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# FEDERAL REGISTER

Vol. 76 Monday,
No. 123 June 27, 2011

Pages 37241–37616

OFFICE OF THE FEDERAL REGISTER

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Federal Register

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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.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2011–0573; Directorate Identifier 2011–NM–082–AD; Amendment 39–16734; AD 2011–13–11]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A318, A319, A320, and A321 Series 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 that would supersede an existing AD. 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:

Some operators reported slow operation of the MLG [main landing gear] door opening/closing sequence, leading to the generation of ECAM [Electronic Centralised Aircraft Monitoring] warnings during the landing gear retraction or extension sequence.

* * * * *

This condition, if not corrected, could prevent the full extension and/or downlocking of the MLG, possibly resulting in MLG collapse during landing or rollout and consequent damage to the aeroplane and injury to occupants.

* * * * *

After in-service introduction of the new MLG door actuator, P/N 114122012, several operators reported failures of internal parts of the MLG door actuator. Investigations confirmed that these failures could result in slow extension of the actuator rod, delaying the MLG Door operation, or possibly stopping just before the end of the stroke, preventing the door to reach the fully open position.

* * * * *

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

**DATES:** This AD becomes effective July 12, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of July 12, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain other publication, listed in the AD as of April 27, 2007 (72 FR 13681, March 23, 2007).

We must receive comments on this AD by August 11, 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:** Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Discussion

On March 13, 2007, we issued AD 2007–06–18, Amendment 39–14999 (72 FR 13681, March 23, 2007). That AD required actions intended to address an unsafe condition on Airbus Model A318, A319, A320, and A321 Airplanes.

Since we issued AD 2007–06–18, it has been determined that certain new actuators had failure of internal parts. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2011–0069, dated April 18, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Some operators reported slow operation of the [main landing gear] MLG door opening/closing sequence, leading to the generation of ECAM [Electronic Centralised Aircraft Monitoring] warnings during the landing gear retraction or extension sequence.

Investigations showed that the damping ring and associated retaining ring of the MLG door actuator deteriorate. The resultant debris increases the friction inside the actuator which can be sufficiently high to restrict opening of the MLG door by gravity, during operation of the landing gear alternate (free-fall) extension system.

This condition, if not corrected, could prevent the full extension and/or downlocking of the MLG, possibly resulting in MLG collapse during landing or rollout and consequent damage to the aeroplane and injury to occupants.

EASA AD 2006–0112R1 was issued to require repetitive inspections of the opening sequence of the MLG door in order to identify the defective actuators [and replacement of any defective actuator with a new actuator], and to introduce as an optional terminating action Airbus production Modification 38274 and associated Service Bulletin (SB) A320–32–1338, which incorporate an improved retaining ring, located on the piston rod's extension end, and a new piston rod with machined shoulder to accommodate the thicker section of the modified retaining ring.

After in-service introduction of the new MLG door actuator, P/N 114122012, several operators reported failures of internal parts of the MLG door actuator. Investigations confirmed that these failures could result in slow extension of the actuator rod, delaying the MLG Door operation, or possibly stopping just before the end of the stroke, preventing the door to reach the fully open position.

This new [EASA] AD, which supersedes EASA AD 2006–0112R1, requires an amendment of the applicable Airplane Flight

Manual (AFM), repetitive checks of specific Centralized Fault Display System (CFDS) messages [and an inspection of the opening sequence of the MLG door actuator for discrepancies if certain messages are found], * * * and, depending on findings, corrective action(s) [*i.e.,* replacing the affected MLG door actuator with a new MLG door actuator].

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

**Relevant Service Information**

Airbus has issued All Operators Telex A320–32A1390, dated February 10, 2011. 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.

**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**

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 failure of internal parts of actuators that could result in slow extension and down-locking of MLG, resulting in MLG collapse during landing or roll out, and consequent damage to the airplane. 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–2011–0573; Directorate Identifier 2011–NM–082–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 removing Amendment 39–14999 (72 FR 13681, March 23, 2007) and adding the following new AD:

**2011–13–11 Airbus:** Amendment 39–16734. Docket No. FAA–2011–0573; Directorate Identifier 2011–NM–082–AD.

**Effective Date**

(a) This airworthiness directive (AD) becomes effective July 12, 2011.

**Affected ADs**

(b) This AD supersedes AD 2007–06–18, Amendment 39–14999.

**Applicability**

(c) This AD applies to all Airbus Model A318–111, –112, –121, and –122, airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes; certificated in any category.

**Subject**

(d) Air Transport Association (ATA) of America Code 32: Landing Gear.

**Reason**

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

Some operators reported slow operation of the MLG [main landing gear] door opening/closing sequence, leading to the generation of ECAM [Electronic Centralised Aircraft

Monitoring] warnings during the landing gear retraction or extension sequence.

* * * * *

This condition, if not corrected, could prevent the full extension and/or downlocking of the MLG, possibly resulting in MLG collapse during landing or rollout and consequent damage to the aeroplane and injury to occupants.

* * * * *

After in-service introduction of the new MLG door actuator, P/N 114122012, several operators reported failures of internal parts of the MLG door actuator. Investigations confirmed that these failures could result in slow extension of the actuator rod, delaying the MLG Door operation, or possibly stopping just before the end of the stroke, preventing the door to reach the fully open position.

* * * * *

**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 2007–06–18, With No Changes**

*Repetitive Inspections/Replacement*

(g) At the time specified in paragraph (g)(1) or (g)(2) of this AD, as applicable: Do a general visual inspection of the operation of the MLG door opening sequence to determine if a defective actuator is installed by doing all the applicable actions, including replacing the door actuator, as applicable, specified in the Accomplishment Instructions of Airbus Service Bulletin A320–32–1309, Revision 01, dated June 19, 2006. Do all applicable replacements before further flight. Repeat the inspection thereafter at intervals not to exceed 900 flight cycles. Accomplishing the actions before April 27, 2007 (the effective date of AD 2007–06–18) in accordance with Airbus Service Bulletin A320–32–1309, dated March 7, 2006, is acceptable for compliance with the corresponding requirements in this paragraph. Doing the inspection required by paragraph (l) of this AD terminates the requirements of this paragraph.

(1) For airplanes on which a record of the total number of flight cycles on the MLG door actuator is available: Before the accumulation of 3,000 total flight cycles on the MLG door actuator, or within 800 flight cycles after April 27, 2007, whichever is later.

(2) For airplanes on which a record of the total number of flight cycles on the MLG door actuator is not available: Within 800 flight cycles after April 27, 2007.

**Note 1:** For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

**No Reporting/Parts Return Required**

(h) Although the Accomplishment Instructions of Airbus Service Bulletin A320–32–1309, Revision 01, dated June 19, 2006, specify submitting certain information to the manufacturer and sending defective actuators back to the component manufacturer for investigation, this AD does not include those requirements.

**New Requirements of This AD**

**Revise the Airplane Flight Manual (AFM)**

(i) Within 14 days after the effective date of this AD, revise the Emergency Procedure Section of the airplane flight manual (AFM) to incorporate the following information. This may be done by inserting a copy of this AD into the AFM.

''• If ECAM triggers the ''L/G GEAR NOT DOWNLOCKED'' warning, apply the following procedure:

Recycle landing gear.

• If unsuccessful after 2 min:

Extend landing gear by gravity. Refer to ABN–32 L/G GRAVITY EXTENSION.''

**Note 2:** When a statement identical to that in paragraph (i) of this AD has been included in the Emergency Procedure Section of the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

**Repetitive Checks**

(j) Within 14 days after the effective date of this AD or before the accumulation of 800 total flight cycles, whichever occurs later, check the post flight report (PFR) for centralized fault display system (CFDS) messages triggered within the last 8 days, in accordance with paragraph 4.2.1 of Airbus All Operators Telex (AOT) A320–32A1390, dated February 10, 2011. Repeat the check thereafter at intervals not to exceed 8 days or 5 flight cycles, whichever occurs later. If done in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, the use of an alternative method to check the PFR for CFDS messages (e.g., AIRMAN) is acceptable in lieu of this check if the messages can be conclusively determined from that method.

**On-Condition Inspection**

(k) If, during any check required by paragraph (j) of this AD, a pair of specific CFDS messages specified in paragraph 4.2.1 of Airbus AOT A320–32A1390, dated February 10, 2011, has been triggered by both landing gear control and indication units (LGCIU) for the same flight, before further flight, inspect the door opening sequence of the affected doors of the MLG for discrepancies (i.e., if any condition specified in steps (a) through (d) of paragraph 4.2.2 of Airbus AOT A320–32A1390, dated February 10, 2011, is not met), in accordance with paragraph 4.2.2 of Airbus AOT A320–32A1390, dated February 10, 2011.

**Repetitive Inspections**

(l) At the applicable time specified in paragraph (l)(1) or (l)(2) of this AD: inspect the door opening sequence of the left hand and right hand doors of the MLG for discrepancies (i.e., if any condition specified in steps (a) through (d) of paragraph 4.2.2 of Airbus AOT A320–32A1390, dated February 10, 2011, is not met), in accordance with the instructions of paragraph 4.2.2 of Airbus AOT A320–32A1390, dated February 10, 2011. Repeat the inspection thereafter at intervals not to exceed 425 flight cycles. Doing this inspection terminates the requirements of paragraph (g) of this AD.

(1) For airplanes on which an inspection required by paragraph (g) of this AD has been done as of the effective date of this AD: Within 800 flight cycles after doing the most recent inspection required by paragraph (g) of this AD, or within 100 flight cycles after the effective date of this AD, whichever occurs later.

(2) For airplanes on which an inspection required by paragraph (g) of this AD has not been done as of the effective date of this AD: Within 800 flight cycles after the effective date of this AD.

**Replacement**

(m) If any discrepancy (i.e., if any condition specified in steps (a) through (d) of paragraph 4.2.2 of Airbus AOT A320–32A1390, dated February 10, 2011, is not met) is found during any inspection required by paragraph (k) or (l) of this AD, before further flight, replace the affected MLG door actuator with a new MLG door actuator, in accordance with the instructions of Airbus AOT A320–32A1390, dated February 10, 2011.

(n) Replacement of the MLG door actuator as required by paragraph (m) of this AD is not a terminating action for the repetitive actions required by paragraphs (j) and (l) of this AD.

**FAA AD Differences**

**Note 3:** This AD differs from the MCAI and/or service information as follows:

(1) Paragraph (6) of European Aviation Safety Agency (EASA) AD 2011–0069, dated April 18, 2011, specifies a compliance time of 800 flight cycles after the effective date for all airplanes for the initial inspection of the door opening sequence. This AD specifies a compliance time of 800 flight cycles after the effective date of this AD for airplanes on which the existing inspections (required by AD 2007–06–18) of the door opening sequence have not been done, and a compliance time of within 800 flight cycles since the most recent inspection or within 100 flight cycles after the effective date of this AD, whichever occurs later, for airplanes on which the existing inspections of the door opening sequence have been done.

(2) EASA AD 2011–0069, dated April 18, 2011, specifies MLG door actuators having part number (P/N) 114122006, P/N 114122007, P/N 114122009, P/N 114122010, P/N 114122011, or P/N 114122012, in its applicability. This AD retains the existing applicability of AD 2007–06–18 of all airplanes because all airplanes have one of the affected part numbers.

**Other FAA AD Provisions**

(o) 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: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1405; 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. As of the effective date of this AD, AMOCs approved previously in accordance with AD 2007–06–18, are not approved as AMOCs with 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) Special Flight Permits: Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) with the MLG extended, provided that no recycle of the MLG is allowed during flight.

**Related Information**

(p) Refer to MCAI EASA 2011–0069, dated April 18, 2011; Airbus Service Bulletin A320–32–1309, Revision 01, dated June 19, 2006; and Airbus AOT A320–32A1390, dated February 10, 2011; for related information.

**Material Incorporated by Reference**

(q) You must use Airbus All Operators Telex A320–32A1390, dated February 10, 2011; and Airbus Service Bulletin A320–32–1309, Revision 01, dated June 19, 2006; 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 Airbus All Operators Telex A320–32A1390, dated February 10, 2011, 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 Airbus Service Bulletin A320–32–1309, Revision 01, dated June 19, 2006, on April 27, 2007 (72 FR 13681, March 23, 2007).

(3) For service information identified in this AD, contact Airbus, Airworthiness Office—EAS, 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.*

(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 June 16, 2011.

**Ali Bahrami,**

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

[FR Doc. 2011–15683 Filed 6–24–11; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2010–0546; Directorate Identifier 2009–NM–215–AD; Amendment 39–16659; AD 2011–08–09]**

**RIN 2120–AA64**

## Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120, –120ER, –120FC, –120QC, and –120RT 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:

It has been found that some fuel quantity probes may fail during the airplane life leading to an erroneous fuel quantity indication to the crew. This erroneous indication may lead to the airplane being operated with less fuel than indicated which may lead to an uncommanded in-flight shutdown of one or both engines due to fuel starvation.

* * * * *

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

**DATES:** This AD becomes effective August 1, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 1, 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:** 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 June 3, 2010 (75 FR 31332). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

It has been found that some fuel quantity probes may fail during the airplane life leading to an erroneous fuel quantity indication to the crew. This erroneous indication may lead to the airplane being operated with less fuel than indicated which may lead to an uncommanded in-flight shutdown of one or both engines due to fuel starvation.

* * * * *

Required actions include determining the real fuel quantity on each tank using the dripless measuring sticks, comparing the results of the fuel quantity measurement with the fuel master indicator and repeater indicator readings for each tank, and corrective actions as applicable. Corrective actions include replacing the measuring stick and its relevant magnetic float, replacing the master fuel quantity indicator, and replacing the repeater indicator, as applicable; inspecting defective tank units for contamination, corrosion and integrity of components, and repairing or replacing as necessary; inspecting system wiring from the connector at the wing root to the master indicator for condition and continuity; and correcting the fuel quantity indication system; as applicable. 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 Change Requirements**

Great Lakes Airlines (Great Lakes) and Ameriflight, LLC (Ameriflight), requested that we remove the repetitive inspections to determine real fuel quantity at intervals not to exceed 600 flight hours or 180 days from the proposed AD, and instead require a one-time inspection to determine real fuel quantity within 600 flight hours or 180 days after the effective date of the AD, and subsequent inspections to comply with the schedule per Task 28–25, Operational Check Fuel Quantity Indicating System (Measuring Sticks), specified in Section 3, Systems and Powerplant Inspection Requirements, in EMBRAER EMB120 Models Maintenance Review Board Report (MRBR), MRB–HI–200, Revision 26, dated January 5, 2010. Ameriflight stated that this inspection has already been added to Section 3 of the EMBRAER EMB120 Models MRBR (Task 28–25), to be done at each ''A'' check, which would occur more frequently than what is called for in the NPRM. Ameriflight stated that requiring the repetitive inspections to comply with the MRBR schedule per Task 28–25 would ensure that Task 28–25 is incorporated into the operators ''A'' check program.

Great Lakes stated that accomplishing the inspection at the next ''A'' check, but no longer than 180 days, would accomplish the same intent as the proposed AD. Great Lakes stated that accomplishing the inspection at the next ''A'' check would close the AD once the inspection was accomplished.

We disagree with the commenters' requests to change the requirements. We note that the operators could accomplish the inspection at the next ''A'' check if the ''A'' checks are more frequent than our requirement. Operators are always permitted to accomplish the requirements of an AD at a time earlier than the specified compliance time. We have determined that this AD must require repetitive inspections in order to address the identified unsafe condition. We have not changed the AD in this regard.

**Request To Move Task 28–25 to the Airworthiness Limitations (AWL) Section of the MRBR**

Great Lakes requested that we ask EMBRAER to move Task 28–25 to the AWL section of the EMBRAER EMB120 Models MRBR. Great Lakes stated that this would accomplish the same thing as the NPRM and would close the AD once the inspection was accomplished.

We disagree with the request to move Task 28–25 to the AWL section of the EMBRAER EMB120 Models MRBR. We have determined that this AD is the vehicle for ensuring, by law, that all affected operators perform the necessary actions that will address the identified unsafe condition. If in the future the manufacturer includes this task in a different manual or some other documentation, the operator may apply for an Alternative Method of Compliance (AMOC) in accordance with paragraph (j) of this AD. We have not changed the AD in this regard.

**Request To Refer to Latest Revision of the Aircraft Maintenance Manual (AMM)**

Great Lakes stated that the operator is directed to use EMBRAER EMB120 Brasilia AMM, MM–120/1459, Revision 24, dated March 30, 2009, to determine the real fuel quantity using dripless stick measuring and comparing to the fuel quantity master indicator and repeater. Great Lakes stated that a later revision of the AMM introduced Task 28–25 to compare the fuel quantity indicated on dripless sticks to the fuel quantity system, and the task card manual was revised to include Task Card 28–25.

We infer that Great Lakes is requesting that we refer to EMBRAER EMB120 Brasilia AMM, MM–120/1459, Revision 27, dated September 28, 2010, to determine the real fuel quantity using dripless stick measuring and comparing to the fuel quantity master indicator and repeater. We agree. References have been changed in paragraphs (g) and (k), and Note 1 of this AD to refer to EMBRAER EMB120 Brasilia AMM, MM–120/1459, Revision 27, dated September 28, 2010. We have also revised this AD by adding new paragraph (i) to give credit to operators that accomplished the applicable inspections before the effective date of this AD, in accordance with EMBRAER EMB120 Brasilia AMM, Revision 24, dated March 30, 2009; Revision 25, dated September 28, 2009; or Revision 26, dated March 29, 2010. We have also included Task 28–25, Operational Check Fuel Quantity Indicating System (Measuring Sticks), specified in Section 3, Systems and Powerplant Inspection Requirements, in EMBRAER EMB120 Models Maintenance Review Board Report (MRBR), MRB–HI–200, Revision 26, dated January 5, 2010, in this AD as an alternative to Subjects 28–41–00, Fuel Quantity Indicating System, and 28–42–00, Fuel Quantity Measuring Sticks Assembly—Description and Operation, of Chapter 28, Fuel, of the EMBRAER EMB120 Brasilia AMM, MM–120/1459, Revision 27, dated September 28, 2010. We have also corrected the reference to the chapter number in paragraph (g)(3) of this AD.

**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**

Based on the service information, we estimate that this AD will affect about 77 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 the AD on U.S. operators to be $13,090, or $170 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 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:

**2011–08–09 Empresa Brasileira de Aeronautica S.A. (EMBRAER):** Amendment 39–16659. Docket No. FAA–2010–0546; Directorate Identifier 2009–NM–215–AD.

**Effective Date**

(a) This airworthiness directive (AD) becomes effective August 1, 2011.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to all Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120, –120ER, –120FC, –120QC, and –120RT airplanes, certificated in any category.

**Subject**

(d) Air Transport Association (ATA) of America Code 28: Fuel.

**Reason**

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

It has been found that some fuel quantity probes may fail during the airplane life leading to an erroneous fuel quantity indication to the crew. This erroneous indication may lead to the airplane being operated with less fuel than indicated which may lead to an uncommanded in-flight shutdown of one or both engines due to fuel starvation.

* * * * *

Required actions include determining the real fuel quantity on each tank using the dripless measuring sticks, comparing the results of the fuel quantity measurement with the fuel master indicator and repeater indicator readings for each tank, and corrective actions as applicable. Corrective actions include replacing the measuring stick and its relevant magnetic float, replacing the master fuel quantity indicator, and replacing the repeater indicator, as applicable; inspecting defective tank units for contamination, corrosion and integrity of components, and repairing or replacing as necessary; inspecting system wiring from the connector at the wing root to the master indicator for condition and continuity; and correcting the fuel quantity indication system; as applicable.

**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 600 flight hours or 180 days after the effective date of this AD, whichever occurs first, with at least 400 kg (882 lb) of fuel in each tank, determine the real fuel quantity in each tank using the dripless measuring sticks, in accordance with Subjects 28–41–00, Fuel Quantity Indicating System, and 28–42–00, Fuel Quantity Measuring Sticks Assembly—Description and Operation, of Chapter 28, Fuel, of the EMBRAER EMB120 Brasilia AMM, MM–120/1459, Revision 27, dated September 28, 2010; or in accordance with Task 28–25, Operational Check Fuel Quantity Indicating System (Measuring Sticks), specified in Section 3, Systems and Powerplant Inspection Requirements, in EMBRAER EMB120 Models Maintenance Review Board Report (MRBR), MRB–HI–200, Revision 26, dated January 5, 2010. Before further flight, compare the results of the fuel quantity measurement with the fuel master indicator and repeater indicator readings for each tank and do the applicable action in paragraph (g)(1), (g)(2), or (g)(3) of this AD.

(1) If the difference of the two measurements is greater than 60 kg (132 lb) on both tanks, before further flight do all applicable corrective actions including correcting the fuel quantity indication system (FQIS), in accordance with Subjects 28–41–00, Fuel Quantity Indicating System, and 28–42–00, Fuel Quantity Measuring Sticks Assembly—Description and Operation, of Chapter 28, Fuel, of the EMBRAER EMB120 Brasilia AMM, MM–120/1459, Revision 27, dated September 28, 2010.

(2) If the difference of the two measurements is greater than 60 kg (132 lb) on only one tank, and the conditions in paragraphs (g)(2)(i), (g)(2)(ii), and (g)(2)(iii) of this AD are met, do all applicable corrective actions including correcting the FQIS, in accordance with Subjects 28–41–00, Fuel Quantity Indicating System, and 28–42–00, Fuel Quantity Measuring Sticks Assembly—Description and Operation, of Chapter 28, Fuel, of the EMBRAER EMB120 Brasilia AMM, MM–120/1459, Revision 27, dated September 28, 2010, within 10 days after determining the real fuel quantity as specified in paragraph (g) of this AD.

(i) Before further flight after each refueling, the actions required in paragraph (g) of this AD are done;

(ii) Both fuel flow indicators are operating properly; and

(iii) The fuel used or fuel remaining function of the totalizer is operating properly.

(3) If the difference of the two measurements is greater than 60 kg (132 lb) on only one tank, and any condition in paragraph (g)(2)(i), (g)(2)(ii), or (g)(2)(iii) of this AD is not met, before further flight do all applicable corrective actions including correcting the FQIS, in accordance with Subjects 28–41–00, Fuel Quantity Indicating System, and 28–42–00, Fuel Quantity Measuring Sticks Assembly—Description and Operation, of Chapter 28, Fuel, of the EMBRAER EMB120 Brasilia AMM, MM–120/1459, Revision 27, dated September 28, 2010.

(h) Repeat the actions required in paragraph (g) of this AD thereafter at intervals not to exceed 600 flight hours or 180 days, whichever occurs first.

**Credit for Actions Accomplished in Accordance With Previous Service Information**

(i) Inspections accomplished before the effective date of this AD according to Subjects 28–41–00, Fuel Quantity Indicating System, and 28–42–00, Fuel Quantity Measuring Sticks Assembly—Description and Operation, of Chapter 28, Fuel, the EMBRAER EMB120 Brasilia Aircraft Maintenance Manual, MM–120/1459, Revision 24, dated March 30, 2009; Revision

25, dated September 28, 2009; and Revision 26, dated March 29, 2010; are considered acceptable for compliance with the corresponding actions specified in this AD.

**FAA AD Differences**

**Note 1:** This AD differs from the MCAI and/or service information as follows:

This AD requires doing all applicable corrective actions in accordance with Subjects 28–41–00, Fuel Quantity Indicating System, and 28–42–00, Fuel Quantity Measuring Sticks Assembly—Description and Operation, of Chapter 28, Fuel, of the EMBRAER EMB120 Brasilia AMM, MM–120/1459, Revision 27, dated September 28, 2010. Corrective actions include replacing the measuring stick and its relevant magnetic float, replacing the master fuel quantity indicator, and replacing the repeater indicator, as applicable; inspecting defective tank units for contamination, corrosion and integrity of components, and repairing or replacing as necessary; inspecting system wiring from the connector at the wing root to the master indicator for condition and continuity; and correcting the fuel quantity indication system; as applicable. The MCAI does not provide a corrective action and only requires a repetitive functional check of the FQIS in accordance with Subject 28–42–00, Fuel Quantity Measuring Sticks Assembly—Description and Operation, of Chapter 28, Fuel, of the EMBRAER EMB120 Brasilia Aircraft Maintenance Manual, Revision 24, dated March 30, 2009. This difference has been coordinated with Agência Nacional de Aviação Civil (ANAC).

**Other FAA AD Provisions**

(j) 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**

(k) Refer to MCAI Brazilian Airworthiness Directive 2009–07–04, effective July 13, 2009; Task 28–25, Operational Check Fuel Quantity Indicating System (Measuring Sticks), specified in Section 3, Systems and Powerplant Inspection Requirements, in EMBRAER EMB120 Models Maintenance Review Board Report (MRBR), MRB–HI–200, Revision 26, dated January 5, 2010; and Subjects 28–41–00, Fuel Quantity Indicating System, and 28–42–00, Fuel Quantity Measuring Sticks Assembly—Description and Operation, of Chapter 28, Fuel, of the EMBRAER EMB120 Brasilia AMM, MM–120/1459, Revision 27, dated September 28, 2010; for related information.

**Material Incorporated by Reference**

(l) You must use Subjects 28–41–00, Fuel Quantity Indicating System, and 28–42–00, Fuel Quantity Measuring Sticks Assembly—Description and Operation, of Chapter 28, Fuel, of the EMBRAER EMB120 Brasilia AMM, MM–120/1459, Revision 27, dated September 28, 2010; or Task 28–25, Operational Check Fuel Quantity Indicating System (Measuring Sticks), specified in Section 3, Systems and Powerplant Inspection Requirements, in EMBRAER EMB120 Models Maintenance Review Board Report (MRBR), MRB–HI–200, Revision 26, dated January 5, 2010; as applicable; to do the actions required by this AD, unless the AD specifies otherwise. The revision level of EMBRAER EMB120 Brasilia Aircraft Maintenance Manual, MM–120/1459, Revision 27, dated September 28, 2010, is indicated only on the title page and Chapter 28 List of Effective Pages of that document. The revision level of EMBRAER EMB120 Brasilia Maintenance Review Board Report, MRB–HI–200, Revision 26, dated January 5, 2010, is indicated only on the title page of that document; pages I–II of the List of Effective Pages of that document do not exist.

