAP—Group I Polymers and Resins; Marine Tank Vessel Loading Operations; Pharmaceuticals Production; and The Printing and Publishing Industry. We will finalize our decisions for the Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks NESHAP and the Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration in a future rulemaking.[1] A summary of the public comments on the proposal, and EPA's responses to the comments, is

[1] We addressed two additional source categories as part of this proposed rule, Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks and Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration, and we plan to take final action on those two source categories in June 2011.

available in Docket ID No. EPA–HQ–OAR–2010–0600.

Organization of This Document. The following outline is provided to aid in locating information in the preamble.

I. General Information
A. Does this action apply to me?
B. Where can I get a copy of this document?
C. Judicial Review
II. Background
III. Summary of the Final Rules
A. What are the final rule amendments for the Group I Polymers and Resins source categories?
B. What are the final rule amendments for the Marine Tank Vessel Loading Operations (MTVLO) source category?
C. What are the final rule amendments for the Pharmaceuticals Production source category?
D. What are the final rule amendments for the Printing and Publishing Industry source category?
E. What are the requirements during periods of startup, shutdown, and malfunction?
F. What are the requirements for submission of emissions test results to EPA?
G. What are the effective and compliance dates of the standards?
IV. Summary of Significant Changes Since Proposal
A. What changes did we make to the risk assessments for these source categories since proposal?
B. What changes did we make to the Group I Polymers and Resins MACT since proposal?
C. What changes did we make to the Marine Tank Vessel Loading Operations MACT since proposal?
V. Summary of Significant Comments and Responses
A. EPA's Authority Under CAA Section 112
B. Group I Polymers and Resins
C. Marine Tank Vessel Loading Operations
D. Startup, Shutdown, and Malfunction (SSM) Requirements
VI. Impacts of the Final Rules
VII. Statutory and Executive Order Reviews
A. Executive Orders 12866: Regulatory Planning and Review, and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act

A red-line version of the regulatory language that incorporates the changes in this action is available in the docket.

I. General Information

A. Does this action apply to me?

Regulated Entities. Categories and entities potentially regulated by this action include:

TABLE 2—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS FINAL ACTION

NESHAP and source category	NAICS [1] code	MACT [2] code
Group I Polymers and Resins:		
Butyl Rubber Production	325212	1307
Epichlorohydrin Elastomers Production	325212	1311
Ethylene Propylene Rubber Production	325212	1313
Hypalon™ Production	325212	1315
Neoprene Production	325212	1320
Nitrile Butadiene Rubber Production	325212	1321
Polybutadiene Rubber Production	325212	1325
Polysulfide Rubber Production	325212	1332
Styrene Butadiene Rubber and Latex Production	325212	1339
Marine Tank Vessel Loading Operations	4883	0603
Pharmaceuticals Production	3254	1201
The Printing and Publishing Industry	32311	0714

[1] North American Industry Classification System.
[2] Maximum Achievable Control Technology.

Table 2 is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by the final action for the source categories listed. To determine whether your facility would be affected, you should examine the applicability criteria in the appropriate NESHAP. If you have any questions regarding the applicability of any of these NESHAP, please contact the appropriate person listed in Table 1 of this preamble in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this final action will also be available on the World Wide Web (www) through the Technology Transfer Network (TTN). Following signature, a copy of the final action will be posted on the TTN's policy and guidance page for newly proposed and promulgated rules at the following address: *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html.* The TTN provides information and technology exchange in various areas of air pollution control.

Additional information is available on the residual risk and technology review (RTR) Web page at *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html.* This information includes source category descriptions and detailed emissions and other data that were used as inputs to the risk assessments.

C. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by June 20, 2011. Under section 307(b)(2) of the CAA, the requirements established by these final rules may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that "[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review." This

section also provides a mechanism for us to convene a proceeding for reconsideration, "[i]f the person raising an objection can demonstrate to EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule." Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

II. Background

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of hazardous air pollutants (HAP) from stationary sources. In the first stage, after EPA has identified categories of sources emitting one or more of the HAP listed in section 112(b) of the CAA, section 112(d) calls for us to promulgate NESHAP for those sources. "Major sources" are those that emit, or have the potential to emit, any single HAP at a rate of 10 tons per year (TPY) or more, or 25 TPY or more of any combination of HAP. For major sources, these technology-based standards must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts), and are commonly referred to as maximum achievable control technology (MACT) standards.

For MACT standards, the statute specifies certain minimum stringency requirements, which are referred to as floor requirements, and may not be based on cost considerations. See CAA section 112(d)(3). For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best controlled similar source. The MACT standards for existing sources can be less stringent than floors for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources). In developing MACT, we must also consider control options that are more stringent than the floor, under CAA section 112(d)(2). We may establish standards more stringent than the floor, based on the consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements. In promulgating MACT standards, CAA section 112(d)(2) directs us to consider the application of measures, processes, methods, systems, or techniques that reduce the volume of or eliminate HAP emissions through process changes, substitution of materials, or other modifications; enclose systems or processes to eliminate emissions; collect, capture, or treat HAP when released from a process, stack, storage, or fugitive emissions point; and/or are design, equipment, work practice, or operational standards.

In the second stage of the regulatory process, we undertake two different analyses, as required by the CAA: Section 112(d)(6) of the CAA calls for us to review these technology-based standards, and to revise them "as necessary (taking into account developments in practices, processes, and control technologies)" no less frequently than every 8 years; and within 8 years after promulgation of the technology standards, CAA section 112(f) calls for us to evaluate the risk to public health remaining after application of the technology-based standards and to revise the standards, if necessary, to provide an ample margin of safety to protect public health or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. In doing so, EPA may adopt standards equal to existing MACT standards if EPA determines that the existing standards are sufficiently protective. *NRDC* v. *EPA,* 529 F.3d 1077, 1083 (D.C. Cir. 2008).

On October 21, 2010, EPA published a proposed rule and supplemental notice of proposed rulemaking in the **Federal Register** for these four NESHAP that took into consideration the RTR analyses. For these NESHAP—Group I Polymers and Resins, Marine Tank Vessel Loading Operations, Pharmaceuticals Production, and The Printing and Publishing Industry—this action provides EPA's final determinations pursuant to the RTR provisions of CAA section 112. In addition, we are promulgating amendments as follows:

- For the Marine Tank Vessel Loading Operations NESHAP and Group I Polymers and Resins NESHAP, pursuant to CAA section 112(d)(2) and (3), EPA is finalizing revisions to address certain emission sources not currently regulated under the standards.
- For the Pharmaceuticals Production NESHAP, EPA is finalizing changes to correct an editorial error.
- For each of the four NESHAP, EPA is finalizing revisions to requirements in each NESHAP related to emissions during periods of startup, shutdown, and malfunction (SSM).
- For each of the four NESHAP, EPA is finalizing revisions to requirements in each NESHAP related to electronic reporting.

III. Summary of the Final Rules

A. What are the final rule amendments for the Group I Polymers and Resins source categories?

The National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins were promulgated on September 5, 1996 (62 FR 46925), and codified at 40 CFR part 63, subpart U. The Group I Polymers and Resins MACT standards apply to major sources and regulate HAP emissions from nine source categories: Butyl Rubber Production, Epichlorohydrin Elastomers Production, Ethylene Propylene Rubber Production, Hypalon™ Production, Neoprene Production, Nitrile Butadiene Rubber (NBR) Production, Polybutadiene Rubber Production, Polysulfide Rubber Production, and Styrene Butadiene Rubber and Latex Production.

The Group I Polymers and Resins MACT standards regulate HAP emissions resulting from the production of elastomers (*i.e.,* synthetic rubber). An elastomer is a synthetic polymeric material that can stretch to at least twice its original length and then return rapidly to approximately its original length when released. Elastomers are produced via a polymerization/copolymerization process, in which monomers undergo intermolecular chemical bond formation to form a very large polymer molecule. Generally, the production of elastomers entails four processes: (1) Raw material (*i.e.,* solvent) storage and refining; (2) polymer formation in a reactor (either via the solution process, where monomers are dissolved in an organic solvent, or the emulsion process, where monomers are dispersed in water using a soap solution); (3) stripping and material recovery; and (4) finishing (*i.e.,* blending, aging, coagulation, washing, and drying).

Sources of HAP emissions from elastomers production include raw material storage vessels, front-end

process vents, back-end process operations, wastewater operations, and equipment leaks. The "front-end" processes include pre-polymerization, reaction, stripping, and material recovery operations; and the "back-end" process includes all operations after stripping (predominantly drying and finishing). Typical control devices used to reduce organic HAP emissions from front-end process vents include flares, incinerators, absorbers, carbon adsorbers, and condensers. Emissions from storage vessels are controlled by floating roofs or by routing them to a control device.

While emissions from back-end process operations can be controlled with control devices such as incinerators, the most common method of reducing these emissions is the pollution prevention method of reducing the amount of residual HAP that is contained in the raw product going to the back-end operations. Emissions from wastewater are controlled by a variety of methods, including equipment modifications (*e.g.,* fixed roofs on storage vessels and oil water separators; covers on surface impoundments, containers, and drain systems), treatment to remove the HAP (steam stripping, biological treatment), control devices, and work practices.

Emissions from equipment leaks are typically reduced by leak detection and repair work practice programs, and in some cases, by equipment modifications.

For these five Group I Polymers and Resins [2] source categories—Epichlorohydrin Elastomers Production; Hypalon™ Production; Polybutadiene Rubber Production; Styrene Butadiene Rubber and Latex Production; and NBR Production—we have determined that the current MACT standards reduce risk to an acceptable level, provide an ample margin of safety to protect public health, and prevent adverse environmental effects. We are, therefore, re-adopting the existing MACT standards to satisfy section 112(f) of the CAA. We have also determined that there have been no significant developments in practices, processes, or control technologies since promulgation of the MACT standards, and that, therefore, it is not necessary to revise the MACT standard pursuant to CAA section 112(d)(6).[3]

[2] We previously re-adopted the existing MACT standards to satisfy section 112(f) of the CAA for four Group I Polymers and Resins source categories—Neoprene Rubber Production; Ethylene Propylene Rubber Production; Butyl Rubber Production; and Polysulfide Rubber Production. See 73 FR 76220, published December 16, 2008.

[3] We note there are no longer any operating facilities in the United States that produce Hypalon™, and we do not anticipate that any will begin operation in the future.

We are eliminating the subcategories in the Butyl Rubber source category (Butyl Rubber and Halobutyl Rubber) because the technical differences that distinguished the subcategories when the original rule was developed no longer exist. The existing requirements for facilities producing either butyl rubber or halobutyl rubber as the primary product are identical, and, therefore, the removal of the subcategory distinction does not affect these requirements. The source category remains named Butyl Rubber Production. We are establishing standards at the MACT floor level of control for previously unregulated hydrochloric acid (HCl) emissions from front-end process vents in the Butyl Rubber and Ethylene Propylene Rubber source categories. We are also establishing standards at the MACT floor level of control for previously unregulated back-end process operations in the Epichlorohydrin Elastomers, NBR, Neoprene, and Butyl Rubber source categories.

The numerical emission standards that are being finalized in this action for new and existing major source facilities in the Group 1 Polymers and Resins source categories are shown in Table 3 of this preamble.

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BILLING CODE 6560–50–C

Table 3 – Numerical Emission Standards for Existing and New Major Source of HAP in Group 1 Polymers and Resins Source Categories

Process Type	P&R I Source Category	Emissions Standard
Front-end process vents		Limit of Mg HCl per Mg elastomer produced
	Butyl Rubber Production	$= \frac{\left(\text{HCl emissions in 2010} \frac{Mg}{yr}\right) * 1.74}{\text{butyl rubber produced in 2010} \frac{Mg}{yr}}$
	Ethylene Propylene Rubber Production	$= \frac{27 \frac{Mg}{yr}}{\text{ethylene propylene rubber produced in 2010} \frac{Mg}{yr}}$
Back-end process operations		Limit of Mg organic HAP per Mg elastomer produced
	Butyl Rubber Production	$= \frac{\left(\text{controlled + bypassed + uncontrolled organic HAP emissions in 2009} \frac{Mg}{yr}\right) * 1.35}{\text{butyl rubber produced in 2009} \frac{Mg}{yr}}$
	Epichlorohydrin Elastomers Production	$= \frac{51 \frac{Mg}{yr}}{\text{epichlorohydrin elastomer produced in 2009} \frac{Mg}{yr}}$
	Neoprene Rubber Production	$= \frac{30 \frac{Mg}{yr}}{\text{neoprene rubber produced in 2007} \frac{Mg}{yr}}$
	NBR Production	$= \frac{2.4 \frac{Mg}{yr}}{\text{NBR produced in 2009} \frac{Mg}{yr}}$

We are finalizing changes to the Group I Polymers and Resins MACT standards to eliminate the SSM exemption. These changes revise Table 1 in 40 CFR part 63, subpart U to indicate that several requirements of the 40 CFR part 63 General Provisions related to periods of SSM do not apply. We are adding provisions to the Group I Polymers and Resins MACT standards to operate in a manner that minimizes emissions, removing the SSM plan requirement, removing the explanation of applicability of emissions standards during periods of SSM, revising the definition of initial start-up to remove references to malfunctions, clarifying the required conditions for performance tests, and revising the SSM-associated monitoring, recordkeeping, and reporting requirements to require reporting and recordkeeping for periods of malfunction. We are also adding provisions to provide an affirmative defense against civil penalties for exceedances of emission standards caused by malfunctions, as well as criteria for establishing the affirmative defense.

We are also requiring the electronic submittal of performance test data to increase the ease and efficiency of data submittal and to improve data accessibility. Specifically, owners and operators of Group I Polymers and Resins facilities are required to submit electronic copies of applicable reports of performance tests to EPA's WebFIRE database through an electronic emissions test report structure called the Electronic Reporting Tool (ERT). This requirement to submit performance test data electronically to EPA does not require any additional performance testing, and applies only to those performance tests conducted using test methods that are supported by the ERT.

We anticipate that the front-end process vent limits will not require additional control to meet the floor-level standards for HCl emissions from front-end process operations at the facilities in the Butyl Rubber and Ethylene Propylene Rubber source categories. We anticipate that facilities in the Butyl Rubber, Epichlorohydrin Elastomers, Neoprene Rubber, and NBR source categories will not require additional control to meet the floor-level standards for the back-end process operations.

To demonstrate compliance with the front-end process vent HCl emissions provisions of the final rule, the facility owner or operator will be required to submit an initial notification of the calculated front-end HCl limit for the facility and to perform and record monthly calculations of the mass of HCl emissions and the mass of elastomer product produced. These recorded monthly calculations are required to be submitted in the semi-annual compliance reports already required by existing provisions of the rule.

To demonstrate compliance with the back-end process operation provisions of the final rule, the facility owner or operator will be required to submit an initial notification of the calculated back-end limit for the facility, and to perform and record monthly calculations of the mass of HAP emissions and the mass of elastomer product produced. These recorded monthly calculations are required to be submitted in the semi-annual compliance reports already required by existing provisions of the rule.

The final changes to the Group I Polymers and Resins MACT standards are not expected to result in substantial emissions reduction or economic impacts. We have determined that facilities in the Group 1 Polymers and Resins categories can meet the applicable emissions limits at all times, including periods of startup and shutdown, with the exception of the organic HAP emissions limits applicable to front-end process vents at facilities in the Butyl Rubber and Ethylene Propylene Rubber source categories. We have determined that facilities in the Butyl Rubber and Ethylene Propylene Rubber source categories cannot meet the applicable organic HAP emission limits applicable to continuous front-end process vents during periods of shutdown. Therefore, we are establishing alternative emissions limits during these periods. No substantial changes in costs to industry are predicted.

B. What are the final rule amendments for the Marine Tank Vessel Loading Operations (MTVLO) source category?

MTVLO are loading operations conducted at marine terminals in which liquid commodities, such as crude oil, gasoline, and other fuels or chemicals, are pumped from the terminal's large, above-ground storage tanks through a network of pipes into a storage compartment (tank) on the vessel. Emissions occur as vapors are displaced from the tank as it is being filled. Most MTVLO facilities are either independent terminals or are associated with synthetic organic chemical manufacturers or with petroleum refineries (although MTVLO at petroleum refineries are part of the Petroleum Refinery source category).

For these MTVLO facilities, we have determined that the current MACT standards reduce risk to an acceptable level, provide an ample margin of safety to protect public health, and prevent adverse environmental effects. We are, therefore, re-adopting the existing MACT standards to satisfy section 112(f) of the CAA. We have also determined that the costs of the only significant development in practices, processes, or control technologies since promulgation of the MACT standards is disproportionate to the emission reduction that would be achieved, and we are not adopting additional technology standards pursuant to CAA section 112(d)(6).

We are finalizing changes to the MTVLO MACT standards to require standards for two subcategories of MTVLO facilities for which the current MTVLO MACT standards do not include emission standards. These subcategories are facilities with MTVLO that emit less than 10/25 TPY of HAP that are located at a major source of HAP emissions and facilities located more than 0.5 miles from shore. For these source categories, we are adding a requirement for the facilities to perform submerged fill. This requirement is the MACT floor level of control.

We are finalizing changes to the MTVLO MACT standards to eliminate the SSM exemption. These changes revise Table 1 in 40 CFR part 63, subpart Y to indicate that several requirements of the 40 CFR part 63 General Provisions related to periods of SSM do not apply. We are adding provisions to the MTVLO MACT standards to operate in a manner that minimizes emissions, clarifying the required conditions for performance tests, and revising the SSM-associated monitoring, recordkeeping, and reporting requirements to require reporting and recordkeeping for periods of malfunction. We are also adding provisions to provide an affirmative defense against civil penalties for exceedances of emission standards caused by malfunctions, as well as criteria for establishing the affirmative defense.

Additionally, we are requiring the electronic submittal of performance test data to increase the ease and efficiency of data submittal and to improve data accessibility. Specifically, owners and operators of MTVLO are required to submit electronic copies of applicable reports of performance tests to EPA's WebFIRE database through an electronic emissions test report structure called the ERT. This requirement to submit performance test data electronically to EPA does not require any additional performance testing, and applies only to those performance tests conducted using test methods that are supported by the ERT. The final changes to the

MTVLO MACT standards will have little or no impact on HAP emissions or costs because facilities currently use submerged fill, as required by Coast Guard regulations.[4]

C. What are the final rule amendments for the Pharmaceuticals Production source category?

The pharmaceutical manufacturing process consists of chemical production operations that produce drugs and medications. These operations include chemical synthesis (deriving a drug's active ingredient) and chemical formulation (producing a drug in its final form). Emissions occur from breathing and withdrawal losses from chemical storage tanks, venting of process vessels, leaks from piping and equipment used to transfer HAP compounds (equipment leaks), and volatilization of HAP from wastewater streams.

For the reasons provided in the proposed rule and in the support documents in the docket, we have determined that the current MACT standards for Pharmaceutical Production facilities reduce risk to an acceptable level, provide an ample margin of safety to protect public health, and prevent adverse environmental effects. We are, therefore, re-adopting the existing MACT standards to satisfy section 112(f) of the CAA. We have also determined that there have been no significant developments in practices, processes, or control technologies since promulgation of the MACT standards, and that, therefore, it is not necessary to revise the MACT standards pursuant to CAA section 112(d)(6).

We are finalizing changes to the Pharmaceutical Production MACT standards to eliminate the SSM exemption. These changes revise Table 1 in 40 CFR part 63, subpart GGG to indicate that several requirements of the 40 CFR General Provisions related to periods of SSM do not apply. We are adding provisions to the Pharmaceuticals Production MACT standards to operate in a manner that minimizes emissions, removing the SSM plan requirement, removing the exemption provisions for periods of SSM in 40 CFR 63.1250(g), requiring that delay of equipment leak repair plans be contained in a separate document, clarifying the required conditions for performance tests, and revising the SSM-associated monitoring, recordkeeping, and reporting requirements to require reporting and recordkeeping for periods of malfunction. We are also adding provisions to provide an affirmative defense against civil penalties for exceedances of emission standards caused by malfunctions, as well as criteria for establishing the affirmative defense.

We are also requiring the electronic submittal of performance test data to increase the ease and efficiency of data submittal and to improve data accessibility. Specifically, owners and operators of Pharmaceuticals Production facilities are required to submit electronic copies of applicable reports of performance tests to EPA's WebFIRE database through an electronic emissions test report structure called the ERT. This requirement to submit performance test data electronically to EPA does not require any additional performance testing, and applies only to those performance tests conducted using test methods that are supported by the ERT.

We are also finalizing a correction to an editorial error in 40 CFR 63.1257(e)(2)(iii)(A)(6)(ii). This section incorrectly provides that only one of the three listed criteria must be met for the inlet to the equalization tank to be considered the inlet to the biological treatment process. The final correction specifies that all of the criteria must be met.

These revisions to the Pharmaceutical Production MACT standards are not expected to result in substantial emissions reduction or economic impacts. We have determined that facilities in this source category can meet the applicable emissions standards at all times, including periods of startup and shutdown, are in compliance with the current MACT standard. No substantial changes in costs to industry are predicted. The correction to the editorial error may result in minimal costs to add or move equipment and may also result in some small amount of emission reductions for any facility that was meeting only one or two of the three listed criteria. However, as the intent of the current MACT standards at the time they were promulgated was to require facilities to meet all three criteria, the costs and emission reductions associated with this requirement were factored into the impacts of the MACT standards at the time the standards were promulgated in 1998. See 63 FR 50287.

D. What are the final rule amendments for the Printing and Publishing Industry source category?

Printing and publishing facilities are those facilities that use rotogravure, flexography, and other methods, such as lithography, letterpress, and screen printing, to print on a variety of substrates, including paper, plastic film, metal foil, and vinyl. The Printing and Publishing Industry MACT standards include two subcategories: (1) Publication rotogravure printing and (2) product and packaging rotogravure and wide-web flexographic printing. Emissions occur from the evaporation of solvents in the inks and from cleaning solvents. The emission points include printing presses and associated dryers and ink and solvent storage.

For the reasons provided in the proposed rule and in the support documents in the docket, we have determined that the current MACT standards for Printing and Publishing facilities reduce risk to an acceptable level, provide an ample margin of safety to protect public health, and prevent adverse environmental effects. We are, therefore, re-adopting the existing MACT standards to satisfy section 112(f) of the CAA. We have also determined that the costs of the only significant development in practices, processes, or control technologies since promulgation of the MACT standards is disproportionate to the emission reduction that would be achieved, and, therefore, we are not adopting additional technology standards pursuant to CAA section 112(d)(6).

We are finalizing changes to the Printing and Publishing Industry MACT standards to eliminate the SSM exemption. These changes revise Table 1 in 40 CFR part 63, subpart KK to indicate that several requirements of the 40 CFR part 63 General Provisions related to periods of SSM do not apply. We are adding provisions to the Printing and Publishing Industry MACT standards requiring sources to operate in a manner that minimizes emissions, removing the SSM plan requirement, clarifying the required conditions for performance tests, and revising the SSM-associated monitoring, recordkeeping, and reporting requirements to require reporting and recordkeeping for periods of malfunction. We are also adding provisions to provide an affirmative defense against civil penalties for exceedances of emission standards caused by malfunctions, as well as criteria for establishing the affirmative defense.

We are also requiring the electronic submittal of performance test data to increase the ease and efficiency of data submittal and to improve data accessibility. Specifically, owners and operators of printing and publishing facilities are required to submit electronic copies of applicable reports of performance tests to EPA's WebFIRE

[4] 46 CFR 153.282.

database through an electronic emissions test report structure called the Electronic ERT. This requirement to submit performance test data electronically to EPA does not require any additional performance testing, and applies only to those performance tests conducted using test methods that are supported by the ERT.

These revisions to the Printing and Publishing Industry MACT standards are not expected to result in substantial emissions reduction or economic impacts. We have determined that facilities in this source category can meet the applicable emissions standards at all times, including periods of startup and shutdown, are in compliance with the current MACT standards. No substantial changes in costs to industry are predicted.

E. What are the requirements during periods of startup, shutdown, and malfunction?

The United States Court of Appeals for the District of Columbia Circuit vacated portions of two provisions in EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. *Sierra Club* v. *EPA,* 551 F.3d 1019 (DC Cir. 2008), *cert. denied, 130 S. Ct. 1735 (U.S. 2010).* Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), that is part of a regulation, commonly referred to as the "General Provisions Rule," that EPA promulgated under section 112 of the CAA. When incorporated into CAA section 112(d) regulations for specific source categories, these two provisions exempt sources from the requirement to comply with the otherwise applicable CAA section 112 emission standards during periods of SSM.

While the Court's ruling in *Sierra Club* v. *EPA,* 551 F.3d 1019 (DC Cir. 2008), did not directly affect all the NESHAP rules being addressed, the legality of source category-specific SSM provisions, such as those in all four NESHAP rules, are called into question based on the reasoning in that decision.

We have eliminated the SSM exemptions in these four NESHAP. Consistent with *Sierra Club* v. *EPA,* EPA's standards in these rules will apply at all times. We have eliminated or revised certain recordkeeping and reporting requirements that were related to the SSM exemption that no longer applies. EPA has attempted to ensure that we have not included in the regulatory language any provisions that are inappropriate, unnecessary, or redundant in light of the removal of the SSM exemption.

EPA has not established different standards for periods of startup and shutdown for three of the four NESHAP addressed in this rule because we believe compliance with the standards is achievable during these periods. In the case of MTVLO, loading of marine tank vessels occurs in "batches," and general practice is for the loading operators to test out the vapor control system before it is attached to the tank vessel. In the case of the Pharmaceuticals Production MACT standards, we expect the difference in emission levels during periods of startup and shutdown are insignificant and that facilities in this source category should be able to comply with the standards during these times. In the case of the Printing and Publishing MACT standards, we believe there are sufficiently long averaging times incorporated into the emissions limits that facilities should be able to comply during periods of startup and shutdown. In the case of Group I Polymers and Resins, one commenter stated that organic HAP emissions that are required to be sent to emissions control equipment (*i.e.,* flares) may not be able to comply with the MACT standards during periods of shutdown. The commenter stated that they may not always be able to route some of their process vents to a flare during periods of shutdown due to the low pressure or low heating value in the process vent. EPA agrees with the commenter that it is not possible to comply with the applicable standard during periods of shutdown, and has provided an alternative standard applicable during these times.

Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. However, by contrast, malfunction is defined as a "sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner * * *" (40 CFR 60.2). EPA has determined that CAA section 112 does not require that emissions that occur during periods of malfunction be factored into development of CAA section 112 standards. Under CAA section 112, emissions standards for new sources must be no less stringent than the level "achieved" by the best controlled similar source, and for existing sources, generally must be no less stringent than the average emission limitation "achieved" by the best performing 12 percent of sources in the category. There is nothing in CAA section 112 that directs the Agency to consider malfunctions in determining the level "achieved" by the best performing or best controlled sources when setting emission standards. Moreover, while EPA accounts for variability in setting emissions standards consistent with the CAA section 112 case law, nothing in that case law requires the Agency to consider malfunctions as part of that analysis. CAA Section 112 uses the concept of "best controlled" and "best performing" unit in defining the level of stringency that CAA section 112 performance standards must meet. Applying the concept of "best controlled" or "best performing" to a unit that is malfunctioning presents significant difficulties, as malfunctions are sudden and unexpected events. Further, accounting for malfunctions would be difficult, if not impossible, given the myriad different types of malfunctions that can occur across all sources in the category, and, given the difficulties associated with predicting or accounting for the frequency, degree, and duration of various malfunctions that might occur. As such, the performance of units that are malfunctioning is not "reasonably" foreseeable. See, *e.g., Sierra Club* v. *EPA,* 167 F. 3d 658, 662 (DC Cir. 1999) (EPA typically has wide latitude in determining the extent of data-gathering necessary to solve a problem. We generally defer to an agency's decision to proceed on the basis of imperfect scientific information, rather than to "invest the resources to conduct the perfect study."). See also, *Weyerhaeuser* v. *Costle,* 590 F.2d 1011, 1058 (DC Cir. 1978) ("In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by 'uncontrollable acts of third parties,' such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation."). In addition, the goal of a best controlled or best performing source is to operate in such a way as to avoid malfunctions of the source, and accounting for malfunctions could lead to standards that are significantly less stringent than levels that are achieved by a well-performing non-malfunctioning source. EPA's approach to malfunctions is consistent with CAA section 112, and is a reasonable interpretation of the statute.

In the event that a source fails to comply with the applicable CAA section 112 standards as a result of a

malfunction event, EPA would determine an appropriate response based on, among other things, the good faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. EPA would also consider whether the source's failure to comply with the CAA section 112 standard was, in fact, "sudden, infrequent, not reasonably preventable" and was not instead "caused in part by poor maintenance or careless operation." 40 CFR 63.2 (definition of malfunction).

Finally, EPA recognizes that even equipment that is properly designed and maintained can sometimes fail, and that such failure can sometimes cause an exceedance of the relevant emission standard. (See, *e.g., State Implementation Plans: Policy Regarding Excessive Emissions During Malfunctions, Startup, and Shutdown* (Sept. 20, 1999); *Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions* (Feb. 15, 1983)). EPA is, therefore, adding to the final rules an affirmative defense to civil penalties for exceedances of emission limits that are caused by malfunctions. See 40 CFR 63.482 (Group I Polymers and Resins), 63.561 (MTVLO), 63.822 (The Printing and Publishing Industry), 63.1251 (Pharmaceuticals Production). The regulations define "affirmative defense" to mean, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding. We also have added other regulatory provisions to specify the elements that are necessary to establish this affirmative defense. See 40 CFR 63.480 (Group I Polymers and Resins), 40 CFR 63.560 (MTVLO), 40 CFR 63.820 (The Printing and Publishing Industry), 40 CFR 63.1250 (Pharmaceuticals Production). The source must prove by a preponderance of evidence that it has met all of the elements set forth in affirmative defense. See 40 CFR 22.24. The criteria ensure that the affirmative defense is available only where the event that causes an exceedance of the emission limit meets the narrow definition of malfunction in 40 CFR 63.2 (sudden, infrequent, not reasonable preventable and not caused by poor maintenance and/or careless operation). For example, to successfully assert the affirmative defense, the source must prove by a preponderance of the evidence that excess emissions "[w]ere caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner * * *" The criteria also are designed to ensure that steps are taken to correct the malfunction, to minimize emissions in accordance with 40 CFR 63.6(e)(1)(i), and to prevent future malfunctions. For example, the source must prove by a preponderance of the evidence that "[r]epairs were made as expeditiously as possible when the applicable emission limitations were being exceeded * * *" and that "[a]ll possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment and human health * * *" In any judicial or administrative proceeding, the Administrator may challenge the assertion of the affirmative defense, and, if the respondent has not met its burden of proving all of the requirements in the affirmative defense, appropriate penalties may be assessed in accordance with section 113 of the CAA (see also 40 CFR part 22.77).

F. What are the requirements for submission of emissions test results to EPA?

EPA must have performance test data to conduct effective reviews of CAA sections 112 and 129 standards, as well as for many other purposes, including compliance determinations, emission factor development, and annual emission rate determinations. In conducting these required reviews, EPA has found it ineffective and time consuming, not only for us, but also for regulatory agencies, and source owners and operators, to locate, collect, and submit performance test data because of varied locations for data storage and varied data storage methods. In recent years, though, performance test data in electronic format have become readily available, making it possible to move to an electronic data submittal system that would increase the ease and efficiency of data submittal and improve data accessibility.

In this action, as a step to increase the ease and efficiency of data submittal and improve data accessibility, EPA is requiring the electronic submittal of select performance test data. Specifically, EPA is requiring owners and operators of sources subject to these MACT standards to submit electronic copies of applicable reports of performance tests to EPA's WebFIRE database. The WebFIRE database was constructed to store performance test data for use in developing emission factors. A description of the WebFIRE database is available at *http://cfpub.epa.gov/oarweb/index.cfm?action=fire.main.* Data entry will be through an electronic emissions test report structure called the ERT.

The ERT will be able to transmit the electronic report through EPA's Central Data Exchange (CDX) network for storage in the WebFIRE database. Although ERT is not the only electronic interface that can be used to submit performance test data to the CDX for entry into WebFIRE, it makes submittal of data very straightforward and easy. A description of the ERT can be found at *http://www.epa.gov/ttn/chief/ert/ert_tool.html.*

The requirement to submit performance test data electronically to EPA would not require any additional performance testing, and would apply to those performance tests conducted using test methods that are supported by the ERT. The ERT contains a specific electronic data entry form for most of the commonly used EPA reference methods. A listing of the pollutants and test methods supported by the ERT is available at *http://www.epa.gov/ttn/chief/ert/ert_tool.html.* When a facility submits performance test data to CDX, there will be no additional requirements for performance test data compilation. Moreover, we believe that industry will benefit from this new electronic data submittal requirement. Having these data, EPA will be able to develop improved emission factors, make fewer information requests, and promulgate better regulations. The information to be reported is already required for the existing test methods, and is necessary to evaluate the conformance to the test method.

One major advantage of submitting performance test data through the ERT is a standardized method to compile and store much of the documentation required to be reported by this rule that also clearly states what testing information would be required. Another important benefit of submitting these data to EPA at the time the source test is conducted is that it should substantially reduce the effort involved in data collection activities in the future. When EPA has performance test data in hand, there will likely be fewer or less substantial data collection requests in conjunction with prospective required residual risk assessments or technology reviews. This results in a reduced burden on both affected facilities (in terms of reduced manpower to respond to data collection requests) and EPA (in terms of preparing and distributing data collection requests and assessing the results).

State, local, and tribal agencies will benefit from electronic data submission as their review of the data will be more streamlined and accurate, because they would not have to re-enter the data to assess the calculations and verify the data entry. Finally, another benefit of submitting data to WebFIRE electronically is that these data will greatly improve the overall quality of the existing and new emission factors by supplementing the pool of emissions test data upon which the emission factor is based, and by ensuring that data are more representative of current industry operational procedures. A common complaint heard from industry and regulators is that emission factors are outdated or not representative of a particular source category. By receiving and incorporating data for most performance tests, EPA will be able to ensure that emission factors, when updated, represent the most current range of operational practices. In summary, in addition to supporting regulation development, control strategy development, and other air pollution control activities, having an electronic database populated with performance test data will save industry, State, local, and tribal agencies, and EPA significant time, money, and effort while improving the quality of emission inventories, and, as a result, air quality regulations.

G. What are the effective and compliance dates of the standards?

The revisions to the MACT standards being promulgated in this action are effective on April 21, 2011. For the MACT standards being addressed in this action, the compliance date for the revised SSM requirements is the effective date of the standards, April 21, 2011. The electronic reporting requirements for the four MACT standards being addressed in this action are effective on January 1, 2012. For the Group 1 Polymers and Resins MACT standards, the compliance date for existing sources for the new MACT standards applicable to front-end and back-end process operations is 1 year from the effective date of the standards, April 23, 2012. For the Marine Tank Vessel Loading Operations MACT standards, the compliance date for the new requirements for submerged fill is 1 year from the effective date of the standards, April 23, 2012. The compliance date for the corrected provision in the Pharmaceuticals Production MACT standards is the effective date of the standards, April 21, 2011. Beyond the revised SSM and electronic reporting requirements, there are no changes to The Printing and Publishing Industry MACT standards.

IV. Summary of Significant Changes Since Proposal

A. What changes did we make to the risk assessments for these source categories since proposal?

CAA section 112(f)(2) requires us to determine whether certain emissions standards reduce risk to an acceptable level, and once we have ensured that the risk is acceptable, whether the standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect. First we determine whether there is an acceptable risk. EPA generally presumes that, if the maximum individual risk (MIR) is no higher than 100-in-1 million, that risk is acceptable. In addition to MIR, EPA also considers a series of other health measures and factors to complete an overall judgment on acceptability. In some cases, these health measures and factors taken together may provide a more realistic description of the magnitude of risk in the exposed population than MIR alone. If the risk is unacceptable, EPA must require additional controls, without consideration of cost, to ensure an acceptable level of risk. After determining that the level of risk is acceptable, EPA evaluates whether the standards provide an ample margin of safety by considering costs and economic impacts of controls, technological feasibility, and other relevant factors, in addition to those health measures and factors considered to determined acceptability. Considering all of these factors, EPA ensures that the standard is set at a level that provides an ample margin of safety to protect public health, as required by CAA section 112(f).

At proposal, we conducted risk assessments that provided estimates of the MIR posed by the allowable and actual HAP emissions from each source in a category, the distribution of cancer risks within the exposed populations, cancer incidence, hazard index (HI) for chronic exposures to HAP with non-cancer health effects, and hazard quotient (HQ) for acute exposures to HAP with non-cancer health effects. We found that the residual risks to public health from all source categories subject to these four MACT standards are acceptable, and, further, that the existing standards provide an ample margin of safety to protect public health and pose no adverse environmental effects. Thus, we proposed that no additional controls would be required to address such risks. Specifically, we found that the lifetime cancer risk to the individual most exposed to emissions from each of these seven source categories [5] was less than 100-in-1 million for both the actual emissions and the emissions that would occur if emissions from the source categories were at the maximum levels allowed by the standards. Additional analyses showed that the cancer incidence and number of people with cancer risk over 1-in-1 million were low. In addition, a review of the acute non-cancer exposures showed that none of these seven source categories posed an appreciable risk of acute non-cancer health effects. We also determined that HAP emissions from these source categories were not expected to result in adverse environmental effects.

To support our decisions regarding acceptability and ample margin of safety in the proposal, we also conducted risk assessments that accounted for HAP emissions from entire facilities at which a source covered by one of the standards under review was located. With the exception of two facilities with MTVLO on-site that had facility-wide risks greater than 100-in-1 million, based on the data we had at that time, we concluded, for purposes of the proposal, that the facility-wide risk for sources in the four source categories was also relatively low. As a result of data and information received from commenters on the proposal, we now project the highest facility-wide risk with MTVLO on-site is approximately 90-in-1 million.

Uncertainty and the potential for bias are inherent in all risk assessments, including those performed for the source categories addressed in these final rules. Although uncertainty exists, we believe that our approach, which used conservative tools and assumptions, ensures that our decisions are health-protective. A discussion of the uncertainties in the emissions datasets, dispersion modeling, inhalation exposure estimates, and dose-response relationships is provided in the preamble to the proposed rule. See 75 FR 65081–65083.

[5] The seven source categories for which we conducted RTR are Epichlorohydrin Elastomers Production; Polybutadiene Rubber Production; Styrene Butadiene Rubber and Latex Production; and NBR Production; Marine Tank Vessel Loading Operations, Pharmaceuticals Production; and Printing and Publishing. We did not conduct RTR for four of the Group I Polymers and Resins source categories (Butyl Rubber Production; Ethylene Propylene Rubber Production; Polysulfide Rubber Production; and Neoprene), because we previously re-adopted the existing MACT standard to satisfy section 112(f) of the CAA. See 73 FR 76220, published December 16, 2008. In addition, we did not conduct RTR for Hypalon™ Production, because there are no longer any facilities operating in the United States.

B. What changes did we make to the Group I Polymers and Resins MACT since proposal?

We are eliminating the subcategories (*i.e.,* Butyl Rubber and Halobutyl Rubber) in the Butyl Rubber source category because we agree with commenters who stated that both facilities in the Butyl Rubber source category now produce halobutyl rubber as the primary product, and the technical differences that distinguished the subcategories no longer exist. The current MACT standards for facilities in this source category are not affected by the removal of the subcategory distinction because the existing standards are identical for each subcategory. In October 2010, we proposed the same standards for both subcategories for the front-end process operations. However, we proposed different standards for each subcategory for the back-end process operations. Considering that both facilities would now be identified as being part of one source category by primary product determination, it would not be appropriate to finalize the proposed requirements that were based on analyses of each facility in its own subcategory. To address the two facilities together in one Butyl Rubber source category, we re-evaluated the emissions reductions, costs, and other impacts of controls for both the back-end operations and the front-end process vents for these two facilities. For the front-end process vents, we had proposed beyond-the-floor standards for both the Butyl Rubber subcategory and the Halobutyl Rubber subcategory, along with the Ethylene Propylene Rubber source category. Based on our revised analyses, we are setting requirements for the combined Butyl Rubber source category at the MACT floor level of control. The requirements for the Ethylene Propylene Rubber source category are also being set at the MACT floor level of control. For the back-end process operations, we had proposed beyond-the-floor standards for the Butyl Rubber subcategory, and the MACT floor level of control for the Halobutyl Rubber subcategory. Based on our revised analyses, we are setting requirements for the combined Butyl Rubber source category at the MACT floor level of control.

We are finalizing our proposal to set standards at the MACT floor level of control for back-end process operations in the Epichlorohydrin Elastomers, NBR, and Neoprene source categories. However, based on information we received during the comment period, we have revised some of the MACT floor limits for these source categories. Information received for the only facility in the Neoprene Rubber Production source category corrected the emissions rate of one HAP emissions source, and we have revised the MACT floor limit for that source category to reflect the corrected emissions rate. We also received information during the comment period for the one facility in the NBR source category, which showed that, due to the different grades of product produced, the rate of emissions per unit of production varies. Similarly, the one facility in the Epichlorohydrin Elastomers source category also expected to have variations in the rate of emissions per unit of production, based on its different grades of product produced. Considering this variation in emissions, we increased the limit of the MACT floor for these source categories to allow for the observed variability in emissions per unit of production. We also added factors to account for variation in emissions per unit of production for the Butyl Rubber and Ethylene Propylene Rubber source categories, based on information received for the facilities in this source category.