(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 Empresa Brasileira de Aeronautica S.A. (EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—BRASIL; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; e-mail *distrib@embraer.com.br;* Internet *http://www.flyembraer.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 March 25, 2011.

**Ali Bahrami,**

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

[FR Doc. 2011–15369 Filed 6–24–11; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2010–0802; Directorate Identifier 2009–NM–256–AD; Amendment 39–16733; AD 2011–13–10]**

**RIN 2120–AA64**

## Airworthiness Directives; Learjet Inc. Model 45 Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are superseding an existing airworthiness directive (AD) for the products listed above. That AD currently requires, for certain airplanes, repetitive inspections for chafing and other damage of the case drain tube from the hydraulic pump case installed on the left-hand engine, and corrective action if necessary. That AD also requires, for all airplanes, repetitive inspections for discrepancies of the left engine's nacelle tubing, repetitive inspections for evidence of fluid leakage within the left engine accessory compartment, and corrective actions if necessary. This new AD also requires replacing the left engine fuel and hydraulic tubing and installing a tubing support channel, which terminates the repetitive inspections required in the existing AD. This new AD also removes airplanes from the applicability. This AD was prompted by reports of chafed hydraulic tubes in the left-hand engine. We are issuing this AD to prevent chafed hydraulic tubes in the left-hand engine and consequent hydraulic tube failure and uncontrolled loss of flammable fluid within the engine cowling, which could result in a fire in the engine nacelle and loss of control of the airplane.

**DATES:** This AD is effective August 1, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of August 1, 2011.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of June 17, 2009 (74 FR 26288, June 2, 2009).

**ADDRESSES:** For service information identified in this AD, contact Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942; telephone 316–946–2000; fax 316–946–2220; e-mail *ac.ict@aero.bombardier.com;* Internet *http://www.bombardier.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:** James Galstad, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; *phone:* 316–946–4135; *fax:* 316–946–4107; *e-mail: james.galstad@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede airworthiness directive (AD) 2009–11–13, Amendment 39–15923 (74 FR 26288, June 2, 2009). That AD applies to the specified products. The NPRM published in the **Federal Register** on August 23, 2010 (75 FR 51701). That NPRM proposed to require, for certain airplanes, repetitive inspections for chafing and other damage of the case drain tube from the hydraulic pump case installed on the left-hand engine, and corrective action if necessary. That NPRM also proposed to require, for all airplanes, repetitive inspections for discrepancies of the left engine's nacelle tubing, repetitive inspections for evidence of fluid leakage within the left engine accessory compartment, and corrective actions if necessary. That NPRM also proposed to require replacing the left engine fuel and hydraulic tubing and installing a tubing support channel which terminates the repetitive inspections required in the existing AD.

## 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 to Reference Later Revisions of the Maintenance Manual

Marlin Priest requested that we revise the NPRM to reference later revisions of the maintenance manual, as operators may not have the prior revisions available. The commenter pointed out that Table 3 of the NPRM references Learjet 45 Maintenance Manual MM–104, Revision 47, dated March 30, 2009; and Learjet 40 Maintenance Manual MM–105, Revision 15, dated March 30, 2009. The commenter stated that Learjet 45 Maintenance Manual MM–104 is currently at a later revision.

We disagree with the request to refer to a later revision of Learjet 45 Maintenance Manual MM–104. The reference to that maintenance manual appears in requirements that are simply restated from AD 2009–11–13. Operators were required to have accomplished those actions within 50 flight hours after June 17, 2009 (the effective date of AD 2009–11–13). Therefore, we find it unnecessary to reference later versions of the maintenance manual in Table 3 of this AD. In addition, we cannot refer to ''the latest revision of the maintenance manual'' in this AD because using the phrase ''or later FAA-approved revisions,'' violates Office of the Federal Register regulations for approving materials that are incorporated by reference. However, affected operators may request approval to use a later revision of the referenced maintenance manual as an alternative method of compliance under the provisions of paragraph (n) of the final rule. No change has been made to this AD in this regard.

## 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 358 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

| Action | Work hours | Average labor rate per hour | Parts | Cost per airplane | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|---|
| Inspection (required by AD 2009–11–13). | 3 | $85 | $0 | $255 per inspection. | 325 | $82,875 per inspection. |
| Modification (new required action) | 20 | 85 | Up to $14,740 | Up to $16,440 | 358 | Up to $5,885,520. |
| Concurrent Action | 4 | 85 | $189 | $529 | 358 | $189,382. |

## Authority for This Rulemaking

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

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

products identified in this rulemaking action.

## Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

(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 removing airworthiness directive (AD) 2009–11–13, Amendment 39–15923 (74 FR 26288, June 2, 2009), and adding the following new AD:

**2011–13–10 Learjet Inc.:** Amendment 39–16733; Docket No. FAA–2010–0802; Directorate Identifier 2009–NM–256–AD.

**Effective Date**

(a) This airworthiness directive (AD) is effective August 1, 2011.

**Affected ADs**

(b) This AD supersedes AD 2009–11–13, Amendment 39–15923.

**Applicability**

(c) This AD applies to Learjet Inc. Model 45 airplanes; certificated in any category; serial numbers 45–005 through 45–405 inclusive, and 45–2001 through 45–2126 inclusive.

**Subject**

(d) Air Transport Association (ATA) of America Code 71: Powerplant.

**Unsafe Condition**

(e) This AD results from reports of chafed hydraulic tubes in the left-hand engine. The Federal Aviation Administration is issuing this AD to prevent chafed hydraulic tubes in the left-hand engine and consequent hydraulic tube failure and uncontrolled loss of flammable fluid within the engine cowling, which could result in a fire in the engine nacelle and loss of control of the airplane.

**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 2009–11–13**

**Repetitive Inspections: Case Drain Tube**

(g) For airplanes having serial numbers identified in Table 1 of this AD: Within 50 flight hours after June 17, 2009 (the effective date of AD 2009–11–13), do a detailed inspection for chafing and other damage of the case drain tube from the hydraulic pump case installed on the left-hand engine, in accordance with the applicable service bulletin identified in Table 1 of this AD. If any damage is found, before further flight, reposition or replace the tube, as applicable, in accordance with the Accomplishment Instructions of the applicable service bulletin identified in Table 1 of this AD. Repeat the inspection thereafter at intervals not to exceed 150 flight hours until the modification required by paragraph (l) of this AD is done.

TABLE 1—SERVICE BULLETINS FOR INSPECTIONS

| For— | Use— |
|---|---|
| Serial numbers 45–005 through 45–313 inclusive (commonly referred to as ''M45'' airplanes). | Bombardier Alert Service Bulletin A45–29–15, dated December 26, 2006. |
| Serial numbers 45–2001 through 45–2063 inclusive (commonly referred to as ''M40'' airplanes). | Bombardier Alert Service Bulletin A40–29–03, dated December 26, 2006. |

**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.''

**Repetitive Inspections: Nacelle Tubing**

(h) Within 50 flight hours after June 17, 2009, do a detailed inspection for discrepancies of the left engine's nacelle tubing, in accordance with the applicable temporary revision (TR) identified in Table 2 of this AD. Discrepancies include damaged tubing, and inadequate clearance between any unsupported section of the tube or other tubing and surrounding components. If any discrepancy is found, before further flight, adjust the tubing and clamping or replace the tubing, as applicable, in accordance with the applicable TR identified in Table 2 of this AD. Repeat the inspection thereafter at intervals not to exceed 150 flight hours until the modification required by paragraph (l) of this AD is done.

TABLE 2—TRS FOR INSPECTIONS

| For— | Use— |
|---|---|
| Serial numbers 45–2001 through 45–4000 inclusive (commonly referred to as ''M40'' airplanes). | Learjet 40 TR 71–1, dated April 28, 2009, to the Learjet 40 Maintenance Manual MM–105. |
| Serial numbers 45–002 through 45–2000 inclusive (commonly referred to as ''M45'' airplanes). | Learjet 45 TR 71–1, dated April 28, 2009, to the Learjet 45 Maintenance Manual MM–104. |

**Concurrent Inspections: Fluid Leakage**

(i) Concurrently with each inspection required by paragraph (h) of this AD, do a detailed inspection for evidence of engine oil, hydraulic fluid, or fuel leakage within the left engine accessory compartment, in accordance with the applicable maintenance manual section identified in Table 3 of this AD. If there is evidence of leakage: Before further flight, remove each plumbing clamp within the inspection areas specified in paragraphs (g) and (h) of this AD, and clean and remove all evidence of fluid leakage.

TABLE 3—MAINTENANCE MANUAL SECTIONS FOR INSPECTIONS

| For— | Use— |
|---|---|
| Serial numbers 45–002 through 45–2000 inclusive (commonly referred to as ''M45'' airplanes). | Section 71–00–00, ''Powerplant—Maintenance Practices,'' and Section 71–00–01, ''Engine—Maintenance Practices,'' of the Learjet 45 Maintenance Manual MM–104, Revision 47, dated March 30, 2009. |
| Serial numbers 45–2001 through 45–4000 inclusive (commonly referred to as ''M40'' airplanes). | Section 71–00–01, ''Engine—Maintenance Practices,'' of the Learjet 40 Maintenance Manual MM–105, Revision 15, dated March 30, 2009. |

**Additional Corrective Action for Fluid Leakage and Inadequate Clearance**

(j) If evidence of fluid leakage was found during any inspection required by paragraph (i) of this AD, or if inadequate clearance was found during any action required by paragraph (g) or (h) of this AD: Before further flight, replace each clamp associated with the fluid leakage or inadequate clearance with a new clamp, in accordance with the applicable maintenance manual identified in Table 3 of this AD.

**Parts Installation**

(k) As of June 17, 2009, no person may reinstall, on any airplane, any plumbing clamp that has been removed in accordance with the requirements of paragraphs (g), (h), (i), or (j) of this AD.

**New Requirements of This AD**

**Terminating Action**

(l) Within 300 flight hours or 12 months after the effective date of this AD, whichever occurs first, do the actions specified in paragraphs (l)(1) and (l)(2) of this AD, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 40–71–04 (Model 45, serial numbers 45–2001 through 45–2126) or 45–71–7 (Model 45, serial numbers 45–005 through 45–405), both dated December 7, 2009, as applicable. Accomplishment of the requirements of paragraphs (l) and (m), as applicable, of this AD terminates the requirements of paragraphs (g), (h), (i), and (j) of this AD.

(1) Replace the left engine fuel and hydraulic tubing and install a tubing support channel using new parts.

(2) Do the inspections specified in paragraphs (l)(2)(i), (l)(2)(ii), (l)(2)(iii), and (l)(2)(iv) of this AD and all applicable corrective actions. Do all applicable corrective actions before further flight.

(i) A general visual inspection for galling of the fuel supply manifold assembly;

(ii) A general visual inspection for minimum clearance between the firewall fuel supply tube assembly and the engine firewall cutout;

(iii) A general visual inspection for minimum clearance between the lower nacelle hydraulic tube and hose assemblies; and

(iv) A general visual inspection for minimum clearance between the lower nacelle fuel tubes and flexible hoses.

(m) For airplanes having serial numbers 45–005 through 45–319, and 45–321, as identified in Bombardier Service Bulletin 45–71–5, dated February 13, 2007; and for airplanes having serial numbers 45–2001 through 45–2069, as identified in Bombardier Service Bulletin 40–71–02, dated February 13, 2007: Before or concurrently with accomplishing the requirements of paragraph (l) of this AD, do the applicable actions specified in paragraphs (m)(1), (m)(2), (m)(3), (m)(4), and (m)(5) of this AD, depending on airplane serial number and configuration, as specified in, and in accordance with, the Accomplishment Instructions of Bombardier Service Bulletin 45–71–5 (Model 45, serial numbers 45–005 through 45–319, and 45–321), dated February 13, 2007; or Bombardier Service Bulletin 40–71–02 (Model 45, serial numbers 45–2001 through 45–2069), dated February 13, 2007; as applicable. Do all applicable corrective actions before further flight. If, during any inspection required by paragraph (m)(3), (m)(4), or (m)(5) of this AD, it is determined that clearances are not met, before further flight, replace the tubing in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 45–71–5, dated February 13, 2007; or Bombardier Service Bulletin 40–71–02, dated February 13, 2007; as applicable.

(1) Change the routing and clamping configuration of the engine and alternator wire harnesses and the starter/generator wire bundles.

(2) Do a detailed inspection for chafing damage of specific hydraulic tubes located within the left engine nacelle between the adjacent fuel tubes and to determine if there is interference between the fuel tubing and hydraulic tubing; secure hydraulic tubes with additional clamps, inspect adjacent fuel tubing for interference with the hydraulic tubing, replace the left engine hydraulic pump case drain tube on certain airplanes, and do all applicable corrective actions.

(3) Do a general visual inspection for clearance between the left engine hydraulic tubing with adjacent tubing, structure, and other components.

(4) Do a general visual inspection for clearance between the wire harnesses and the hydraulic and fuel tubing on the left engine.

(5) Do a general visual inspection for clearance between the wire harnesses and the hydraulic and fuel tubing on the right engine.

**Alternative Methods of Compliance (AMOCs)**

(n)(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 appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) AMOCs approved previously in accordance with AD 2009–11–13, amendment 39–15923, are approved as AMOCs for the corresponding provisions of this AD.

**Related Information**

(o) For more information about this AD, contact James Galstad, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita ACO, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; *phone:* 316–946–4135; *fax:* 316–946–4107; *e-mail: James.Galstad@faa.gov.*

**Material Incorporated by Reference**

(p) You must use the service information contained in Table 4 of this AD, as applicable, to do the actions required by this AD, unless the AD specifies otherwise.

TABLE 4—ALL MATERIAL INCORPORATED BY REFERENCE

| Document | Revision | Date |
|---|---|---|
| Bombardier Alert Service Bulletin A45–29–15 | Original | December 26, 2006. |

TABLE 4—ALL MATERIAL INCORPORATED BY REFERENCE—Continued

| Document | Revision | Date |
|---|---|---|
| Bombardier Alert Service Bulletin A40–29–03 | Original | December 26, 2006. |
| Learjet 40 Temporary Revision 71–1 to the Learjet Maintenance Manual MM–105 | Original | April 28, 2009. |
| Learjet 45 Temporary Revision 71–1 to the Learjet Maintenance Manual MM–104 | Original | April 28, 2009. |
| Sections 71–00–00 and 71–00–01 of the Learjet 45 Maintenance Manual MM–104 | 47 | March 30, 2009. |
| Section 71–00–01 of the Learjet 40 Maintenance Manual MM–105 | 15 | March 30, 2009. |
| Bombardier Service Bulletin 40–71–04 | Original | December 7, 2009. |
| Bombardier Service Bulletin 45–71–7 | Original | December 7, 2009. |
| Bombardier Service Bulletin 45–71–5 | Original | February 13, 2007. |
| Bombardier Service Bulletin 40–71–02 | Original | February 13, 2007. |

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

TABLE 5—NEW MATERIAL INCORPORATED BY REFERENCE

| Document | Date |
|---|---|
| Bombardier Service Bulletin 40–71–04 | December 7, 2009. |
| Bombardier Service Bulletin 45–71–7 | December 7, 2009. |
| Bombardier Service Bulletin 45–71–5 | February 13, 2007. |
| Bombardier Service Bulletin 40–71–02 | February 13, 2007. |

(2) The Director of the Federal Register previously approved the incorporation by reference of the service information contained in Table 6 of this AD on June 17, 2009 (74 FR 26288, June 2, 2009).

TABLE 6—MATERIAL PREVIOUSLY INCORPORATED BY REFERENCE

| Document | Revision | Date |
|---|---|---|
| Sections 71–00–00 and 71–00–01 of the Learjet 45 Maintenance Manual MM–104 | 47 | March 30, 2009. |
| Section 71–00–01 of the Learjet 40 Maintenance Manual MM–105 | 15 | March 30, 2009. |
| Bombardier Alert Service Bulletin A40–29–03 | Original | December 26, 2006. |
| Bombardier Alert Service Bulletin A45–29–15 | Original | December 26, 2006. |
| Learjet 40 Temporary Revision 71–1 to the Learjet Maintenance Manual MM–105 | Original | April 28, 2009. |
| Learjet 45 Temporary Revision 71–1 to the Learjet Maintenance Manual MM–104 | Original | April 28, 2009. |

(3) For service information identified in this AD, contact Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942; telephone 316–946–2000; fax 316–946–2220; e-mail *ac.ict@aero.bombardier.com*; Internet *http://www.bombardier.com.*

(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 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 June 14, 2011.

**Ali Bahrami,**

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

[FR Doc. 2011–15579 Filed 6–24–11; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2011–0477; Directorate Identifier 2011–NM–108–AD; Amendment 39–16735; AD 2011–12–51]**

**RIN 2120–AA64**

## Airworthiness Directives; Dassault Aviation Model FALCON 7X 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 emergency AD was sent previously to all known U.S. owners and operators of these airplanes. This AD requires that, as of the effective date of the AD, operation of Model FALCON 7X airplanes is prohibited. This AD was prompted by a report of an uncontrolled pitch trim runaway during descent. We are issuing this AD to prevent loss of control of the airplane.

**DATES:** This AD is effective July 12, 2011 to all persons except those persons to whom it was made immediately effective by Emergency AD 2011–12–51, issued on May 27, 2011, which contained the requirements of this amendment.

We must receive comments on this AD by August 11, 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:* Deliver to Mail address above 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 (*phone:* 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; *phone:* 425–227–1137; fax: 425–227–1149.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

On May 27, 2011, we issued Emergency AD 2011–12–51, which requires that, as of receipt of the AD, operation of Model FALCON 7X airplanes is prohibited.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued Emergency Airworthiness Directive 2011–0102–E, dated May 26, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products.

EASA has advised that a Model FALCON 7X airplane experienced an uncontrolled pitch trim runaway during descent. The crew succeeded in recovering a stable situation and performed an uneventful landing. Analysis of the Digital Flight Data Recorder (DFDR) and Fault History Database (FHDB) confirmed the event, but did not identify the cause of the pitch trim runaway. This condition, if not corrected, could result in loss of control of the airplane.

To address this unsafe condition, the EASA AD prohibits, from the effective date of the EASA AD, any flight operations of FALCON 7X airplanes.

**FAA's Determination**

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 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.

**AD Requirements**

This AD requires that, as of effective date of the AD, operation of Model FALCON 7X airplanes is prohibited.

**Interim Action**

We consider this AD interim action pending the outcome of the investigation currently being carried out by the manufacturer. We may consider further rulemaking when additional information is available.

**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 an uncontrolled pitch trim runaway during descent could result in loss of control of the airplane. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

**Comments Invited**

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2011–0477 and Directorate Identifier 2011–NM–108–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 affects 26 airplanes of U.S. registry. There are no costs associated with complying with 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**

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):

**2011–12–51 Dassault Aviation:** Amendment 39–16735; Docket No. FAA–2011–0477; Directorate Identifier 2011–NM–108–AD.

**Effective Date**

(a) This AD is effective July 12, 2011 to all persons except those persons to whom it was made immediately effective by Emergency AD 2011–12–51, issued on May 27, 2011, which contained the requirements of this amendment.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Dassault Aviation Model FALCON 7X airplanes, certificated in any category, all serial numbers.

**Subject**

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 27: Flight controls.

**Unsafe Condition**

(e) This AD was prompted by a report of an uncontrolled pitch trim runaway during descent. We are issuing this AD to prevent loss of control of the airplane.

**Compliance**

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

**Flight Prohibited**

(g) As of the effective date of this AD, operation of the airplane is prohibited.

**Special Flight Permit**

(h) Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are not allowed.

**Alternative Methods of Compliance (AMOCs)**

(i)(1) The Manager, International Branch, 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 manager of the International Branch, 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-116-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**

(j)(1) For further information about this AD, contact Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; *phone:* 425–227–1137; fax: 425–227–1149.

(2) Refer to MCAI European Aviation Safety Agency (EASA) Emergency Airworthiness Directive 2011–0102–E, dated May 26, 2011, for related information.

**Material Incorporated by Reference**

(k) None.

Issued in Renton, Washington, on June 16, 2011.

**Ali Bahrami,**

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

[FR Doc. 2011–15989 Filed 6–24–11; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2011–0260; Directorate Identifier 2010–NM–242–AD; Amendment 39–16731; AD 2011–13–08]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier, Inc. Model DHC–8–400 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:

Several reports have been received on the elevator power control units (PCUs) where the shaft (tailstock) swaged bearing liners had shown a higher than normal rate of wear. Investigation revealed that the excessive wear was due to the paint contamination between the bearing roller and bearing liner. The bearing paint contamination is known to be abrasive and could seize the bearing.

This condition, if not corrected, could lead to excessive airframe vibrations and difficulties in aircraft pitch control.

* * * * *

The unsafe condition is loss of controllability. We are issuing this AD to require actions to correct the unsafe condition on these products.

**DATES:** This AD becomes effective August 1, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 1, 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:** Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

**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 March 29, 2011 (76 FR 17362). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Several reports have been received on the elevator power control units (PCUs) where the shaft (tailstock) swaged bearing liners had shown a higher than normal rate of wear. Investigation revealed that the excessive wear was due to the paint contamination between the bearing roller and bearing liner. The bearing paint contamination is known to be abrasive and could seize the bearing.

This condition, if not corrected, could lead to excessive airframe vibrations and difficulties in aircraft pitch control.

This directive mandates a free-play check of the shaft swaged bearing installed in the elevator PCU tailstock end and replacement of the shaft swaged bearings if excessive free-play is found.

The unsafe condition is loss of controllability. 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 66 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 $11,220, or $170 per product.

In addition, we estimate that any necessary follow-on actions would take about 3 work-hours and require parts costing $33, for a cost of $288 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:

**2011–13–08 Bombardier, Inc.:** Amendment 39–16731. Docket No. FAA–2011–0260; Directorate Identifier 2010–NM–242–AD.

**Effective Date**

(a) This airworthiness directive (AD) becomes effective August 1, 2011.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes having serial numbers (S/Ns) 4001 through 4304 inclusive; certificated in any category.

**Subject**

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

**Reason**

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

Several reports have been received on the elevator power control units (PCUs) where the shaft (tailstock) swaged bearing liners had shown a higher than normal rate of wear. Investigation revealed that the excessive wear was due to the paint contamination between the bearing roller and bearing liner. The bearing paint contamination is known to be abrasive and could seize the bearing.

This condition, if not corrected, could lead to excessive airframe vibrations and difficulties in aircraft pitch control.

* * * * *

The unsafe condition is loss of controllability.

**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.

**Free-Play Check and Corrective Actions**

(g) At the applicable time specified in paragraph (g)(1) or (g)(2) of this AD: Perform a free-play check for any shaft swaged bearing having part number (P/N) MS14103–7 that is installed in the tailstock end of each elevator PCU (three PCUs per elevator surface), having P/Ns 390600–1007 and 390600–1009, in accordance with paragraph 3.B., Part A, of Bombardier Service Bulletin 84–27–52, dated May 25, 2010.

(1) For airplanes that have accumulated 8,000 or more total flight hours as of the effective date of this AD: Within 2,000 flight hours after the effective date of this AD.

(2) For airplanes that have accumulated less than 8,000 total flight hours as of the effective date of this AD: Within 6,000 flight hours after the effective date of this AD or before the accumulation of 10,000 total flight hours, whichever occurs first.

(h) If, during the check required by paragraph (g) of this AD, the bearing free-play is within the limits specified in Bombardier Service Bulletin 84–27–52, dated May 25, 2010, no further action is required by this AD.

(i) If, during the check required by paragraph (g) of this AD, the bearing free-play exceeds the limits specified in Bombardier Service Bulletin 84–27–52, dated May 25, 2010: Before further flight, replace the elevator PCU with a serviceable one, in accordance with paragraph 3.B., Part B, of Bombardier Service Bulletin 84–27–52, dated May 25, 2010.

**FAA AD Differences**

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

**Other FAA AD Provisions**

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO,

ANE–170, 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 ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. 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**

(k) Refer to MCAI Canadian Airworthiness Directive CF–2010–28, dated August 20, 2010; and Bombardier Service Bulletin 84–27–52, dated May 25, 2010; for related information.

**Material Incorporated by Reference**

(l) You must use Bombardier Service Bulletin 84–27–52, dated May 25, 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 Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; e-mail *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.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 June 14, 2011.

**Ali Bahrami,**

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

[FR Doc. 2011–15367 Filed 6–24–11; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2009–1212; Directorate Identifier 2008–NM–167–AD; Amendment 39–16732; AD 2011–13–09]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A330–200 and –300 Series 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:

* * * * *

The airworthiness limitations applicable to the Certification Maintenance Requirements (CMR) are given in Airbus A330 ALS Part 3, which is approved by the European Aviation Safety Agency (EASA).

The revision 03 of Airbus A330 ALS Part 3 introduces more restrictive maintenance requirements and/or airworthiness limitations. Failure to comply with this revision constitutes an unsafe condition.

* * * * *

The unsafe condition is safety-significant latent failures that would, in combination with one or more other specific failures or events, result in a hazardous or catastrophic failure condition. We are issuing this AD to require actions to correct the unsafe condition on these products.

**DATES:** This AD becomes effective August 1, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 1, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of April 9, 2007 (72 FR 9658, March 5, 2007).