C. What changes did we make to the Marine Tank Vessel Loading Operations MACT since proposal?

We proposed the MACT floor as submerged fill for the two subcategories not previously regulated (facilities emitting less than 10/25 TPY of HAP from MTVLO, and those "offshore" facilities located more than 0.5 miles from shore). Additionally, under the CAA section 112(d)(6) technology review of the existing MTVLO MACT, and as setting the beyond-the-floor MACT standards for the two subcategories not previously regulated, we proposed that existing facilities loading 1 million barrels per year (bbl/yr) of gasoline install vapor controls, either meeting 97-percent control, or the equivalent emission limit of 10 milligrams per liter (mg/l).

We are finalizing the proposed MACT floor work practice to require submerged fill of liquids into marine tank vessels at those previously unregulated sources. However, as a result of information received during the comment period, we are not finalizing the requirements we proposed under the technology review requirements of CAA section 112(d)(6), the beyond the floor and technology review requirements for vapor control technology for facilities loading 1 million bbl/yr.

V. Summary of Significant Comments and Responses

In the proposed action, we requested public comments on our residual risk reviews, our technology reviews, proposed amendments to delete the startup and shutdown exemptions and the malfunction exemption, the control of unregulated HAP, and clarification of rule provisions. We received written comments from 104 commenters. Our responses to the public comments that changed the basis for our decisions or are otherwise significant are provided below.[6]

A. EPA's Authority Under CAA Section 112

Comment: We received comments both in favor of and objecting to EPA's consideration of various factors in determining acceptable risk. Some commenters argue that the two-step process developed to address residual risk and determine "ample margin of safety" in the Benzene NESHAP should be preserved. Commenters also request that EPA continue to use its discretion to determine that a maximum cancer risk of 100-in-1 million is acceptable. Another commenter supports EPA's commitment to avoid establishing inflexible decision points for acceptable risks or ample margin of safety. Commenters also debate whether EPA has the authority to evaluate, or should, as a matter of policy, evaluate facility-wide risk, demographic assessments, and risks based on actual or allowable emissions.

Response: For the four rules we are finalizing, our evaluation of facility-wide risk, demographics, and allowable emissions did not change our decisions about acceptability and ample margin of safety. Therefore, comments on how these factors were used by EPA in determining acceptable risks are not germane to these final rules. We note, however, that section 112(f)(2) of the CAA expressly preserves our use of the two-step process for developing standards to address residual risk and interpret "ample margin of safety" as developed in the Benzene NESHAP.[7] In both the Benzene NESHAP and our

[6] See *Summary of Public Comments and Responses for Group I Polymers and Resins, Marine Tank Vessel Loading Operations, Pharmaceutical Production, and The Printing and Publishing NESHAP* (March 2011), for summaries of other comments and our responses to them.

[7] See National Emission Standards for Hazardous Air Pollutants: Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants (Benzene NESHAP) (54 FR 38044, September 14, 1989).

Residual Risk Report [8] to Congress, we explain that we do not define "rigid line(s) of acceptability" and that we will consider a series of other health measures and factors in determining if risk is acceptable. Our authority to use the two-step process laid out in the Benzene NESHAP, and to consider a variety of measures of risk to public health is discussed more thoroughly in the preamble to the proposal. See 75 FR 65071–65073.

Comment: Some commenters state that our review under CAA section 112(d)(6) should be limited to only advances in work practices and control technologies, and should not include emission points not regulated by the existing MACT standard. Expanding rule applicability should not be considered, as it has nothing to do with developments in practices, processes, or control technologies and is not indicated in the CAA as a basis for the technology review. The commenter states that EPA already made applicability determinations in the original MACT rules by evaluating the floor and beyond-the-floor options, and nothing in the CAA warrants review of these determinations. The commenters also state these changes should only be considered in the CAA section 112(f) risk review to reduce risks.

Some commenters stated that a review under CAA section 112(d)(6) is not required if the post-MACT emissions levels result in risks that are deemed to be protective of public health with an ample margin of safety. Furthermore, they stated that EPA should exempt source categories from CAA section 112(d)(6) review once this level has been achieved. They add that the review under CAA section 112(d)(6) should be considered an extension of the main purpose of CAA section 112, which is to reduce the public's exposure to air toxics, and not to impose new technology just because it is available. One commenter states that it was the intent of Congress for the MACT standards to ultimately reduce risk from sources to a level considered acceptable, and there is no legislative history to suggest that Congress expected EPA to revise MACT standards after these levels had been achieved.

Another commenter states an opposing view, saying that, in keeping with the context of CAA section 112(d), which requires technology-based standards that reflect the maximum degree of emission reduction achievable, CAA section 112(d)(6) serves as an on-going ratchet to continually require EPA to update standards to keep pace with new technology. The commenter states that the decision of the Court in the Hazardous Organic NESHAP (HON) [9] ruling, while not requiring recalculation of the floor for that standard, did so only for that MACT because there were no new developments in practices, processes, or control technologies, and expressly declined to decide whether EPA was required to recalculate the floors for other instances where there were such developments.

Response: We note that we do not consider unregulated emission points under CAA section 112(d)(6). To the extent there are unregulated emission points, we set standards under CAA sections 112(d)(2) and (3). We are not revising any of the four MACT rules in this notice pursuant to the CAA section 112(d)(6) review. Instead, for the newly regulated emissions points in the Group I Polymers and Resins source categories and in the Marine Tank Vessel Loading Operations source category we are promulgating MACT standards under CAA sections 112(d)(2)–(3).

In our CAA section 112(d)(6) review of pre-existing standards, we consider both improvements in practices, processes, or control technologies that we may have previously considered, as well as practices, processes, or control technologies that are new, or were unknown to us when the original MACT rule was developed. Because incremental changes in the practices, processes, or control technologies can have a significant impact on emissions, these changes are considered in our analysis of whether to revise the MACT standards under CAA section 112(d)(6). In considering both existing and new practices, processes, and control technologies, we consider costs and other factors in determining whether it is "necessary" to revise the existing standard.

We disagree with the view that a determination under CAA section 112(f) of an ample margin of safety and no adverse environmental effects alone will, in all cases, cause us to determine that a revision is not necessary under CAA section 112(d)(6). In some cases, even if risk factors remain the same from one round of CAA section 112(d)(6) review to another, changes in costs or availability of control technology may be sufficient to alter a previous conclusion about whether to impose further controls. We also disagree with the assertion that the HON Court's ruling that CAA section 112(d)(6) does not require re-calculation of MACT floors was limited to instances in which there have not been developments in practices, processes, or control technologies. In fact, the Court was quite clear on this point, and declined to rule only on whether it was appropriate for EPA to consider costs and risks in conducting CAA section 112(d)(6) reviews, as the issue was rendered moot by the litigants' failure to preserve it. See *NRDC* v. *EPA,* 529 F.3d at 1084 ("It has been argued that EPA was obliged to completely recalculate the maximum achievable control technology—in other words, to start from scratch. We do not think the words 'review, and revise as necessary' can be construed reasonably as imposing any such obligation. Even if the statute did impose such an obligation, petitioners have not identified any post-1994 technological innovations that EPA has overlooked.").

Comment: Commenters state that EPA does not have the authority under CAA section 112(d)(2) or (3) to later review and possibly revise the MACT determination once a MACT determination has been made for a source category. Several commenters state that EPA only has the authority to revisit the rulemaking if a timely legal challenge to the standard is lodged. The commenters further note they are not aware of any instance where EPA has revisited a beyond-the-floor analysis in the absence of a Court decision, rule vacatur, or settlement agreement. Commenters also state that reassessing MACT standards and imposing more stringent requirements would also be inconsistent with Congress's desire for finality evident in the judicial review provisions of CAA section 307(b), which provides that challenges to MACT standards must be raised within 60 days of their promulgation, assuring that regulated entities, EPA, and the public know what emissions limitations will apply to a source rather than having those limitations be subject to flux.

In contrast, one commenter states that it is appropriate and essential that EPA establish control for all emissions sources, including sources that previously had "no control" floors, under CAA section 112(d)(6). The commenter states that EPA should continue to do this for all MACT standards.

Response: Under CAA section 112(d)(2), the EPA must promulgate technology-based standards that reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts). Nothing in the

[8] See *Residual Risk Report to Congress,* EPA–453/R–99–001 (March 1999).

[9] *NRDC and LEAN* v. *EPA,* 529 F.3d 1077 (D.C. Cir. 2008).

CAA or its legislative history suggests that EPA is prohibited from reviewing and revising MACT standards, except as part of the CAA section 112(d)(6) or CAA section 112(f) reviews. Where we identify emission points that were erroneously not previously regulated under a MACT rule, we may identify MACT floor and beyond-the-floor control options for existing and new sources. An agency generally remains free to revise improperly promulgated or otherwise unsupportable rules, even in the absence of a remand from a Court. *United Gas Improvement Co.* v. *Callery Props., Inc.,* 382 U.S. 223, 229 (1966) ("An agency, like a court, can undo what is wrongfully done by virtue of its order."); *Macktal* v. *Chao,* 286 F.3d 822, 825–26 (5th Cir. 2002) ("[I]t is generally accepted that in the absence of a specific statutory limitation, an administrative agency has the inherent authority to reconsider its decisions."). Agencies have particularly broad authority to revise their regulations to correct their errors. *Last Best Beef, LLC* v. *Dudas,* 506 F.3d 333, 340 (4th Cir. 2007); *Friends of the Boundary Water Wilderness* v. *Bosworth,* 437 F.3d 815, 823 (8th Cir. 2006) ("It is widely accepted that an agency may, on its own initiative, reconsider its interim or even final decisions, regardless of whether the applicable statute and agency regulations expressly provide for such review.") (citations omitted). Moreover, an agency may reconsider its methodologies and application of its statutory requirements and may even completely reverse course, regardless of whether a court has determined that its original regulation is flawed, so long as the agency explains its bases for doing so. *Motor Vehicle Mfrs. Ass'n* v. *State Farm Mutual Auto Ins. Co.,* 463 U.S. 29, 42 (1983); *FCC* v. *Fox Television Stations, Inc.,* 129 S. Ct. 1800, 1810 (2009); *Nat'l Cable & Telecomms. Ass'n* v. *Brand X Internet Servs.,* 545 U.S. 967, 981–82 (2005) (internal citations omitted): ("'An initial agency interpretation is not instantly carved in stone. On the contrary, the agency * * * must consider varying interpretations and the wisdom of its policy on a continuing basis,' *Chevron, supra* at 863–864[], for example, in response to changed factual circumstances, or a change in administration. That is, no doubt, why in *Chevron* itself, this Court deferred to an agency interpretation that was a recent reversal of agency policy.")

Here, both the Polymers and Resins I and the Marine Tank Vessel Loading Operations NESHAP, as originally promulgated, did not contain MACT standards for certain significant HAP emissions points, and, we are, therefore, appropriately promulgating standards for those emissions points under CAA sections 112(d)(2)–(3) for the first time. CAA section 112(d)(6) and CAA section 112(f)(2) do not govern the initial establishment of the MACT standards. This approach is consistent with other recent actions that establish MACT standards for the first time for significant emissions points that had not been previously addressed by CAA section 112 (d) standards. See, *e.g.,* National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries; Final Rule, 74 FR 55670, 556773–74 (October 28, 2009).

B. Group 1 Polymers and Resins

Comment: One commenter states that, due to changes made at a facility since MACT promulgation, the facility would no longer fall into the Butyl Rubber subcategory, based on the primary product made, and would be in the Halobutyl Rubber subcategory. (The Butyl Rubber and Halobutyl Rubber subcategories comprise the Butyl Rubber source category.) However, the unit at this facility that produces halobutyl rubber as the primary product is a flexible operations unit that produces three major products, one of which is still butyl rubber, and, therefore, emits significantly different emissions from the only other halobutyl rubber facility in the United States, which produces halobutyl rubber exclusively. Commenters recommend EPA revise the Butyl Rubber source category descriptions to distinguish between halobutyl rubber-only and flexible units, and to apply primary product determinations only at the category level, and not the subcategory level. The commenters further state that, if these facilities are not separated into different subcategories and are both included in the Halobutyl Rubber subcategory, the current proposal and supporting analyses will not be applicable, and new analyses and proposal will be needed.

Response: Currently there are only two facilities in the United States that produce either butyl or halobutyl rubber. Since one of these facilities can produce both butyl rubber and halobutyl rubber, and since halobutyl rubber is the primary product for both of these facilities, we have concluded that there is no longer a need to maintain the subcategory distinction in the Butyl Rubber source category in the current MACT standards. Therefore, we have removed the subcategories of Halobutyl Rubber and Butyl Rubber in the Butyl Rubber source category, and both facilities that were in these subcategories will now be included in the Butyl Rubber source category. The Group I Polymers and Resins MACT standards create separate source categories or subcategories by requiring different standards for different types of primary products. In the final rule, we have removed the language that distinguishes halobutyl rubber as a separate product type, which has the effect of removing the subcategories from the Butyl Rubber source category. While the existing MACT standards have identical requirements for the Butyl and Halobutyl Rubber subcategories, we proposed different requirements for these subcategories for back-end process operations, and common requirements for the front-end process vents at proposal.

With the removal of the subcategory distinction, we have revised our analyses of the emissions reductions, costs, and other impacts of controls for both the front-end and back-end process operations for these two facilities. Based on these analyses, we determined that the beyond-the-floor standards for front-end process operations that were proposed separately for both the Butyl Rubber and Halobutyl Rubber subcategories, which are a 98-percent reduction in organic HAP, and a 99-percent reduction in hydrogen halides and halogens, are not cost-effective for the Butyl Rubber source category. We are setting requirements for the combined front-end process operations for the Butyl Rubber source category at the MACT floor level of control. For the back-end process operations, we proposed beyond-the-floor standards for the Butyl Rubber subcategory, and the MACT floor level of control for the Halobutyl Rubber subcategory. Based on our revised analyses, the beyond-the-floor level of control, which is a 98-percent reduction in organic HAP, is not cost-effective for the Butyl Rubber source category. We are setting requirements for the combined back-end process operations for the Butyl Rubber source category at the MACT floor level of control. The current MACT standards are not affected by the removal of the subcategory distinction because the existing standards are identical for each subcategory.

Comment: One commenter stated that, if a facility was subject to MACT standards limiting HCl emissions from its front-end process vents in the Butyl Rubber source category and the Ethylene Propylene Rubber source category, then it would be unacceptable business practice to route those emissions to the proposed shared control device. A shared control device

would limit operating flexibility, cause lost business due to shutdown of both units for expected maintenance of thermal oxidizers and halogen scrubbers, and the potential for lost business, excess emissions, and dual violations from both units from unplanned shutdowns. The commenter states that EPA, therefore, needs to consider separate controls for each unit, a spare thermal oxidizer and halogen scrubber, or the significant lost business and other costs and emission impacts of having a shared control device in the beyond-the-floor costs analysis for the proposed control. The commenter estimates that the costs for the units to be controlled separately are $20,600/ton HCl emissions reduced for the unit in the Butyl Rubber source category (note that the commenter refers to this as the halobutyl rubber unit, since that is the product being produced), and $51,000/ton HCl emissions reduced for the unit in the Ethylene Propylene Rubber source category. Commenters also stated that the proposed beyond-the-floor MACT standards to control front-end process vents in the Butyl Rubber and Ethylene Propylene Rubber source categories are not cost-effective and should not be finalized. One commenter provided data showing costs to range from $16,900/ton of HAP emissions reduced to $80,100/ton of HAP emissions reduced to meet the proposed front-end process vent MACT standards.

Response: We disagree with the claim that the CAA precludes our taking note of the co-location of these units in estimating the costs to control the HCl from these units. Nevertheless, based on information received during the comment period, we recalculated separate source category cost estimates for control of HCl from ethylene propylene rubber and butyl rubber units for the one facility where these units are co-located. The changes from the estimate at proposal primarily include using a recuperative thermal oxidizer rather than a direct flame incinerator, and including additional ductwork and pumps needed to convey emissions to the control devices. We estimate that, considered separately, the cost to control the ethylene propylene rubber front-end process vents would be approximately $19,000/ton HCl emissions reduced, and the cost to control the butyl rubber front-end process vents would be approximately $12,000/ton HCl emission reduced.

Comment: Commenters state that the proposed beyond-the-floor MACT standards to control the back-end process vents in the Butyl Rubber source category are not cost-effective, and should not be finalized. One commenter provided data showing costs to range from $72,300/ton of HAP emissions reduced to $75,600/ton of HAP emissions reduced to meet the proposed back-end process vent MACT standards.

Response: With the removal of the subcategory distinction, we revised our analyses of the emissions reductions, costs, and other impacts of the beyond-the-floor option identified at proposal. This beyond-the-floor option would require the ducting of emissions from the uncontrolled back-end process operations to a control device for the two facilities now in the Butyl Rubber source category. In this revised analysis, we considered information provided during the comment period regarding the types of oxidizers and ducting equipment that would be needed for the facilities in this source category for the beyond-the-floor control option, as well as the provided information on process flow rates. From the revised analysis, we estimate that thermal oxidizers would achieve an emissions reduction of 98 percent, resulting in a decrease in hexane emissions of approximately 66 TPY. The capital costs of this option are estimated to be approximately $3.5 million, total annual costs are estimated to be approximately $1.5 million, and the cost-effectiveness values would be approximately $23,000 per ton of HAP emissions reduced. We believe the costs of this beyond-the-floor option are not reasonable, given the level of emission reduction. Therefore, we are finalizing the MACT floor level of emissions. We have determined that the MACT floor level of control for the source category is a production-based limit reflecting each source's organic HAP emissions divided by its total elastomer product leaving the stripper in 2009, multiplied by a variability factor of 1.35. In establishing the floor-level limit, the variability factor was included to account for the historic variability in the amount of emissions per unit of production at these facilities.

Comment: Commenters noted that the emissions from back-end process operations for facilities in the Epichlorohydrin Elastomers, NBR, and Butyl Rubber source categories, and HCl emissions from front-end process operations in the Ethylene Propylene Rubber and Butyl Rubber source categories will vary only by the mass of polymer product produced, because there is only one facility in each source category. The commenters note that the proposed MACT standards were based on emissions data and associated production levels for certain years. These commenters state that it is not appropriate to set the standards in this way, as it does not allow for variability in the manufacturing process, or the potential for the production of different product mixes and volumes in the future. One commenter suggests using 2008 emissions, and, perhaps, other recent years of data in setting the limits. Another commenter suggests that EPA look at the statistical variation over time, and, if EPA revisits the current subcategorization scheme within the Butyl Rubber source category, then EPA should also consider variability in source design and operation. The commenter also notes that, over the last 10 years, emissions from back-end process vents varied by up to 43 percent from their levels in 2006 due to factors such as weather conditions, grade slate changes (such as product grade or slight variations in product type), and process and control device reliability/service. Both commenters submitted additional emissions data for EPA's consideration.

Response: We have adjusted the emissions limits in the final rule to better account for process variability and other factors for the front-end process vent MACT limits in the Butyl Rubber and Ethylene Propylene Rubber source categories and the back-end MACT limits for the Butyl Rubber, Epichlorohydrin Elastomers, and NBR source categories.[10] For the Butyl Rubber source category, up to 10 years of annual emissions and annual production data were submitted for the two facilities in the source category. These data showed that the emissions per unit production varied up to 74 percent higher for HCl from front-end process vents than that reported in 2010, and varied up to 35 percent higher for back-end process vents than that reported for 2009. To account for this variability, we included a variability factor of 74 percent over the HCl emissions per unit production in 2010 in the front-end process operations limit, and a variability factor of 35 percent over the emissions per unit production in 2009 in the back-end process operations limit for this source category. For the Ethylene Propylene Rubber source category, historical annual emissions and annual production data were submitted for the one affected facility in the source category. These data showed that the emissions per unit production varied up to 39 percent higher for HCl from front-end process vents than reported in 2010. To account for this variability, we included a variability factor of 39 percent over the HCl emissions per unit production in 2010 in the front-end

[10] See *Regulatory Alternative Impacts for Group I Polymers and Resins* (March 2011) in the docket.

process operations limit. Similarly, for the NBR source category, historical annual emissions and production data were submitted after the comment period for the one facility in the source category. While this facility recently installed emissions control systems beyond those required to meet the current MACT requirements, after these control were in place, the data showed that emissions per unit production varied up to 42 percent higher than that reported for 2009. To account for this variability, we included a variability factor of 42 percent over the emissions per unit production in 2009 in the back-end process operations limit for this source category. For the Epichlorohydrin Elastomers source category, historical annual emissions indicative of the expected variation of emissions was unavailable. Due to the similarities between the NBR and Epichlorohydrin Elastomers facilities in the equipment used, and how they operate their back-end processes, however, the same 42-percent variability factor was applied to the emissions per unit production in 2009 in the back-end process operations limit.

Comment: Commenters stated that EPA should provide an allowance for maintenance of any thermal oxidizer required to be installed. One commenter notes that a regenerative thermal oxidizer (RTO) requires maintenance that sometimes necessitates that the RTO be bypassed. The commenter notes that back-end process vents at existing sources in the Butyl Rubber source category are currently permitted to allow bypass emissions during maintenance work on the control device up to the permitted limit with the use of purchased Emission Reduction Credits in Texas, and an allowance for bypass emissions is included in the unit operating permit in Louisiana. The commenter suggests that the MACT standards for the back-end process vents should recognize that bypassing currently occurs for RTO-controlled emissions, and allow for it in the MACT standards.

Response: We recognize that bypassing currently occurs. However, the Court has made clear that MACT standards must apply at all times. See *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), cert. denied, 130 S. Ct. 1735 (U.S. 2010). The emission limits we are finalizing for the back-end process operations are in the format of a 12-month rolling average, and, therefore, facilities may bypass only provided that they are in continuous compliance with the standards.

Comment: Commenters requested that EPA clarify the definition of back-end processes specifically to exclude operations that have essentially no HAP emission potential, such as handling and storage of finished products. They stated that it would also be helpful for the Agency to clarify that surge control vessels, equipment leaks, storage vessels, and wastewater, which are regulated by the Group I Polymers and Resins MACT, are not included in the definition of back-end processes.

Response: We agree with the commenters that the proposed definition of back-end processes was unclear, and that surge control vessels, equipment leaks, storage vessels, and wastewater are regulated in the existing Group I Polymers and Resins MACT standards, and that handling and storage of finished products is not part of the back-end process operations. We have revised the language in the final rule accordingly.

Comment: Commenters request clarification that, in the absence of allowing 4 years for compliance, the first compliance demonstration would be 24 months after the publication date for emission limits, based on a 12-month rolling average. This would allow for data collection to begin in the first month after the compliance date (13th month after promulgation) and provide for 1 year of data to be used in the compliance demonstration. One commenter requested that compliance not be determined on less than a 12-month basis, because this would limit the variability allowed for in the rolling 12-month limit.

Response: We agree with the commenter that compliance should be determined on a 12-month basis. The first time 12 months of data will be available will be in the 13th month after the compliance date, which is the 25th month after the publication date. To demonstrate compliance, the 12-month rolling average information must be included in the first periodic report that occurs after 12 months of data have been collected. We have clarified the timing of the compliance demonstration in the final rule language.

C. Marine Tank Vessel Loading Operations

Comment: Commenters stated that there were errors in the 2005 National Emissions Inventory (NEI) data set, and that EPA significantly overestimated the MIR for the MTVLO source category for each of these facilities due to data errors.

Response: At proposal, we found that the current MACT-based standards both provide an ample margin of safety to protect public health and prevent adverse environmental effects, and, therefore, did not make any changes to the existing standards due to the risk analysis. We found that three facilities had MIR greater than 1-in-1 million (values of 10-, 20-, and 20-in-1 million) for the MTVLO source category. We identified two facilities with facility-wide MIR greater than 100–in-1 million (each with values of 200). Using new data obtained since proposal, we corrected the errors noted by the commenters for both MTVLO emission sources and other emission sources at the facilities. We found incorrect latitudes and longitudes for some emission sources, incorrect emissions reported for some sources, or incorrectly identified HAP. We updated the 2005 NEI data sets for each facility with corrected data, and conducted a reanalysis of the risk using the corrected data set. The revised risk assessment results show no facilities with MTVLO have a facility-wide risk of greater than 100-in-1 million.[11] Based on 2005 emissions data, MTVLO source category emissions from one facility result in a MIR of 50-in-1 million (20 percent from benzene and 80 percent from butadiene), however, this facility reports in its public comments an 89- percent reduction in benzene emissions and a 97-percent reduction in butadiene emissions between years 2006 and 2009. Based on this information, the revised MIR associated with actual MTVLO emissions from this facility is less than 1-in-1 million.[12] No other facility has MTVLO emissions resulting in a MIR greater than 1-in-1 million. The corrections to the emission data files and risk results are included in memoranda in the docket.

Comment: One commenter noted that it is not clear whether offshore loading terminals at refineries would be exempt from proposed changes to MTVLO MACT. The commenter recommended rule text changes for 40 CFR 63.560(d)(6). The commenter noted that their facility may be one of the few (or only) offshore loading terminals in the United States, meaning the cost analysis and controls selected for this subcategory by the MTVLO MACT proposal are likely to set a precedent in the Refinery RTR rule process.

[11] Of the two facilities with MTVLO that previously showed facility-wide risks exceeding 100-in-1 million, the revised risk assessment results show one facility has facility-wide risks of 70-in-1 million, and the other has facility-wide risks of 40-in-1 million.

[12] For this facility, reported actual and allowable emission are the same; therefore, the MIR is the same for both.

Response: We have considered the comment and agree that the proposed rule was not clear. Therefore, this final rule clarifies applicability for petroleum refineries.

Comment: Three commenters supported submerged fill requirements. One commenter supported the requirement for submerged fill for previously-exempt subcategories, and stated that submerged fill is cost-effective. One commenter agreed with EPA's decision to establish submerged fill as the MACT floor. The Commenter noted that submerged fill, as defined by the Coast Guard, has been standard industry practice for some time, reduces HAP emissions, and eliminates static electricity from free-falling cargo, thereby enhancing operational safety. One commenter suggested that if additional control is needed, a work practice standard (submerged fill) should be adopted for the offshore loading subcategory instead of 99-percent efficient vapor control systems.

Response: The commenters agree with the proposal to require submerged fill as the floor level of control for the two subcategories not previously regulated (those facilities emitting less than 10/25 TPY of HAP from MTVLO, and those facilities located more than 0.5 miles from shore). We have included the submerged fill requirement in the final rule.

Comment: One commenter noted the discussion in the preamble is confusing concerning whether the proposed 1 million bbl/yr threshold is a MACT measure, or a reasonably available control technology (RACT) measure. The preamble states that the existing MACT standards require vapor recovery control for at least 10 million bbl/yr of gasoline, however, this provision is in the RACT provisions of the existing rule. Furthermore, the commenter asserts that the proposal preamble justifies the proposed new 1 million bbl/yr threshold on a volatile organic compounds (VOC) RACT basis rather than a HAP (MACT) basis, and describes the lower threshold as a beyond-the-floor MACT measure for the two previously-exempt subcategories. In addition, the commenter noted that the throughput threshold for a major source is 5 million bbl/yr, and asked how a facility only loading 1 million bbl/yr could be considered a major source, and subject to MACT. The commenter stated that the preamble discussion should be consistent with both the basis presented for justification of this measure, and the language of the rule.

Response: The proposed and final rules only pertain to the MACT requirements in the rule that address major sources of HAP; no changes were proposed for the RACT requirements.[13] While the commenter noted that a particular throughput would be required to define a major source of HAP, the throughput levels for MTVLO were not defined with the intent of identifying a major source. Applicability for the current rule is two-fold: (1) Is the facility, as a whole, a major source of HAP; and (2) does the facility conduct MTVLO.

We agree that the discussion in the proposed preamble regarding the gasoline throughput thresholds used to analyze the proposed 1 million bbl/yr gasoline threshold was not clear (75 FR 65115). As discussed below, we have not included a requirement for MTVLO facilities with a throughput of 1 million bbl/yr of gasoline to install and operate vapor recovery controls in the final rule.

Comment: Two commenters stated that EPA's cost-effectiveness determination for the beyond-the-floor MACT is flawed/not accurate, and noted concerns that the cost analysis is based on information from one vendor, for one control technology, for a single facility, and assumed installation costs. One commenter stated that EPA's cost information was limited. One commenter indicated that beyond-the-floor MACT options must be cost-effective in reducing HAP, and since EPA's estimated cost was $74,000/ton HAP emissions reduced, it is not cost-effective, and, thus, illegal to promulgate this requirement as a MACT measure. The commenter stated that the real cost, based on corrected values of HAP content, would be $180,000/ton HAP emissions reduced. The commenter requested that EPA rescind the proposed action.

Commenters stated that the EPA does not have the authority to consider non-HAP emission reductions in conducting a review of existing MACT standards under CAA section 112(d). The commenters noted that, in setting MACT standards, the CAA expressly forbids EPA from considering the co-benefits of non-HAP emissions reductions, and the MACT floor must be based on the HAP emission reductions achieved; any beyond-the-floor standard may be based only on consideration of the cost of achieving HAP emission reductions, and any non-air quality health and environmental impacts and energy requirements.

Response: As discussed earlier, we established and proposed the MACT floor as submerged fill for the two subcategories not previously regulated (facilities emitting less than 10/25 TPY of HAP from MTVLO, and those "offshore" facilities located more than 0.5 miles from shore). Additionally, under the CAA section 112(d)(6) technology review of the existing MTVLO MACT, and as setting the beyond-the-floor MACT standards for the two subcategories not previously regulated, we proposed that existing facilities loading 1 million bbl/yr of gasoline, install vapor controls either meeting 97-percent control, or the equivalent emission limit of 10 mg/l (10 milligrams of total organic compound emissions per liter of gasoline loaded). At proposal, we estimated the cost and emissions reductions for installing vapor controls for facilities loading 1 million bbl/yr of gasoline, and we estimated a cost of $74,000/ton HAP emissions reduction (190 TPY HAP emissions reduction) and $5,500/ton VOC emissions reduction (2,600 TPY VOC emissions reduction).

As discussed in the cost section of the response to comment and the cost memoranda in the docket, we received and considered the comments on the control costs, emission rate differences for ships and barges, additional costs for offshore facilities, and the HAP content in gasoline. All those factors change the cost-effectiveness calculations. Based on information received as part of the comments, we reevaluated the costs used at proposal. The revised costs and emissions for the proposed threshold of 1 million bbl/yr gasoline are as high as $500,000 per ton of HAP emissions reduced (1.9 tons of HAP reduced annually per facility) for loading ships offshore. Looking at a less stringent threshold for the final rule of 7 million bbl/yr of gasoline loaded would likely achieve little or no HAP or VOC emission reductions, since many facilities near that threshold were required to install controls under the current rule. We agree with commenters that these costs are unreasonable. Therefore, we are not including the proposed vapor controls for loading 1 million bbl/yr of gasoline requirement in the final rule. We disagree with the commenter that we cannot consider VOC benefits, but, given that we are not requiring these additional vapor controls for HAP, the issue is now moot.

Comment: One commenter stated that VOC and HAP emission rates from ships and barges at their facility are lower than EPA uses in its cost-effectiveness determinations. EPA used the uncontrolled gasoline loading emissions factor for barges (3.4 pounds (lb) VOC/1,000 gallons (gal) loaded), but should

[13] RACT and MACT requirements are both included in 40 CFR part 63, subpart Y—National Emission Standards of Marine Tank Vessel Loading Operations.

use the emissions factor for ocean-going ships and barges (1.8 lb VOC/1,000 gal loaded); AP–42 notes in Chapter 5 that vapor saturation is much lower in ship and barge loading.

Response: We agree with the commenter that the emission factors for ships and barges, as applicable to the type of marine vessel being loaded, should be considered for estimating VOC and HAP emissions. We have revised the emission estimates using the barge and ship emission factors from AP–42.

Comment: One commenter noted that HAP content in the vapor phase is 3.0 percent, and not the 7.3 percent determined by EPA in the proposal. The commenter provided the analysis showing the calculations, based on conventional gasoline, where the commenter assumed no methyl tertiary butyl ether (MTBE) in the gasoline; no change to the total partial pressure; and benzene concentration of 1.8 percent. Another commenter stated the HAP emissions factor is approximately 50 percent of the EPA factor.

Response: In the proposal, we determined that the HAP content in the vapor phase of gasoline of 7.3 percent (based on 2006 gasoline composition) was appropriate, and used 7.3 percent in our emissions estimates for gasoline loading at MTVLO. We reviewed and considered the data provided by the commenter, and reviewed HAP content information from several other sources that have more recent gasoline composition data. We conducted a reanalysis of the HAP content, looking at both conventional and reformulated gasoline, considering the phase-out of MTBE and the requirements for reduced benzene content. Based on the revised analysis, we concluded that a good typical value for HAP content in the vapor is 5.0 percent. The revised analysis of HAP content in gasoline is in a memorandum in the docket.

Comment: Commenters argued that lean oil absorption technology is not capable of meeting the rule efficiency, is not in common use for MTVLO, and must be demonstrated as an effective technology for MTVLO. One commenter cited an instance where lean oil absorption installed on MTVLO was unable to meet control requirements in their permit. The commenter stated that lean oil absorption is typically used in smaller applications. Commenters stated that EPA must provide actual performance data for lean oil absorption technology in the MTVLO source category.

Response: Lean oil absorption systems are not new control technologies for MTVLO. Lean oil absorption was discussed as a vapor recovery device, in addition to refrigeration (condenser) systems and carbon adsorption systems, for marine vessel loading in the 1987 *National Research Council, Committee on Control and Recovery of Hydrocarbons Vapors from Ships and Barges* report, *Controlling Hydrocarbon Emissions from Tank Vessel Loading.* Lean oil absorption also was discussed in the 1992 proposal, *Technical Support Document for MTVLO* (EPA–450/3–92–001a), and has been installed as vapor recovery devices for MTVLO. While we have not selected a beyond-the-floor option as MACT, we would like to clarify that lean oil absorption systems were included in the cost analysis for the beyond-the-floor option, because lean oil absorption systems achieving an emission reduction efficiency of 97 percent are used by at least one MTVLO facility, and because the units are a relatively less expensive control technology option that has the added benefit of recovered product.

D. Startup, Shutdown, and Malfunction (SSM) Requirements

Comment: Two commenters state that EPA offers little support for the assertion that it is reasonable to interpret CAA section 112 as not requiring EPA to account for malfunctions in setting emissions standards, or that malfunctions are not a distinct operating mode. The commenters state that it does not make sense for EPA to assert that malfunctions are part of normal operations, but then exclude emissions from these parts of normal operations in the determination of the emissions limits. The commenters state that, due to the unplanned nature and variety of potential malfunctions, it would be difficult, if not impossible, for EPA to gather data and set an emissions standard for periods of malfunction. Due to these difficulties, the commenters suggest that, under the authority of CAA section 112(h), EPA prescribe alternative design, equipment, work practice, or operational standards where it is not feasible to set or enforce a numerical emissions limit. The commenters add that there are work practices that can be identified as being the best to minimize emissions during a malfunction, and EPA must acknowledge the fact that even the best-performing sources experience malfunction events.

Response: EPA has determined that CAA section 112 does not require that emissions that occur during periods of malfunction be factored into development of CAA section 112 standards. Under CAA section 112, emissions standards for new sources must be no less stringent than the level "achieved" by the best controlled similar source, and for existing sources, generally, must be no less stringent than the average emission limitation "achieved" by the best performing 12 percent of sources in the category. There is nothing in CAA section 112 that directs the Agency to consider malfunctions in determining the level "achieved" by the best performing or best controlled sources when setting emission standards. Moreover, while EPA accounts for variability in setting emissions standards consistent with the CAA section 112 case law, nothing in that case law requires the Agency to consider malfunctions as part of that analysis.

CAA section 112 uses the concept of "best controlled" and "best performing" unit in defining the level of stringency that CAA section 112 performance standards must meet. Applying the concept of "best controlled" or "best performing" to a unit that is malfunctioning presents significant difficulties, as malfunctions are sudden and unexpected events. Accounting for malfunctions would be difficult, if not impossible, given the myriad different types of malfunctions that can occur across all sources in the category, and given the difficulties associated with predicting or accounting for the frequency, degree, and duration of various malfunctions that might occur. As such, the performance of units that are malfunctioning is not "reasonably" foreseeable. See, *e.g., Sierra Club* v. *EPA,* 167 F. 3d 658, 662 (D.C. Cir. 1999) (EPA typically has wide latitude in determining the extent of data-gathering necessary to solve a problem. We generally defer to an agency's decision to proceed on the basis of imperfect scientific information, rather than to "invest the resources to conduct the perfect study."). See also, *Weyerhaeuser* v. *Costle,* 590 F.2d 1011, 1058 (D.C. Cir. 1978) ("In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by 'uncontrollable acts of third parties,' such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation."). In addition, the goal of a best controlled or best performing source is to operate in such a way as to avoid malfunctions of the source, and accounting for malfunctions could lead

to standards that are significantly less stringent than levels that are achieved by a well-performing non-malfunctioning source. EPA's approach to malfunctions is consistent with CAA section 112, and is a reasonable interpretation of the statute.

Comment: Several commenters argued that emissions limits should not apply during SSM events, while other commenters stated that SSM emissions should be included in calculations of emissions and standards. Commenters suggested that requiring continuous compliance during periods of SSM constitutes beyond-the-floor requirements, and the Agency should have to justify this more stringent level of control, because facilities would need to install redundant control systems and bypass systems. They further stated that, in order to assure that SSM are appropriately accommodated, EPA must either assure that the data on which the standard is based include representative data from such periods, or, alternatively, set a separate work practice standard to properly accommodate SSM, and they cited case law supporting establishment of special SSM provisions. Further, several commenters stated that compliance with emissions standards during malfunction events will be difficult to gauge since emissions testing during such events is nearly impossible, given the sporadic and unpredictable nature of malfunctions. The commenters contended that the rules could have the effect of forcing units to choose between safety and compliance with emissions requirements. The commenters stated that, for some affected units, malfunctions, by their very nature, create unsafe conditions which can lead to excessive combustible mixtures that can result in explosions, equipment damage, and personnel hazards. Commenters also noted that some of the MACT standards included in this action did not rely exclusively upon the General Provisions, and, thus, were not immediately affected by the Court's vacatur of the SSM exemptions in the General Provisions. The commenters pointed out that, given that these categories were not immediately affected, EPA is not compelled to remove the exemptions that are established within these individual category-specific MACT standards.

Other commenters expressed support for requiring continuous compliance with the MACT standards, including periods of SSM. They noted that malfunctions are also preventable, and, thus, there should be no relief from the standards during these events.

Response: At this time, we are not promulgating separate emission standards for periods of startup and shutdown for three of the four categories addressed in this rule, because we believe compliance with the standards is achievable during these periods. In the case of the Pharmaceuticals Production MACT standards, we expect the difference in emission levels during periods of startup and shutdown are insignificant, and that facilities in this source category should be able to comply with the standards during these times. In the case of the Printing and Publishing MACT standards, we believe there are sufficiently long averaging times incorporated into the emissions limits that facilities should be able to comply during periods of startup and shutdown. In the case of MTVLO, loading of marine tank vessels occurs in "batches," and general practice is for the loading operators to test out the vapor control system before it is attached to the tank vessel. In the case of Group I Polymers and Resins, one commenter stated that organic HAP emissions that are required to be sent to emissions control equipment (*i.e.,* flares) may not be able to comply with the MACT standards during periods of shutdown. The commenter stated that they may not always be able to route some of their process vents to a flare during periods of shutdown due to low pressure or low heat content in the process vent. EPA agrees with the commenter that it is not possible to comply with the applicable standard during periods of shutdown, and is establishing alternative emissions standards that apply during these periods.

Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. However, by contrast, malfunction is defined as a "sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner * * *" (40 CFR 60.2). EPA has determined that malfunctions should not be viewed as a distinct operating mode, and, therefore, any emissions that occur at such times do not need to be factored into development of CAA section 112 standards, which, once promulgated, apply at all times. Also refer to section III.E of this preamble, and the response to comments document available in the docket for this action for additional discussion of this issue.

Comment: Commenters on the Group I Polymers and Resins MACT disagreed with EPA's statement that the proposed rules will reduce the reporting burden associated with having to prepare and submit an SSM report. The commenters also state that the claims EPA makes that EPA is not proposing any new paperwork requirements is false if a facility wants to claim an affirmative defense. The affirmative defense provision contains much more onerous reporting and implied recordkeeping requirements than the existing rules. The commenters state that EPA needs to account for the information collection burden associated with affirmative defense in the Information Collection Request (ICR) for the SSM portion of the Group I Polymers and Resins MACT, and otherwise comply with the Paperwork Reduction Act.

Response: As discussed in section VII.B of this preamble, EPA is providing the public with an estimate of the relative magnitude of the burden associated with an assertion of the affirmative defense position adopted by a source, and is providing administrative adjustments to the ICR for the MACT standards subject to these final rules that show what the notification, recordkeeping, and reporting requirements associated with the assertion of the affirmative defense might entail.

Comment: Two commenters note that, in making changes to the rules to exclude the SSM exemption and add the general duty clause to the MACT standards, three of the six MACT standards in the proposal include the statement that "the general duty to minimize emissions does not require the owner or operator to make any further efforts to reduce emissions if levels required by this standard have been achieved," but the other three do not (*i.e.,* Group I Polymers and Resins, MTLVO, and Printing and Publishing Industry MACT standards). The commenters state that this clarifying language should be included in all six standards.