**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 second supplemental 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 February 7, 2011 (76 FR 6578), and proposed to supersede AD 2007–05–08, Amendment 39–14969 (72 FR 9658, March 5, 2007). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

The airworthiness limitations are currently distributed in the Airbus A330 Airworthiness Limitations Section (ALS).

The airworthiness limitations applicable to the Certification Maintenance Requirements (CMR) are given in Airbus A330 ALS Part 3, which is approved by the European Aviation Safety Agency (EASA).

The revision 03 of Airbus A330 ALS Part 3 introduces more restrictive maintenance requirements and/or airworthiness limitations. Failure to comply with this revision constitutes an unsafe condition.

For the reason described above, this new AD supersedes EASA AD 2010–0048 and requires the implementation of the new or more restrictive maintenance requirements and/or airworthiness limitations as specified in Airbus A330 ALS Part 3 revision 03.

The unsafe condition is safety-significant latent failures that would, in combination with one or more other specific failures or events, result in a hazardous or catastrophic failure condition. 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 Delete Requirement of No Alternative Inspection Interval

Hawaiian Airlines (Hawaiian) requested that paragraph (j) of the second supplemental NPRM be removed completely, or amended to delete the requirement regarding the inspection interval. Hawaiian explained that paragraph (j) of the second supplemental NPRM would mandate that no alternative inspections or inspection intervals could be used unless approved as an alternative method of compliance (AMOC). Hawaiian argued that this proposed requirement would restrict operators from using the long standing approved

ALS Part 3 policy for exceptional short-term extensions, as defined in ''Ref (C) ALS paragraph 9.'' Hawaiian reasoned that the proposed requirement would also restrict operators from adjusting the interval on two-star certification maintenance requirements (CMR**) in accordance with the operators approved escalation practices or approved reliability program, as allowed per ''Ref (C) paragraph 6.B.''

We partially agree. While we do not agree to remove paragraph (j) or delete the inspection interval in paragraph (j) of this final rule, we agree to add the phrase, ''other than those specified in Airbus A330 ALS, Part 3—Certification Maintenance Requirements, Revision 03, dated July 29, 2010,'' which allows operators to use alternative inspections and alternative inspection intervals within the guidelines of Airbus A330 ALS, Part 3—Certification Maintenance Requirements, Revision 03, dated July 29, 2010. We have also revised paragraph (g) of this AD by replacing the phrase ''at the times'' with the phrase ''within the times'' to clarify all compliance times and extensions specified in Airbus A330 ALS, Part 3—Certification Maintenance Requirements, Revision 03, dated July 29, 2010, are acceptable.

**Request for Inclusion of Appropriate AD**

Airbus requested that we revise the second supplemental NPRM to reference the European Aviation Safety Agency (EASA) AD 2006–0224, dated July 27, 2006, instead of EASA AD 2006–0225, dated July 21, 2006. Airbus explained that EASA AD 2006–0225, dated July 21, 2006, is listed in the Related Information paragraph (paragraph (l)) of the second supplemental NPRM.

We agree to revise this final rule to reference EASA AD 2006–0224, dated July 27, 2006, in paragraph (l) of this AD. We have determined that EASA AD 2006–0224, dated July 27, 2006, is the appropriate corresponding EASA AD for this final rule.

**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 about 55 products of U.S. registry.

The actions that are required by AD 2007–05–08 and retained in this AD take about 1 work-hour 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 $85 per product.

We estimate that it will take about 1 work-hour 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 this AD to the U.S. operators to be $4,675, or $85 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**

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 proposed 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 39–14969 (72 FR 9658, March 5, 2007) and adding the following new AD:

**2011–13–09 Airbus:** Amendment 39–16732. Docket No. FAA–2009–1212; Directorate Identifier 2008–NM–167–AD.

**Effective Date**

(a) This airworthiness directive (AD) becomes effective August 1, 2011.

**Affected ADs**

(b) This AD supersedes AD 2007–05–08, Amendment 39–14969.

**Applicability**

(c) This AD applies to all Airbus Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes, certificated in any category; all serial numbers.

**Subject**

(d) Air Transport Association (ATA) of America Code 05.

**Reason**

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

* * * * *

The airworthiness limitations applicable to the Certification Maintenance Requirements (CMR) are given in Airbus A330 ALS Part 3, which is approved by the European Aviation Safety Agency (EASA).

The revision 03 of Airbus A330 ALS Part 3 introduces more restrictive maintenance requirements and/or airworthiness limitations. Failure to comply with this revision constitutes an unsafe condition.

* * * * *

The unsafe condition is safety-significant latent failures that would, in combination with one or more other specific failures or events, result in a hazardous or catastrophic failure condition.

**Note 1:** This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (k) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529–1A.

**Restatement of Requirements of AD 2007–05–08, With Requirements for Model A340 Airplanes Removed**

**Revise the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness**

(f) Unless already done: Within 90 days after April 9, 2007 (the effective date of AD 2007–05–08), revise the Airworthiness Limitations section of the Instructions for Continued Airworthiness by incorporating Airbus A330 Certification Maintenance Requirements, Document 955.2074/93, Issue 19, dated March 22, 2006. Accomplish the actions specified in Airbus A330 Certification Maintenance Requirements, Document 955.2074/93, Issue 19, dated March 22, 2006, at the times specified in Airbus A330 Certification Maintenance Requirements, Document 955.2074/93, Issue 19, dated March 22, 2006, and in accordance with Airbus A330 Certification Maintenance Requirements, Document 955.2074/93, Issue 19, dated March 22, 2006, except as provided by paragraphs (f)(1) and (f)(2) of this AD.

(1) The associated interval for any new task is to be counted from April 9, 2007.

(2) The associated interval for any revised task is to be counted from the previous performance of the task.

**New Requirements of This AD**

**Revise the Maintenance Program**

(g) Unless already done, within 90 days of the effective date of this AD: Revise the maintenance program which ensures the continuing airworthiness of each operated airplane by incorporating Airbus A330 ALS, Part 3—Certification Maintenance Requirements, Revision 03, dated July 29, 2010. Within the times specified in the Airbus A330 ALS, Part 3—Certification Maintenance Requirements, Revision 03, dated July 29, 2010, comply with all applicable maintenance requirements and associated airworthiness limitations included in Airbus A330 ALS, Part 3—Certification Maintenance Requirements, Revision 03, dated July 29, 2010, except as provided by paragraphs (h) and (i) of this AD. Doing this revision terminates the requirements of paragraph (f) of this AD for that airplane only.

**Exceptions to the Certification Maintenance Requirements (CMR) Tasks**

(h) At the latest of the times specified in paragraph (h)(1), (h)(2), or (h)(3) of this AD: Do the first accomplishment of Airbus A330 CMR Task 213100–00001–2–C, Pressure Control Monitoring, of Airbus A330 ALS, Part 3—Certification Maintenance Requirements, Revision 03, dated July 29, 2010.

(1) Before the accumulation of 48,000 total flight hours.

(2) Within 48,000 flight hours after the most recent accomplishment of Airbus A330 Maintenance Review Board Report (MRBR) Task 21.31.00/05.

(3) Within three months after the effective date of this AD.

(i) At the latest of the times specified in paragraph (i)(1), (i)(2), or (i)(3) of this AD: Do the first accomplishment of Airbus A330 CMR Tasks 242000–00005–1–C, AC Generation; 243000–00001–1–C, DC Generation; and 243000–00002–1–C, DC Generation; of Airbus A330 ALS, Part 3—Certification Maintenance Requirements, Revision 03, dated July 29, 2010.

(1) Before the accumulation of 12,000 total flight hours.

(2) Within 12,000 flight hours after the most recent accomplishment of Airbus A330 MRBR Task 24.20.00/17, 24.30.00/04, or 24.30.00/05 respectively.

(3) Within three months after the effective date of this AD.

**No Alternative Inspections or Intervals**

(j) After accomplishing the action required by paragraph (g) of this AD, no alternative inspections or inspection intervals may be used, other than those specified in Airbus A330 ALS, Part 3—Certification Maintenance Requirements, Revision 03, dated July 29, 2010, unless the inspections or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (k)(1) of this AD.

**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, ANM–116, International Branch, Transport Airplane Directorate, 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: 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. 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**

(l) Refer to European Aviation Safety Agency (EASA) Airworthiness Directives 2006–0224, dated July 27, 2006, and 2010–0264, dated December 20, 2010; Airbus A330 Certification Maintenance Requirements, Document 955.2074/93, Issue 19, dated March 22, 2006; and Airbus A330 ALS, Part 3—Certification Maintenance Requirements, Revision 03, dated July 29, 2010; for related information.

**Material Incorporated by Reference**

(m) You must use Airbus A330 Certification Maintenance Requirements, Document 955.2074/93, Issue 19, dated March 22, 2006; and Airbus A330 ALS, Part 3—Certification Maintenance Requirements, Revision 03, dated July 29, 2010; as applicable; to do the actions required by this AD, unless the AD specifies otherwise. The revision level of Airbus A330 ALS, Part 3—Certification Maintenance Requirements, Revision 03, dated July 29, 2010, is identified only on the title page of the document; the revision date of this document is not identified on the title page.

(1) The Director of the Federal Register approved the incorporation by reference of Airbus A330 ALS, Part 3—Certification Maintenance Requirements, Revision 03, dated July 29, 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 Airbus A330 Certification

Maintenance Requirements, Document 955.2074/93, Issue 19, dated March 22, 2006; on April 9, 2007 (72 FR 9658, March 5, 2007).

(3) 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.*

(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 June 14, 2011.

**Ali Bahrami,**

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

[FR Doc. 2011–15366 Filed 6–24–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2011–0036; Directorate Identifier 2010–NM–230–AD; Amendment 39–16729; AD 2011–13–06]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier, Inc. Model DHC–8–400 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:

Bombardier Aerospace has completed a system safety review of the aeroplanes fuel system against fuel tank safety standards introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002–043 [which corresponds with the FAA's Special Federal Aviation Regulation (SFAR) 88]. The identified non-compliances were then assessed using Transport Canada Policy Letter No. 525–001, to determine if mandatory corrective action is required.

The assessment showed that a number of modifications to the fuel system are required to mitigate unsafe conditions that could result in potential ignition source within the fuel system.

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

**DATES:** This AD becomes effective August 1, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 1, 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:** James Delisio, Aerospace Engineer, Propulsion and Services Branch, ANE–173, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7321; fax (516) 794–5531.

**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 February 7, 2011 (76 FR 6584). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Bombardier Aerospace has completed a system safety review of the aeroplanes fuel system against fuel tank safety standards introduced in chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002–043 [which corresponds with the FAA's Special Federal Aviation Regulation (SFAR) 88]. The identified non-compliances were then assessed using Transport Canada Policy Letter No. 525–001, to determine if mandatory corrective action is required.

The assessment showed that a number of modifications to the fuel system are required to mitigate unsafe conditions that could result in potential ignition source within the fuel system.

The Bombardier modifications include:

• Modsum 4–126330, ''Fuel Tank System Design Left and Right Side (SFAR 88) Retrofit.'' The retrofit includes replacing certain fittings, couplings, o-rings, gaskets, fuel adapter, and other related components with new, improved parts; applying Alodine 1132 to certain areas of a wing rib and a wing spar; and replacing a certain doubler on the front wing spar with a new, improved doubler.

• Modsum 4–126366, ''Fuel Tank System and Fuel Indication—Wiring Identification, Segregation and Installation (High Level Sensor and Fuel Quantity Indication)—Retrofit.'' The retrofit includes adding new wiring with protective sleeving, reworking existing wiring, labeling and separating the fuel quantity indicating (FQI) wiring and high level sensor wiring from other wiring, enhancing the electro-magnetic interference (EMI) shielding of the wiring connected to the vent valve position switch, and installing additional provisions (bulkhead brackets) for wiring clips in the center fuselage.

• Modsum 4–901425, ''Fuel Feed to APU—Replacement of Couplings in Center Wing Left Side—SFAR 88.''

• Modsum 4–126370, ''Fuel Tank System—Enhance Protective Covering for Electrical Cable Assembly,'' which includes reworking the contact area on the rib at Yw–42.000 to ensure adequate electrical bonding, installing spiral wrap on certain cable assemblies where existing spiral wrap does not extend 4 inches past the tie mounts, applying a dome seal on thread openings on a high level sensor, and installing fuel grommets at certain locations.

• Modsum 4–113580, ''Fuel Indication—High Level Sensor—Application of Sealant to Exposed End of Sensor Terminal Block Screws—Special Inspection and Rectification,'' which includes doing a detailed inspection of the high level sensor for correct sealant coverage ('dome seal') on the terminal screws, and applying sealant 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

We estimate that this AD will affect 67 products of U.S. registry. We also estimate that it will take about 526 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $37,696 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $5,521,202, or $82,406 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

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.

## 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:

**2011–13–06 Bombardier, Inc.:** Amendment 39–16729. Docket No. FAA–2011–0036; Directorate Identifier 2010–NM–230–AD.

**Effective Date**

(a) This airworthiness directive (AD) becomes effective August 1, 2011.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes, certificated in any category; with serial numbers (S/N) 4003, 4004, 4006, and 4008 through 4205 inclusive.

**Subject**

(d) Air Transport Association (ATA) of America Code 28: Fuel.

**Reason**

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

Bombardier Aerospace has completed a system safety review of the aeroplanes fuel system against fuel tank safety standards introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002–043 [which corresponds with the FAA's Special Federal Aviation Regulation (SFAR) 88]. The identified non-compliances were then assessed using Transport Canada Policy Letter No. 525–001, to determine if mandatory corrective action is required.

The assessment showed that a number of modifications to the fuel system are required to mitigate unsafe conditions that could result in potential ignition source within the fuel system.

**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 Applicable to Airplanes Having S/N 4003, 4004, 4006 & 4008 through 4118**

(g) For airplanes having S/Ns 4003, 4004, 4006, and 4008 through 4118 inclusive: Within 6,000 flight hours after the effective date of this AD, incorporate the modifications required in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, as applicable.

(1) Incorporate Bombardier Modsum 4–126330, ''Fuel Tank System Design Left and Right Side (SFAR 88) Retrofit,'' by doing all the applicable actions in the Accomplishment Instructions of Bombardier Service Bulletin 84–57–09, Revision B, dated September 3, 2008.

(2) Incorporate Bombardier Modsum 4–126366, ''Fuel Tank System and Fuel Indication—Wiring Identification, Segregation and Installation (High Level Sensor and Fuel Quantity Indication)—Retrofit,'' by doing all the applicable actions in the Accomplishment Instructions of Bombardier Service Bulletin 84–28–04, Revision B, dated October 21, 2009.

(3) For airplanes on which Bombardier Modsum 4–302000, ''Standard Option—APU Installation,'' has been installed: Incorporate Bombardier Modsum 4–901425, ''Fuel Feed to APU—Replacement of Couplings in Center Wing Left Side—SFAR 88,'' by doing all the applicable actions in the Accomplishment Instructions of Bombardier Service Bulletin 84–28–05, dated June 28, 2006.

(h) For airplanes having S/Ns 4003, 4004, 4006, and 4008 through 4118 inclusive, do Bombardier Fuel System Limitation (FSL) Task 284000–417 (Functional Check of the Fuel Tank Components and Plumbing Lines for Electrical Bonding) contained in Section 4–1, Fuel System Limitations, of Part 2—Airworthiness Limitation Items, Revision 5, dated April 21, 2010, of Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7, at the applicable times specified in paragraphs (h)(1) and (h)(2) of

this AD. Where the task specifies contacting Bombardier for technical assistance, this AD requires repairs/rework actions in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, or Transport Canada Civil Aviation (TCCA) (or its delegated agent).

(1) Except as provided in paragraphs (h)(1)(i) and (h)(1)(ii) of this AD, for airplanes that have incorporated either Bombardier Modsum 4–126330 or 4–901425 prior to the effective date of this AD: Do Bombardier Task 284000–417 in Section 4–1, Fuel System Limitations, of Part 2—Airworthiness Limitation Items, Revision 5, dated April 21, 2010, of Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7, within 6,000 flight hours after the effective date of this AD.

(i) Airplanes on which Bombardier Task 284000–417 in Section 4–1, Fuel System Limitations, of Part 2—Airworthiness Limitation Items, Revision 5, dated April 21, 2010, of Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7, was successfully completed after incorporation of Bombardier Modsum 4–126330 or 4–901425 do not need to comply with the requirements of paragraph (h) of this AD.

(ii) Airplanes on which Bombardier Modsum 4–126330 or 4–901425 was incorporated during manufacturing of the airplane do not need to comply with the requirements of paragraph (h) of this AD.

(2) For airplanes on which neither Bombardier Modsum 4–126330 nor 4–901425 were incorporated before the effective date of this AD: Do Bombardier Task 284000–417 in Section 4–1, Fuel System Limitations, of Part 2—Airworthiness Limitation Items, Revision 5, dated April 21, 2010, of Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7, upon completion of the incorporation of Bombardier Modsum 4–126330 and, if applicable, Bombardier Modsum 4–901425.

**Actions Applicable to Airplanes S/N 4003, 4004, 4006 & 4008 Through 4118 Inclusive, Manufactured Before September 21, 2005**

(i) For airplanes having S/N 4003, 4004, 4006, and 4008 through 4118 inclusive, on which the date of issuance of the original Canadian standard airworthiness certificate or the date of issuance of the original Canadian export certificate of airworthiness is before September 21, 2005: Within 6,000 flight hours after the effective date of this AD, incorporate Bombardier Modsum 4–126370, ''Fuel Tank System—Enhance Protective Covering for Electrical Cable Assembly,'' by doing all the applicable actions in the Accomplishment Instructions of Bombardier Service Bulletin 84–28–03, Revision C, dated May 15, 2009.

**Actions Applicable to Airplanes S/N 4003, 4004, 4006 & 4008 Through 4118 Inclusive, Manufactured on or After September 21, 2005**

(j) For airplanes having S/Ns 4003, 4004, 4006, and 4008 through 4118 inclusive, on which the date of issuance of the original Canadian standard airworthiness certificate or the date of issuance of the original Canadian export certificate of airworthiness is on or after September 21, 2005: Within 12,000 flight hours after the effective date of this AD, incorporate Bombardier Modsum 4–126370, ''Fuel Tank System—Enhance Protective Covering for Electrical Cable Assembly,'' by doing all the applicable actions in the Accomplishment Instructions of Bombardier Service Bulletin 84–28–03, Revision C, dated May 15, 2009.

**Actions Applicable to Airplanes S/N 4119 Through 4205 Inclusive**

(k) For airplanes having S/N 4119 through 4205 inclusive: Within 6,000 flight hours after the effective date of this AD, incorporate Bombardier Modsum 4–113580, ''Fuel Indication—High Level Sensor—Application of Sealant to Exposed End of Sensor Terminal Block Screws—Special Inspection and Rectification,'' by doing all the applicable actions in the Accomplishment Instructions of Bombardier Service Bulletin 84–28–07, dated August 1, 2008.

**Credit for Actions Accomplished in Accordance With Previous Service Information**

(l) Incorporation of Bombardier Modsum 4–126330 prior to the effective date of this AD according to the instructions contained in Bombardier Service Bulletin 84–57–09, Revision A, dated March 19, 2007, meets the requirements of paragraph (g)(1) of this AD.

(m) Incorporation of Bombardier Modsum 4–126366 prior to the effective date of this AD according to the instructions contained in Bombardier Service Bulletin 84–28–04, dated June 29, 2006; or Revision A, dated November 15, 2006; meets the requirements of paragraph (g)(2) of this AD.

(n) Incorporation of Bombardier Modsum 4–126370 prior to the effective date of this AD according to instructions contained in Bombardier Service Bulletin 84–28–03, Revision B, dated October 18, 2006, meets the requirements of paragraphs (i) and (j) of this AD.

**FAA AD Differences**

**Note 1:** This AD differs from the MCAI and/or service information as follows: The MCAI specifies to do Bombardier Task 284000–417 in Section 4–1, Fuel System Limitations, of Part 2—Airworthiness Limitation Items, Revision 5, dated April 21, 2010, of Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7, but does not specify what to do if the functional check finds that measured resistance exceeds the specified values. This AD requires contacting the Manager, New York ACO, FAA, or TCCA (or its delegated agent) for repair/rework instructions.

**Other FAA AD Provisions**

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, ANE–170, New York 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: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. 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**

(p) Refer to MCAI Canadian Airworthiness Directive CF–2010–31, dated September 3, 2010; Bombardier Task 284000–417 in Section 4–1, Fuel System Limitations, of Part 2—Airworthiness Limitation Items, Revision 5, dated April 21, 2010, of Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7; and the Bombardier service bulletins identified in Table 1 of this AD; for related information.

TABLE 1—RELEVANT SERVICE INFORMATION

| Bombardier service bulletin— | Revision— | Dated— |
|---|---|---|
| 84–28–03 | C | May 15, 2009. |
| 84–28–04 | B | October 21, 2009. |
| 84–28–05 | Original | June 28, 2006. |
| 84–28–07 | Original | August 1, 2008. |
| 84–57–09 | B | September 3, 2008. |

**Material Incorporated by Reference**

(q) You must use Bombardier Task 284000–417 in Section 4–1, Fuel System Limitations, of Part 2—Airworthiness Limitation Items, Revision 5, dated April 21, 2010, of Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7, and the service information contained in Table 2 of this AD, as applicable, to do the actions required by this AD, unless the AD specifies otherwise. The revision level for Bombardier Task 284000–417 in Section 4–1, Fuel System Limitations, of Part 2—Airworthiness Limitation Items, Revision 5, dated April 21, 2010, of Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7, is specified only on the title page and page 1 of the record of Revisions of that document. Page 4 of Section 4–1, Fuel System Limitations, of Part 2—Airworthiness Limitation Items, Revision 5, dated April 21, 2010, of Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7, is not listed in the Table of Contents of that document.

(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 Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.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.*

TABLE 2—SERVICE BULLETINS INCORPORATED BY REFERENCE

| Document | Revision | Date |
|---|---|---|
| Bombardier Service Bulletin 84–28–03 | C | May 15, 2009 |
| Bombardier Service Bulletin 84–28–04 | B | October 21, 2009 |
| Bombardier Service Bulletin 84–28–05 | Original | June 28, 2006 |
| Bombardier Service Bulletin 84–28–07 | Original | August 1, 2008 |
| Bombardier Service Bulletin 84–57–09 | B | September 3, 2008 |

Issued in Renton, Washington, on June 10, 2011.

**Ali Bahrami,**

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

[FR Doc. 2011–15364 Filed 6–24–11; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2011–0078; Airspace Docket No. 10–AEA–20]**

## Establishment of Helicopter Area Navigation (RNAV) Routes; Northeast United States

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

**ACTION:** Final rule.

**SUMMARY:** This action establishes helicopter RNAV routes as part of the U.S. air traffic service route (ATS) structure and designates two helicopter RNAV routes (TK-routes) in the northeast corridor between the Washington, DC, and New York City metropolitan areas. The TK-routes are for use by helicopters having IFR-approved Global Positioning System (GPS)/Global Navigation Satellite System (GNSS) equipment. The FAA is taking this action to enhance safety and to improve the efficient use of the navigable airspace for en route IFR helicopter operations.

**DATES:** Effective date 0901 UTC, August 25, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Paul Gallant, Airspace, Regulations and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

### History

On Tuesday, March 8, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish two helicopter RNAV routes in Northeast United States (76 FR 12643). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. Four people submitted comments on the proposal.

### Discussion of Comments

Two commenters wrote expressing support for the proposal. Two commenters raised several issues which are discussed below. One commenter questioned the need for a new type of airway for helicopters stating that the existing system of VOR Federal airways and RNAV T-routes should be sufficient. The commenter wrote, in the past, the FAA had designated routes for helicopters in the northeast, but they were seldom available for use. Additionally, the commenter asked if the air traffic control separation standards for IFR helicopters differ from those that apply to fixed-wing aircraft; contending that, if they are the same, there is no need for helicopter airways.

The past routes noted by the commenter were initiated in FAA Advisory Circular AC 73–2, ''IFR Helicopter Operations in the Northeast Corridor,'' dated June 11, 1979. AC 73–2 advised of special RNAV helicopter routes between Washington, DC, and Boston, MA. The routes were developed consistent with conventional traffic flows for use by helicopters under IFR conditions. Use of these routes was limited only to those operators that met specified criteria and were issued a letter of authorization from the FAA. Therefore, the routes were not available for general use and they were not depicted on IFR Enroute Low Altitude charts. The Advisory Circular was subsequently cancelled because the routes were designed for first generation RNAV systems which lacked the accuracy and reliability of satellite navigation and other advanced RNAV systems. Additionally, it was determined that the routes do not meet current Air Traffic Service route criteria. On March 26, 2007, the FAA issued a Letter to Airmen containing new routings to be filed with a ''fix-to-fix'' flight plan along the ''old'' IFR northeast corridor. As with the Advisory Circular routes, these routes are not depicted on IFR En route Low Altitude charts. The new TK routes in this rule approximate the former northeast corridor route

tracks. In addition, the new TK routes are public routes that will be depicted on the IFR Enroute Low Altitude charts and available for use by suitably equipped helicopters.

Regarding IFR separation standards, there is no difference between IFR helicopters and IFR fixed wing aircraft. The question of establishing a new type of route for IFR helicopters was raised in response to user requests. In March 2006, the Helicopter Association International (HAI) requested that the FAA take action to develop and chart IFR RNAV airways for use by helicopters having IFR-approved GPS equipment. Of particular interest was the use of RNAV to assist IFR helicopter pilots transiting though busy terminal airspace areas while providing routes separate from fixed-wing traffic. This issue was studied by members of the Government/Industry Aeronautical Charting Forum (ACF), which is comprised of both FAA and Industry participants. The ACF supported the establishment of RNAV helicopter routes and concluded that a unique prefix should be used to identify these routes. Establishment of charted helicopter RNAV TK-routes will enhance safety and facilitate more flexible and efficient access to the NAS for IFR helicopter operations. In addition, the TK-routes will enable the designation of waypoints and feeder routes that would provide a connection between the NAS and instrument procedures serving helicopter landing/departure facilities. Among the potential benefits of these routes are more efficient and safer operations for helicopter emergency medical services flights.