Response: We agree that this language should be included in each of the six MACT standards, and we have added this clarifying language to 40 CFR 63.823(b) in the Printing and Publishing Industry MACT standards and 40 CFR 63.562(e) in the MTVLO MACT standards. However, we find that 40 CFR 63.483 in the Group 1 Polymers and Resins MACT standards already includes this language, and we have not revised the proposed language.

VI. Impacts of the Final Rules

The final changes to the Group I Polymers and Resins, MTVLO, Pharmaceuticals Production, and the Printing and Publishing Industry MACT standards are not estimated to have any significant emission reductions, costs, or other impacts.

VII. Statutory and Executive Order Reviews

A. Executive Orders 12866: Regulatory Planning and Review, and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action." This action is a significant regulatory action because it raises novel legal and policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866 and Executive Order 13563 (76 FR 3821, January 21, 2011), and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in the final rules have been submitted for approval to OMB under the *Paperwork Reduction Act,* 44 U.S.C. 3501, *et seq.* The information collection requirements are not enforceable until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

These final rules would require maintenance inspections of the control devices, but would not require any notifications or reports beyond those required by the General Provisions. The recordkeeping requirements require only the specific information needed to determine compliance.

When a malfunction occurs, sources must report them according to the applicable reporting requirements of 40 CFR part 63, subparts U, Y, KK, and GGG. An affirmative defense to civil penalties for exceedances of emission limits that are caused by malfunctions is available to a source if it can demonstrate that certain criteria and requirements are satisfied. The criteria ensure that the affirmative defense is available only where the event that causes an exceedance of the emission limit meets the narrow definition of malfunction in 40 CFR 63.2 (sudden, infrequent, not reasonable preventable, and not caused by poor maintenance and or careless operation) and where the source took necessary actions to minimize emissions. In addition, the source must meet certain notification and reporting requirements. For example, the source must prepare a written root cause analysis and submit a written report to the Administrator documenting that it has met the conditions and requirements for assertion of the affirmative defense.

For two of the rules promulgated, National Emissions Standards for Group I Polymers and Resins (Butyl Rubber Production, Epichlorohydrin Elastomers Production, Ethylene Propylene Rubber Production, Hypalon™ Production, Neoprene Production, NBR Production, Polybutadiene Rubber Production, Polysulfide Rubber Production, and Styrene Butadiene Rubber and Latex Production); and Pharmaceuticals Production, EPA is adding affirmative defense to the estimate of burden in the ICR. To provide the public with an estimate of the relative magnitude of the burden associated with an assertion of the affirmative defense position adopted by a source, EPA has provided administrative adjustments to these two ICR that show what the notification, recordkeeping, and reporting requirements associated with the assertion of the affirmative defense might entail. EPA's estimate for the required notification, reports, and records, including the root cause analysis, totals $3,141, and is based on the time and effort required of a source to review relevant data, interview plant employees, and document the events surrounding a malfunction that has caused an exceedance of an emission limit. The estimate also includes time to produce and retain the record and reports for submission to EPA. EPA provides this illustrative estimate of this burden, because these costs are only incurred if there has been a violation, and a source chooses to take advantage of the affirmative defense.

Given the variety of circumstances under which malfunctions could occur, as well as differences among sources' operation and maintenance practices, we cannot reliably predict the severity and frequency of malfunction-related excess emissions events for a particular source. It is important to note that EPA has no basis currently for estimating the number of malfunctions that would qualify for an affirmative defense. Current historical records would be an inappropriate basis, as source owners or operators previously operated their facilities in recognition that they were exempt from the requirement to comply with emissions standards during malfunctions. Of the number of excess emission events reported by source operators, only a small number would be expected to result from a malfunction (based on the definition above), and only a subset of excess emissions caused by malfunctions would result in the source choosing to assert the affirmative defense. Thus, we believe the number of instances in which source operators might be expected to avail themselves of the affirmative defense will be extremely small. For this reason, we estimate no more than 2 or 3 such occurrences for all sources subject to 40 CFR part 63, subparts U and GGG over the 3-year period covered by this ICR. We expect to gather information on such events in the future, and will revise this estimate as better information becomes available.

With respect to MTVLO and Printing and Publishing source categories, operations would not proceed or continue if there is a malfunction of a control device, and, thus, it is unlikely that a control device malfunction would cause an exceedance of any emission limit. The existing MTVLO rule requires the vapor displaced during loading of the vessel be sent to vapor processors that meet specified efficiency standards. In discussions with industry, and at plant visits, the industry reports that marine vessels are not allowed to start loading until the vapor collection and processor system has been thoroughly checked for proper operation. If the loading equipment, and the vapor collection and possessor system are not properly operating, the vessel is not allowed to load. In addition, if processor system settings are not maintained during vessel loading, loading is automatically stopped. Therefore, we believe there is no burden to the industry for the affirmative defense provisions added to the final rule. Additionally, an ICR document (number 1679.08) was prepared and submitted for the October 21, 2010, proposed rule that included burdens associated with testing, reporting, and recordkeeping for the proposed lowering of the threshold for when additional vapor collection and processor systems are required. In this action we are not requiring the lower threshold for additional vapor collection and processor systems. However, submerged fill requirements are added in the final rule, and are already being met under Coast Guard rules; thus, there is no additional ICR burden associated with the final rule for MTVLO.

For Printing and Publishing, we do not believe that printing and publishing

facilities have excess emissions caused by malfunctions. Printing presses and control devices are interlocked. If the control device is not operating, the press cannot start printing. If the control device stops operating, the press stops printing. Also, given the characteristics of the affected units at printing and publishing sources, EPA does not believe that any other type of malfunction could conceivably cause excess emissions.

Therefore, sources within these two source categories are not expected to have any need or use for the affirmative defense. Thus, for these source categories, EPA is not assigning any burden associated with affirmative defense.

For the Group I Polymers and Resins MACT standards, an ICR document prepared by EPA for the amendments to the standards has been assigned EPA ICR number 2410.02, which has been revised since the proposed estimate assigned EPA ICR number 2410.01. Burden changes associated with these amendments result from the reporting and recordkeeping requirements of the affirmative defense provisions added to the rule; the reporting and recordkeeping requirements associated with the new back-end process operation emission limits for Epichlorohydrin Elastomers, Neoprene Rubber, NBR, and Butyl Rubber Production source categories; and the reporting and recordkeeping requirements associated with the new HCl emission limits for the front-end process vents for the Ethylene Propylene Rubber and Butyl Rubber Production source categories. The respondents' annual reporting and recordkeeping burden for this collection (averaged over the first 3 years after the effective date of the standards) for these amendments is estimated to be 251 labor hours at a cost of $12,222 per year. The annual burden for the Federal government (averaged over the first 3 years after the effective date of the standard) for these amendments is estimated to be 9 labor hours at a cost of $408 per year.

For the Pharmaceuticals Production MACT standards ICR document prepared by EPA, which has been revised to include the amendments to the standards, has been assigned EPA ICR number 1781.06. Burden changes associated with these amendments result from the reporting and recordkeeping requirements of the affirmative defense provisions added to the rule. The change in respondents' annual reporting and recordkeeping burden associated with these amendments for this collection (averaged over the first 3 years after the effective date of the standards) is estimated to be 20 labor hours at a cost of $2,094 per year. There is no estimated change in annual burden to the Federal government for these amendments.

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 OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When these ICR are approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control numbers for the approved information collection requirements contained in the final rules.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the *Administrative Procedure Act,* or any other statute, 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 organizations, and small governmental jurisdictions.

For purposes of assessing the impact of these final rules on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of these final rules on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final action will not impose any requirements on small entities. These final rules will not change the level of any emission standard, or impose emission measurements or reporting requirements on small entities beyond those specified in existing regulations.

D. Unfunded Mandates Reform Act

These rules do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, these rules are not subject to the requirements of sections 202 or 205 of UMRA.

These rules are also not subject to the regulatory requirements that might significantly or uniquely affect small governments. They contain no requirements that apply to such governments or impose obligations upon them.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It 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. These final rules primarily affect private industry, and do not impose significant economic costs on State or local governments. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have substantial direct effect 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action will not relax the control measures on existing regulated sources, and EPA's risk assessments (included in the docket for the proposed rules) demonstrate that the existing regulations are health protective.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a

significant adverse energy effect on the supply, distribution, or use of energy. This action will not create any new requirements for sources in the energy supply, distribution, or use sectors. Further, we have concluded that these final rules are not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This action does not involve technical standards. Therefore, EPA did not consider the use of any VCS.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that these final rules will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations, because they do not affect the level of protection provided to human health or the environment. To examine the potential for any environmental justice issues that might be associated with each source category, we evaluated the distributions of HAP-related cancer and non-cancer risks across different social, demographic, and economic groups within the populations living near the facilities where these source categories are located. Our analyses also show that, for all the source categories evaluated, there is no potential for an adverse environmental effect or human health multipathway effects, and that acute and chronic non-cancer health impacts are unlikely. Our additional analysis of facility-wide risks showed that the maximum facility-wide cancer risks for all source categories are within the range of acceptable risks, and that the maximum chronic non-cancer risks are unlikely to cause health impacts. Our additional analysis of the demographics of the exposed population may show disparities in risks between demographic groups for all three categories, but EPA has determined that, although there may be a disparity in risks between demographic groups, no group is exposed to unacceptable level of risk.

The rules will not relax the control measures on emissions sources regulated by the rules, and, therefore, will not increase risks to any populations exposed to these emissions sources.

K. 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 these final rules and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the final rules 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). The final rules will be effective on April 21, 2011.

List of Subjects for 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 31, 2011.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency amends title 40, chapter I, of the Code of Federal Regulations as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart U—[Amended]

■ 2. Section 63.480 is amended by revising paragraph (j) to read as follows:

§ 63.480 Applicability and designation of affected sources.

* * * * *

(j) *Applicability of this subpart.* Paragraphs (j)(1) through (4) of this section shall be followed during periods of non-operation of the affected source or any part thereof.

(1) The emission limitations set forth in this subpart and the emission limitations referred to in this subpart shall apply at all times except during periods of non-operation of the affected source (or specific portion thereof) resulting in cessation of the emissions to which this subpart applies. However, if a period of non-operation of one portion of an affected source does not affect the ability of a particular emission point to comply with the emission limitations to which it is subject, then that emission point shall still be required to comply with the applicable emission limitations of this subpart during the period of non-operation. For example, if there is an overpressure in the reactor area, a storage vessel that is part of the affected source would still be required to be controlled in accordance with the emission limitations in § 63.484.

(2) The emission limitations set forth in subpart H of this part, as referred to in § 63.502, shall apply at all times, except during periods of non-operation of the affected source (or specific portion thereof) in which the lines are drained and depressurized, resulting in cessation of the emissions to which § 63.502 applies.

(3) The owner or operator shall not shut down items of equipment that are required or utilized for compliance with this subpart during times when emissions (or, where applicable, wastewater streams or residuals) are being routed to such items of equipment if the shutdown would contravene requirements of this subpart applicable to such items of equipment.

(4) In response to an action to enforce the standards set forth in this subpart, an owner or operator may assert an affirmative defense to a claim for civil penalties for exceedances of such standards that are caused by a malfunction, as defined in § 63.2. Appropriate penalties may be assessed, however, if the owner or operator fails to meet the burden of proving all the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(i) To establish the affirmative defense in any action to enforce such a limit, the owners or operators of a facility must timely meet the notification requirements of paragraph (j)(4)(ii) of this section, and must prove by a preponderance of evidence that:

(A) The excess emissions were caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring equipment, or a process to operate in a normal and usual manner; and could not have been prevented through careful planning, proper design, or better operation and maintenance practices; did not stem from any activity or event that could have been foreseen and avoided, or planned for; and were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

(B) Repairs were made as expeditiously as possible when the applicable emission limitations were being exceeded. Off-shift and overtime labor were used, to the extent practicable to make these repairs;

(C) The frequency, amount, and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions;

(D) If the excess emissions resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(E) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment, and human health;

(F) All emissions monitoring and control systems were kept in operation, if at all possible, consistent with safety and good air pollution control practices;

(G) All of the actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs;

(H) At all times, the facility was operated in a manner consistent with good practices for minimizing emissions; and

(I) The owner or operator has prepared a written root cause analysis, the purpose of which is to determine, correct, and eliminate the primary causes of the malfunction and the excess emissions resulting from the malfunction event at issue. The analysis shall also specify, using the best monitoring methods and engineering judgment, the amount of excess emissions that were the result of the malfunction.

(ii) *Notification.* The owner or operator of the facility experiencing an exceedance of its emission limit(s) during a malfunction shall notify the Administrator by telephone or facsimile (FAX) transmission as soon as possible, but no later than 2 business days after the initial occurrence of the malfunction, if it wishes to avail itself of an affirmative defense to civil penalties for that malfunction. The owner or operator seeking to assert an affirmative defense shall also submit a written report to the Administrator within 45 days of the initial occurrence of the exceedance of the standard in this subpart to demonstrate, with all necessary supporting documentation, that it has met the requirements set forth in paragraph (j)(4)(i) of this section. The owner or operator may seek an extension of this deadline for up to 30 additional days by submitting a written request to the Administrator before the expiration of the 45 day period. Until a request for an extension has been approved by the Administrator, the owner or operator is subject to the requirement to submit such report within 45 days of the initial occurrence of the exceedance.

■ 3. Section 63.481 is amended by revising paragraph (c) to read as follows:

§ 63.481 Compliance dates and relationship of this subpart to existing applicable rules.

* * * * *

(c) With the exceptions provided in paragraphs (c)(1) through (3) of this section, existing affected sources shall be in compliance with this subpart no later than June 19, 2001, as provided in § 63.6(c), unless an extension has been granted as specified in paragraph (e) of this section.

(1) Existing affected sources producing epichlorohydrin elastomer, butyl rubber, neoprene rubber, and nitrile butadiene rubber shall be in compliance with the applicable emission limitation in § 63.494(a)(4) no later than April 23, 2012.

(2) Existing affected sources producing butyl rubber and ethylene propylene rubber shall be in compliance with § 63.485(q)(1) no later than April 23, 2012.

(3) Compliance with § 63.502 is covered by paragraph (d) of this section.

* * * * *

■ 4. Section 63.482 is amended by removing the definition of "halobutyl rubber," adding in alphabetical order a definition for "affirmative defense," revising the definitions of "back-end," "butyl rubber," "elastomer product," "initial start-up," and "product" in paragraph (b) to read as follows:

§ 63.482 Definitions.

* * * * *

(b) * * *

Affirmative defense means, in the context of an enforcement proceeding, a response or a defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

* * * * *

Back-end refers to the unit operations in an EPPU following the stripping operations. Back-end process operations include, but are not limited to, filtering, coagulation, blending, concentration, drying, separating, and other finishing operations, as well as latex and crumb storage. Back-end does not include storage and loading of finished product or emission points that are regulated under §§ 63.484, 63.501, or 63.502 of this subpart.

* * * * *

Butyl rubber means a copolymer of isobutylene and other monomers. Typical other monomers include isoprene and methylstyrene. A typical composition of butyl rubber is approximately 85- to 99-percent isobutylene, and 1- to 15-percent other monomers. Most butyl rubber is produced by precipitation polymerization, although other methods may be used. Halobutyl rubber is a type of butyl rubber elastomer produced using halogenated copolymers.

* * * * *

Elastomer product means one of the following types of products, as they are defined in this section:

(1) Butyl Rubber;
(2) Epichlorohydrin Elastomer;
(3) Ethylene Propylene Rubber;
(4) Hypalon ™;
(5) Neoprene;
(6) Nitrile Butadiene Rubber;
(7) Nitrile Butadiene Latex;
(8) Polybutadiene Rubber/Styrene Butadiene Rubber by Solution;
(9) Polysulfide Rubber;
(10) Styrene Butadiene Rubber by Emulsion; and
(11) Styrene Butadiene Latex.

* * * * *

Initial start-up means the first time a new or reconstructed affected source begins production of an elastomer product, or, for equipment added or changed as described in § 63.480(i), the first time the equipment is put into operation to produce an elastomer product. Initial start-up does not include operation solely for testing equipment. Initial start-up does not include subsequent start-ups of an affected source or portion thereof

following shutdowns, or following changes in product for flexible operation units, or following recharging of equipment in batch operation.

* * * * *

Product means a polymer produced using the same monomers, and varying in additives (*e.g.,* initiators, terminators, etc.); catalysts; or in the relative proportions of monomers, that is manufactured by a process unit. With respect to polymers, more than one recipe may be used to produce the same product, and there can be more than one grade of a product. As an example, styrene butadiene latex and butyl rubber each represent a different product. Product also means a chemical that is not a polymer, is manufactured by a process unit. By-products, isolated intermediates, impurities, wastes, and trace contaminants are not considered products.

* * * * *

■ 5. Section 63.483 is amended by revising paragraph (a) to read as follows:

§ 63.483 Emission standards.

(a) At all times, each owner or operator must operate and maintain any affected source subject to the requirements of this subpart, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require the owner or operator to make any further efforts to reduce emissions if levels required by this standard have been achieved. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source. Except as allowed under paragraphs (b) through (d) of this section, the owner or operator of an existing or new affected source shall comply with the provisions in:

(1) Section 63.484 for storage vessels;

(2) Section 63.485 for continuous front-end process vents;

(3) Sections 63.486 through 63.492 for batch front-end process vents;

(4) Sections 63.493 through 63.500 for back-end process operations;

(5) Section 63.501 for wastewater;

(6) Section 63.502 for equipment leaks;

(7) Section 63.504 for additional test methods and procedures;

(8) Section 63.505 for monitoring levels and excursions; and

(9) Section 63.506 for general reporting and recordkeeping requirements.

* * * * *

■ 6. Section 63.484 is amended by revising paragraph (b)(4) to read as follows:

§ 63.484 Storage vessel provisions.

* * * * *

(b) * * *

(4) Storage vessels located downstream of the stripping operations at affected sources subject to the back-end residual organic HAP limitation located in § 63.494(a)(1) through (3), that are complying through the use of stripping technology, as specified in § 63.495;

* * * * *

■ 7. Section 63.485 is amended by:

■ a. Revising paragraphs (q) introductory text, and (q)(1) introductory text;

■ b. Adding paragraphs (q)(1)(iii) through (q)(1)(vi); and

■ c. Adding paragraph (w) to read as follows:

§ 63.485 Continuous front-end process vent provisions.

* * * * *

(q) Group 1 halogenated continuous front-end process vents must comply with the provisions of § 63.113(a)(1)(ii) and § 63.113(c), with the exceptions noted in paragraphs (q)(1) and (2) of this section.

(1) Group I halogenated continuous front-end process vents at existing affected sources producing butyl rubber or ethylene propylene rubber using a solution process are exempt from the provisions of § 63.113(a)(1)(ii) and § 63.113(c) if the conditions in paragraphs (q)(1)(i) and (ii) of this section are met, and shall comply with the requirements in paragraphs (q)(1)(iii) through (vi) of this section. Group I halogenated continuous front-end process vents at new affected sources producing butyl rubber or ethylene propylene rubber using a solution process are not exempt from § 63.113(a)(1)(ii) and § 63.113(c).

* * * * *

(iii) The average HCl emissions from all front-end process operations at affected sources producing butyl rubber and ethylene propylene rubber using a solution process shall not exceed the limits determined in accordance with paragraphs (q)(1)(iii)(A) and (B) of this section for any consecutive 12-month period. The specific limitation for each elastomer type shall be determined based on the calculation or the emissions level provided in paragraphs (q)(1)(iii)(A) and (B) of this section divided by the base year elastomer product that leaves the stripping operation (or the reactor(s), if the plant has no stripper(s)). The limitation shall be calculated and submitted in accordance with paragraph (q)(1)(iv) of this section.

(A) For butyl rubber, the HCl emission limitation shall be calculated using the following equation:

$$BRHClEL = \frac{HCl_{2010}}{P_{2010}} * 1.74$$

Where:

HCl_{2010} = HCl emissions in 2010, megagrams per year (Mg/yr)

BRHClEL = Butyl rubber HCl emission limit, Mg HCl emissions/Mg butyl rubber produced

P_{2010} = Total elastomer product leaving the stripper in 2010, Mg/yr

1.74 = variability factor, unitless

(B) For ethylene propylene rubber using a solution process, the HCl emission limitation, in units of Mg HCl emissions per Mg of ethylene propylene rubber produced, shall be calculated by dividing 27 Mg/yr by the mass of ethylene propylene rubber produced in 2010, in Mg.

(iv) If the front-end process operation is subject to a HCl emission limitation in paragraph (q)(1)(iii) of this section, the owner and operator must submit the information specified in paragraphs (q)(1)(iv)(A) and (B) of this section.

(A) The applicable HCl emission limitation determined in accordance with paragraphs (q)(1)(iii)(A) and (B) of this section shall be submitted no later than 180 days from the date of publication of the final rule amendments in the **Federal Register**.