One commenter asked if he could file a TK-route for a flight in a Cessna 150. The answer is no, due in part to the differing missions of fixed-wing aircraft and helicopters, TK-routes may start and end at locations inappropriate for fixed wing aircraft, such as in the vicinity of hospital or other helipad locations. Due to this difference TK-routes will be designated specifically for helicopter use; therefore, only suitably equipped helicopters will be able to file for the routes.

A commenter asked about the expected usage of the routes and the altitudes flown. It is anticipated the average usage rate would be around 30 to 50 flights per month for those route segments between the Philadelphia and the New York City areas. Usage of the full route between New York and Washington, DC, is expected to be about five per month. Altitude use on the routes will vary as with other ATS routes. Each TK-route will have a designated minimum en route IFR altitude (MEA). Assigned altitudes will be determined based on the requested altitude filed in the flight plan by the pilot and ATC requirements.

The FAA received one request to extend the comment period. We feel that sufficient information was received to issue a final rule; therefore, an extension is not needed.

One commenter questioned whether an environmental categorical exclusion (CATEX), as noted in the NPRM, was appropriate for this rule. This comment is addressed in the ''Environmental Review'' section, below.

**The Rule**

The FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 adding low altitude helicopter RNAV routes (TK-routes) to the U.S. ATS route structure and designating the first two such helicopter RNAV routes. Helicopter RNAV routes will be identified by the International Civil Aviation Organization (ICAO) prefix ''TK'' followed by a 3-digit number. ICAO has allocated the number block 501 through 650 for U.S. use in identifying the routes. The two new routes in this rule, designated TK–502 and TK–504, will provide more direct routing for IFR helicopters in the northeast corridor between the New York City and Washington, DC, metropolitan areas. The routes will serve New York City, Philadelphia, Baltimore and Washington, DC area airports/heliports. The helicopter RNAV routes will be depicted on the appropriate IFR Enroute Low Altitude charts. Only GNSS equipped RNAV helicopters may file for the TK-routes.

Helicopter RNAV routes are published in paragraph 6012 of FAA Order 7400.9U dated August 18, 2010 and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The helicopter RNAV routes listed in this document will be subsequently published in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it designates new helicopter RNAV air traffic service routes to enhance the safe and efficient use of the NAS in the northeastern United States.

**Environmental Review**

The TK routes have been determined to be Categorically Excluded from further environmental review in accordance with paragraphs 311a of FAA Order 1050.1E and documented under the provisions outlined in paragraph 305 of that order. The estimated number of daily helicopter operations is low, with an estimate of less than 50 helicopter operations on the routes per month. Based on the low number of operations, no noise analysis was needed as per FAA Order 1050.1E. Other environmental impact categories were considered as well as the potential for extraordinary circumstances before reaching this environmental determination of CATEX. The Air Traffic Initial Environmental Review (IER) is not a mandatory document and was not required for this action. The FAA issued a Categorical Exclusion/Record of Decision dated June 14, 2011.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

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

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

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

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

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9U, Airspace Designations and Reporting Points, Dated August 18, 2010 and effective September 15, 2010, is amended as follows:

*Paragraph 6012 Helicopter Area Navigation Routes [New]*

* * * * *

**TK–502 Westminster (EMI), MD to DECKR, PA [New]**

| | | |
|---|---|---|
| Westminster (EMI), MD | VORTAC | (Lat. 39°29′42″ N., long. 76°58′43″ W.) |
| TAYLO, MD | WP | (Lat. 39°39′48″ N., long. 76°27′43″ W.) |
| WINGO, PA | WP | (Lat. 39°45′59″ N., long. 76°06′55″ W.) |
| SINON, PA | WP | (Lat. 40°02′14″ N., long. 75°34′46″ W.) |
| GRIBL, PA | WP | (Lat. 40°14′30″ N., long. 74°53′31″ W.) |
| TOLAN, NJ | WP | (Lat. 40°21′58″ N., long. 74°25′23″ W.) |
| BALDE, NJ | WP | (Lat. 40°28′42″ N., long. 74°11′33″ W.) |
| SPATE, NY | WP | (Lat. 40°31′22″ N., long. 74°07′31″ W.) |
| DECKR, NY | WP | (Lat. 40°39′07″ N., long. 74°02′42″ W.) |

* * * * * * *

**TK–504 RUSEY, MD to BANKA, NJ [New]**

| | | |
|---|---|---|
| RUSEY, MD | WP | (Lat. 39°16′07″ N., long. 76°11′19″ W.) |
| CIDOB, MD | WP | (Lat. 39°25′47″ N., long. 75°58′43″ W.) |
| HAMOR, PA | WP | (Lat. 39°51′21″ N., long. 75°47′17″ W.) |
| ARCUM, PA | WP | (Lat. 40°01′26″ N., long. 75°20′54″ W.) |
| TULLY, PA | WP | (Lat. 40°10′38″ N., long. 74°51′48″ W.) |
| BORKE, NJ | WP | (Lat. 40°10′12″ N., long. 74°22′32″ W.) |
| BANKA, NJ | WP | (Lat. 40°22′53″ N., long. 74°03′04″ W.) |

Issued in Washington, DC, on June 20, 2011.

**Gary A. Norek,**

*Acting Manager, Airspace, Regulations and ATC Procedures Group.*

[FR Doc. 2011–15885 Filed 6–24–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 97

**[Docket No. 30789; Amdt. No. 3431]**

## Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective June 27, 2011. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 27, 2011.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is as follows:

*For Examination*—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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.*

*Availability*—All SIAPs are available online free of charge. Visit *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

**FOR FURTHER INFORMATION CONTACT:** Harry J. Hodges, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (*Mail Address:* P.O. Box 25082 Oklahoma City, OK 73125) *telephone:* (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation

by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

## The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

## Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore— (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on June 10, 2011.

**Ray Towles,**

*Deputy Director, Flight Standards Service.*

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective upon Publication*

| AIRAC Date | State | City | Airport | FDC No. | FDC Date | Subject |
|---|---|---|---|---|---|---|
| 28–Jul–11 | AL | Birmingham | Birmingham-Shuttlesworth Intl. | 1/0475 | 6/3/11 | RNAV (RNP) Z RWY 24, Orig |
| 28–Jul–11 | NJ | Teterboro | Teterboro | 1/0477 | 5/27/11 | RNAV (RNP) Z RWY 6, Orig-A |
| 28–Jul–11 | FL | Fort Lauderdale | Fort Lauderdale/Hollywood Intl. | 1/0497 | 5/26/11 | RNAV (RNP) Y RWY 9L, Orig-C |
| 28–Jul–11 | GA | Atlanta | Hartsfield-Jackson Atlanta Intl. | 1/0500 | 6/3/11 | RNAV (RNP) Z RWY 26R, Orig-A |
| 28–Jul–11 | GA | Atlanta | Hartsfield-Jackson Atlanta Intl. | 1/0501 | 6/3/11 | RNAV (RNP) Z RWY 8R, Orig-A |
| 28–Jul–11 | GA | Atlanta | Hartsfield-Jackson Atlanta Intl. | 1/0502 | 6/3/11 | RNAV (RNP) Z RWY 8L, Orig-A |
| 28–Jul–11 | GA | Atlanta | Hartsfield-Jackson Atlanta Intl. | 1/0503 | 6/3/11 | RNAV (RNP) Z RWY 9R, Orig-A |
| 28–Jul–11 | KY | Covington | Cincinnati/Northern Kentucky Intl. | 1/0504 | 6/3/11 | RNAV (RNP) Z RWY 18L, Orig |
| 28–Jul–11 | GA | Atlanta | Fulton County Airport-Brown Field. | 1/0514 | 5/26/11 | RNAV (RNP) Z RWY 8, Orig |
| 28–Jul–11 | GA | Atlanta | Hartsfield-Jackson Atlanta Intl. | 1/0515 | 6/3/11 | RNAV (RNP) Z RWY 26L, Orig-A |
| 28–Jul–11 | GA | Atlanta | Hartsfield-Jackson Atlanta Intl. | 1/0516 | 6/3/11 | RNAV (RNP) Z RWY 27L, Amdt 1 |
| 28–Jul–11 | GA | Atlanta | Hartsfield-Jackson Atlanta Intl. | 1/0521 | 6/3/11 | RNAV (RNP) Z RWY 9L, Orig-A |
| 28–Jul–11 | GA | Atlanta | Hartsfield-Jackson Atlanta Intl. | 1/0522 | 6/3/11 | RNAV (RNP) Z RWY 27R, Orig-A |
| 28–Jul–11 | KY | Louisville | Louisville Intl-Standiford Field | 1/0523 | 5/26/11 | RNAV (RNP) Z RWY 35L, Orig |
| 28–Jul–11 | NJ | Teterboro | Teterboro | 1/0525 | 5/27/11 | RNAV (RNP) RWY 19, Orig-A |
| 28–Jul–11 | TX | Waco | TSTC Waco | 1/1061 | 5/6/11 | NDB RWY 35R, Amdt 11 |
| 28–Jul–11 | CA | Ukiah | Ukiah Muni | 1/1163 | 5/26/11 | LOC RWY 15, Amdt 5B |
| 28–Jul–11 | SC | Allendale | Allendale County | 1/2564 | 6/3/11 | GPS RWY 17, Orig-A |
| 28–Jul–11 | GA | Tifton | Henry Tift Myers | 1/3172 | 5/27/11 | RNAV (GPS) RWY 33, Orig |

| AIRAC Date | State | City | Airport | FDC No. | FDC Date | Subject |
|---|---|---|---|---|---|---|
| 28–Jul–11 | CA | Rio Vista | Rio Vista Muni | 1/3380 | 5/27/11 | Takeoff Minimus and Obstacle DP, Orig |
| 28–Jul–11 | IN | Portland | Portland Muni | 1/3592 | 5/27/11 | RNAV (GPS) RWY 27, Orig |
| 28–Jul–11 | IN | Portland | Portland Muni | 1/3593 | 5/27/11 | RNAV (GPS) RWY 9, Orig |
| 28–Jul–11 | KY | Covington | Cincinnati/Northern Kentucky Intl. | 1/4250 | 6/3/11 | RNAV (RNP) Z RWY 36L, Orig |
| 28–Jul–11 | KY | Covington | Cincinnati/Northern Kentucky Intl. | 1/4252 | 6/3/11 | RNAV (RNP) Z RWY 9, Orig |
| 28–Jul–11 | KY | Covington | Cincinnati/Northern Kentucky Intl. | 1/4255 | 6/3/11 | RNAV (RNP) Z RWY 27, Orig |
| 28–Jul–11 | KY | Covington | Cincinnati/Northern Kentucky Intl. | 1/4256 | 6/3/11 | RNAV (RNP) Z RWY 36R, Orig |
| 28–Jul–11 | KY | Covington | Cincinnati/Northern Kentucky Intl. | 1/4257 | 6/3/11 | RNAV (RNP) Z RWY 36C, Orig |
| 28–Jul–11 | KY | Covington | Cincinnati/Northern Kentucky Intl. | 1/4259 | 6/3/11 | RNAV (RNP) Z RWY 18C, Orig |
| 28–Jul–11 | KY | Covington | Cincinnati/Northern Kentucky Intl. | 1/4260 | 6/3/11 | RNAV (RNP) Z RWY 18R, Orig |
| 28–Jul–11 | NY | New York | John F Kennedy Intl | 1/4262 | 6/3/11 | RNAV (RNP) Z RWY 4R, Orig |
| 28–Jul–11 | NY | New York | John F Kennedy Intl | 1/4263 | 6/3/11 | RNAV (RNP) Z RWY 4L, Orig |
| 28–Jul–11 | NY | New York | John F Kennedy Intl | 1/4264 | 6/3/11 | RNAV (RNP) Z RWY 31L, Orig |
| 28–Jul–11 | NY | New York | John F Kennedy Intl | 1/4265 | 6/3/11 | RNAV (RNP) Z RWY 31R, Orig-A |
| 28–Jul–11 | NY | New York | John F Kennedy Intl | 1/4266 | 6/3/11 | RNAV (RNP) Z RWY 22L, Orig |
| 28–Jul–11 | FL | Fort Lauderdale | Fort Lauderdale/Hollywood Intl. | 1/4337 | 6/3/11 | RNAV (RNP) Z RWY 27R, Orig-C |
| 28–Jul–11 | OR | Portland | Portland Intl | 1/4364 | 5/24/11 | ILS OR LOC RWY 10L, Amdt 3A |
| 28–Jul–11 | AL | Birmingham | Birmingham-Shuttlesworth Intl. | 1/4371 | 6/3/11 | RNAV (RNP) Z RWY 6, Orig |
| 28–Jul–11 | IL | De Kalb | De Kalb Taylor Muni | 1/4725 | 6/3/11 | RNAV (GPS) RWY 2, Orig |
| 28–Jul–11 | IL | De Kalb | De Kalb Taylor Muni | 1/4726 | 6/3/11 | ILS OR LOC RWY 2, Orig |
| 28–Jul–11 | TX | Hondo | Hondo Muni | 1/5995 | 6/2/11 | Takeoff Minimus and Obstacle DP, Orig |
| 28–Jul–11 | NC | Charlotte | Charlotte/Douglas Intl | 1/9869 | 5/27/11 | RNAV (RNP) Z RWY 18R, Orig |
| 28–Jul–11 | NC | Charlotte | Charlotte/Douglas Intl | 1/9871 | 5/27/11 | RNAV (RNP) Z RWY 18L, Orig |
| 28–Jul–11 | NC | Charlotte | Charlotte/Douglas Intl | 1/9873 | 5/27/11 | RNAV (RNP) Z RWY 36L, Orig |
| 28–Jul–11 | NC | Charlotte | Charlotte/Douglas Intl | 1/9874 | 5/27/11 | RNAV (RNP) Z RWY 36R, Orig |
| 28–Jul–11 | NC | Charlotte | Charlotte/Douglas Intl | 1/9876 | 5/27/11 | RNAV (RNP) Z RWY 5, Orig |
| 28–Jul–11 | NC | Charlotte | Charlotte/Douglas Intl | 1/9877 | 5/27/11 | RNAV (RNP) Z RWY 18C, Orig |
| 28–Jul–11 | NC | Charlotte | Charlotte/Douglas Intl | 1/9879 | 5/27/11 | RNAV (RNP) Z RWY 36C, Orig-A |
| 28–Jul–11 | NC | Charlotte | Charlotte/Douglas Intl | 1/9880 | 5/27/11 | RNAV (RNP) Z RWY 23, Orig |

[FR Doc. 2011–15395 Filed 6–24–11; 8:45 am]
BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 97

**[Docket No. 30788; Amdt. No. 3430 ]**

### Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective June 27, 2011. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 27, 2011.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or

4. 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.*

*Availability*—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

**FOR FURTHER INFORMATION CONTACT:** Harry J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (*Mail Address:* P.O. Box 25082, Oklahoma City, OK 73125) *Telephone:* (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the, associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

## The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

## Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule '' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979) ; and (3)does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on June 10, 2011.

**Ray Towles,**

*Deputy Director, Flight Standards Service.*

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

**Effective 30 JUN 2011**

Napa, CA, Napa County, RNAV (GPS) Y RWY 36L, Amdt 2
Napa, CA, Napa County, RNAV (GPS) Z RWY 36L, Amdt 1

**Effective 28 JUL 2011**

Andalusia/Opp, AL, South Alabama Rgnl at Bill Benton Field, COPTER NDB RWY 29, Orig
Andalusia/Opp, AL, South Alabama Rgnl at Bill Benton Field, RNAV (GPS) RWY 11, Amdt 2
Andalusia/Opp, AL, South Alabama Rgnl at Bill Benton Field, RNAV (GPS) RWY 29, Amdt 2
Fayette, AL, Richard Arthur Field, RNAV (GPS) RWY 18, Amdt 1
Fayette, AL, Richard Arthur Field, RNAV (GPS) RWY 36, Amdt 1
Gulf Shores, AL, Jack Edwards, VOR–A, Amdt 3, CANCELLED
Crossett, AR, Z M Jack Stell Field, Takeoff Minimums and Obstacle DP, Orig
Springerville, AZ, Springerville Muni, RNAV (GPS) RWY 21, Amdt 1
Big Bear City, CA, Big Bear City, RNAV (GPS) RWY 26, Orig-A
Marina, CA, Marina Muni, VOR/DME RWY 29, Amdt 2
Oxnard, CA, Oxnard, RNAV (GPS) RWY 7, Amdt 1
Jacksonville, FL, Cecil Airport, ILS OR LOC RWY 36R, Amdt 2
Plant City, FL, Plant City, RNAV (GPS) RWY 10, Amdt 1
Madison, GA, Madison Muni, GPS RWY 14, Amdt 1B, CANCELLED
Madison, GA, Madison Muni, RNAV (GPS) RWY 14, Orig
Monroe, GA, Monroe-Walton County, RNAV (GPS) RWY 3, Amdt 2
Bloomington, IN, Monroe County, VOR/DME RWY 6, Amdt 19
Indianapolis, IN, Indianapolis Executive, RNAV (GPS) RWY 36, Orig-A
Ashland, KY, Ashland Rgnl, RNAV (GPS) RWY 10, Amdt 1
Ashland, KY, Ashland Rgnl, RNAV (GPS) RWY 28, Amdt 1
Nantucket, MA, Nantucket Memorial, RNAV (GPS) RWY 15, Orig
Traverse City, MI, Cherry Capital, Takeoff Minimums and Obstacle DP, Amdt 10
Cleveland, MS, Cleveland Muni, GPS RWY 35, Orig-A, CANCELLED
Cleveland, MS, Cleveland Muni, RNAV (GPS) RWY 17, Orig
Cleveland, MS, Cleveland Muni, RNAV (GPS) RWY 35, Orig
Cleveland, MS, Cleveland Muni, VOR–A, Amdt 8
West Yellowstone, MT, Yellowstone, ILS OR LOC RWY 1, Amdt 4

West Yellowstone, MT, Yellowstone, NDB RWY 1, Amdt 4
Oak Island, NC, Cape Fear Rgnl Jetport/ Howie Franklin Fld, RNAV (GPS) RWY 5, Amdt 1B
Millville, NJ, Millville Muni, RNAV (GPS) RWY 10, Orig
Monongahela, PA, Rostraver, Takeoff Minimums and Obstacle DP, Amdt 1A

**Effective 25 AUG 2011**

Unalakleet, AK, Unalakleet, RNAV (GPS) Y RWY 33, Orig-A
Unalakleet, AK, Unalakleet, RNAV (GPS) Z RWY 33, Orig
Riverside/Rubidoux, CA, Flabob, RNAV (GPS)-A, Orig
Colorado Springs, CO, City of Colorado Springs Muni, RNAV (RNP) Z RWY 35L, Orig-A
Destin, FL, Destin-Fort Walton Beach, RNAV (GPS) RWY 14, Amdt 1
Destin, FL, Destin-Fort Walton Beach, RNAV (GPS) RWY 32, Amdt 1
Homestead, FL, Homestead General Aviation, RNAV (GPS) RWY 10, Orig
Homestead, FL, Homestead General Aviation, Takeoff Minimums and Obstacle DP, Orig
Cedartown, GA, Polk County Arpt-Cornelius Moore Field, RNAV (GPS) RWY 10, Orig
Cedartown, GA, Polk County Arpt-Cornelius Moore Field, RNAV (GPS) RWY 28, Orig
Cedartown, GA, Polk County Arpt-Cornelius Moore Field, Takeoff Minimums and Obstacle DP, Amdt 1
Cedartown, GA, Polk County Arpt-Cornelius Moore Field, VOR–A, Amdt 13
Cedartown, GA, Polk County Arpt-Cornelius Moore Field, VOR/DME RNAV OR GPS RWY 9, Amdt 2B, CANCELLED
Cedartown, GA, Polk County Arpt-Cornelius Moore Field, VOR/DME RNAV OR GPS RWY 27, Amdt 2A, CANCELLED
Macon, GA, Middle Georgia Rgnl, RNAV (GPS) RWY 13, Amdt 1
Baltimore, MD, Martin State, LOC RWY 15, Amdt 3
Baltimore, MD, Martin State, RNAV (GPS) RWY 15, Amdt 1
Great Falls, MT, Great Falls Intl, GPS RWY 21, Orig-A, CANCELLED
Great Falls, MT, Great Falls Intl, ILS OR LOC/DME RWY 3, ILS RWY 3 (SA CAT I), ILS RWY 3 (CAT II), ILS RWY 3 (CAT III), Amdt 5
Great Falls, MT, Great Falls Intl, RNAV (GPS) Y RWY 3, Amdt 3
Great Falls, MT, Great Falls Intl, RNAV (GPS) Y RWY 21, Orig
Great Falls, MT, Great Falls Intl, RNAV (RNP) Z RWY 3, Orig
Great Falls, MT, Great Falls Intl, RNAV (RNP) Z RWY 21, Orig
Maxton, NC, Laurinburg-Maxton, ILS OR LOC RWY 5, Amdt 2
Maxton, NC, Laurinburg-Maxton, RNAV (GPS) RWY 5, Amdt 1
Maxton, NC, Laurinburg-Maxton, RNAV (GPS) RWY 23, Amdt 1
Somerville, NJ, Somerset, RNAV (GPS) RWY 12, Orig-A
Fremont, OH, Sandusky County Rgnl, GPS RWY 6, Orig-B, CANCELLED
Fremont, OH, Sandusky County Rgnl, GPS RWY 24, Orig-B, CANCELLED
Fremont, OH, Sandusky County Rgnl, RNAV (GPS) RWY 6, Orig
Fremont, OH, Sandusky County Rgnl, RNAV (GPS) RWY 24, Orig
Fremont, OH, Sandusky County Rgnl, Takeoff Minimums and Obstacle DP, Orig
Fremont, OH, Sandusky County Rgnl, VOR/ DME RWY 24, Amdt 1
Galion, OH, Galion Muni, Takeoff Minimums and Obstacle DP, Orig
Charleston, SC, Charleston AFB/Intl, ILS OR LOC RWY 15, ILS RWY 15 (CAT II), Amdt 23
Charleston, SC, Charleston AFB/Intl, ILS OR LOC/DME RWY 33, Amdt 8
Charleston, SC, Charleston AFB/Intl, RNAV (GPS) Y RWY 3, Amdt 2
Charleston, SC, Charleston AFB/Intl, RNAV (GPS) Y RWY 15, Amdt 3
Charleston, SC, Charleston AFB/Intl, RNAV (GPS) Y RWY 21, Amdt 2
Charleston, SC, Charleston AFB/Intl, RNAV (GPS) Y RWY 33, Amdt 3
Charleston, SC, Charleston Executive, RNAV (GPS) RWY 9, Amdt 3
Charleston, SC, Charleston Executive, RNAV (GPS) RWY 27, Amdt 2
Crosbyton, TX, Crosbyton Muni, Takeoff Minimums and Obstacle DP, Orig
Houston, TX, Lone Star Executive, ILS OR LOC RWY 14, Amdt 2C
Sulphur Springs, TX, Sulphur Springs Muni, Takeoff Minumims and Obstabcle DP, Amdt 1
West Point, VA, Middle Peninsula Rgnl, RNAV (GPS) RWY 28, Orig
Snohomish, WA, Harvey Field, Takeoff Minimums and Obstacle DP, Amdt 1
La Crosse, WI, La Crosse Muni, Takeoff Minimums and Obstacle DP, Amdt 6

[FR Doc. 2011–15398 Filed 6–24–11; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2011–0473]**

**RIN 1625–AA00**

## Safety Zone, Pantego Creek; Belhaven, NC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the Pantego Creek, Belhaven, NC. This action is necessary to protect the life and property of the maritime public from the hazards posed by fireworks displays. This zone is intended to restrict vessels from a portion of the Pantego Creek during the Belhaven Fourth of July Fireworks.

**DATES:** This rule is effective from 8 p.m. to 10 p.m. on July 4, 2011.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0473 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0473 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail CWO3 Joseph M. Edge, Sector North Carolina Waterways Management, Coast Guard; telephone 252–247–4525, e-mail *Joseph.M.Edge@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is needed to minimize potential danger to the public during the event. The necessary information regarding the date for this fireworks event was not provided to the Coast Guard with sufficient time to publish an NPRM. The potential dangers associated with a fireworks display, including accidental discharge of fireworks, dangerous projectiles and falling hot embers makes a safety zone necessary to provide for the safety of participants, spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event. The Coast Guard will issue broadcast notice to mariners to advise vessel operators of navigational restrictions. On scene Coast Guard and local law enforcement vessels will also provide actual notice to mariners.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for

making this rule effective less than 30 days after publication in the **Federal Register**. The potential dangers posed by fireworks displays conducted in close proximity to transiting vessels makes a safety zone necessary. Delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the safety of the event participants, patrol vessels, spectator craft and other vessels transiting the event area. However, the Coast Guard will provide advance notifications to users of the effected waterways via marine information broadcasts, local notice to mariners, along with sponsor event notifications using commercial radio stations and area newspapers.

**Background and Purpose**

On July 4, 2011, fireworks will be launched from a point on land near the Pantego Creek to commemorate the Nation's birthday. The temporary safety zone created by this rule is necessary to ensure the safety of vessels and spectators from hazards associated with the fireworks display. Such hazards include obstructions to the waterway that may cause death, serious bodily harm, or property damage. Establishing a safety zone to control vessel movement around the location of the launch area will help ensure the safety of persons and property in the vicinity of this event and help minimize the associated risks.

**Discussion of Rule**

A temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading, and launching of the Belhaven Fourth of July Fireworks Display. The fireworks display will occur from approximately 8:45 p.m. to 9:45 p.m. on July 4, 2011.

The safety zone will encompass all waters on the Pantego Creek within a 600 foot radius of the launch site on land at position 35°32′35″ N, 076°37′46″ W from 8 p.m. until 10 p.m. on July 4, 2011. All geographic coordinates are North American Datum 1983 (NAD 83). The effect of this temporary safety zone will be to restrict navigation in the regulated area during the fireworks display.

All persons and vessels shall comply with the instructions of the Coast guard Captain of the Port or the designated on scene patrol personnel. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Sector North Carolina or his designated representative. The Captain of the Port or his designated representative may be contacted via VHF Channel 16. Notification of the temporary safety zone will be provided to the public via marine information broadcasts.

**Regulatory Analyses**

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

**Regulatory Planning and Review**

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the department of Homeland Security (DHS).

We conclude that this rule is not a significant regulatory action because that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone around the launch area will be relatively small and exist for only a minimal time. Thus, restrictions on vessel movement within any particular area of the Pantego Creek are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain on the Port.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in this portion of the Pantego Creek between 8:45 p.m. and 9:45 p.m. on July 4, 2011.

This safety zone will not have a significant economic impact on a substantial number of small entities because: (i) Vessels may transit around the event zone with permission from the Coast Guard Patrol Commander; (ii) the zone is of limited size and duration; (iii) in the event a vessel deems it necessary to transit through the zone during the enforcement period, the COTP may afford the vessel the opportunity to do so upon request. The Coast Guard will give notice to the public via a Local Notice to Mariners that the regulation is in effect in order to allow mariners to make alternate plans for transiting the affected area.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

**Collection of Information**

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the

aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

**Indian Tribal Governments**

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**Energy Effects**

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Technical Standards**

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

**Environment**

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a temporary safety zone. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T05–0473 to read as follows:

**§ 165.T05–0473 Safety Zone, Pantego Creek; Belhaven, NC**

(a) *Definitions.* For the purposes of this section, Captain of the Port means the Commander, Sector North Carolina. *Representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized to act on the behalf of the Captain of the Port.

(b) *Location.* The following area is a safety zone: This safety zone will encompass all waters on the Pantego Creek within a 600 foot radius of the launch site on land at position 35°32′35″ N, 076°37′46″ W. All geographic coordinates are North American Datum 1983 (NAD 83).

(c) *Regulations.* (1) The general regulations contained in § 165.23 of this part apply to the area described in paragraph (b) of this section.

(2) Persons or vessels requiring entry into or passage through any portion of the safety zone must first request authorization from the Captain of the Port, or a designated representative, unless the Captain of the Port previously announced via Marine Safety Radio Broadcast on VHF Marine Band Radio channel 22 (157.1 MHz) that this regulation will not be enforced in that portion of the safety zone. The Captain of the Port can be contacted at telephone number (910) 343–3882 or by radio on VHF Marine Band Radio, channels 13 and 16.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced from 8 p.m. to 10 p.m. on July 4, 2011 unless cancelled earlier by the Captain of the Port.

Dated: June 7, 2011.

**A. Popiel,**

*Captain, U.S. Coast Guard, Captain of the Port North Carolina.*

[FR Doc. 2011–15972 Filed 6–24–11; 8:45 am]

BILLING CODE 9110–04–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2011–0501]**

**RIN 1625–AA00**

## Safety Zone; Charleston Sharkfest Swim, Charleston Harbor, Charleston, SC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the waters of Charleston Harbor, in Charleston, South Carolina during the Charleston Sharkfest Swim on Sunday,

September 4, 2011. The Charleston Sharkfest Swim is a 1.5-mile swimming race. The safety zone is necessary for the safety of the swimmers, participant vessels, spectators, and the general public during the swim. Persons and vessels will be prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Charleston or a designated representative.

**DATES:** This rule is effective from 9 a.m. until 11 a.m. on September 4, 2011.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0501 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0501 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary final rule, call or e-mail Chief Warrant Officer Robert B. Wilson, Sector Charleston Office of Waterways Management, Coast Guard; telephone 843–740–3180, e-mail *Robert.B.Wilson@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

## Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive necessary information about the Charleston Sharkfest Swim with sufficient time to publish an NPRM and to receive public comments prior to the event. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize the potential danger to the swimmers, participant vessels, spectators, and the general public.

## Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The purpose of the rule is to ensure the safety of the swimmers, participant vessels, spectators, and the general public during the Charleston Sharkfest Swim.

## Discussion of Rule

On Sunday, September 4, 2011, the Charleston Sharkfest Swim is scheduled to take place on the waters of Charleston Harbor in Charleston, South Carolina. The Charleston Sharkfest Swim will consist of a 1.5 mile swim that starts at Castle Pinckney on Shute's Folly, crosses Charleston Harbor, and finishes at the dock at Fountain Walk, next to the South Carolina Aquarium.

The safety zone encompasses certain waters of Charleston Harbor in Charleston, South Carolina. The safety zone will be enforced from 9 a.m. until 11 a.m. on September 4, 2011. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Charleston or a designated representative. Persons and vessels desiring to enter, transit through, anchor in, or remain within the safety zone may contact the Captain of the Port Charleston by telephone at 843–740–7050, or a designated representative via VHF radio on channel 16, to request authorization. The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

## Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

### *Executive Order 12866 and Executive Order 13563*

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The economic impact of this rule is not significant for the following reasons: (1) The safety zone will be enforced for a only two hours; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port Charleston or a designated representative, they may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the safety zone if authorized by the Captain of the Port Charleston or a designated representative; and (4) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

### *Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of Charleston Harbor encompassed within the safety zone from 9 a.m. until 11 a.m. on September 4, 2011. For the reasons discussed in the Executive Order 12866 and Executive Order 13563 section above, this rule will not have a significant economic impact on a substantial number of small entities.

### *Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

*Collection of Information*

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*Federalism*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

*Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*Taking of Private Property*

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

*Civil Justice Reform*

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

*Protection of Children*

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

*Indian Tribal Governments*

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*Energy Effects*

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

*Technical Standards*

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

*Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph 34(g), of the Instruction. This rule involves the establishment of a temporary safety zone on the waters of Charleston Harbor that will be enforced for a total of two hours. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary § 165.T07–0501 to read as follows:

### § 165.T07–0501 Safety Zone; Charleston Sharkfest Swim, Charleston Harbor, Charleston, SC.

(a) *Regulated Area.* The following regulated area is a safety zone. All waters of Charleston Harbor encompassed within an imaginary line connecting the following points: starting at Point 1 in position 32°46′22″ N, 79°55′37″ W; thence northeast to Point 2 in position 32°47′36″ N, 79°55′33″ W; thence east to Point 3 in position 32°47′36″ N, 79°55′26″ W; thence southeast to Point 4 in position 32°46′24″ N, 79°55′07″ W; thence west back to origin. All coordinates are North American Datum 1983.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the

Captain of the Port Charleston in the enforcement of the regulated area.

(c) *Regulations.*

(1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at 843–740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Effective Date.* This rule is effective from 9 a.m. until 11 a.m. on September 4, 2011.

Dated: June 17, 2011.

**M.F. White,**

*Captain, U.S. Coast Guard, Captain of the Port Charleston.*

[FR Doc. 2011–15973 Filed 6–24–11; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R05–OAR–2010–0973; FRL–9319–2]**

## Approval and Promulgation of Air Quality Implementation Plans; Illinois; Royal Fiberglass Pools, Inc. Adjusted Standard

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving into the Illinois State Implementation Plan (SIP) an adjusted standard for Royal Fiberglass Pools (''Royal'') at its Dix, Illinois facility. On November 8, 2010, the Illinois Environmental Protection Agency (IEPA) submitted to EPA for approval an adjustment to the general rule, Use of Organic Material Rule, commonly known as the eight pound per hour (8 lb/hr) rule, as it applies to emissions of volatile organic matter (VOM) from Royal's pool manufacturing facility. The adjusted standard relieves Royal from being subject to the general rule for VOM emissions from its Dix facility. EPA is approving this SIP revision because it will not interfere with attainment or maintenance of the ozone National Ambient Air Quality Standard (NAAQS).

**DATES:** This direct final rule will be effective August 26, 2011, unless EPA receives adverse comments by July 27, 2011. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2010–0973, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: aburano.douglas@epa.gov.*
3. *Fax:* (312) 408–2279.
4. *Mail:* Doug Aburano, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Doug Aburano, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA–R05–OAR–2010–0973. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Carolyn Persoon, Environmental Engineer, at (312) 353–8290, before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Carolyn Persoon, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8290, *persoon.carolyn@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What should I consider as I prepare my comments for EPA?
II. What is EPA's analysis of Royal's adjusted standard?
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews

### I. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying

information (subject heading, **Federal Register** date and page number).

2. Follow directions—The EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

## II. What is EPA's analysis of Royal's adjusted standard?

### *Background of the 8 lb/hr Rule and the Adjusted Standard*

EPA approved the VOM general 8 lb/hr rule into the Illinois SIP on February 21, 1980 (45 FR 11472). The rule states that ''no person shall cause or allow the discharge of more than 3.6 kg/hr (8 lb/hr) of organic material into the atmosphere from any emission source * * *.'' The basis for this rule is prevention of ground-level ozone formation in order to meet the ozone NAAQS.

Royal filed a petition for an adjusted standard on April 3, 2009, in accordance with section 28.1 of the Illinois Environmental Protection Act, 415 ILCS 5/28.1, and Illinois' regulations at 35 Ill. Adm. Code section 215. Section 28.1 sets out the factors that a petitioner must demonstrate to justify an adjusted standard. Royal filed the petition describing the factors relating to its Dix facility that are substantially and significantly different from the factors relied on in adopting the general rule, specifically that the general rule did not take into account the specific operations needed to make composite fiberglass pools. Royal also provided an air quality impact analysis to support its petition. On October 28, 2009, the Illinois Pollution Control Board (IPCB) held a public hearing on the petition in Mt. Vernon, Illinois where testimony was given to support Royal's petition. A final order by the IPCB granted Royal an adjusted standard on February 18, 2010. Among other things, the IPCB found that granting the adjusted standard would not result in an adverse impact on air quality in terms of exceeding the ozone NAAQS. The IPCB limited applicability of the adjusted standard to the swimming pool manufacturing emissions units existing as of August 20, 2009 at the Dix facility.

### *Analysis of SIP Revision for the Adjusted Standard*

EPA's approval is based on consideration of whether the adjusted standard meets the requirements of section 110(l) of the Clean Air Act (CAA), 42 U.S.C. 4202(l). In particular, EPA considered whether exempting Royal's Dix facility from compliance with 35 Ill. Adm. Code 215.301 will impact Illinois' ability to attain and maintain the ozone NAAQS in the area in which the facility is located.

Under CAA section 110(l) the state must show that the SIP revision will not interfere with attainment and maintenance of both existing eight-hour ozone standards, which would be 75 parts per billion (ppb) promulgated in 2008 and the 84 ppb promulgated in 1997.[1] Based on the record presented to the IPCB, Royal provided evidence to IEPA after a 2006 notice of violation that Royal could not comply with the 8 lb/hour rule. After reviewing the evidence, IEPA agreed that Royal should file a petition for an adjusted standard. The monitor closest to Royal's Dix facility is located in Hamilton County, Illinois. This monitor has been and currently is attaining the eight-hour ozone standards with design values of 68 ppb for 2007–2009 and 68 ppb for 2008–2010 using preliminary quality assured (but not yet certified) data from 2010. See EPA's Web site on design values for ozone at *http://www.epa.gov/airtrends/values.html.* Thus, Royal's facility in Dix, Illinois has not been interfering with attainment of the standard at its current production rate.

To support its petition, Royal did a conservative analysis of emissions to determine an approximate ozone contribution that would result from it operating at the maximum capacity which Royal is allowed in its approved Title V permit. When adding this potential contribution to the existing monitored data both the 75 and 84 ppb ozone standards are still maintained even at the facility's maximum capacity.

Although Royal is not required to comply with the 8 lb/hour rule, Royal is required to operate its facility in compliance with Federal regulations of reinforced composite manufacturing facilities set forth at 40 CFR part 63 subpart WWWW, which requires certain operational practices, recordkeeping, and emission limits for VOM. The emissions of styrene from Royal's Dix facility are from three different types of operations: (1) Open molding, corrosion resistant and/or high strength resin applied by non-atomized spray, (2) open molding, corrosion resistant and/or high strength resin manually applied, and (3) open molding, resistant and/or high strength gel-coat. The Federal Maximum Achievable Control Technology (MACT) requires emission limits on all of these processes of 113 pounds of styrene per ton of material (lb/ton), 123 lb/ton, and 605 lb/ton, respectively. These emission limits are enforceable VOM limits for the Dix Facility.

## III. What action is EPA taking?

EPA is approving into the Illinois SIP an adjusted standard of the 8 lb/hr general rule for VOM for Royal. The adjusted standard removes the 8 lb/hr VOM limit for Royal's fiberglass facility in Dix, Illinois in the SIP, and the Royal facility at Dix, Illinois is no longer subject to this rule as it applies to VOM emissions. The adjusted standard is approvable, since under worst case conditions it is not interfering with attaining or maintaining the 75 and 84 ppb ozone standards as prescribed by section 110(l) of the CAA.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan amendment if relevant adverse written comments are filed. This rule will be effective August 26, 2011 without further notice unless we receive relevant adverse written comments by July 27, 2011. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive

[1] EPA has not yet designated areas for the 2008 eight-hour ozone standard.

any comments, this action will be effective August 26, 2011.

### IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 26, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 3, 2011.

**Susan Hedman,**

*Regional Administrator, Region 5.*

40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

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

**Authority:** 42 U.S.C. 7401 *et seq.*

## Subpart O—Illinois

■ 2. Section 52.720 is amended by adding paragraph (c)(188) to read as follows:

### § 52.720 Identification of plan.

* * * * *

(c) * * *

(188) On November 8, 2010, the Illinois Environmental Protection Agency submitted a revision to its state implementation plan. The revision to the SIP allows an adjusted standard to the general rule, Use of Organic Material Rule, known as the eight pound per hour (8 lb/hr) rule, for volatile organic matter, for Royal Fiberglass Pools, Inc. manufacturing facility located in Dix, Illinois. The adjusted standard is that 35 Ill. Adm. Code 217.301 does not apply to VOM emissions from Royal's Dix, Illinois facility. The facility is subject to emission limit requirements set forth in the MACT under 40 CFR 63 subpart WWWW finalized in 68 FR 19402, April 21, 2003.

(i) *Incorporation by reference.* (A) February 18, 2010, Opinion and Order of the Illinois Pollution Control Board, AS–09–04, effective February 18, 2010.

[FR Doc. 2011–15866 Filed 6–24–11; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 55

**[EPA–R10–OAR–2011–0045; FRL–9317–8]**

## Outer Continental Shelf Air Regulations Consistency Update for Alaska

**AGENCY:** Environmental Protection Agency (''EPA'').

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing an update to a portion of the Outer Continental Shelf (''OCS'') Air Regulations proposed in the **Federal Register** on February 10, 2011. Requirements applying to OCS sources located within 25 miles of States' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area, as mandated by section 328(a)(1) of the Clean Air Act (''the Act''). The portion of the OCS air regulations being updated pertains to the requirements for OCS sources in the State of Alaska. The intended effect of approving the OCS requirements for the State of Alaska is to regulate emissions from OCS sources in a manner consistent with the requirements onshore. The change to

the existing requirements discussed below is to be incorporated by reference into the Code of Federal Regulations and is listed in the appendix to the OCS air regulations.

**DATES:** *Effective Date:* The final rule is effective on July 27, 2011. The incorporation by reference of certain publications listed this rule are approved by the Director of the Federal Register as of July 27, 2011.

**ADDRESSES:** EPA has established a docket for this action under docket number. EPA–R10–OAR–2011–0045. The index to the docket is available electronically at *http://www.regulations.gov* or in hard copy at the Office of Air, Waste and Toxics, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101. While all documents in the docket are listed in the index, some information may be publically available only at the hard copy location (e.g., copyrighted materials), and some may not be publicly available in either location (e.g., Confidential Business Information). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Natasha Greaves, Federal and Delegated Air Programs Unit, Office of Air, Waste, and Toxics, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Suite 900, Mail Stop: AWT–107, Seattle, WA 98101; *telephone number:* (206) 553–7079; *e-mail address: greaves.natasha@epa.gov.*

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## I. Background Information

*Why is EPA taking this action?*

On September 4, 1992, EPA promulgated 40 CFR part 55 (the OCS rule)[1] which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a State's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the corresponding onshore area (''COA''.) Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) of the Act requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to section 55.12 of the OCS rule, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent (''NOI'') under section 40 CFR 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in part 55.

On February 10, 2011, (76 FR 7518), EPA proposed to approve requirements into the OCS Air Regulations pertaining to the State of Alaska. These requirements are being promulgated in response to the submittal of a Notice of Intent on December 10, 2010, by Shell Offshore, Inc. of Houston, Texas (''Shell''). EPA has evaluated the proposed requirements to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS, and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure that they are not arbitrary or capricious. 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that would apply if the source[s] were located onshore. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (''SIP'') guidance or certain requirements of the Act.

Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

## II. Public Comment and EPA Response

EPA's February 10, 2011, proposed action provided a 30-day public comment period which closed on March 14, 2011. During the public comment period, EPA received one letter from the Alaska Eskimo Whaling Commission commenting on the proposed rule.

*Comment:* The Alaska Eskimo Whaling Commission stated that Shell's NOI and other relevant submissions were not included within the public notice and were not made available to the public on EPA's Web site or otherwise.

*Response:* As noted in the proposed rule, EPA established a docket for the consistency update under Docket ID No. EPA–R10–OAR–2011–0045. The docked included the NOI submitted by Shell, the state rules relevant to the proposed action and other information relied on by EPA. These documents were available for review to the public, as noted in the proposed rule, electronically via the federal docket management system or in hard copy during normal business hours at EPA. We do acknowledge that the information was not posted on EPA Region 10's OCS webpage.

*Comment:* The Alaska Eskimo Whaling Commission requested a narrative discussing how EPA made the decision to include or exclude rules. The Alaska Eskimo Whaling Commission expressed specific concern with EPA's decision to exclude administrative and procedural rules and stated that EPA did not explain the basis for excluding administrative and procedural rules.

*Response:* EPA is required to perform consistency updates to maintain

[1] The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

consistency with the applicable regulations in the COA. In order to be considered for inclusion in the OCS rule, these COA requirements must have been formally adopted by the state or local regulatory agency. Before a COA rule can apply to an OCS source, it must be incorporated into part 55 by formal rulemaking. EPA incorporates those onshore rules that comply with the statutory requirements of section 328 of the Clean Air Act that are rationally related to the attainment and maintenance of national or state ambient air quality standards and the prevention of significant deterioration of air quality. (See also 40 CFR 55.1). Section 328 of the Act requires that the requirements for sources located within 25 miles of a state's seaward boundary, shall be the same as would be applicable if the source were located on the COA. EPA must adopt the COA rules into part 55 as they exist onshore. This prevents EPA from making substantive changes to the rules it incorporates.

In updating 40 CFR part 55, EPA reviews the current COA rules for consistency with part 55. For the proposed rule, EPA reviewed Alaska's Air Quality Control Regulations at 18 AAC 50, as amended through December 9, 2010, to identify rules that are rationally related to the attainment or maintenance of federal or state ambient air quality standards (or part C of title I of the Act) and applicable to OCS sources. EPA also evaluated the rules to ensure they are not arbitrary or capricious. Rules that are arbitrary or capricious are excluded from incorporation. (See 40 CFR 55.12(e)). Additionally as noted in part 55, the OCS rules specifically provide that EPA shall not be bound by state or local administrative procedural requirements including, but not limited to, requirements pertaining to hearing boards, permit issuance, public notice procedures, and public hearings. (See 40 CFR 55.14(c)(4)). EPA uses the applicable administrative and public notice and comment procedures of 40 CFR part 55.6 and 40 CFR part 124. (See 40 CFR 55.6(a)(3) and 40 CFR 55.14(c)(4)). Finally EPA did not incorporate COA rules that regulate toxics which are not related to the attainment and maintenance of federal and state ambient air quality standards, and/or designed to prevent exploration and development on the OCS. (See also 40 CFR 55.1 and 57 FR 40792, 40803 (Final OCS rule)).

The intended effect of approving the OCS requirements is to regulate emissions from OCS sources consistent with the requirements onshore; to the extent those requirements are applicable to OCS sources and as modified by the requirements of section 328 and 40 CFR part 55. EPA determined that each of the Alaska rules proposed to be incorporated relate to the regulation of criteria pollutants or their precursors and therefore are related to the Federal or State air quality standards or relate to the prevention of significant deterioration. For example, this final rule includes the State of Alaska regulations regarding ambient air quality management including other provisions regarding major and minor stationary source permit, but does not include provisions unrelated to OCS sources or activities. Because EPA must adopt the COA rules into part 55 as they exist onshore, EPA does not make substantive changes to the rules it incorporates. After reviewing Alaska's rules, EPA determined which ones are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act and, that they are not designed expressly to prevent exploration and development of the OCS and are applicable to OCS sources.

*Comment:* The Alaska Eskimo Whaling Commission submitted several comments requesting clarification on EPA's decision to exclude several of the COA rules regarding public participation. Specifically, the Alaska Eskimo Whaling Commission expressed concern about excluding the public from participating in the permit process by excluding permit issuance under 40 CFR 52.21 and excluding rules that allow request for adjudicatory hearing as it applies to 55.166(q)(2) public participation process of PSD permits. Specifically, the Alaska Eskimo Whaling Commission asked EPA to clarify the rational for excluding 18 AAC 50.040(h)(2); 18 AAC 50.225(c) through (g); 18 AAC 50.306(c) and (e); 18 AAC 50.311(c); 18 AAC 50.316(c); 18 AAC 50.326 (j)(5) through (j)(6), (k)(1), (k)(3), (k)(5), and (k)(6); 18 AAC 50.400(j)(13); 18 AAC 50.420; 18 AAC 50.430; 18 AAC 50.542(a) through (d); and 18 AAC 50.546.

*Response:* Part 55.6(a)(3) requires EPA to follow the applicable procedures of 40 CFR part 124 in processing applications under part 55. Specifically, EPA is required to use the procedures in part 124 used to issue Prevention of Significant Deterioration (''PSD'') permits until 40 CFR part 124 has been modified to reference permits issued under part 55. As explained in the regulation itself, part 124 contains the procedures for issuing, modifying, revoking and reissuing, or terminating the permits. (40 CFR 124.(1)(a)). Part 124 set forth the applicable procedures that EPA will use to process OCS permits, thus incorporating additional state procedural rules is not necessary. Also, part 124 specifically provides the opportunity for full meaningful public participation in the permit process. (See e.g. 40 CFR 124.10, 124.11 and 124.12). Additionally, part 124 includes procedures to challenge the permits. See 40 CFR 124.19. Accordingly, EPA excluded all COA regulations, including those referenced in the comment, pertaining to procedures for issuing, modifying, revoking and reissuing, or terminating permits.

*Comment:* The Alaska Eskimo Whaling Commission asked EPA to clarify the exclusion of Table 1 Air Quality Classifications.

*Response:* EPA included 18 AAC 50 Table 1 Air Quality Classifications into the proposed rulemaking. The table can be found under Article 1—Ambient Air Quality Management in the proposed rule.

*Comment:* The Alaska Eskimo Whaling Commission asked EPA to clarify the exclusion of 18 AAC 50.250.

*Response:* EPA did not incorporate 18 AAC 50.250 because the rule sets out the procedure and criteria for revising air quality classifications. This rule was not incorporated because it is administrative or procedural. More specifically, the rule outlines the process the State of Alaska uses to reclassify an air quality classification for a geographic area.

*Comment:* The Alaska Eskimo Whaling Commission asked EPA to clarify exclusion of 18 AAC 326(h) and (i)(3) and 18 AAC 50.400 (a)(2), (a)(5), (j)(2) through (j)(5), and (j)(8)

*Response:* EPA did not incorporate 18 AAC 326(h) and (i)(3) and 18 AAC 50.400 (a)(2), (a)(5), (j)(2) through (j)(5), and (j)(8) because the rules do not apply to the OCS. More specifically, 18 AAC 50.326(h) and (i)(3) relates to a portion of the state regulations regarding Title V permits pertaining to ponds and lagoons and coffee roasters and agricultural activities as insignificant emission units. The provisions at 18 AAC 50.400 relate to the permit state administrative fees. Specifically, 18 AAC 50.400(a)(2) related to fees for a small power plant permit renewal and (a)(5), (j)(2) through (j)(5) and (j)(8) are procedural or do not relate to OCS sources and need not be incorporated.

*Comment:* AEWC requests an explanation and an opportunity for input on EPA's rationale prior to finalizing the update.

*Response:* EPA appreciated the comments submitted by the Alaska Eskimo Whaling Commission. As part of

this rulemaking, EPA provided the public notice and the opportunity to comment on the proposed consistency update. EPA carefully considered the comments received and its response to the comments are contained in this action.

## III. EPA Action

In this document, EPA takes final action to incorporate the changes proposed on February 10, 2011 into 40 CFR part 55 related to the consistency update for the OCS air regulations for Alaska. As described above, EPA is approving the action under section 328(a)(1) of the Act, 42 U.S.C. 7627. Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as or consistent with onshore requirements. To comply with this statutory mandate, EPA incorporates applicable Alaska onshore rules into part 55 as they exist onshore.