(B) Beginning with the first periodic report required to be submitted by § 63.506(e)(6) that is at least 13 months after the compliance date, the total mass of HCl emitted for each of the rolling 12-month periods in the reporting period divided by the total mass of elastomer produced during the corresponding 12-month period, determined in accordance with paragraph (q)(1)(v) of this section.

(v) Compliance with the HCl emission limitations determined in accordance with paragraph (q)(1)(iii) of this section shall be demonstrated in accordance with paragraphs (q)(1)(v)(A) through (E) of this section.

(A) Calculate your HCl emission limitation in accordance with paragraphs (q)(1)(iii)(A) and (B) of this section, as applicable, record it, and submit it in accordance with paragraph (q)(1)(iv) of this section.

(B) Each month, calculate and record the HCl emissions from all front-end process operations using engineering assessment. Engineering assessment includes, but is not limited to, the following:

(*1*) Use of material balances;

(*2*) Estimation of flow rate based on physical equipment design, such as pump or blower capacities;

(*3*) Estimation of HCl concentrations based on saturation conditions; and

(*4*) Estimation of HCl concentrations based on grab samples of the liquid or vapor.

(C) Each month, record the mass of elastomer product produced.

(D) Each month, calculate and record the sum of the HCl emissions and the mass of elastomer produced for the previous calendar 12-month period.

(E) Each month, divide the total mass of HCl emitted for the previous calendar 12-month period by the total mass of elastomer produced during this 12-month period. This value must be recorded in accordance with paragraph (q)(1)(vi) of this section and reported in accordance with paragraph (q)(1)(iv) of this section.

(vi) If the front-end process operation is subject to an HCl emission limitation in paragraph (q)(1)(iii) of this section, the owner or operator shall maintain the records specified in paragraphs (q)(1)(vi)(A) through (D) of this section.

(A) The applicable HCl emission limitation determined in accordance with paragraphs (q)(1)(iii)(A) and (B) of this section.

(B) The HCl emissions from all front-end process operations for each month, along with documentation of all calculations, and other information used in the engineering assessment to estimate these emissions.

(C) The mass of elastomer product produced each month.

(D) The total mass of HCl emitted for each 12-month period divided by the total mass of elastomer produced during the 12-month period, determined in accordance with paragraph (q)(1)(v) of this section.

* * * * *

(w) *Shutdown.* (1) During periods of shutdown, a Group 1 continuous front-end process vent at an existing affected source producing butyl rubber or ethylene propylene rubber using a solution process must be routed to a flare until either the organic HAP concentration in the vent is less than 50 ppmv, or the vent pressure is below 103.421 kPa.

■ 8. Section 63.489 is amended by revising paragraph (b)(4)(ii)(C) to read as follows:

§ 63.489 Batch front-end process vents—monitoring equipment.

* * * * *

(b) * * *

(4) * * *

(ii) * * *

(C) The owner or operator may prepare and implement a gas stream flow determination plan that documents an appropriate method which will be used to determine the gas stream flow. The plan shall require determination of gas stream flow by a method which will at least provide a value for either a representative or the highest gas stream flow anticipated in the scrubber during representative operating conditions. The plan shall include a description of the methodology to be followed and an explanation of how the selected methodology will reliably determine the gas stream flow, and a description of the records that will be maintained to document the determination of gas stream flow. The owner or operator shall maintain the plan as specified in § 63.506(a).

* * * * *

■ 9. Section 63.491 is amended by revising paragraph (e)(2)(ii) to read as follows:

§ 63.491 Batch front-end process vents—recordkeeping requirements.

* * * * *

(e) * * *

(2) * * *

(ii) Monitoring data recorded during periods of monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments shall not be included in computing the batch cycle daily averages. In addition, monitoring data recorded during periods of non-operation of the EPPU (or specific portion thereof) resulting in cessation of organic HAP emissions shall not be included in computing the batch cycle daily averages.

* * * * *

■ 10. Section 63.493 is revised to read as follows:

§ 63.493 Back-end process provisions.

Owners and operators of new and existing affected sources shall comply with the requirements in §§ 63.494 through 63.500. Owners and operators of affected sources whose only elastomer products are latex products, liquid rubber products, or products produced in a gas-phased reaction process, are not subject to the provisions of §§ 63.494 through 63.500. If latex or liquid rubber products are produced in an affected source that also produces another elastomer product, the provisions of §§ 63.494 through 63.500 do not apply to the back-end operations dedicated to the production of one or more latex products, or to the back-end operations during the production of a latex product. Table 8 to this subpart contains a summary of compliance alternative requirements for the emission limits in § 63.494(a)(1)–(3) and associated requirements.

■ 11. Section 63.494 is amended by:

■ a. Revising the section heading;

■ b. Revising paragraph (a) introductory text;

■ c. Revising paragraph (a)(4);

■ d. Revising paragraph (a)(5) introductory text;

■ e. Adding paragraph (a)(6);

■ f. Revising paragraph (b);

■ g. Revising paragraph (c); and

■ h. Revising paragraph (d) to read as follows:

§ 63.494 Back-end process provisions—residual organic HAP and emission limitations.

(a) The monthly weighted average residual organic HAP content of all grades of styrene butadiene rubber produced by the emulsion process, polybutadiene rubber and styrene butadiene rubber produced by the solution process, and ethylene-propylene rubber produced by the solution process that is processed, shall be measured after the stripping operation (or the reactor(s), if the plant has no stripper(s)), as specified in § 63.495(d), and shall not exceed the limits provided in paragraphs (a)(1) through (3) of this section, as applicable. Owners or operators of these affected sources shall comply with the requirements of paragraphs (a)(1) through (3) of this section using either stripping technology, or control or recovery devices. The organic HAP emissions from all back-end process operations at affected sources producing butyl rubber, epichlorohydrin elastomer, neoprene, and nitrile butadiene rubber shall not exceed the limits determined in accordance with paragraph (a)(4) of this section, as applicable.

* * * * *

(4) The organic HAP emissions from back-end processes at affected sources producing butyl rubber, epichlorohydrin elastomer, neoprene, and nitrile butadiene rubber shall not exceed the limits determined in accordance with paragraphs (a)(4)(i) through (iv) of this section for any consecutive 12-month period. The specific limitation for each elastomer type shall be determined based on the calculation or the emissions level provided in paragraphs (a)(4)(i) through

(iv) of this section divided by the base year elastomer product that leaves the stripping operation (or the reactor(s), if the plant has no stripper(s)). The limitation shall be calculated and submitted in accordance with § 63.499(f)(1).

(i) For butyl rubber, the organic HAP emission limitation shall be calculated using the following equation:

$$BREL = \frac{Ce_{2009} + Be_{2009} + UCe_{2009}}{P_{2009}} * 1.35$$

Where:

Be_{2009} = Bypass emissions in 2009, Mg/yr
BREL = Butyl rubber emission limit, Mg organic HAP emissions/Mg butyl rubber produced
Ce_{2009} = Controlled emissions in 2009, Mg/yr
P_{2009} = Total elastomer product leaving the stripper in 2009, Mg/yr
UCe_{2009} = Uncontrolled emissions in 2009, Mg/yr
1.35 = variability factor, unitless

(ii) For epichlorohydrin elastomer, the organic HAP emission limitation, in units of Mg organic HAP emissions per Mg of epichlorohydrin elastomer produced, shall be calculated by dividing 51 Mg/yr by the mass of epichlorohydrin elastomer produced in 2009, in Mg.

(iii) For neoprene, the organic HAP emission limitation, in units of Mg organic HAP emissions per Mg of neoprene produced, shall be calculated by dividing 30 Mg/yr by the mass of neoprene produced in 2007, in Mg.

(iv) For nitrile butadiene rubber, the organic HAP emission limitation, in units of Mg organic HAP emissions per Mg of nitrile butadiene rubber produced, shall be calculated by dividing 2.4 Mg/yr by the mass of nitrile butadiene rubber produced in 2009, in Mg.

(5) For EPPU that produce both an elastomer product with a residual organic HAP limitation listed in paragraphs (a)(1) through (3) of this section, and a product listed in paragraphs (a)(5)(i) through (iv) of this section, only the residual HAP content of the elastomer product with a residual organic HAP limitation shall be used in determining the monthly average residual organic HAP content.

* * * * *

(6) There are no back-end process operation residual organic HAP or emission limitations for Hypalon ™ and polysulfide rubber production. There are also no back-end process operation residual organic HAP limitations for latex products, liquid rubber products, products produced in a gas-phased reaction process, styrene butadiene rubber produced by any process other than a solution or emulsion process, polybutadiene rubber produced by any process other than a solution process, or ethylene-propylene rubber produced by any process other than a solution process.

(b) If an owner or operator complies with the residual organic HAP limitations in paragraph (a)(1) through (3) of this section using stripping technology, compliance shall be demonstrated in accordance with § 63.495. The owner or operator shall also comply with the recordkeeping provisions in § 63.498, and the reporting provisions in § 63.499.

(c) If an owner or operator complies with the residual organic HAP limitations in paragraph (a)(1) through (3) of this section using control or recovery devices, compliance shall be demonstrated using the procedures in § 63.496. The owner or operator shall also comply with the monitoring provisions in § 63.497, the recordkeeping provisions in § 63.498, and the reporting provisions in § 63.499.

(d) If the owner or operator complies with the residual organic HAP limitations in paragraph (a)(1) through (3) of this section using a flare, the owner or operator of an affected source shall comply with the requirements in § 63.504(c).

■ 12. Section 63.495 is amended by:
■ a. Revising the section heading;
■ b. Revising paragraph (a);
■ c. Revising paragraph (b)(5); and
■ d. Adding paragraph (g) to read as follows:

§ 63.495 Back-end process provisions—procedures to determine compliance with residual organic HAP limitations using stripping technology and organic HAP emissions limitations.

(a) If an owner or operator complies with the residual organic HAP limitations in § 63.494(a)(1) through (3) using stripping technology, compliance shall be demonstrated using the periodic sampling procedures in paragraph (b) of this section, or using the stripper parameter monitoring procedures in paragraph (c) of this section. The owner or operator shall determine the monthly weighted average residual organic HAP content for each month in which any portion of the back-end of an elastomer production process is in operation. A single monthly weighted average shall be determined for all back-end process operations at the affected source.

(b) * * *

(5) The monthly weighted average shall be determined using the equation in paragraph (f) of this section. All representative samples taken and analyzed during the month shall be used in the determination of the monthly weighted average.

* * * * *

(g) Compliance with the organic HAP emission limitations determined in accordance with § 63.494(a)(4) shall be demonstrated in accordance with paragraphs (g)(1) through (5) of this section.

(1) Calculate your organic HAP emission limitation in accordance with § 63.494(a)(4)(i) through (iv), as applicable, record it, and submit it in accordance with § 63.499(f)(1).

(2) Each month, calculate and record the organic HAP emissions from all back-end process operations using engineering assessment. Engineering assessment includes, but is not limited to, the following:

(i) Previous test results, provided the test was representative of current operating practices.

(ii) Bench-scale or pilot-scale test data obtained under conditions representative of current process operating conditions.

(iii) Design analysis based on accepted chemical engineering principles, measurable process parameters, or physical or chemical laws or properties. Examples of analytical methods include, but are not limited to:

(A) Use of material balances;

(B) Estimation of flow rate based on physical equipment design, such as pump or blower capacities;

(C) Estimation of organic HAP concentrations based on saturation conditions; and

(D) Estimation of organic HAP concentrations based on grab samples of the liquid or vapor.

(3) Each month, record the mass of elastomer product produced.

(4) Each month, calculate and record the sums of the organic HAP emissions

and the mass of elastomer produced for the previous calendar 12-month period.

(5) Each month, divide the total mass of organic HAP emitted for the previous calendar 12-month period by the total mass of elastomer produced during this 12-month period. This value must be recorded in accordance with § 63.498(e) and reported in accordance with § 63.499(f)(2).

■ 13. Section 63.496 is amended by:
■ a. Revising the section heading;
■ b. Revising paragraph (a);
■ c. Revising paragraph (c)(2); and
■ d. Revising paragraph (d) to read as follows:

§ 63.496 Back-end process provisions—procedures to determine compliance with residual organic HAP limitations using control or recovery devices.

(a) If an owner or operator complies with the residual organic HAP limitations in § 63.494(a)(1) through (3) using control or recovery devices, compliance shall be demonstrated using the procedures in paragraphs (b) and (c) of this section. Previous test results conducted in accordance with paragraphs (b)(1) through (6) of this section may be used to determine compliance in accordance with paragraph (c) of this section.

* * * * *

(c) * * *

(2) A facility is in compliance if the average of the organic HAP contents calculated for all three test runs is below the residual organic HAP limitations in § 63.494(a)(1) through (3).

(d) An owner or operator complying with the residual organic HAP limitations in § 63.494(a)(1) through (3) using a control or recovery device, shall redetermine the compliance status through the requirements described in paragraph (b) of this section whenever process changes are made. The owner or operator shall report the results of the redetermination in accordance with § 63.499(d). For the purposes of this section, a process change is any action that would reasonably be expected to impair the performance of the control or recovery device. For the purposes of this section, the production of an elastomer with a residual organic HAP content greater than the residual organic HAP content of the elastomer used in the compliance demonstration constitutes a process change, unless the overall effect of the change is to reduce organic HAP emissions from the source as a whole. Other examples of process changes may include changes in production capacity or production rate, or removal or addition of equipment. For the purposes of this paragraph, process changes do not include: Process upsets; unintentional, temporary process changes; or changes that reduce the residual organic HAP content of the elastomer.

■ 14. Section 63.497 is amended by:
■ a. Revising the section heading;
■ b. Revising paragraph (a) introductory text; and
■ c. Revising paragraph (d) introductory text to read as follows:

§ 63.497 Back-end process provisions—monitoring provisions for control and recovery devices used to comply with residual organic HAP limitations.

(a) An owner or operator complying with the residual organic HAP limitations in § 63.494(a)(1) through (3) using control or recovery devices, or a combination of stripping and control or recovery devices, shall install the monitoring equipment specified in paragraphs (a)(1) through (6) of this section, as appropriate.

* * * * *

(d) The owner or operator of an affected source with a controlled back-end process vent using a vent system that contains bypass lines that could divert a vent stream away from the control or recovery device used to comply with § 63.494(a)(1) through (3), shall comply with paragraph (d)(1) or (2) of this section. Equipment such as low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and pressure relief valves needed for safety purposes are not subject to this paragraph.

* * * * *

■ 15. Section 63.498 is amended by:
■ a. Revising paragraph (a) introductory text;
■ b. Revising paragraph (a)(3);
■ c. Adding paragraph (a)(4);
■ d. Revising paragraph (b) introductory text;
■ e. Revising paragraph (b)(3);
■ f. Revising paragraph (c) introductory text;
■ g. Revising paragraph (d) introductory text;
■ h. Revising paragraph (d)(5)(ii)(B);
■ i. Revising paragraph (d)(5)(ii)(E); and
■ j. Adding paragraph (e) to read as follows:

§ 63.498 Back-end process provisions—recordkeeping.

(a) Each owner or operator shall maintain the records specified in paragraphs (a)(1) through (4), and paragraphs (b) through (e) of this section, as appropriate.

* * * * *

(3) If the back-end process operation is subject to a residual organic HAP limitation in § 63.494(a)(1) through (3), whether compliance will be achieved by stripping technology, or by control or recovery devices.

(4) If the back-end process operation is subject to an emission limitation in § 63.494(a)(4), the organic HAP emission limitation calculated in accordance with § 63.494(a)(4)(i) through (iv), as applicable.

(b) Each owner or operator of a back-end process operation using stripping technology to comply with a residual organic HAP limitation in § 63.494(a)(1) through (3), and demonstrating compliance using the periodic sampling procedures in § 63.495(b), shall maintain the records specified in paragraph (b)(1), and in paragraph (b)(2) or paragraph (b)(3) of this section, as appropriate.

* * * * *

(3) If the organic HAP contents for all samples analyzed during a month are below the appropriate level in § 63.494(a), the owner or operator may record that all samples were in accordance with the residual organic HAP limitations in § 63.494(a)(1) through (3), rather than calculating and recording a monthly weighted average.

(c) Each owner or operator of a back-end process operation using stripping technology to comply with a residual organic HAP limitation in § 63.494(a)(1) through (3), and demonstrating compliance using the stripper parameter monitoring procedures in § 63.495(c), shall maintain the records specified in paragraphs (c)(1) through (3) of this section.

* * * * *

(d) Each owner or operator of a back-end process operation using control or recovery devices to comply with a residual organic HAP limitation in § 63.494(a)(1) through (3), shall maintain the records specified in paragraphs (d)(1) through (5) of this section. The recordkeeping requirements contained in paragraphs (d)(1) through (4) pertain to the results of the testing required by § 63.496(b), for each of the three required test runs.

* * * * *

(5) * * *

(ii) * * *

(B) Monitoring data recorded during periods of monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments, shall not be included in computing the hourly or daily averages. In addition, monitoring data recorded during periods of non-operation of the EPPU (or specific portion thereof) resulting in cessation of organic HAP emissions, shall not be included in

computing the hourly or daily averages. Records shall be kept of the times and durations of all such periods and any other periods of process or control device operation when monitors are not operating.

* * * * *

(E) For flares, records of the times and duration of all periods during which the pilot flame is absent, shall be kept rather than daily averages. The records specified in this paragraph are not required during periods when emissions are not routed to the flare.

* * * * *

(e) If the back-end process operation is subject to an organic HAP emission limitation in § 63.494(a)(4), the records specified in paragraphs (e)(1) through (4) of this section.

(1) The applicable organic HAP emission limitation determined in accordance with § 63.494(a)(4)(i) through (iv).

(2) The organic HAP emissions from all back-end process operations for each month, along with documentation of all calculations and other information used in the engineering assessment to estimate these emissions.

(3) The mass of elastomer product produced each month.

(4) The total mass of organic HAP emitted for each 12-month period divided by the total mass of elastomer produced during the 12-month period, determined in accordance with § 63.495(g)(5).

■ 16. Section 63.499 is amended by:
■ a. Revising paragraph (a)(3);
■ b. Revising paragraph (b) introductory text;
■ c. Revising paragraph (c) introductory text;
■ d. Revising paragraph (d) introductory text; and
■ e. Adding paragraph (f) to read as follows:

§ 63.499 Back-end process provisions—reporting.

(a) * * *

(3) If the back-end process operation is subject to a residual organic HAP limitation in § 63.494(a)(1) through (3), whether compliance will be achieved by stripping technology, or by control or recovery devices.

(b) Each owner or operator of a back-end process operation using stripping to comply with a residual organic HAP limitation in § 63.494(a)(1) through (3), and demonstrating compliance by stripper parameter monitoring, shall submit reports as specified in paragraphs (b)(1) and (2) of this section.

* * * * *

(c) Each owner or operator of an affected source with a back-end process operation control or recovery device that shall comply with a residual organic HAP limitation in § 63.494(a)(1) through (3), shall submit the information specified in paragraphs (c)(1) through (3) of this section as part of the Notification of Compliance Status specified in § 63.506(e)(5).

* * * * *

(d) Whenever a process change, as defined in § 63.496(d), is made that causes the redetermination of the compliance status for the back-end process operations subject to a residual organic HAP limitation in § 63.494(a)(1) through (3), the owner or operator shall submit a report within 180 days after the process change, as specified in § 63.506(e)(7)(iii). The report shall include:

* * * * *

(f) If the back-end process operation is subject to an organic HAP emission limitation in § 63.494(a)(4), the owner and operator must submit the information specified in paragraphs (f)(1) and (2) of this section.

(1) The applicable organic HAP emission limitation determined in accordance with § 63.494(a)(4)(i) through (iv), shall be submitted no later than 180 days from the date of publication of the final rule amendments in the **Federal Register**.

(2) Beginning with the first periodic report required to be submitted by § 63.506(e)(6) that is at least 13 months after the compliance date, the total mass of organic HAP emitted for each of the rolling 12-month periods in the reporting period divided by the total mass of elastomer produced during the corresponding 12-month period, determined in accordance with § 63.495(g)(5).

■ 17. Section 63.501 is amended by revising paragraph (c)(2) to read as follows:

§ 63.501 Wastewater provisions.

* * * * *

(c) * * *

(2) Back-end streams at affected sources that are subject to a residual organic HAP limitation in § 63.494(a)(1) through (3) and that are complying with these limitations through the use of stripping technology.

■ 18. Section 63.502 is amended by revising paragraphs (a) and (b)(4) to read as follows:

§ 63.502 Equipment leak and heat exchange system provisions.

(a) *Equipment leak provisions.* The owner or operator of each affected source, shall comply with the requirements of subpart H of this part, with the exceptions noted in paragraphs (b) through (m) of this section. Surge control vessels required to be controlled by subpart H may, alternatively, comply with the Group 1 storage vessel provisions specified in § 63.484.