## IV. Statutory and Executive Order Reviews

### *A. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (''OMB'') review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB Review. This rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. These OCS rules already apply in the COA, and EPA has no evidence to suggest that these OCS rules have created an adverse material effect. As required by section 328 of the Clean Air Act, this action simply updates the existing OCS requirements to make them consistent with rules in the COA.

### *B. Paperwork Reduction Act*

The OMB has approved the information collection requirements contained in 40 CFR part 55, and by extension this update to the rules, under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0249. The OMB Notice of Action is dated January 15, 2009. The approval expires January 31, 2012.

OMB's Notice of Action dated January 15, 2009 indicated that the annual public reporting and recordkeeping burden for collection of information under 40 CFR part 55 is estimated to average 112 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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 and are identified on the form and/or instrument, if applicable.

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (''RFA'') generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant economic impact on a substantial number of small entities. This rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. These OCS rules already apply in the COA, and EPA has no evidence to suggest that these OCS rules have had a significant economic impact on a substantial number of small entities. As required by section 328 of the Clean Air Act, this action simply updates the existing OCS requirements to make them consistent with rules in the COA. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

### *D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA''), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million of more in any one year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant

Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or to the private sector in any one year. This rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act without the exercise of any policy discretion by EPA. These OCS rules already apply in the COA, and EPA has no evidence to suggest that these OCS rules have created an adverse material effect. As required by section 328 of the Clean Air Act, this action simply updates the existing OCS requirements to make them consistent with rules in the COA.

*E. Executive Order 13132: Federalism*

Executive Orders 13132, entitled ''Federalism'' (64 FR 43255 (August 10, 1999)), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule 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. This rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. As required by section 328 of the Clean Air Act, this rule simply updates the existing OCS rules to make them consistent with current COA requirements. This rule does not amend the existing provisions within 40 CFR part 55 enabling delegation of OCS regulations to a COA, and this rule does not require the COA to implement the OCS rules. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comments on this final rule from State and local officials.

*F. Executive Order 13175: Coordination With Indian Tribal Governments*

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249 (November 9, 2000)), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This rule does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes and thus does not have ''tribal implications,'' within the meaning of Executive Order 13175. This rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. As required by section 328 of the Clean Air Act, this rule simply updates the existing OCS rules to make them consistent with current COA requirements. In addition, this rule does not impose substantial direct compliance costs on tribal governments, nor preempt tribal law. Consultation with Indian tribes is therefore not required under Executive Order 13175. Nonetheless, in the spirit of Executive Order 13175 and consistent with EPA policy to promote communications between EPA and tribes, EPA specifically solicits comments on this final rule from tribal officials.

*G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885 (April 23, 1997)), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866. In addition, the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportional risk to children.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This final rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' [66 FR 28355 (May 22, 2001)] because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12(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 in its regulatory activities unless to do so would be inconsistent with applicable laws or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decided not to use available and applicable voluntary consensus standards.

As discussed above, this rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. As required by section 328 of the Clean Air Act, this rule simply updates the existing OCS rules to make them consistent with current COA requirements. In the absence of a prior existing requirement for the state to use voluntary consensus standards and in light of the fact that EPA is required to make the OCS rules consistent with current COA requirements, it would be inconsistent with applicable law for EPA to use voluntary consensus standards in this action. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the final rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to

explain why such standards should be used in this regulation.

The Congressional Review Act, 5 U.S.C. 801 st seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 26, 2011. Filing a petition for reconsideration by the Administrator of this final action does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2))

**List of Subjects in 40 CFR Part 55**

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: May 27, 2011.

**Michelle L. Pirzadeh,**

*Acting Regional Administrator, Region 10.*

Title 40, chapter I of the Code of Federal Regulations, is amended as follows:

## PART 55—[AMENDED]

■ 1. The authority citation for part 55 continues to read as follows:

**Authority:** Section 328 of the Act (42 U.S.C. 7401, *et seq.*) as amended by Pub. L. 101–549.

■ 2. Section 55.14 is amended by revising paragraph (e)(2)(i)(A) to read as follows:

**§ 55.14 Requirements that apply to OCS sources located within 25 miles of States' seaward boundaries, by State.**

* * * * *

(e) * * *

(2) * * *

(i) * * *

(A) State of Alaska Requirements Applicable to OCS Sources, December 9, 2010.

* * * * *

■ 3. Appendix A to part 55 is amended by revising paragraph (a)(1) under the heading ''Alaska'' to read as follows:

**APPENDIX A TO PART 55—LISTING OF STATE AND LOCAL REQUIREMENTS INCORPORATED BY REFERENCE INTO PART 55, BY STATE**

* * * * *

Alaska

(a) * * *

(1) The following State of Alaska requirements are applicable to OCS Sources, December 9, 2010, Alaska Administrative Code—Department of Environmental Conservation. The following sections of Title 18, Chapter 50:

**Article 1. Ambient Air Quality Management**

18 AAC 50.005. Purpose and Applicability of Chapter (effective 10/01/2004)
18 AAC 50.010. Ambient Air Quality Standards (effective 04/01/2010)
18 AAC 50.015. Air Quality Designations, Classification, and Control Regions (effective 12/09/2010) except (b)(1), (b)(3) and (d)(2)

Table 1. Air Quality Classifications

18 AAC 50.020. Baseline Dates and Maximum Allowable Increases (effective 07/25/2008)

Table 2. Baseline Dates

Table 3. Maximum Allowable Increases

18 AAC 50.025. Visibility and Other Special Protection Areas (effective 06/21/1998)
18 AAC 50.030. State Air Quality Control Plan (effective 10/29/2010)
18 AAC 50.035. Documents, Procedures, and Methods Adopted by Reference (effective 04/01/2010)
18 AAC 50.040. Federal Standards Adopted by Reference (effective12/09/2010) except (h)(2)
18 AAC 50.045. Prohibitions (effective 10/01/2004)
18 AAC 50.050. Incinerator Emissions Standards (effective 07/25/2008)

Table 4. Particulate Matter Standards for Incinerators

18 AAC 50.055. Industrial Processes and Fuel-Burning Equipment (effective 12/09/2010) except (a)(3) through (a)(9), (b)(2)(A), (b)(3) through (b)(6), (e) and (f)
18 AAC 50.065. Open Burning (effective 01/18/1997)
18 AAC 50.070. Marine Vessel Visible Emission Standards (effective 06/21/1998)
18 AAC 50.075. Wood-Fired Heating Device Visible Emission Standards (effective 05/06/2009)
18 AAC 50.080. Ice Fog Standards (effective 01/18/1997)
18 AAC 50.085. Volatile Liquid Storage Tank Emission Standards (effective 01/18/1997)
18 AAC 50.090. Volatile Liquid Loading Racks and Delivery Tank Emission Standards (effective 07/25/2008)
18 AAC 50.100. Nonroad Engines (effective 10/01/2004)
18 AAC 50.110. Air Pollution Prohibited (effective 05/26/1972)

**Article 2. Program Administration**

18 AAC 50.200. Information Requests (effective 10/01/2004)
18 AAC 50.201. Ambient Air Quality Investigation (effective 10/01/2004)
18 AAC 50.205. Certification (effective 10/01/2004) except (b)
18 AAC 50.215. Ambient Air Quality Analysis Methods (effective 10/29/2010)

Table 5. Significant Impact Levels (SILs)

18 AAC 50.220. Enforceable Test Methods (effective 10/01/2004)
18 AAC 50.225 Owner-Requested Limits (effective 12/09/2010) except (c) through (g)
18 AAC 50.230. Preapproved Emission Limits (effective 07/01/2010) except (d)
18 AAC 50.235. Unavoidable Emergencies and Malfunctions (effective 10/01/2004)
18 AAC 50.240. Excess Emissions (effective 10/01/2004)
18 AAC 50.245. Air Episodes and Advisories (effective 10/01/2004)

Table 6. Concentrations Triggering an Air Episode

**Article 3. Major Stationary Source Permits**

18 AAC 50.301. Permit Continuity (effective 10/01/2004) except (b)
18 AAC 50.302. Construction Permits (effective 12/09/2010)
18 AAC 50.306. Prevention of Significant Deterioration (PSD) Permits (effective 12/09/2010) except (c) and (e)
18 AAC 50.311. Nonattainment Area Major Stationary Source Permits (effective 10/01/2004) except (c)
18 AAC 50.316. Preconstruction Review for Construction or Reconstruction of a Major Source of Hazardous Air Pollutants (effective 12/01/2004) except (c)
18 AAC 50.321. Case-By-Case Maximum Achievable Control Technology (effective 12/01/04)
18 AAC 50.326. Title V Operating Permits (effective12/01/2004) except (c)(1), (h), (i)(3), (j)(5), (j)(6), (k)(1), (k)(3), (k)(5), and (k)(6)
18 AAC 50.345. Construction, Minor and Operating Permits: Standard Permit Conditions (effective 11/09/2008)
18 AAC 50.346. Construction and Operating Permits: Other Permit Conditions (effective 12/09/2010)

Table 7. Standard Operating Permit Condition

**Article 4. User Fees**

18 AAC 50.400. Permit Administration Fees (effective 07/01/2010) except (a)(2), (a)(5), (j)(2) through (j)(5), (j)(8), and (j)(13)

18 AAC 50.403. Negotiated Service Agreements (effective 07/01/2010)
18 AAC 50.410. Emission Fees (effective 07/10/2010)
18 AAC 50.499. Definition for User Fee Requirements (effective 01/29/2005)

**Article 5. Minor Permits**

18 AAC 50.502. Minor Permits for Air Quality Protection (effective 12/09/2010) except (b)(1) through (b)(3), (b)(5), (d)(1)(A) and (d)(2)(A)
18 AAC 50.508. Minor Permits Requested by the Owner or Operator (effective 12/07/2010)
18 AAC 50.510. Minor Permit—Title V Permit Interface (effective 12/09/2010)
18 AAC 50.540. Minor Permit: Application (effective 12/09/2010)
18 AAC 50.542. Minor Permit: Review and Issuance (effective 12/09/2010) except (a), (b), (c), and (d)
18 AAC 50.544. Minor Permits: Content (effective 12/09/2010)
18 AAC 50.560. General Minor Permits (effective 10/01/2004) except (b)

**Article 9. General Provisions**

18 AAC 50.990. Definitions (effective 12/09/2010)

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[FR Doc. 2011–15852 Filed 6–24–11; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

### 46 CFR Part 221

### Approval Process for Transfers to Foreign Registry of U.S. Documented Vessels Over 1,000 Gross Tons

**AGENCY:** Maritime Administration (MARAD), DOT.

**ACTION:** Clarification.

**SUMMARY:** This document clarifies the Maritime Administration's (MARAD's) approval process in 46 CFR part 221, for requests relating to proposed transfers to foreign registry of U.S. documented vessels over 1,000 gross tons.

**DATES:** The applicability date of this clarification is February 14, 2011. Comments may be submitted on or before July 27, 2011.

**ADDRESSES:** Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or submit electronically at *http://www.regulations.gov* or fax comments to (202) 493–2251. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays. Those desiring notification or receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Page 19477–78), or you may visit *http://dms.dot.gov*.

**FOR FURTHER INFORMATION CONTACT:** Michaela Noble, Office of Chief Counsel, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–5184; or e-mail *Michaela.Noble@dot.gov*. Copies of this notice may also be obtained from that office. An electronic copy of this document may be downloaded from the **Federal Register**'s home page at: *http://www.archives.gov* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

**SUPPLEMENTARY INFORMATION:** The Maritime Administration (MARAD) is clarifying its approval process in 46 CFR Part 221 for requests relating to proposed transfers to foreign registry of U.S. documented vessels over 1000 gross tons. The approval process will require vessel owners to self-certify that the vessel(s) does not contain polychlorinated biphenyls (PCBs) in regulated quantities, and to provide notice to the Environmental Protection Agency (EPA) of the transfer request. This process shall apply to all transfer requests filed on or after February 14, 2011, except as otherwise provided herein. In addition, the requirement for vessel owner self-certification will apply to all future approvals under the provisions for granting advance foreign transfer approvals pursuant to 46 U.S.C. 56101(b), regardless of when the application is filed. Vessel owners that receive advance approval under 46 U.S.C. 56101(b) will be required to submit a self-certification conforming to the language provided below, or as may be amended by MARAD, prior to transfer of the vessel to foreign registry, otherwise the prior approval is void. Vessels built in the United States after 1985 shall be exempted from these requirements.

Self-certification must be performed by a person with legal authority to act on behalf of the company. Self-certification means a written statement containing the following language: ''Under civil and criminal penalties of law for the making or submission of false or fraudulent statements or representations (18 U.S.C. 1001 and 15 U.S.C. 2615), to the best of my knowledge and belief, I hereby certify that after the exercise of reasonable due diligence, the vessel(s) do(es) not contain polychlorinated biphenyls (PCBs) in amounts greater than or equal to 50 ppm as regulated by the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*).'' The Maritime Administration will provide the EPA with up to 30 days notice prior to approving any transfer request. Applicants are advised to account for this processing time when submitting transfer requests.

Dated: June 20, 2011.

By Order of the Maritime Administrator.

**Murray A. Bloom,**

*Acting Secretary, Maritime Administration.*

[FR Doc. 2011–15889 Filed 6–24–11; 8:45 am]

BILLING CODE 4910–81–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

**[WC Docket No. 02–60; FCC 11–101]**

### Rural Health Care Support Mechanism

**AGENCY:** Federal Communications Commission.

**ACTION:** Interim rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) adopts an interim rule permitting health care providers that are located in a ''rural area'' under the definition used by the Commission prior to July 1, 2005, and that have received a funding commitment from the rural health care program prior to July 1, 2005, to continue to be treated as if they are located in ''rural'' areas for purposes of determining eligibility for all universal service rural health care programs. The Commission takes these actions to ensure that health care providers located in rural areas can continue to benefit from connecting with grandfathered providers, and thereby provide health care to patients in rural areas.

**DATES:** Effective June 27, 2011.

**FOR FURTHER INFORMATION CONTACT:** Chin Yoo, Attorney Advisor, at 202–418–0295, Telecommunications Access Policy Division, Wireline Competition Bureau.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order (Order) in WC Docket No. 02–60, FCC 11–101, adopted on June 20, 2011 and released on June 21, 2011. This Order was also released with a companion Notice of Proposed Rulemaking

(NPRM). The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

## I. Introduction

1. In this Order, we adopt an interim rule permitting health care providers that are located in a ''rural area'' under the definition used by the Commission prior to July 1, 2005, and that have received a funding commitment from the rural health care program prior to July 1, 2005, to continue to be treated as if they are located in ''rural'' areas for purposes of determining eligibility for all universal service rural health care programs. In the accompanying Notice of Proposed Rulemaking (NPRM) published elsewhere in this issue of the **Federal Register**, we seek comment on whether to make these ''grandfathered'' providers permanently eligible for discounted services under the rural health care program. Grandfathered providers do not currently qualify as ''rural,'' but play a key role in delivering health care services to surrounding regions that do qualify as ''rural'' today. Thus, we take these actions to ensure that health care providers located in rural areas can continue to benefit from connecting with grandfathered providers, and thereby provide health care to patients in rural areas.

## II. Order

2. In this order, we adopt an interim rule to allow all currently grandfathered health care providers to continue to qualify for discounted services until the Commission adopts permanent rules governing the eligibility of such providers to participate in rural health care programs. We find good cause to adopt this interim rule without notice and comment, and to make it effective upon publication in the **Federal Register** rather than 30 days afterwards. For the reasons below, we find that it is unnecessary and contrary to the public interest to delay adoption of this interim rule.

3. Section 553 of the Administrative Procedure Act (APA) requires that agencies provide notice in the **Federal Register** and an opportunity for public comment on their proposed rules except, *inter alia,* ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' Notice and comment have been excused in emergency situations or where delay could result in serious harm. In addition, section 553(d) of the APA requires a substantive rule to be published not less than 30 days before its effective date, except ''as otherwise provided by the agency for good cause found and published with the rule.''

4. Without a change in our rules before June 30, 2011, currently grandfathered providers will lose eligibility for discounted services. In 2008, the Commission found that discontinuing services to these providers would ''serve only to endanger the continued availability of telemedicine and telehealth services that [these] health care facilities provide.'' For the reasons below, we find that such an outcome remains as likely to happen today as in 2008, and thus would be contrary to the public interest.

5. The record demonstrates that grandfathered facilities, while not located themselves in a ''rural area'' under current Commission definitions, play a key role in providing health care services to ''fundamentally rural'' areas. These providers are not located in large urbanized areas. In some instances, the grandfathered health care provider is a primary or secondary hub in a network that serves health care providers and patients located in areas that do qualify as ''rural'' under our current definition. Discontinuance of rural health care support would make vulnerable rural providers that connect to these hub sites. For example, three grandfathered facilities in Nebraska are hub hospitals in the Nebraska Statewide Telehealth Network (NSTN), a ''hub-and-spoke'' statewide telehealth network in which nearly 80 percent of providers are eligible for rural health care support. The Nebraska hub hospitals currently receive support for backbone lines that carry traffic for the entire NSTN, including traffic for rural sites, and the majority of interactions over the backbone lines benefit small rural health care providers and those they serve, not the hub site.

6. The record also provides numerous examples of the critical services that the petitioners and other affected health care providers offer to their patients. By its nature, telehealth allows health care providers that are not themselves located in ''rural'' areas to provide services to patients that are located in rural areas. In particular, many grandfathered facilities are located in regions experiencing specialty health care shortages, which these facilities are seeking to remedy via telemedicine. Services provided by grandfathered facilities include the following: emergency services, preventative care, interactive video, counseling, specialist consultations, oncology, psychiatry, neurology, tele-trauma, teleradiology, health professional and community education, and other telehealth and telemedicine applications.

7. Without continued funding, these facilities will likely be unable to continue providing telehealth services to rural areas. Virginia Telehealth Network (VTN) states that many grandfathered providers do not enjoy the benefit of competitively priced broadband services and would likely no longer be able to afford to continue their telehealth programs without discounted services. Similarly, NSTN states that if the Commission takes no action, its hub sites will be unable to sustain the costs of the backbone lines, which would directly sever the connection of 40 eligible rural sites from the NSTN. According to the NSTN, these 40 sites would be unable to connect to tertiary care centers, which serve as their referring hospitals, and to other rural health sites. Access to specialized care via telehealth in rural Nebraska would be compromised, and in some cases, cease to exist. More generally, the American Telemedicine Association (ATA) explains that the loss of existing facilities supported by universal service could ''result in the loss of health care services to populations that have unmet health care needs, that are remote and rural to the location of those services, and are most disparate.'' Thus, we find that discontinuance of funding could result in serious harm to affected rural health care providers and their patient populations, and such harm would be contrary to the public interest.

8. We note that continued grandfathering on an interim basis will also support important Commission, federal, and state health information technology (health IT) priorities. For example, the Tanana Chiefs Conference states that continued funding is needed to meet bandwidth requirements created by National Broadband Plan initiatives, adoption of electronic health record meaningful use requirements by HHS, and Alaska's statewide health information exchange initiative. VTN and the Office of Telemedicine of the University of Virginia Health System (UVA) explain that Virginia was recently awarded two federal rural health IT grants to create a demonstration tele-stroke network and to deliver high risk obstetric services. Both Virginia projects include grandfathered health care providers as partners, and elimination of discounted services to these providers would adversely impact the projects' ability to sustain the federal grants. Similarly,

NSTN states it has been successful in developing a model, comprehensive, statewide network in which the federal government has invested over $1.4 million, but the discontinuance of funding to Nebraska's grandfathered hub hospitals would result in the transformation of this statewide network into isolated ''mini'' networks.

9. We also find that notice-and-comment and 30-day advance publication in the **Federal Register** is unnecessary for this interim rule. The purpose of the notice-and-comment requirement is to allow interested parties to respond to the proposed rule and participate in the rulemaking process. In July 2010, the Nebraska Public Service Commission (Nebraska PSC) filed a petition requesting that the FCC permanently grandfather health care providers that were temporarily grandfathered until 2011. In response to the Nebraska PSC petition, the Wireline Competition Bureau issued a public notice requesting comment on whether the Commission should grant the relief sought by the Nebraska PSC, either through permanent grandfather, permanent waiver, or other action, and interested parties had an opportunity to respond to the public notice. We note that all commenters, including all affected health care providers, support at least an interim extension of the grandfathering period. The 30-day advance publication requirement of section 553(d) is intended to inform affected parties of the proposed rule and afford them a reasonable time to adjust to the new regulations. The purpose of our interim rule, however, is to maintain the *status quo* while we consider amending our rules permanently. Thus, as a practical matter, there is no ''new'' regulation to which grandfathered health care providers must adjust. Indeed, the National Telecommunications Cooperative Association argues that *without* the interim extension, grandfathered entities would be left without a needed ''transition period * * * to accommodate for any lost USF revenues and to comply with'' new requirements, and would be forced to ''scramble for alternative technology solutions and funding sources.'' In addition, as discussed above, grandfathered providers, in the aggregate, have historically received less than $1.4 million annually in discounted services, or less than 0.02 percent of the $8 billion universal service fund. Therefore, we find that the interim rule will not materially affect entities that contribute to the universal service fund, because their individual contributions will not change significantly. Based on the foregoing, we find good cause to adopt this interim rule without notice and comment.

## III. Procedural Matters

### *A. Final Regulatory Flexibility Certification*

10. *Interim Rule.* The interim rule adopted in this *Order* is being adopted without notice and comment, and therefore is not subject to Regulatory Flexibility Act analysis under 5 U.S.C. 604(a).

11. *Proposed Permanent Rule.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment rule-making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

12. An initial regulatory flexibility analysis (IRFA) was incorporated in the *Second Report and Order,* 70 FR 6365, February 7, 2005. The Commission sought written public comment on the proposals in the *Second Report and Order,* including comment on the IRFA. No comments were received to the *Second Report and Order* or IRFA that specifically raised the issue of the impact of the proposed rules on small entities.

13. In this Order, we now indefinitely extend, and propose to adopt permanently, the Commission's prior determination to grandfather those health care providers who were eligible under the Commission's definition of ''rural'' prior to the *Second Report and Order.* This has no effect on any parties that do not currently participate in the rural health care support program. It does not create any additional burden on small entities. We believe that this action imposes a minimal burden on the vast majority of entities, small and large, that are affected by this action.

14. Therefore, we certify that the requirements of the order will not have a significant economic impact on a substantial number of small entities.

15. In addition, the Order and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the **Federal Register**.

### *B. Other Matters*

16. *Congressional Review Act.* The Commission will send a copy of this Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. *See* 5 U.S.C. 801(a)(1)(A). The interim rule contained in this Order shall take effect upon publication of a summary of the *Order* in the **Federal Register** for the reasons stated therein. *See id.* Sec. 808(2).

### List of Subjects in 47 CFR Part 54

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

### Interim Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 to read as follows:

## PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

**Authority:** 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

■ 2. Amend § 54.601 by revising paragraph (a)(3)(i) to read as follows:

**§ 54.601 Eligibility.**

(a) * * *

(3) * * *

(i) Notwithstanding the definition of ''rural area'' in § 54.5, any health care provider that is located in a ''rural area'' under the definition used by the Commission prior to July 1, 2005, and received a funding commitment from the rural health care program prior to July 1, 2005, is eligible for support under this subpart.

* * * * *

[FR Doc. 2011–16062 Filed 6–24–11; 8:45 am]

BILLING CODE 6712–01–P

**DEPARTMENT OF TRANSPORTATION**

**Pipeline and Hazardous Materials Safety Administration**

**49 CFR Part 172**

**[Docket No. PHMSA–2011–0102 (HM–145O)]**

**RIN 2137–AE74**

## Hazardous Materials: Revision to the List of Hazardous Substances and Reportable Quantities

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** PHMSA amends the Hazardous Materials Regulations by removing saccharin and its salts from the list of hazardous substances and reportable quantities. The Comprehensive Environmental Response, Compensation and Liability Act, requires PHMSA to list and regulate all hazardous substances designated by statute or by the U.S. Environmental Protection Agency (EPA). EPA recently removed saccharin and its salts from their list of hazardous substances through notice and comment rulemaking. This final rule simply harmonizes the lists to better enable shippers and carriers to identify the affected hazardous substances, comply with all applicable regulatory requirements, and make required notifications if the release of a hazardous substance occurs.

**DATES:** *Effective Date:* June 27, 2011.

**FOR FURTHER INFORMATION CONTACT:** Dirk Der Kinderen (202) 366–8553, Standards and Rulemaking Division, PHMSA, 1200 New Jersey Avenue, SE, East Building, Washington, DC 20590–0001. Questions about hazardous substance designations or reportable quantities should be directed to the Office of Resource Conservation and Recovery, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (703) 308–0454.

**SUPPLEMENTARY INFORMATION:**

### I. Statutory Background

Section 306(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA; 42 U.S.C. 9601–9675), as amended by section 202 of the Superfund Amendments and Reauthorization Act of 1986 (SARA; 42 U.S.C 11011 *et seq.*), requires the Secretary of Transportation to regulate hazardous substances listed or designated under Section 101(14) of CERCLA, 42 U.S.C. 9601(14), as hazardous materials under the Federal hazardous materials transportation law (49 U.S.C. 5101–5128). PHMSA carries out the rulemaking responsibilities of the Secretary of Transportation under the Federal hazardous materials transportation law, 49 CFR 1.53(b). This final rule is necessary to comply with 42 U.S.C. 9656(a), as amended by Section 202 of SARA.

In carrying out the statutory mandate, PHMSA has no discretion to determine what is or is not a hazardous substance or the appropriate reportable quantity (RQ) for materials designated as hazardous substances. This authority is vested in EPA. In accordance with CERCLA requirements, EPA must issue final rules amending the list of CERCLA hazardous substances, including removing entries, before PHMSA can amend the list of hazardous substances in the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180). PHMSA periodically revises the list of hazardous substances and RQs in the HMR as adjustments are made by EPA.