(b) * * *

(4) Surge control vessels and bottoms receivers located downstream of the stripping operations at affected sources subject to the back-end residual organic HAP limitation located in § 63.494(a)(1) through (3) that are complying through the use of stripping technology, as specified in § 63.495;

* * * * *

§ 63.503—[Amended]

■ 19. Section 63.503 is amended by removing and reserving paragraph (f)(1).

■ 20. Section 63.504 is amended by revising paragraph (a)(1) introductory text to read as follows:

§ 63.504 Additional requirements for performance testing.

(a) * * *

(1) Performance tests shall be conducted at maximum representative operating conditions achievable during one of the time periods described in paragraph (a)(1)(i) of this section, without causing any of the situations described in paragraph (a)(1)(ii) of this section to occur. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

* * * * *

■ 21. Section 63.505 is amended by:
■ a. Revising paragraph (e)(4);
■ b. Revising paragraph (g)(1) introductory text;
■ c. Revising paragraph (g)(1)(v)(A);
■ d. Revising paragraph (g)(1)(v)(B);
■ e. Removing paragraphs (g)(1)(v)(C) through (g)(1)(v)(E);
■ f. Revising paragraph (g)(2)(ii)(B) introductory text; and
■ g. Adding paragraph (j) to read as follows:

§ 63.505 Parameter monitoring levels and excursions.

* * * * *

(e) * * *

(4) An owner or operator complying with the residual organic HAP limitations in paragraphs (a)(1) through (3) of § 63.494 using stripping, and demonstrating compliance by stripper parameter monitoring, shall redetermine the residual organic HAP content for all affected grades whenever process changes are made. For the purposes of this section, a process change is any action that would reasonably be

expected to impair the performance of the stripping operation. For the purposes of this section, examples of process changes may include changes in production capacity or production rate, or removal or addition of equipment. For purposes of this paragraph, process changes do not include: Process upsets; unintentional, temporary process changes; or changes that reduce the residual organic HAP content of the elastomer.

* * * * *

(g) * * *

(1) With respect to storage vessels (where the applicable monitoring plan specifies continuous monitoring), continuous front-end process vents, aggregate batch vent streams, back-end process operations complying with § 63.494(a)(1) through (3) through the use of control or recovery devices, and process wastewater streams, an excursion means any of the three cases listed in paragraphs (g)(1)(i) through (g)(1)(iii) of this section. * * *

(v) * * *

(A) Monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments; or

(B) Periods of non-operation of the affected source (or portion thereof), resulting in cessation of the emissions to which the monitoring applies.

(2) * * *

(ii) * * *

(B) Subtract the time during the periods of monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments from the total amount of time determined in paragraph (g)(2)(ii)(A) of this section, to obtain the operating time used to determine if monitoring data are insufficient.

* * * * *

(j) *Excursion definition for back-end operations subject to § 63.494(a)(4).* An excursion means when the total mass of organic HAP emitted for any consecutive 12-month period divided by the total mass of elastomer produced during the 12-month period, determined in accordance with § 63.495(g), is greater than the applicable emission limitation, determined in accordance with § 63.494(a)(4)(i) through (iv) and submitted in accordance with § 63.499(f)(1).

■ 22. Section 63.506 is amended by:

■ a. Revising paragraph (b)(1) introductory text;

■ b. Revising paragraph (d)(7);

■ c. Revising paragraph (e)(3) introductory text;

■ d. Removing and reserving paragraph (e)(3)(viii);

■ e. Revising paragraph (e)(3)(ix)(B);

■ f. Revising paragraph (e)(6)(iii)(E);

■ g. Revising paragraph (h)(1)(i);

■ h. Revising paragraph (h)(1)(ii)(C);

■ i. Revising paragraph (h)(1)(iii);

■ j. Revising paragraph (h)(2)(iii);

■ k. Removing and reserving paragraph (h)(2)(iv)(A); and

■ l. Adding paragraph (i) to read as follows:

§ 63.506 General recordkeeping and reporting provisions.

* * * * *

(b) * * *

(1) *Malfunction records.* Each owner or operator of an affected source subject to this subpart shall maintain records of the occurrence and duration of each malfunction of operation (*i.e.,* process equipment), air pollution control equipment, or monitoring equipment. Each owner or operator shall maintain records of actions taken during periods of malfunction to minimize emissions in accordance with § 63.483(a)(1), including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation.

* * * * *

(d) * * *

(7) Monitoring data recorded during periods identified in paragraphs (d)(7)(i) and (ii) of this section shall not be included in any average computed under this subpart. Records shall be kept of the times and durations of all such periods and any other periods during process or control device or recovery device operation when monitors are not operating.

(i) Monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments; or

(ii) Periods of non-operation of the affected source (or portion thereof), resulting in cessation of the emissions to which the monitoring applies.

* * * * *

(e) * * *

(3) *Precompliance Report.* Owners or operators of affected sources requesting an extension for compliance; requesting approval to use alternative monitoring parameters, alternative continuous monitoring and recordkeeping, or alternative controls; requesting approval to use engineering assessment to estimate emissions from a batch emissions episode, as described in § 63.488(b)(6)(i); wishing to establish parameter monitoring levels according to the procedures contained in § 63.505(c) or (d); shall submit a Precompliance Report according to the schedule described in paragraph (e)(3)(i) of this section. The Precompliance Report shall contain the information specified in paragraphs (e)(3)(ii) through (vii) of this section, as appropriate.

* * * * *

(viii) [Reserved]

(ix) * * *

(B) Supplements to the Precompliance Report may be submitted to request approval to use alternative monitoring parameters, as specified in paragraph (e)(3)(iii) of this section; to use alternative continuous monitoring and recordkeeping, as specified in paragraph (e)(3)(iv) of this section; to use alternative controls, as specified in paragraph (e)(3)(v) of this section; to use engineering assessment to estimate emissions from a batch emissions episode, as specified in paragraph (e)(3)(vi) of this section; or to establish parameter monitoring levels according to the procedures contained in § 63.505(c) or (d), as specified in paragraph (e)(3)(vii) of this section.

* * * * *

(6) * * *

(iii) * * *

(E) The number, duration, and a brief description for each type of malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded. The report must also include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with § 63.483(a)(1), including actions taken to correct a malfunction.

* * * * *

(h) * * *

(1) * * *

(i) The monitoring system is capable of detecting unrealistic or impossible data during periods of normal operation (*e.g.,* a temperature reading of −200 °C on a boiler), and will alert the operator by alarm or other means. The owner or operator shall record the occurrence. All instances of the alarm or other alert in an operating day constitute a single occurrence.

(ii) * * *

(C) The running average reflects a period of normal operation.

(iii) The monitoring system is capable of detecting unchanging data during periods of normal operation, except in circumstances where the presence of unchanging data is the expected operating condition based on past experience (*e.g.,* pH in some scrubbers), and will alert the operator by alarm or other means. The owner or operator shall record the occurrence. All instances of the alarm or other alert in

an operating day constitute a single occurrence.

* * * * *

(2) * * *

(iii) The owner or operator shall retain the records specified in paragraphs (h)(1)(i) through (iii) of this section, for the duration specified in paragraph (h) of this section. For any calendar week, if compliance with paragraphs (h)(1)(i) through (iii) of this section does not result in retention of a record of at least one occurrence or measured parameter value, the owner or operator shall record and retain at least one parameter value during a period of normal operation.

(iv) * * *

(A) [Reserved]

* * * * *

(i)(1) As of January 1, 2012, and within 60 days after the date of completing each performance test, as defined in § 63.2 and as required in this subpart, you must submit performance test data, except opacity data, electronically to EPA's Central Data Exchange by using the Electronic Reporting Tool (ERT) (see *http://www.epa.gov/ttn/chief/ert/ert tool.html/*) or other compatible electronic spreadsheet. Only data collected using test methods compatible with ERT are subject to this requirement to be submitted electronically into EPA's WebFIRE database.

(2) All reports required by this subpart not subject to the requirements in paragraphs (i)(1) of this section must be sent to the Administrator at the appropriate address listed in § 63.13. If acceptable to both the Administrator and the owner or operator of a source, these reports may be submitted on electronic media. The Administrator retains the right to require submittal of reports subject to paragraph (i)(1) of this section in paper format.

■ 23. Table 1 to Subpart U of part 63 is amended by:

■ a. Removing entry 63.6(e);

■ b. Revising entries 63.6(e)(1)(i) and 63.6(e)(1)(ii);

■ c. Revising entry 63.6(e)(2);

■ d. Adding entry 63.6(e)(3);

■ e. Removing entries 63.6(e)(3)(i) through 63.6(e)(3)(ix);

■ f. Revising entry 63.6(f)(1); and

■ g. Revising entries 63.7(e)(1) and 63.10(d)(5)(i) to read as follows:

TABLE 1 TO SUBPART U OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART U AFFECTED SOURCES

Reference	Applies to subpart U	Explanation
* * *	*	* * *
§ 63.6(e)(1)(i)	No	See § 63.483(a)(1) for general duty requirement. Any cross reference to § 63.6(e)(1)(i) in any other general provision incorporated by reference shall be treated as a cross reference to § 63.483(a)(1).
§ 63.6(e)(1)(ii)	No.	
* * *	*	* * *
§ 63.6(e)(2)	No	[Reserved.].
§ 63.6(e)(3)	No.	
§ 63.6(f)(1)	No.	
* * *	*	* * *
§ 63.7(e)(1)	No	See § 63.504(a)(1). Any cross-reference to § 63.7(e)(1) in any other general provision incorporated by reference shall be treated as a cross-reference to § 63.504(a)(1).
* * *	*	* * *
63.10(d)(5)(i)	No.	
* * *	*	* * *

■ 24. Table 5 to Subpart U of part 63 is revised to read as follows:

TABLE 5 TO SUBPART U OF PART 63—KNOWN ORGANIC HAP EMITTED FROM THE PRODUCTION OF ELASTOMER PRODUCTS

[Known organic HAP emitted from the production of elastomer products]

Organic HAP/Chemical name (CAS No.)	Elastomer product/subcategory										
	BR	EPI	EPR	HYP	NEO	NBL	NBR	PBR/SBRS	PSR	SBL	SBRE
Acrylonitrile (107131)						X	X				
1,3 Butadiene (106990)						X	X	X		X	X
Carbon Disulfide						X	X	X		X	X
Carbon Tetrachloride (56235)				X							
Chlorobenzene (108907)				X							
Chloroform (67663)				X							
Chloroprene (126998)					X						
Epichlorohydrin (106898)		X									
Ethylbenzene (100414)	X									X	
Ethylene Dichloride (107062)									X		
Ethylene Oxide (75218)		X							X		
Formaldehyde (50000)		X							X		

TABLE 5 TO SUBPART U OF PART 63—KNOWN ORGANIC HAP EMITTED FROM THE PRODUCTION OF ELASTOMER PRODUCTS—Continued

[Known organic HAP emitted from the production of elastomer products]

Organic HAP/Chemical name (CAS No.)	Elastomer product/subcategory										
	BR	EPI	EPR	HYP	NEO	NBL	NBR	PBR/ SBRS	PSR	SBL	SBRE
Hexane (110543)	X		X					X			
Methanol (67561)	X							X			
Methyl Chloride (74873)	X			X							
Propylene Oxide (75569)		X									
Styrene (100425)								X		X	X
Toluene (108883)		X	X		X			X			
Xylenes (1330207)	X										
Xylene (m-) (108383)	X										
Xylene (o-) (95476)	X										
Xylene (p-) (106423)	X										

CAS No. = Chemical Abstract Service Number.
BR = Butyl Rubber.
EPI = Epichlorohydrin Rubber.
EPR = Ethylene Propylene Rubber.
HYP = Hypalon™.
NEO = Neoprene.
NBL = Nitrile Butadiene Latex.
NBR = Nitrile Butadiene Rubber.
PBR/SBRS = Polybutadiene and Styrene Butadiene Rubber by Solution.
PSR = Polysulfide Rubber.
SBL = Styrene Butadiene Latex.
SBRE = Styrene Butadiene Rubber by Emulsion.

Subpart Y—[Amended]

■ 25–26. Section 63.560 is amended by:
■ a. Adding paragraph (a)(4);
■ b. Revising paragraph (d)(6); and
■ c. Adding paragraph (e)(1)(iv) to read as follows:
■ d. Table 1 to subpart Y of part 63 is amended by:
■ 1. Revising entry 63.6(f)(1);
■ 2. Removing entry 63.7(e);
■ 3. Adding entries 63.7(e)(1) and 63.7(e)(2)–(4);
■ 4. Removing entries 63.8(c)(1)(i), 63.8(c)(1)(ii), and 63.(c)(1)(iii);
■ 5. Adding entry 63.8(c)(1);
■ 6. Removing entry 63.10(b)(2)(i);
■ 7. Adding entry 63.10(b)(2)(i)–(ii);
■ 8. Removing entry 63.10(b)(2)(ii)–(iii);
■ 9. Adding entry 63.10(b)(2)(iii);
■ 10. Removing entry 63.10(c)(10)–(13); and
■ 11. Adding entries 63.10(c)(10)–(11) and 63.10(c)(12)–(13).

The additions and revisions read as follows:

§ 63.560 Applicability and designation of affected source.

(a) * * *

(4) Existing sources with emissions less than 10 and 25 tons must meet the submerged fill standards of 46 CFR 153.282. This submerged fill requirement does not apply to petroleum refineries.

* * * * *

(d) * * *

(6) The provisions of this subpart do not apply to marine tank vessel loading operations at existing offshore loading terminals, as that term is defined in § 63.561, however existing offshore loading terminals must meet the submerged fill standards of 46 CFR 153.282.

* * * * *

(e) * * *

(1) * * *

(iv) Existing sources with emissions less than 10 and 25 tons, and existing offshore loading terminals, shall comply with the submerged fill requirements in paragraph (a)(4) and (d)(6) of this section by April 23, 2012.

* * * * *

TABLE 1 OF § 63.560—GENERAL PROVISIONS APPLICABILITY TO SUBPART Y

Reference	Applies to affected sources in subpart Y	Comment
* *	* *	* * * * *
63.6(f)(1)	No.	
* *	* *	* * * * *
63.7(e)(1)	No	See 63.563(b)(1). Any cross reference to 63.7(e)(1) in any other general provision incorporated by reference shall be treated as a cross-reference to 63.563(b)(1).
63.7(e)(2)–(4)	Yes.	
63.8(c)(1)	No.	
* *	* *	* * * * *
* *	* *	* * * * *
63.10(b)(2)(i)–(ii)	No	See 63.567(m).

TABLE 1 OF § 63.560—GENERAL PROVISIONS APPLICABILITY TO SUBPART Y—Continued

Reference	Applies to affected sources in subpart Y	Comment
* * * * * * *		
63.10(b)(2)(iii)	Yes.	
* * * * * * *		
63.10(c)(10)–(11)	No	See 63.567(m) for reporting malfunctions. Any cross-reference to 63.10(c)(10) or 63.10(c)(11) in any other general provision incorporated by reference shall be treated as a cross-reference to 63.567(m).
63.10(c)(12)–(13)	Yes.	
* * * * * * *		

■ 27. Section 63.561 is amended by adding in alphabetical order a definition for "affirmative defense" to read as follows:

§ 63.561 Definitions.

* * * * *

Affirmative defense means, in the context of an enforcement proceeding, a response or a defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

* * * * *

■ 28. Section 63.562 is amended by:

■ a. Revising paragraph (e) introductory text; and

■ b. Adding paragraph (e)(7) to read as follows:

§ 63.562 Standards.

* * * * *

(e) Operation and maintenance requirements for air pollution control equipment and monitoring equipment for affected sources. At all times, owners or operators of affected sources shall operate and maintain a source, including associated air pollution control equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. Determination of whether acceptable operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

* * * * *

(7) In response to an action to enforce the standards set forth in this subpart, you may assert an affirmative defense to a claim for civil penalties for exceedances of such standards that are caused by a malfunction, as defined in § 63.2. Appropriate penalties may be assessed, however, if the respondent fails to meet its burden of proving all the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(i) To establish the affirmative defense in any action to enforce such a limit, the owners or operators of a facility must timely meet the notification requirements of paragraph (e)(7)(ii) of this section, and must prove by a preponderance of evidence that:

(A) The excess emissions were caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring equipment, or a process to operate in a normal and usual manner; and could not have been prevented through careful planning, proper design or better operation and maintenance practices; and did not stem from any activity or event that could have been foreseen and avoided, or planned for; and were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

(B) Repairs were made as expeditiously as possible when the applicable emission limitations were being exceeded. Off-shift and overtime labor were used, to the extent practicable to make these repairs;

(C) The frequency, amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions;

(D) If the excess emissions resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(E) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment, and human health;

(F) All emissions monitoring and control systems were kept in operation if at all possible, consistent with safety and good air pollution control practices;

(G) All of the actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs;

(H) At all times, the affected facility was operated in a manner consistent with good practices for minimizing emissions; and

(I) The owner or operator has prepared a written root cause analysis, the purpose of which is to determine, correct, and eliminate the primary causes of the malfunction and the excess emissions resulting from the malfunction event at issue. The analysis shall also specify, using the best monitoring methods and engineering judgment, the amount of excess emissions that were the result of the malfunction.

(ii) *Notification.* The owner or operator of the facility experiencing an exceedance of its emission limit(s) during a malfunction shall notify the Administrator by telephone or facsimile (FAX) transmission as soon as possible, but no later than 2 business days after the initial occurrence of the malfunction, if it wishes to avail itself of an affirmative defense to civil penalties for that malfunction. The owner or operator seeking to assert an affirmative defense shall also submit a written report to the Administrator within 45 days of the initial occurrence of the exceedance of the standard in this subpart to demonstrate, with all necessary supporting documentation, that it has met the requirements set forth in paragraph (e)(7)(i) of this section. The owner or operator may seek an extension of this deadline for up to 30 additional days by submitting a written request to the Administrator before the

expiration of the 45 day period. Until a request for an extension has been approved by the Administrator, the owner or operator is subject to the requirement to submit such report within 45 days of the initial occurrence of the exceedance.

■ 29. Section 63.563 is amended by revising paragraph (b)(1) to read as follows:

§ 63.563 Compliance and performance testing.

* * * * *

(b) * * *

(1) *Initial performance test.* An initial performance test shall be conducted using the procedures listed in § 63.7 of subpart A of this part according to the applicability in Table 1 of § 63.560, the procedures listed in this section, and the test methods listed in § 63.565. The initial performance test shall be conducted within 180 days after the compliance date for the specific affected source. During this performance test, sources subject to MACT standards under § 63.562(b)(2), (3), (4), and (5), and (d)(2) shall determine the reduction of HAP emissions, as VOC, for all combustion or recovery devices other than flares. Performance tests shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance of the affected source for the period being tested. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests. Sources subject to RACT standards under § 63.562(c)(3), (4), and (5), and (d)(2) shall determine the reduction of VOC emissions for all combustion or recovery devices other than flares.

* * * * *

■ 30. Section 63.567 is amended by adding paragraphs (m) and (n) to read as follows:

§ 63.567 Recordkeeping and reporting requirements.

* * * * *

(m) The number, duration, and a brief description for each type of malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded shall be stated in a semiannual report. The report must also include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with § 63.562(e), including actions taken to correct a malfunction. The report, to be certified by the owner or operator or other responsible official, shall be submitted semiannually and delivered or postmarked by the 30th day following the end of each calendar half.

(n)(1) As of January 1, 2012 and within 60 days after the date of completing each performance test, as defined in § 63.2, and as required in this subpart, you must submit performance test data, except opacity data, electronically to EPA's Central Data Exchange by using the ERT (see *http://www.epa.gov/ttn/chief/ert/ert tool.html/*) or other compatible electronic spreadsheet. Only data collected using test methods compatible with ERT are subject to this requirement to be submitted electronically into EPA's WebFIRE database.

(2) All reports required by this subpart not subject to the requirements in paragraph (n)(1) of this section must be sent to the Administrator at the appropriate address listed in § 63.13. If acceptable to both the Administrator and the owner or operator of a source, these reports may be submitted on electronic media. The Administrator retains the right to require submittal of reports subject to paragraph (n)(1) of this section in paper format.

Subpart KK—[Amended]

■ 31. Section 63.820 is amended by adding paragraph (c) to read as follows:

§ 63.820 Applicability.