### II. Regulatory Actions

*EPA Rulemaking*

EPA published a notice of proposed rulemaking (NPRM) for public comment on April 22, 2010 (75 FR 20942) and a final rule December 17, 2010 (75 FR 78918) removing saccharin and its salts from the List of Hazardous Substances and Reportable Quantities in 40 CFR 302.4 (Table 302.4) in response to a petition submitted to EPA. EPA received two comments in response to the NPRM, one supportive of removing saccharin and its salts from the list and one beyond the scope of the rulemaking. The amendment includes the removal of both the product name (saccharin) and the chemical name (1,2-benzisothiazol-3(2H)-one,1,1-dioxide). EPA based its decision on a review of evaluations conducted by key public health agencies concerning the carcinogenic and other potential toxicological effects of saccharin and its salts, as well as their own assessment of the waste generation and management information for saccharin and its salts. This review/assessment demonstrated that saccharin and its salts do not meet the criteria in their hazardous waste regulations for remaining on EPA's lists of hazardous constituents, hazardous wastes, and hazardous substances. Specifically, EPA's listing of saccharin and its salts as a hazardous substance was based solely upon the material being listed as hazardous wastes under the Resource Conversation and Recovery Act (RCRA) (see 40 CFR 261.33(f)). Thus, by no longer being listed hazardous wastes, there was no basis for retaining saccharin and its salts in Table 302.4.

*PHMSA Rulemaking*

This final rule revises the ''List of Hazardous Substances and Reportable Quantities'' that appears in Table 1 to Appendix A of § 172.101 by removing the entry for saccharin and its salts (including the chemical name and salts). This revision is being made for consistency with EPA's December 17, 2010 final rule removing saccharin and its salts from the List of Hazardous Substances and Reportable Quantities in Table 302.4. This final rule will enable shippers and carriers to properly identify CERCLA hazardous substances subject to HMR and EPA requirements, and subsequent notifications if a release of a hazardous substance occurs. In addition to the reporting requirements of the HMR found in §§ 171.15 and 171.16, a release of a hazardous substance is subject to EPA notification requirements under 40 CFR 302.6 and may be subject to the reporting requirements of the U.S. Coast Guard under 33 CFR 153.203.

PHMSA is publishing this final rule without notice and public procedure with good cause. As discussed in the ''EPA Action'' section above, EPA revised the list of hazardous substances through notice and public procedure. EPA has ultimate discretion when determining what is or is not a hazardous substance. PHMSA is statutorily mandated to list and regulate in the 49 CFR EPA's list of hazardous substances. Thus, it is unnecessary for PHMSA to again provide notice and public procedure to incorporate into the HMR the changes made by EPA.

### III. Regulatory Analyses and Notices

*A. Statutory/Legal Authority for This Rulemaking*

This rulemaking is issued under authority of the Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*), which authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in interstate, intrastate, and foreign commerce. This rulemaking is also issued under Section 306(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA; 42 U.S.C. 9601–9675), as amended by section 202 of the Superfund Amendments and Reauthorization Act of 1986 (SARA; 42 U.S.C 11011 et seq.), which requires the Secretary of Transportation to regulate hazardous substances listed or designated under Section 101(14) of

CERCLA, 42 U.S.C. 9601(14), as hazardous materials under the Federal hazardous materials transportation law (49 U.S.C. 5101–5128).

*B. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures*

This final rule is not a significant rulemaking action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. The rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). This rulemaking conforms to the intent of Executive Order 13563. This rulemaking relieves regulatory burdens placed on shippers or carriers of saccharin and on its salts that may be subject to regulation under the 49 CFR based on being defined as a hazardous substance, and subsequent regulation as a hazardous material by removing saccharin and its salts from the list of hazardous substances found in Table 1 of Appendix A to 49 CFR 172.101.

*C. Executive Order 13132*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule preempts State, local and Indian tribe requirements but does not adopt any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous material transportation law, 49 U.S.C. 5101–5128, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous material;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, inspection, marking, maintenance, reconditioning, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject items (1), (2), and (3) above and would preempt State, local, and Indian tribe requirements not meeting the ''substantively the same'' standard. This rule is required by statute. Federal hazardous materials transportation law provides at Sec. 5125(b)(2) that, if PHMSA issues a regulation concerning any of the covered subjects, PHMSA must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of Federal preemption for these requirements is September 26, 2011.

*D. Executive Order 13175*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not have tribal implications, does not impose substantial direct compliance costs, and is required by statute, the funding and consultation requirements of Executive Order 13175 do not apply.

*E. Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a Federal agency to assess the impact of a regulatory action on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. The Regulatory Flexibility Act applies only to final rules that are preceded by notices of proposed rulemaking (NPRM). Because this rule was not preceded by an NPRM, no assessment is required. EPA addressed the Regulatory Flexibility Act when it made the hazardous substances designation reflected in this rule.

*F. Executive Order 13272 and DOT Regulatory Policies and Procedures*

This final rule has been developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure consideration of the potential impact of a rulemaking on small entities.

*G. Paperwork Reduction Act*

This final rule does not impose any new information collection burdens under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*H. Regulation Identifier Number (RIN)*

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

*I. Unfunded Mandates Reform Act*

This final rule imposes no unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $140.8 million or more to either State, local or tribal governments, in the aggregate, or to the private sector.

*J. Privacy Act*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477 through 19478) or you may visit *http://www.dot.gov.*

**I. Environmental Assessment**

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), requires a Federal agency to consider the consequences of a major Federal action and prepare a detailed statement on actions significantly affecting the quality of the human environment. The revision made to the ''List of Hazardous Substances and Reportable Quantities'' found in Table 1 of Appendix A to § 172.101 in this final rule is not a major Federal action significantly affecting the quality of the human environment.

Releases of hazardous substances have the potential to cause damages to the human environment. Releases can occur during any stage of transportation (i.e., loading, transport, unloading, etc.). When a release occurs, it may result in increased risk to public health and the environment such as increased human exposure to carcinogens or adverse impacts vegetation and wildlife surrounding the location of the release. EPA believes that saccharin and its salts, based on the results of reviews of available scientific information performed by National Toxicology Program and the International Agency

for Research on Cancer, do not pose a present or potential risk of causing toxic, carcinogenic, mutagenic or teratogenic effects on humans or other life forms. EPA believes the results, of these reviews as well as their own assessment of waste generation and management information for saccharin and its salts, indicate that saccharin and its salts do not meet the criteria for listing as hazardous wastes under 40 CFR 261.11. EPA's listing of saccharin and its salts as a hazardous substance under CERCLA (40 CFR 302.4) was based solely upon being listed as hazardous wastes under RCRA (40 CFR 261.33(f)). Thus, we conclude there is no significant environmental impact associated with removing saccharin and its salts for the ''List of Hazardous Substances and Reportable Quantities'' found in Table 1 to Appendix A of 49 CFR 172.101 in this final rule.

**List of Subjects in 49 CFR Part 172**

Education, Hazardous materials transportation, Hazardous waste, Hazardous substances, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, Title 49, part 172 of the Code of Federal Regulations, is amended as follows:

## PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

■ 1. The authority citation for part 172 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5128, 44701; 49 CFR 1.53.

**§ 172.101 [Amended]**

■ 2. Section 172.101 Appendix A is amended as follows:

■ a. By removing the entry ''1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide, & salts'' from Table 1.

■ b. By removing the entry ''Saccharin & salts'' from Table 1.

Issued in Washington, DC on June 21, 2011 under authority delegated in 49 CFR part 1.

**Cynthia L. Quarterman,**

*Administrator.*

[FR Doc. 2011–15954 Filed 6–24–11; 8:45 am]

BILLING CODE 4910–60–P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 665**

**[Docket No. 100803320–1319–03]**

**RIN 0648–AY93**

## Fisheries in the Western Pacific; Mechanism for Specifying Annual Catch Limits and Accountability Measures

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes the procedures and timing for specifying annual catch limits (ACLs) and accountability measures (AMs) for western Pacific fisheries. The final rule is intended to help NMFS end and prevent overfishing, rebuild overfished stocks, and achieve optimum yield.

**DATES:** This rule is effective July 27, 2011.

**ADDRESSES:** Copies of the Fishery Ecosystem Plans (FEP) for the Pacific Remote Islands Areas (PRIA), American Samoa, Mariana Archipelago, Hawaii, and western Pacific pelagic fisheries are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, 808–522–8220, fax 808–522–8226, or *http://www.wpcouncil.org.*

**FOR FURTHER INFORMATION CONTACT:** Jarad Makaiau, NMFS PIR, Sustainable Fisheries, 808–944–2108.

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act requires that fishery management plans include a mechanism for specifying ACLs at a level such that overfishing does not occur and that does not exceed the fishing level recommendation of a council's Scientific and Statistical Committee (SSC). AMs are also required to prevent ACLs from being exceeded, and to correct or mitigate overage of an ACL should it occur. The requirements for ACLs and AMs do not apply to fisheries for stocks that are subject to international fishery agreements in which the U.S. participates, or for species with life cycles of approximately one year. ACLs and AMs are also not required for species classified in a fishery management plan as ''ecosystem component species,'' which are generally non-target species, not determined to be subject to overfishing, approaching overfished, or overfished, not likely to become subject to overfishing or overfished, and generally not retained for sale or personal use.

This final rule implements the mechanism that NMFS will use to specify ACLs (possibly including multi-year ACLs) and AMs in western Pacific fisheries. Briefly, the Council will recommend an ACL to NMFS at least two months before the start of a fishing year. The Council will base its recommendation on the SSC's fishing level recommendation for the subject species or fishery, and may not exceed it. At least one month before the fishing year starts, NMFS will request public comment on the proposed ACL. Before the start of the fishing year, NMFS will notify fishermen and the public of the final ACL specification.

NMFS will monitor the fishery on an ongoing basis throughout the fishing year. When an ACL is projected to be reached during the year, NMFS will notify fishermen and the public that fishing for the regulated stock will be restricted through one or more inseason accountability measures to ensure that the ACL is not exceeded. Restrictions may include, but are not limited to, closing the fishery, closing specific areas, changing bag limits, or otherwise restricting effort or catch. Any inseason restriction will generally remain in effect until the end of the fishing year.

If inseason monitoring or subsequent data analyses indicate that an ACL was exceeded in the previous fishing year, the Council may recommend that NMFS reduce the ACL for the subsequent year by the amount of the overage.

This rule establishes only the procedures for specifying ACLs and AMs. The Council and NMFS will provide the public with opportunities to review and comment on the ACLs and AMs for each fishery at the time they are proposed.

**Comments and Responses**

On March 31, 2011, NMFS published a proposed rule and request for public comment (76 FR 17808). The public comment period ended on May 16, 2011. Additional background information on this final rule is found in the preamble to the proposed rule and is not repeated here. NMFS received two comments that were generally supportive of this action.

**Changes From the Proposed Rule**

No changes were made from the proposed rule.

## Classification

The Administrator, Pacific Islands Region, NMFS, determined that the FEP amendments that establish a mechanism for specifying ACLs and AMs are necessary for the conservation and management of western Pacific fisheries, and that they are consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

NMFS will begin specifying ACLs and AMs for each fishery that requires them using the proposed notice-and-comment mechanism starting in fishing year 2011. When fishery-specific ACLs and AMs are specified through subsequent rulemaking, NMFS will assess each proposed specification for compliance with all applicable laws, including any relevant impacts on small businesses, organizations and small government jurisdictions, and will prepare an initial regulatory flexibility analysis for that action, if warranted.

## List of Subjects in 50 CFR Part 665

Accountability measures, Annual catch limits, Fisheries, Fishing, Western and central Pacific.

Dated: June 21, 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 665 is amended as follows:

## PART 665—FISHERIES IN THE WESTERN PACIFIC

■ 1. The authority citation for part 665 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.,* 50 CFR part 600.310.

■ 2. In subpart A, add § 665.4 to read as follows:

### § 665.4 Annual catch limits.

(a) *General.* For each fishing year, the Regional Administrator shall specify an annual catch limit, including any overage adjustments, for each stock or stock complex of management unit species defined in subparts B through F of this part, as recommended by the Council, and considering the best available scientific, commercial, and other information about the fishery for that stock or stock complex. The annual catch limit shall serve as the basis for invoking accountability measures in paragraph (f) of this section.

(b) *Overage adjustments.* If landings of a stock or stock complex exceed the specified annual catch limit in a fishing year, the Council will take action in accordance with 50 CFR 600.310(g), which may include recommending that the Regional Administrator reduce the annual catch limit for the subsequent year by the amount of the overage or other measures, as appropriate.

(c) *Exceptions.* The Regional Administrator is not required to specify an annual catch limit for a management unit species that is statutorily excepted from the requirement pursuant to 50 CFR 600.310(h)(2), or that the Council has identified as an ecosystem component species. The Regional Administrator will publish in the **Federal Register** the list of ecosystem component species, and will publish any changes to the list, as necessary.

(d) *Annual catch target.* For each fishing year, the Regional Administrator may also specify an annual catch target that is below the annual catch limit of a stock or stock complex, as recommended by the Council. When used, the annual catch target shall serve as the basis for invoking accountability measures in paragraph (f) of this section.

(e) *Procedures and timing.* (1) No later than 60 days before the start of a fishing year, the Council shall recommend to the Regional Administrator an annual catch limit, including any overage adjustment, for each stock or stock complex. The recommended limit should be based on a recommendation of the SSC of the acceptable biological catch for each stock or stock complex. The Council may not recommend an annual catch limit that exceeds the acceptable biological catch recommended by the SSC. The Council may also recommend an annual catch target below the annual catch limit.

(2) No later than 30 days before the start of a fishing year, the Regional Administrator shall publish in the **Federal Register** a notice of the proposed annual catch limit specification and any associated annual catch target, and request public comment.

(3) No later than the start of a fishing year, the Regional Administrator shall publish in the **Federal Register** and use other methods to notify permit holders of the final annual catch limit specification and any associated annual catch target.

(f) *Accountability measures.* When any annual catch limit or annual catch target is projected to be reached, based on available information, the Regional Administrator shall publish notification to that effect in the **Federal Register** and shall use other means to notify permit holders.

(1) The notice will include an advisement that fishing for that stock or stock complex will be restricted beginning on a specified date, which shall not be earlier than 7 days after the date of filing the notice for public inspection at the Office of the **Federal Register**. The restriction may include, but is not limited to, closure of the fishery, closure of specific areas, changes to bag limits, or restrictions in effort. The restriction will remain in effect until the end of the fishing year, except that the Regional Administrator may, based on a recommendation from the Council, remove or modify the restriction before the end of the fishing year.

(2) It is unlawful for any person to conduct fishing in violation of the restrictions specified in the notification issued pursuant to paragraph (f)(1) of this section.

■ 3. In § 665.12, add the definitions of ''Ecosystem component species'' and ''SSC'' in alphabetical order to read as follows:

### § 665.12 Definitions.

* * * * *

*Ecosystem component species* means any western Pacific MUS that the Council has identified to be, generally, a non-target species, not determined to be subject to overfishing, approaching overfished, or overfished, not likely to become subject to overfishing or overfished, and generally not retained for sale or personal use.

* * * * *

*SSC* means the Scientific and Statistical Committee of the Western Pacific Fishery Management Council.

* * * * *

■ 4. In § 665.15, add a new paragraph (u) to read as follows:

### § 665.15 Prohibitions.

* * * * *

(u) Fail to comply with the restrictions specified in the notification

issued pursuant to § 665.4(f)(1), in violation of § 665.15(f)(2).

[FR Doc. 2011–16040 Filed 6–24–11; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 665

**[Docket No. 0808051054–1319–02]**

**RIN 0648–AW67**

## Western Pacific Pelagic Fisheries; Prohibiting Longline Fishing Within 30 nm of the Northern Mariana Islands

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** This final rule prohibits pelagic longline fishing within approximately 30 nautical miles (nm) of the islands of the Commonwealth of the Northern Mariana Islands (CNMI). By establishing a longline fishing prohibited area around the CNMI, NMFS intends to reduce the potential for nearshore localized fish depletion from longline fishing, and to limit catch competition and gear conflicts between the CNMI-based longline and trolling fleets. This rule also makes several administrative clarifications to the pelagic fishing regulations.

**DATES:** This final rule is effective July 27, 2011.

**ADDRESSES:** The background on this final rule may be found in the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific Region (FEP) and FEP Amendment 2, which are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226, *http://www.wpcouncil.org.* Amendment 2 may also be found at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Toby Wood, NMFS PIR Sustainable Fisheries, 808–944–2234.

**SUPPLEMENTARY INFORMATION:** Pelagic fisheries in the U.S. western Pacific are managed under the FEP. In Amendment 2, the Council recommended that NMFS prohibit purse seine fishing in the U.S. EEZ around the Mariana Archipelago, including the CNMI and Guam, and prohibit pelagic longline fishing within 30 nm (approx. 56 km) of the CNMI. The recommended prohibition on purse seine fishing was intended to limit impacts on juvenile recruitment of bigeye tuna, and reduce the potential for localized depletion and catch competition between purse seine vessels and the pelagic fishing fleets of the CNMI and Guam. The recommended longline closed area near the CNMI was intended to minimize potential gear conflicts and catch competition between the local pelagic trolling fleet and the developing CNMI-based longline fishery (a 50-nm (93 km) longline prohibited area currently exists around Guam to prevent gear conflicts).

Additional background information on this final rule is found in the preamble to the proposed rule published on March 31, 2011 (76 FR 17811); the comment period ended on May 16, 2011. NMFS received two substantive comments, and responds as follows:

*Comment 1:* The longline prohibited area around the CNMI should be increased to 90 nm (167 km) from the proposed 30 nm to further protect marine life and seafood resources in the region.

*Response:* U.S. longline fishing in the Pacific is regulated stringently to minimize impacts on protected species and harvest fish sustainably. Requirements for this fishery include permits, specific gear configuration and identification, area restrictions monitored by a satellite vessel monitoring system, observer placement when requested, educational workshops, and reporting requirements for fishing activities and interactions with protected resources, and others.

The Council and NMFS assessed the potential impacts of longline prohibited areas ranging in size from 25 to 100 nm (46 to 185 km) around the CNMI, and concluded that a 30-nm zone best achieved the conservation and management objectives of the proposed amendment, while at the same time minimizing economic costs and ensuring sustained participation by fishermen. The 30-nm prohibited area encompasses the majority of the submarine habitat containing banks and reefs where small boats typically concentrate their fishing efforts. Excluding longline fishing from this zone will prevent gear conflicts and competition for catches between the small boats and larger longliners, and will reduce the likelihood of longline gear entanglement on the banks and reefs, thereby protecting reefs and the marine life that depends on it.

Larger prohibited areas would impose higher travel costs to the longline vessels with little to no additional benefit of conserving stocks of pelagic fish or protected resources, or minimizing the potential for gear conflicts with the small boat fishery. A 30-nm prohibited area is not so large as to prevent longline fishing activity, which will allow for the development of the longline fishery and provide economic benefits to the CNMI.

*Comment 2:* There is little demonstrated need or justification for the proposed prohibition on purse seine fishing because there is virtually no history of purse seine fishing in the Mariana Archipelago, and there is little evidence that purse seine fishing negatively impacts other pelagic fisheries in the area. Also, an EEZ closure will disadvantage the United States in its negotiations to renew the South Pacific Tuna Treaty, as the proposed prohibition on purse seine fishing in the U.S. EEZ might encourage other Pacific Island parties to take similar protective measures in their national waters.

*Response:* NMFS agrees, and this final rule will not implement the proposed prohibition on purse seine fishing in the EEZ around the Mariana Archipelago. Under the Magnuson-Stevens Act, NMFS may partially approve a plan or amendment to the FEP offered by the Council. When partially approving an amendment, NMFS must specify the applicable law with which the amendment is inconsistent, explain the nature of the inconsistency, and recommend to the Council actions it could take to conform the amendment to the applicable law.

The Magnuson-Stevens Act requires NMFS to consider ten National Standards when implementing fishery conservation and management measures. National Standard 2 requires such measures to be based on the best scientific information available, and requires fishery management actions to be founded on thorough analyses that allow NMFS to rationally conclude that the selected alternative will accomplish legitimate conservation and management objectives. The scientific analysis in Amendment 2 presented inconclusive evidence of a negative impact of purse seine fishing on other fisheries and fish stocks, with the possible exception of some localized impacts on trolling catch rates over small distances near American Samoa. Nonetheless, the Council recommended prohibiting U.S. purse seine fishing throughout the entire EEZ around the Mariana Archipelago. That recommendation is not supported by the best available scientific evidence on the need to reduce interactions between the purse seine and local trolling fisheries in the area around the CNMI, and is,

therefore, inconsistent with National Standard 2. Accordingly, NMFS did not approve the proposed purse seine prohibition, and it is not part of this final rule. The Council may revisit the issue if activities by U.S. purse seine vessels change, or if new scientific information is presented.

**Changes From the Proposed Rule**

The proposed rule contained provisions that would have defined purse seine fishing and prohibited purse seine fishing within the EEZ around Guam and the CNMI. Those provisions were not approved, so the final rule does not include the definition or prohibition on purse seine fishing. The final rule does implement the Council's recommended prohibited area for longline fishing around the CNMI. This final rule also makes administrative changes to the pelagic fishing regulations: all pelagic fishing prohibited areas (existing longline prohibited areas in Hawaii and Guam, the American Samoa large vessel prohibited areas, and the new CNMI longline prohibited area) are combined into 50 CFR 665.806.

**Classification**

The Administrator, Pacific Islands Region, NMFS, determined that the part of Amendment 2 that pertains to a prohibited area for pelagic longline fishing in the CNMI is necessary for the conservation and management of CNMI pelagic fisheries, and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. Although this final rule does not implement all of the proposed measures, the determination in the proposed rule that this final action will not have a significant economic effect on a substantial number of small entities remains unchanged. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

**List of Subjects in 50 CFR Part 665**

Administrative practice and procedure, Fisheries, Fishing, Longline, Northern Mariana Islands, Prohibited areas.

Dated: June 21, 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 chapter VI is amended as follows:

## PART 665—FISHERIES IN THE WESTERN PACIFIC

■ 1. The authority citation for part 665 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

■ 2. In § 665.802, revise paragraphs (v) and (xx) to read as follows:

**§ 665.802 Prohibitions.**

* * * * *

(v) Use longline gear to fish within a longline fishing prohibited area in violation of § 665.806, except as allowed pursuant to an exemption issued under §§ 665.17 or 665.807.

* * * * *

(xx) Use a large vessel to fish for western Pacific Pelagic MUS within an American Samoa large vessel prohibited area in violation of § 665.806, except as allowed pursuant to an exemption issued under §§ 665.17 or 665.818.

* * * * *

■ 3. Revise § 665.806 to read as follows:

**§ 665.806 Prohibited area management.**

(a) *Longline fishing prohibited areas.* Longline fishing is prohibited in the longline fishing prohibited areas as defined in paragraphs (a)(1) through (a)(4) of this section.

(1) *NWHI protected species zone.* The NWHI protected species zone is the portion of the EEZ within 50 nm of the center geographical positions of certain islands and reefs in the NWHI, as follows:

| Name | N. lat. | W. long. |
|---|---|---|
| Nihoa Island | 23°05′ | 161°55′ |
| Necker Island | 23°35′ | 164°40′ |
| French Frigate Shoals | 23°45′ | 166°15′ |
| Gardner Pinnacles | 25°00′ | 168°00′ |
| Maro Reef | 25°25′ | 170°35′ |
| Laysan Island | 25°45′ | 171°45′ |
| Lisianski Island | 26°00′ | 173°55′ |
| Pearl and Hermes Reef | 27°50′ | 175°50′ |
| Midway Island | 28°14′ | 177°22′ |
| Kure Island | 28°25′ | 178°20′ |
| Where the areas are not contiguous, parallel lines drawn tangent to and connecting those semicircles of the 50-nm areas that lie between Nihoa Island and Necker Island, French Frigate Shoals and Gardner Pinnacles, Gardner Pinnacles and Maro Reef, and Lisianski Island and Pearl and Hermes Reef, delimit the remainder of the NWHI longline protected species zone. | | |

(2) *Main Hawaiian Islands (MHI).* (i) From February 1 through September 30 each year, the MHI longline fishing prohibited area is the portion of the EEZ around Hawaii bounded by straight lines connecting the following coordinates in the order listed:

| Point | N. lat. | W. long. |
|---|---|---|
| A | 18°05′ | 155°40′ |
| B | 18°20′ | 156°25′ |
| C | 20°00′ | 157°30′ |
| D | 20°40′ | 161°40′ |
| E | 21°40′ | 161°55′ |
| F | 23°00′ | 161°30′ |
| G | 23°05′ | 159°30′ |
| H | 22°55′ | 157°30′ |
| I | 21°30′ | 155°30′ |
| J | 19°50′ | 153°50′ |
| K | 19°00′ | 154°05′ |
| A | 18°05′ | 155°40′ |

(ii) From October 1 through the following January 31 each year, the MHI longline fishing prohibited area is the portion of the EEZ around Hawaii bounded by straight lines connecting the following coordinates in the order listed:

| Point | N. lat. | W. long. |
|---|---|---|
| A | 18°05′ | 155°40′ |
| L | 18°25′ | 155°40′ |
| M | 19°00′ | 154°45′ |
| N | 19°15′ | 154°25′ |
| O | 19°40′ | 154°20′ |
| P | 20°20′ | 154°55′ |
| Q | 20°35′ | 155°30′ |
| R | 21°00′ | 155°35′ |
| S | 22°30′ | 157°35′ |
| T | 22°40′ | 159°35′ |
| U | 22°25′ | 160°20′ |
| V | 21°55′ | 160°55′ |
| W | 21°40′ | 161°00′ |
| E | 21°40′ | 161°55′ |
| D | 20°40′ | 161°40′ |
| C | 20°00′ | 157°30′ |
| B | 18°20′ | 156°25′ |
| A | 18°05′ | 155°40′ |

(3) *Guam.* The Guam longline fishing prohibited area is the portion of the EEZ around Guam bounded by straight lines connecting the following coordinates in the order listed:

| Point | N. lat. | E. long. |
|---|---|---|
| A | 14°25′ | 144°00′ |

| Point | N. lat. | E. long. |
|---|---|---|
| B | 14°00′ | 143°38′ |
| C | 13°41′ | 143°33′33" |
| D | 13°00′ | 143°25′30" |
| E | 12°20′ | 143°37′ |
| F | 11°40′ | 144°09′ |
| G | 12°00′ | 145°00′ |
| H | 13°00′ | 145°42′ |
| I | 13°27′ | 145°51′ |

(4) *CNMI.* The CNMI longline fishing prohibited area is the portion of the EEZ around the CNMI bounded by straight lines connecting the following coordinates in the order listed:

| Point | N. lat. | E. long. |
|---|---|---|
| A | 14°00′ | 144°34′ |
| B | 15°49′ | 145°29′ |
| C | 16°21′ | 145°06′ |
| D | 17°03′ | 145°22′ |
| E | 19°07′ | 145°09′ |
| F | 20°39′ | 144°19′ |
| G | 21°04′ | 145°06′ |
| H | 19°19′ | 146°04′ |
| I | 16°00′ | 146°32′ |
| J | 13°32′ | 145°32′ |
| A | 14°00′ | 144°34′ |

(b) *American Samoa large vessel prohibited areas.* A large vessel of the United States may not be used to fish for western Pacific pelagic MUS in the American Samoa large vessel prohibited areas as defined in paragraphs (b)(1) and (b)(2) of this section, except as allowed pursuant to an exemption issued under § 665.818.