* * * * *

(c) In response to an action to enforce the standards set forth in this subpart, an owner or operator may assert an affirmative defense to a claim for civil penalties for exceedances of such standards that are caused by a malfunction, as defined in § 63.2. Appropriate penalties may be assessed, however, if the owner or operator fails to meet the burden of proving all the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(1) To establish the affirmative defense in any action to enforce such a limit, the owners or operators of a facility must timely meet the notification requirements of paragraph (c)(2) of this section, and must prove by a preponderance of evidence that:

(i) The excess emissions were caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring equipment, or a process to operate in a normal or usual manner; and could not have been prevented through careful planning, proper design or better operation and maintenance practices; and did not stem from any activity or event that could have been foreseen and avoided, or planned for; and were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

(ii) Repairs were made as expeditiously as possible when the applicable emission limitations were being exceeded. Off-shift and overtime labor were used, to the extent practicable to make these repairs;

(iii) The frequency, amount, and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions;

(iv) If the excess emissions resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(v) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment, and human health;

(vi) All emissions monitoring and control systems were kept in operation, if at all possible, consistent with safety and good air pollution control practices;

(vii) All of the actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs;

(viii) At all times, the facility was operated in a manner consistent with good practices for minimizing emissions; and

(ix) The owner or operator has prepared a written root cause analysis, the purpose of which is to determine, correct and eliminate the primary causes of the malfunction and the excess emissions resulting from the malfunction event at issue. The analysis shall also specify, using the best monitoring methods and engineering judgment, the amount of excess emissions that were the result of the malfunction.

(2) *Notification.* The owner or operator of the facility experiencing an exceedance of its emission limit(s) during a malfunction shall notify the Administrator by telephone or facsimile (FAX) transmission as soon as possible, but no later than 2 business days after the initial occurrence of the malfunction, if it wishes to avail itself of an affirmative defense to civil penalties for that malfunction. The owner or operator seeking to assert an affirmative defense shall also submit a written report to the Administrator within 45 days of the initial occurrence of the exceedance of the standard in this subpart to demonstrate, with all necessary supporting documentation,

that it has met the requirements set forth in paragraph (c)(1) of this section. The owner or operator may seek an extension of this deadline for up to 30 additional days by submitting a written request to the Administrator before the expiration of the 45 day period. Until a request for an extension has been approved by the Administrator, the owner or operator is subject to the requirement to submit such report within 45 days of the initial occurrence of the exceedance.

■ 32. Section 63.822 is amended by adding in alphabetical order a definition for "affirmative defense" to paragraph (a) to read as follows:

§ 63.822 Definitions.

(a) * * *

Affirmative defense means, in the context of an enforcement proceeding, a response or a defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

* * * * *

■ 33. Section 63.823 is revised to read as follows:

§ 63.823 Standards: General.

(a) Table 1 to this subpart provides cross references to the 40 CFR part 63, subpart A, general provisions, indicating the applicability of the general provisions requirements to this subpart KK.

(b) Each owner or operator of an affected source subject to this subpart must at all times operate and maintain that affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator, which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

■ 34. Section 63.827 is amended by adding introductory text to read as follows:

§ 63.827 Performance test methods.

Performance tests shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance of the affected source for the period being tested. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

* * * * *

■ 35. Section 63.829 is amended by adding paragraphs (g) and (h) to read as follows:

§ 63.829 Recordkeeping requirements.

* * * * *

(g) Each owner or operator of an affected source subject to this subpart shall maintain records of the occurrence and duration of each malfunction of operation (*i.e.,* process equipment), air pollution control equipment, or monitoring equipment.

(h) Each owner or operator of an affected source subject to this subpart shall maintain records of actions taken during periods of malfunction to minimize emissions in accordance with § 63.823(b), including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation.

■ 36. Section 63.830 is amended by:
■ a. Removing and reserving paragraph (b)(5);
■ b. Adding paragraph (b)(6)(v); and
■ c. Adding paragraph (c) to read as follows:

§ 63.830 Reporting requirements.

* * * * *

(b) * * *

(6) * * *

(v) The number, duration, and a brief description for each type of malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded. The report must also include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with § 63.823(b), including actions taken to correct a malfunction.

(c)(1) As of January 1, 2012, and within 60 days after the date of completing each performance test, as defined in § 63.2 and as required in this subpart, you must submit performance test data, except opacity data, electronically to EPA's Central Data Exchange by using the ERT (see *http://www.epa.gov/ttn/chief/ert/ert tool.html/*) or other compatible electronic spreadsheet. Only data collected using test methods compatible with ERT are subject to this requirement to be submitted electronically into EPA's WebFIRE database.

(2) All reports required by this subpart not subject to the requirements in paragraph (c)(1) of this section must be sent to the Administrator at the appropriate address listed in § 63.13. If acceptable to both the Administrator and the owner or operator of a source, these reports may be submitted on electronic media. The Administrator retains the right to require submittal of reports subject to paragraph (c)(1) of this section in paper format.

■ 37. Table 1 to Subpart KK of part 63 is amended by:
■ a. Removing entry 63.6(e);
■ b. Adding entries 63.6(e)(1)(i), 63.6(e)(1)(ii); 63.6(e)(1)(iii), 63.6(e)(2), and 63.6(e)(3);
■ c. Removing entry 63.6(f);
■ d. Adding entries 63.6(f)(1) and 63.6(f)(2)–(f)(3);
■ e. Removing entry 63.7;
■ f. Adding entries 63.7(a)–(d), 63.7(e)(1), and 63.7(e)(2)–(e)(4);
■ g. Removing entry 63.8(d)–(f);
■ h. Adding entries 63.8(d)(1)–(2), 63.8(d)(3), and 63.8(e)–(f);
■ i. Removing entries 63.10(b)(1)–(b)(3), 63.10(c)(10)–(c)(15), and 63.10(d)(4)–(d)(5);
■ j. Adding entries 63.10(b)(1), 63.10(b)(2)(i), 63.10(b)(2)(ii), 63.10(b)(2)(iii), 63.10(b)(2)(iv)–(b)(2)(v), 63.10(b)(2)(vi)–(b)(2)(xiv), 63.10(b)(3), 63.10(c)(10), 63.10(c)(11), 63.10(c)(12)–(c)(14), 63.10(c)(15), 63.10(d)(4), and 63.10(d)(5) to read as follows:

TABLE 1 TO SUBPART KK OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KK

General provisons reference	Applicable to subpart KK	Comment
*	*	*
§ 63.6(e)(1)(i)	No	See 63.823(b) for general duty requirement. Any cross-reference to 63.6(e)(1)(i) in any other general provision incorporated by reference shall be treated as a cross-reference to 63.823(b).

TABLE 1 TO SUBPART KK OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KK—Continued

General provisons reference	Applicable to subpart KK	Comment
§ 63.6(e)(1)(ii)	No.	
§ 63.6(e)(1)(iii)	Yes.	
§ 63.6(e)(2)	No	Section reserved.
§ 63.6(e)(3)	No.	
§ 63.6(f)(1)	No.	
§ 63.6(f)(2)–(f)(3)	Yes.	
* * * * * * *		
§ 63.7(a)–(d)	Yes.	
§ 63.7(e)(1)	No	See 63.827 introductory text. Any cross-reference to 63.7(e)(1) in any other general provision incorporated by reference shall be treated as a cross-reference to 63.827 introductory text.
§ 63.7(e)(2)–(e)(4)	Yes.	
* * * * * * *		
§ 63.8(d)(1)–(2)	Yes.	
§ 63.8(d)(3)	Yes, except for last sentence.	
§ 63.8(e)–(f)	Yes.	
* * * * * * *		
§ 63.10(b)(1)	Yes.	
§ 63.10(b)(2)(i)	No.	
§ 63.10(b)(2)(ii)	No	See 63.829(g) for recordkeeping of occurrence and duration of malfunctions. See 63.829(h) for recordkeeping of actions taken during malfunction. Any cross-reference to 63.10(b)(2)(ii) in any other general provision incorporated by reference shall be treated as a cross-reference to 63.829(g).
§ 63.10(b)(2)(iii)	Yes.	
§ 63.10(b)(2)(iv)–(b)(2)(v)	No.	
§ 63.10(b)(2)(vi)–(b)(2)(xiv)	Yes.	
§ 63.10(b)(3)	Yes.	
* * * * * * *		
§ 63.10(c)(10)	No	See 63.830(b)(6)(v) for reporting malfunctions. Any cross-reference to 63.10(c)(10) in any other general provision incorporated by reference shall be treated as a cross-reference to 63.830(b)(6)(v).
§ 63.10(c)(11)	No	See 63.830(b)(6)(v) for reporting malfunctions. Any cross-reference to 63.10(c)(11) in any other general provision incorporated by reference shall be treated as a cross-reference to 63.830(b)(6)(v).
§ 63.10(c)(12)–(c)(14)	Yes.	
§ 63.10(c)(15)	No.	
* * * * * * *		
§ 63.10(d)(4)	Yes.	
§ 63.10(d)(5)	No.	
* * * * * * *		

Subpart GGG—[Amended]

■ 38. Section 63.1250 is amended by revising paragraph (g) to read as follows:

§ 63.1250 Applicability.

* * * * *

(g) *Applicability of this subpart.* (1) Each provision set forth in this subpart shall apply at all times, except that the provisions set forth in § 63.1255 of this subpart shall not apply during periods of nonoperation of the PMPU (or specific portion thereof) in which the lines are drained and depressurized resulting in the cessation of the emissions to which § 63.1255 of this subpart applies.

(2) The owner or operator shall not shut down items of equipment that are required or utilized for compliance with the emissions limitations of this subpart during times when emissions (or, where applicable, wastewater streams or residuals) are being routed to such items of equipment, if the shutdown would contravene emissions limitations of this subpart applicable to such items of equipment. This paragraph does not apply if the owner or operator must shut down the equipment to avoid damage to a PMPU or portion thereof.

(3) At all times, each owner or operator must operate and maintain any affected source subject to the requirements of this subpart, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require the owner or operator to make any further efforts to reduce emissions if levels required by this standard have been achieved. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

(4) In response to an action to enforce the standards set forth in this subpart, an owner or operator may assert an affirmative defense to a claim for civil penalties for exceedances of such standards that are caused by a malfunction, as defined in § 63.2. Appropriate penalties may be assessed, however, if owner or operator fails to meet the burden of proving all the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(i) To establish the affirmative defense in any action to enforce such a limit, the owners or operators of a facility must timely meet the notification requirements of paragraph (g)(4)(ii) of this section, and must prove by a preponderance of evidence that:

(A) The excess emissions were caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring equipment, or a process to operate in a normal and usual manner; and could not have been prevented through careful planning, proper design, or better operation and maintenance practices; and did not stem from any activity or event that could have been foreseen and avoided, or planned for; and were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

(B) Repairs were made as expeditiously as possible when the applicable emission limitations were being exceeded. Off-shift and overtime labor were used, to the extent practicable to make these repairs;

(C) The frequency, amount, and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions;

(D) If the excess emissions resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(E) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment, and human health;

(F) All emissions monitoring and control systems were kept in operation if at all possible, consistent with safety and good air pollution control practices;

(G) All of the actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs;

(H) At all times, the facility was operated in a manner consistent with good practices for minimizing emissions; and

(I) The owner or operator has prepared a written root cause analysis, the purpose of which is to determine, correct, and eliminate the primary causes of the malfunction and the excess emissions resulting from the malfunction event at issue. The analysis shall also specify, using the best monitoring methods and engineering judgment, the amount of excess emissions that were the result of the malfunction.

(ii) *Notification.* The owner or operator of the facility experiencing an exceedance of its emission limit(s) during a malfunction shall notify the Administrator by telephone or facsimile (FAX) transmission as soon as possible, but no later than 2 business days after the initial occurrence of the malfunction, if it wishes to avail itself of an affirmative defense to civil penalties for that malfunction. The owner or operator seeking to assert an affirmative defense shall also submit a written report to the Administrator within 45 days of the initial occurrence of the exceedance of the standard in this subpart to demonstrate, with all necessary supporting documentation, that it has met the requirements set forth in paragraph (g)(4)(i) of this section. The owner or operator may seek an extension of this deadline for up to 30 additional days by submitting a written request to the Administrator before the expiration of the 45 day period. Until a request for an extension has been approved by the Administrator, the owner or operator is subject to the requirement to submit such report within 45 days of the initial occurrence of the exceedance.

* * * * *

■ 39. Section 63.1251 is amended by adding in alphabetical order a definition for "affirmative defense" to read as follows:

§ 63.1251 Definitions.

* * * * *

Affirmative defense means, in the context of an enforcement proceeding, a response or a defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

* * * * *

■ 40. Section 63.1255 is amended by revising paragraph (g)(4)(v)(A) to read as follows:

§ 63.1255 Standards: Equipment leaks.

* * * * *

(g) * * *

(4) * * *

(v) * * *

(A) The owner or operator may develop a written procedure that identifies the conditions that justify a delay of repair. The written procedures shall be included in a document that is maintained at the plant site. Reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

* * * * *

■ 41. Section 63.1256 is amended by revising paragraph (a)(4)(i) introductory text, and removing paragraphs (a)(4)(iii) and (iv) to read as follows:

§ 63.1256 Standards: Wastewater.

(a) * * *

(4) * * *

(i) The owner or operator shall prepare a description of maintenance procedures for management of wastewater generated from the emptying and purging of equipment in the process during temporary shutdowns for inspections, maintenance, and repair (*i.e.,* a maintenance turnaround) and during periods which are not shutdowns (*i.e.,* routine maintenance). The descriptions shall be included in a document that is maintained at the plant site and shall:

* * * * *

■ 42. Section 63.1257 is amended by revising paragraph (a) introductory text and the first sentence of paragraph (e)(2)(iii)(A)(*6*)(*ii*) to read as follows:

§ 63.1257 Test methods and compliance procedures.

(a) *General.* Except as specified in paragraph (a)(5) of this section, the procedures specified in paragraphs (c), (d), (e), and (f) of this section are required to demonstrate initial compliance with §§ 63.1253, 63.1254, 63.1256, and 63.1252(e), respectively. The provisions in paragraphs (a)(2) and (3) apply to performance tests that are specified in paragraphs (c), (d), and (e) of this section. The provisions in paragraph (a)(5) of this section are used to demonstrate initial compliance with the alternative standards specified in §§ 63.1253(d) and 63.1254(c). The provisions in paragraph (a)(6) of this section are used to comply with the outlet concentration requirements specified in §§ 63.1253(c), 63.1254(a)(2)(i), and (a)(3)(ii)(B), 63.1254(b)(i), and 63.1256(h)(2). Performance tests shall be conducted under such conditions representative of performance of the affected source for the period being tested. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to

determine the conditions of performance tests.

* * * * *

(e) * * *

(2) * * *

(iii) * * *

(A) * * *

(*6*) * * *

(*ii*) The owner or operator may consider the inlet to the equalization tank as the inlet to the biological treatment process if the wastewater is conveyed by hard-piping from either the last previous treatment process or the point of determination to the equalization tank; and the wastewater is conveyed from the equalization tank exclusively by hard-piping to the biological treatment process and no treatment processes or other waste management units are used to store, handle, or convey the wastewater between the equalization tank and the biological treatment process; and the equalization tank is equipped with a fixed roof and a closed-vent system that routes emissions to a control device that meets the requirements of § 63.1256(b)(1)(i) through (iv) and § 63.1256(b)(2)(i). * * *

* * * * *

§ 63.1258 [Amended]

■ 43. Section 63.1258 is amended by removing paragraph (b)(8)(iv).

■ 44. Section 63.1259 is amended by revising paragraph (a)(3) to read as follows:

§ 63.1259 Recordkeeping requirements.

* * * * *

(a) * * *

(3) *Malfunction records.* Each owner or operator of an affected source subject to this subpart shall maintain records of the occurrence and duration of each malfunction of operation (*i.e.,* process equipment), air pollution control equipment, or monitoring equipment. Each owner or operator shall maintain records of actions taken during periods of malfunction to minimize emissions in accordance with § 63.1250(g)(3), including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation.

* * * * *

■ 45. Section 63.1260 is amended by:

■ a. Revising paragraph (a);

■ b. Revising paragraph (i); and

■ c. Adding paragraph (n) to read as follows:

§ 63.1260 Reporting requirements.

* * * * *

(a) The owner or operator of an affected source shall comply with the reporting requirements of paragraphs (b) through (n) of this section. Applicable reporting requirements of §§ 63.9 and 63.10 are also summarized in Table 1 of this subpart.

* * * * *

(i) The owner or operator shall submit a report of the number, duration, and a brief description for each type of malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded. The report must also include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with § 63.1250(g)(3), including actions taken to correct a malfunction. The report shall be submitted on the same schedule as the periodic reports required under paragraph (g) of this section.

* * * * *

(n)(1) As of January 1, 2012, and within 60 days after the date of completing each performance test, as defined in § 63.2 and as required in this subpart, you must submit performance test data, except opacity data, electronically to EPA's Central Data Exchange by using the ERT (see *http://www.epa.gov/ttn/chief/ert/ert tool.html/*) or other compatible electronic spreadsheet. Only data collected using test methods compatible with ERT are subject to this requirement to be submitted electronically into EPA's WebFIRE database.

(2) All reports required by this subpart not subject to the requirements in paragraphs (n)(1) of this section must be sent to the Administrator at the appropriate address listed in § 63.13. If acceptable to both the Administrator and the owner or operator of a source, these reports may be submitted on electronic media. The Administrator retains the right to require submittal of reports subject to paragraph (n)(1) of this section in paper format.

■ 46. Table 1 to Subpart GGG is amended by:

■ a. Removing entry 63.6(e);

■ b. Adding entries 63.6(e)(1)(i), 63.6(e)(1)(ii), 63.6(e)(1)(iii), 63.6(e)(2), and 63.6(e)(3);

■ c. Removing entry 63.6(f)–(g);

■ d. Adding entries 63.6(f)(1), 63.6(f)(2)–(3), 63.6(g);

■ e. Removing entry 63.7(e);

■ f. Adding entries 63.7(e)(1) and 63.7(e)(2)–(4);

■ g. Removing entry 63.8(d);

■ h. Adding entries 63.8(d)(1)–(2) and 63.8(d)(3).

■ i. Removing entry 63.10(c)–(d)(2);

■ j. Adding entries 63.10(c)(1)–(9), 63.10(c)(10), 63.10(c)(11), 63.10(c)(12)–(14), 63.10(c)(15), and 63.10(d)(1)–(2);

■ k. Removing entry 63.10(d)(4–5); and

■ l. Adding entries 63.10(d)(4) and 63.10(d)(5) to read as follows:

TABLE 1 TO SUBPART GGG OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART GGG

General provisions reference	Summary of requirements	Applies to subpart GGG	Comments
* *	*	* *	* *
§ 63.6(e)(1)(i)	Requirements during periods of startup, shutdown, and malfunction.	No	See 63.1250(g)(3) for general duty requirement. Any cross-reference to 63.6(e)(1)(i) in any other general provision incorporated by reference shall be treated as a cross-reference to 63.1250(g)(3).
§ 63.6(e)(1)(ii)	Malfunction correction requirements.	No.	
§ 63.6(e)(1)(iii)	Enforceability of operation and maintenance requirements.	Yes.	
§ 63.6(e)(2)	Reserved	No	Section reserved.
§ 63.6(e)(3)	Startup, shutdown, and malfunction plan requirements.	No.	

TABLE 1 TO SUBPART GGG OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART GGG—Continued

General provisions reference	Summary of requirements	Applies to subpart GGG	Comments
* *	*	* *	* *
63.6(f)(1)	Applicability of nonopacity emission standards.	No.	
63.6(f)(2)–(3)	Methods of determining compliance and findings compliance.	Yes.	
63.6(g)	Use of an alternative nonopacity emission standard.	Yes.	
* *	*	* *	* *
63.7(e)(1)	Conduct of performance tests.	No	See 63.1257(a) text. Any cross-reference to 63.7(e)(1) in any other general provision incorporated by reference shall be treated as a cross-reference to 63.1257(a).
63.7(e)(2)–(4)	Performance tests requirements.	Yes.	
* *	*	* *	* *
63.8(d)(1)–(2)	CMS quality control program requirements.	Yes.	
63.8(d)(3)	CMS quality control program recordkeeping requirements.	Yes, except for last sentence.	
* *	*	* *	* *
63.10(c)(1)–(9)	Additional recordkeeping requirements for sources with continuous monitoring systems.	Yes.	
63.10(c)(10)	Malfunction recordkeeping requirement.	No	Subpart GGG specifies recordkeeping requirements.
63.10(c)(11)	Malfunction corrective action recordkeeping requirement.	No	Subpart GGG specifies recordkeeping requirements.
63.10(c)(12)–(14)	Additional recordkeeping requirements for sources with continuous monitoring systems.	Yes.	
63.10(c)(15)	Additional SSM recordkeeping requirements.	No.	
* *	*	* *	* *
63.10(d)(1)–(2)	General reporting requirements.	Yes.	
* *	*	* *	* *
63.10(d)(4)	Progress report requirements.	Yes.	
63.10(d)(5)	Startup, shutdown, and malfunction report requirements.	No	Subpart GGG specifies reporting requirements.
* *	*	* *	* *

[FR Doc. 2011–8168 Filed 4–20–11; 8:45 am]

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