(1) *Tutuila Island, Manua Islands, and Rose Atoll (AS–1).* The Tutuila Island, Manua Islands, and Rose Atoll large vessel prohibited area is the portion of the EEZ around American Samoa enclosed by straight lines connecting the following coordinates:

| Point | S. lat. | W. long. |
|---|---|---|
| AS–1–A | 13°30′ | 167°25′ |
| AS–1–B | 15°13′ | 167°25′ |
| and from Point AS–1–A westward along the latitude 13°30′ S. until intersecting the U.S. EEZ boundary with Samoa, and from Point AS–1–B westward along the latitude 15°13′ S. until intersecting the U.S. EEZ boundary with Samoa. | | |

(2) *Swains Island (AS–2).* The Swains Island large vessel prohibited area is the portion of the EEZ around American Samoa enclosed by straight lines connecting the following coordinates:

| Point | S. lat. | W. long. |
|---|---|---|
| AS–2–A | 11°48′ | 171°50′ |
| AS–2–B | 11°48′ | 170°20′ |
| and from Point AS–2–A northward along the longitude 171°50′ W. until intersecting the U.S. EEZ boundary with Tokelau, and from Point AS–2–B northward along the longitude 170°20′ W. until intersecting the U.S. EEZ boundary with Tokelau. | | |

■ 4. Revise the section heading in § 665.807 to read as follows:

**§ 665.807 Exemptions for Hawaii longline fishing prohibited areas; procedures.**

* * * * *

**§ 665.817 [Removed and Reserved]**

■ 5. Remove and reserve § 665.817.

[FR Doc. 2011–16039 Filed 6–24–11; 8:45 am]

BILLING CODE 3510–22–P

# Proposed Rules

Federal Register
Vol. 76, No. 123
Monday, June 27, 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.

## FEDERAL TRADE COMMISSION

## 16 CFR Part 312

## Children's Online Privacy Protection Rule; Aristotle International, Inc.'s Application for Safe Harbor Proposed Self-Regulatory Guidelines

**AGENCY:** Federal Trade Commission (FTC or Commission).

**ACTION:** Third party submission of proposed ''safe harbor'' guidelines; request for public comment.

**SUMMARY:** The Federal Trade Commission publishes a notice and request for public comment concerning proposed self-regulatory guidelines submitted by Aristotle International, Inc. (Aristotle) under the safe harbor provision of the Children's Online Privacy Protection Rule.

**DATES:** Written comments must be received by August 8, 2011.

**ADDRESSES:** Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Aristotle Application for Safe Harbor, Project No. P–114509'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/aristotle,* by following the instructions on the Web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex B), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Phyllis Marcus, Attorney, (202) 326–2854, or Mamie Kresses, Attorney, (202) 326–2070, Division of Advertising Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:**

### Section A. Background

On October 20, 1999, the Commission issued its final Rule [1] pursuant to the Children's Online Privacy Protection Act, 15 U.S.C. 6501 *et seq,* which became effective on April 21, 2000.[2] The Rule requires certain Web site operators to post privacy policies, provide notice, and obtain parental consent prior to collecting, using, or disclosing personal information from children. The Rule contains a ''safe harbor'' provision enabling industry groups or others to submit to the Commission for approval self-regulatory guidelines that would implement the Rule's protections.[3]

Pursuant to Section 312.10 of the Rule, Aristotle has submitted proposed self-regulatory guidelines to the Commission for approval. The full text of the proposed guidelines is available on the Commission's Web site, at *http://www.ftc.gov/os/2011/06/110621aristotlerequest.pdf.*

### Section B. Questions on the Proposed Guidelines

The Commission is seeking comment on various aspects of the proposed guidelines, and is particularly interested in receiving comment on the questions that follow. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted. Responses to these questions should cite the numbers and subsection of the questions being answered. For all comments submitted, please provide any relevant data, statistics, or any other evidence, upon which those comments are based.

1. Please provide comments on any or all of the provisions in the proposed guidelines. For each provision commented on please describe (a) The impact of the provision(s) (including any benefits and costs), if any, and (b) what alternatives, if any, Aristotle should consider, as well as the costs and benefits of those alternatives.

2. Do the provisions of the proposed guidelines governing operators' information practices provide ''the same or greater protections for children'' as those contained in Sections 312.2–312.8 of the Rule? [4] Where possible, please cite the relevant sections of both the Rule and the proposed guidelines.

3. Are the mechanisms used to assess operators' compliance with the guidelines effective? [5] If not, please describe (a) how the proposed guidelines could be modified to satisfy the Rule's requirements, and (b) the costs and benefits of those modifications.

4. Are the incentives for operators' compliance with the guidelines effective? [6] If not, please describe (a) how the proposed guidelines could be modified to satisfy the Rule's requirements, and (b) the costs and benefits of those modifications.

5. Do the guidelines provide adequate means for resolving consumer complaints? If not, please describe (a) how the proposed guidelines could be modified to resolve consumer complaints adequately, and (b) the costs and benefits of those modifications.

### Section C. Invitation To Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before August 8, 2011. Write ''Aristotle Application for Safe Harbor, Project No. P–114509'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment doesn't include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment doesn't include any sensitive health information, like medical records or other individually identifiable health information. In addition, don't include any ''[t]rade secret or any commercial or

[1] 64 FR 59888 (1999).
[2] 16 CFR part 312.
[3] *See* 16 CFR 312.10; 64 FR at 59906–08, 59915.
[4] *See* 16 CFR 312.10(b)(1); 64 FR at 59915.
[5] *See* 16 CFR 312.10(b)(2); 64 FR at 59915.
[6] *See* 16 CFR 312.10(b)(3); 64 FR at 59915.

financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, don't include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[7] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *http://ftcpublic.commentworks.com/ftc/aristotle,* by following the instructions on the Web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Aristotle Application for Safe Harbor, Project No. P–114509'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex B), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before August 8, 2011. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

[7] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 2011–16007 Filed 6–24–11; 8:45 am]

BILLING CODE 6750–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 101

**[Docket No. FDA–2011–F–0171]**

### Food Labeling; Calorie Labeling of Articles of Food in Vending Machines; Correction

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a proposed rule that appeared in the **Federal Register** of April, 6, 2011 (76 FR 19238). To implement the vending machine labeling provisions of the Patient Protection and Affordable Care Act of 2010 (Affordable Care Act), FDA proposed requirements for providing calorie information for certain articles of food sold from vending machines. The document published with several errors including an incorrect contact phone number and an incomplete address. This document corrects those errors.

**FOR FURTHER INFORMATION CONTACT:** Daniel Y. Reese, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–2371.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 2011–8037, appearing in the **Federal Register** of April 6, 2011 (76 FR 19238), the following corrections are made:

1. On page 19238, in the second column, under **FOR FURTHER INFORMATION CONTACT** the phone number ''301–436–2371'' is corrected to read ''240–402–2371''.

2. On page 19239, in the third column, in the last paragraph, the last sentence, '' 'Act' is defined as the Federal Food, Drug, and Cosmetic Act.'' is removed.

3. On page 19243, in the first column, beginning in the 29th line, the phrase ''FDA is proposing in § 101.8(c)(2)(i)(B) and § 101.8(c)(2)(i)(C) that the calorie declaration * * *.'' is corrected to read ''FDA is proposing in § 101.8(c)(2)(i)(C) that the calorie declaration * * *.''

4. On page 19243, in the second column, in the first full paragraph, ''§ 101.8(c)(2)(ii)(B)'' is corrected to read ''§ 101.8(c)(2)(ii)(C)''.

5. On page 19255, in the first column, in proposed § 101.8(d)(3)(v), the phrase, ''FDA, White Oak Building 22, Rm. 0209, 10903 New Hampshire Ave., Silver Spring, MD 20993.'' is corrected to read ''FDA, CFSAN Menu and Vending Machine Labeling Registration, White Oak Building 22, Rm. 0209, 10903 New Hampshire Ave., Silver Spring, MD 20993.''

Dated: June 21, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–15983 Filed 6–24–11; 8:45 am]

BILLING CODE 4164–01–P

## NATIONAL LABOR RELATIONS BOARD

### 29 CFR Parts 101, 102, 103

**RIN 3142–AAO8**

### Representation Case Procedures

**AGENCY:** National Labor Relations Board.

**ACTION:** Proposed rule; notice of meeting.

**SUMMARY:** The National Labor Relations Board (NLRB or Board) invites interested parties to attend an open meeting with the Board and its staff on July 18, 2011. The Board meeting will be held from 9 a.m. until 4 p.m. The meeting will be held in the Margaret A. Browning Hearing Room (Room 11000), National Labor Relations Board, 1099 14th Street, NW., Washington, DC 20570. During the public meeting, interested persons may share their views on the proposed amendments to the Board's rules governing representation case procedures, published at 76 FR 15307 (June 22, 2011) and make other proposals for improving representation case procedures.

**DATES:** The meeting will be held on Monday, July 18, 2011, from 9 a.m. to 4 p.m. A second day of meetings may be scheduled for Tuesday, July 19, 2011, if necessary. Due to time and seating considerations, persons desiring to attend the meeting, or to make a presentation before the Board, must notify the NLRB staff, no later than 4 p.m. on Friday, July 1, 2011.

**ADDRESSES:** The public meeting will be held in the Margaret A. Browning Hearing Room (Room 11000), National Labor Relations Board, 1099 14th Street, NW., Washington, DC 20570. Requests to attend the meeting must be addressed to Mary Meyers, Administrative Assistant to the Chairman, National

Labor Relations Board, 1099 14th Street, NW., Suite 11100, Washington, DC 20570. Written requests may also be made electronically to *publicmeeting@nlrb.gov.* All communications must include the following words on the Subject Line—''*Request to Attend Public Meeting Regarding* RIN 3142–AA08.''

**FOR FURTHER INFORMATION CONTACT:** Mary Meyers, Administrative Assistant to the Chairman, National Labor Relations Board, 1099 14th Street, NW., Suite 11100, Washington, DC 20570; *Phone:* 202–273–1700; *E-mail: publicmeeting@nlrb.gov.*

**SUPPLEMENTARY INFORMATION:** The National Labor Relations Board will hold an open public meeting on Monday, July 18, 2011, from 9 a.m. until 4 p.m. A second day of meetings may be scheduled for Tuesday, July 19, 2011, if necessary. Pursuant to 5 U.S.C. 553(c), the purpose of the meeting will be to allow interested persons to participate in the rulemaking through oral presentation on the proposed amendments to the Board's rules governing representation-case procedures and to make any other proposals for improving representation case procedures.

On June 22, 2011, the NLRB published a Notice of Proposed Rulemaking (NPRM) (76 FR 15307), proposing to amend its rules and regulations governing the filing and processing of petitions relating to the representation of employees for purposes of collective bargaining with their employer. In addition to the comment procedure outlined in the NPRM, the NLRB is providing another opportunity for interested persons to provide their views to the Board on this important matter at the open public meeting.

Persons desiring to attend the meeting must notify the NLRB staff, in writing, at the above listed physical or e-mail address, by the deadline posted. If the person desires to make a presentation to the Board at the meeting, he or she is required to submit a brief outline of the presentation when making the request. In lieu of making an oral presentation, or in addition to such a presentation, interested persons may submit a written statement for the record or utilize the comment process described in the NPRM.

To attend the meeting, all potential attendees must include in their request: (1) Their full name, (2) organizational affiliation (if any), and (3), if they are appearing in a representative capacity, the names of any individuals or organizations on whose behalf they are appearing. Attendees are reminded to bring a photo identification card with them to the public meeting in order to gain admittance to the building. Due to the time and potential space limitations in the meeting room, the NLRB will notify persons of their attendance and/or speaking status (*i.e.,* preliminary date and time for their presentation) prior to the meeting. Time allocation for oral presentations will depend upon the number of persons who desire to make presentations to the Board. Persons making oral presentations should be prepared to summarize their written statements, if any, at the meeting. In the event that there are more requests for oral presentations than there are available time slots, the Board will allocate the available time slots in an effort to insure that a variety of viewpoints are represented at the hearing and that both individuals and organizations possessing substantial experience with and expertise concerning the Board's representation case procedures and members of the general public are heard. Subject to such allocations, available time slots will be assigned on a first-come-first-served basis.

*Agenda:* The meeting will be limited to issues related to the proposed amendments to the Board's rules governing representation-case procedures and other proposals for improving representation case procedures. A copy of the NPRM may also be obtained from the NLRB's Web site at: *http://www.nlrb.gov/nprm.*

Dated: June 21, 2011.

**Wilma B. Liebman,**

*Chairman.*

[FR Doc. 2011–15962 Filed 6–24–11; 8:45 am]

**BILLING CODE 7545–01–P**

## DEPARTMENT OF LABOR

### Office of Labor-Management Standards

### 29 CFR Parts 405 and 406

**RIN 1215–AB79**
**RIN 1245–AA03**

### Labor-Management Reporting and Disclosure Act; Interpretation of the ''Advice'' Exemption; Correction

**AGENCY:** Office of Labor-Management Standards, Department of Labor.

**ACTION:** Notice of proposed rulemaking; correction.

**SUMMARY:** This document corrects the preamble and the regulatory text of the notice of proposed rulemaking (NPRM) that was published in the **Federal Register** on June 21, 2011 (76 FR 36178), regarding the interpretation of Section 203 of the Labor-Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. 433, and corresponding revisions to the Form LM–10 Employer Report and to the Form LM–20 Agreement and Activities Report. This correction clarifies that the NPRM intended to propose a technical revision to 29 CFR 406.2, which was inadvertently omitted from the preamble and the proposed revised regulatory text of the NPRM.

**FOR FURTHER INFORMATION CONTACT:** Andrew R. Davis, Chief of the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5609, Washington, DC 20210, *olms-public@dol.gov,* (202) 693–0123 (this is not a toll-free number), (800) 877–8339 (TTY/TDD).

**SUPPLEMENTARY INFORMATION:** In a proposed rule published on June 21, 2011, in the **Federal Register**, 76 FR 36178, by the Office of Labor-Management Standards, Department of Labor, a proposed technical revision to 29 CFR 406.2 and a reference in the preamble setting out the revision were inadvertently omitted. Accordingly, the following corrections are made to this proposed rule.

### Corrections to the Notice of Proposed Rulemaking

1. In proposed rule, 76 FR 36178, beginning on page 36193 in the issue of June 21, 2011, make the following correction in the **SUPPLEMENTARY INFORMATION** Section. In the first column, the first paragraph of Section VI, correct the third sentence to read as follows:

The Department is also proposing revisions to sections 405.5, 405.7, and 406.2 of title 29 of the Code of Federal Regulations to update cross-references in those sections to the instructions.

2. In proposed rule, 76 FR 36178, beginning on page 36206 in the issue of June 21, 2011, make the following addition to the proposed revisions to 29 CFR 406, which appears in the third column, by adding the following:

5. Section 406.2 is amended by removing the phrase ''other than that required by Item C, 10, (c) of the Form,'' and adding in its place ''other than that required by Item 11.c. of the Form.''

Dated: June 21, 2011.

**John Lund,**

*Director, Office of Labor-Management Standards.*

[FR Doc. 2011–15960 Filed 6–24–11; 8:45 am]

**BILLING CODE 4510–CP–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

**[Docket No. USCG–2011–0545]**

**RIN 1625–AA08**

## Special Local Regulation for Marine Events; Temporary Change of Dates for Recurring Marine Events in the Fifth Coast Guard District, John H. Kerr Reservoir, Clarksville VA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to temporarily change the enforcement period of special local regulations for one recurring marine event in the Fifth Coast Guard District, specifically, the ''Clarksville Hydroplane Challenge,'' hydroplane races on the waters of the John H. Kerr Reservoir. Because this event will consist of approximately 80 hydroplane powerboats conducting high-speed competitive races in heats counter-clockwise around an oval racecourse on the water of the John H. Kerr Reservoir, this regulation is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the John H. Kerr Reservoir in Clarksville, Virginia during the event.

**DATES:** Comments and related material must be received by the Coast Guard on or before July 27, 2011.

**ADDRESSES:** You may submit comments identified by docket number USCG–2011–0545 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or e-mail. If you have questions on this temporary rule, call or e-mail LCDR Christopher O'Neal, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757–668–5581, e-mail *Christopher.A.ONeal@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

*Submitting Comments*

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0545), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2011–0545'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

*Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–0545'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation, West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

*Privacy Act*

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

*Public Meeting*

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact LCDR Christopher O'Neal at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

### Basis and Purpose

Marine events are frequently held on the navigable waters within the boundary of Fifth Coast Guard District. The water activities that typically comprise marine events include sailing regattas, power boat races, swim races and holiday parades. For a description of the geographical area of each Coast

Guard Sector—Captain of the Port Zone, please see 33 CFR 3.25.

This regulation proposes to temporarily change the enforcement period of special local regulations for one recurring marine event within Fifth Coast Guard District. This proposed regulation applies to one marine event in 33 CFR 100.501, Table to § 100.501.

On September 24 and 25, 2011, the Cambridge Power Boat Racing Association will sponsor the ''Clarksville Hydroplane Challenge'' hydroplane races on the waters of the John H. Kerr Reservoir. The regulation at 33 CFR 100.501 is effective annually for this hydroplane boat race marine event. The event will consist of approximately 80 hydroplane powerboats conducting high-speed competitive races in heats counter-clockwise around an oval racecourse on the water of the John H. Kerr Reservoir adjacent to Occoneechee State Park, Clarksville, Virginia and State Route 15 Highway Bridge. A fleet of spectator vessels is expected to gather near the event site to view the competition. To provide for the safety of participants, spectators, support and transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during the hydroplane races. The regulation at 33 CFR 100.501 would be enforced for the duration of the event. Under the provisions of 33 CFR 100.501, from 9 a.m. to 6 p.m. on September 24 and 25, 2011, vessels may not enter the regulated area unless they receive permission from the Coast Guard Patrol Commander.

## Discussion of Proposed Rule

The Coast Guard is establishing a temporary special local regulation on specified waters of John H. Kerr Reservoir, in Clarksville, Virginia. The regulated area will be established in the interest of public safety during the ''Clarksville Hydroplane Challenge'', and will be enforced from 9 a.m. to 6 p.m. on September 24 and 25, 2011. The Coast Guard, at its discretion, when practical will allow the passage of vessels when races are not taking place. Except for participants and vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the regulated area.

## Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

### *Regulatory Planning and Review*

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that those Orders.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. Although this rule prevents traffic from transiting a portion of certain waterways during specified times, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts, local radio stations and area newspapers so mariners can adjust their plans accordingly. Additionally, this rulemaking does not change the permanent regulated areas that have been published in 33 CFR 100.501, Table to § 100.501. In some cases vessel traffic may be able to transit the regulated area when the Coast Guard Patrol Commander deems it is safe to do so.

### *Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit this section of the John H. Kerr Reservoir during the event.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it. This regulation will not have a significant impact on a substantial number of small entities because: (i) It will be enforced only for a short period of time on two consecutive days; (ii) vessels may be granted the opportunity to transit the safety zone during the period of enforcement if the Patrol Commander deems it safe to do so; (iii) vessels may transit around the safety zone; and (iv) before the enforcement period, the Coast Guard will issue maritime advisories so mariners can adjust their plans accordingly.

### *Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LCDR Christopher O'Neal. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

### *Collection of Information*

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### *Federalism*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

### *Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the

effects of this rule elsewhere in this preamble.

*Taking of Private Property*

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

*Civil Justice Reform*

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

*Protection of Children*

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

*Indian Tribal Governments*

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*Energy Effects*

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

*Technical Standards*

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

*Environment*

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction. This rule involves implementation of regulations within 33 CFR part 100 that apply to organized marine events on the navigable waters of the United States that may have potential for negative impact on the safety or other interest of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, and sail board racing. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233.

2. In § 100.501, suspend line No. 47 in the Table to § 100.501.

3. In § 100.501, on September 24 and 25, 2011, add line No. 62 in Table to § 100.501; to be enforced from 9 a.m. to 6 p.m. on September 24, 2011 and from 9 a.m. to 6 p.m. on September 25, 2011, to read as follows:

**§ 100.501 Special Local Regulations; Marine Events in the Fifth Coast Guard District.**

* * * * *

TABLE TO § 100.501–ALL COORDINATES LISTED IN THE TABLE TO § 100.501 REFERENCE DATUM NAD 1983

| Number | Date | Event | Sponsor | Location |
|---|---|---|---|---|
| * | * | * | * | * * * |
| **Coast Guard Sector Hampton Roads—COTP Zone** | | | | |
| 62 ..... | September 24 and 25, 2011. | Clarksville Hydroplane Challenge. | Cambridge Power Boat Racing Assoc. | The waters of the John H. Kerr Reservoir, adjacent to the State Route 15 Highway Bridge and Occoneechee State Park, Clarksville, Virginia, from shoreline to shoreline, bounded on the south by a line running northeasterly from a point along the shoreline at latitude 36°37′14″ N, longitude 078°32′46.5″ W, thence to latitude 36°37′39.2″ N, longitude 078°32′08.8″ W, and bounded on the north by the State Route 15 Highway Bridge. |

* * * * *

Dated: June 16, 2011.

**Mark S. Ogle,**

*Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.*

[FR Doc. 2011–15971 Filed 6–24–11; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF COMMERCE

## United States Patent and Trademark Office

## 37 CFR Parts 1 and 41

**[PTO–C–2010–0019]**

**RIN 0651–AC44**

## Revision of Patent Fees for Fiscal Year 2012

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** The United States Patent and Trademark Office (Office) is proposing to adjust certain patent fee amounts for fiscal year 2012 to reflect fluctuations in the Consumer Price Index (CPI). The patent statute provides for the annual CPI adjustment of patent fees set by statute to recover the higher costs associated with doing business.

**DATES:** Written comments must be received on or before July 27, 2011. No public hearing will be held.

**ADDRESSES:** You may submit comments, identified by RIN number RIN 0651–AC44, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: Walter.Schlueter@uspto.gov.* Include RIN number RIN 0651–AC44 in the subject line of the message.
- *Fax:* (571) 273–6299, marked to the attention of Walter Schlueter.
- *Mail:* Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Walter Schlueter.

*Instructions:* All submissions received must include the agency name and Regulatory Information Number (RIN) for this proposed rule making. For additional information on the rule making process, see the heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Walter Schlueter by e-mail at *Walter.Schlueter@uspto.gov,* by telephone at (571) 272–6299, or by fax at (571) 273–6299.

**SUPPLEMENTARY INFORMATION:** The USPTO is proposing to adjust certain patent fees in accordance with the applicable provisions of title 35, United States Code, as amended by the Consolidated Appropriations Act (Pub. L. 108–447, 118 Stat. 2809 (2004)).

*Background: Statutory Provisions:* Patent fees are set by or under the authority provided in 35 U.S.C. 41, 119, 120, 132(b), 156, 157(a), 255, 302, 311, 376, section 532(a)(2) of the Uruguay Round Agreements Act (URAA) (Pub. L. 103–465, § 532(a)(2), 108 Stat. 4809, 4985 (1994)), and section 4506 of the American Inventors Protection Act of 1999 (AIPA) (Pub. L. 106–113, 113 Stat. 1501, 1501A–565 (1999)). For fees paid under 35 U.S.C. 41(a) and (b) and 132(b), independent inventors, small business concerns, and nonprofit organizations who meet the requirements of 35 U.S.C. 41(h)(1) are entitled to a fifty-percent reduction.

Section 41(f) of title 35, United States Code, provides that fees established under 35 U.S.C. 41(a) and (b) may be adjusted on October 1, 1992, and every year thereafter, to reflect fluctuations in the CPI over the previous twelve months.

Section 41(g) of title 35, United States Code, provides that new fee amounts established by the Director under 35 U.S.C. 41 may take effect thirty days after notice in the **Federal Register** and the *Official Gazette of the United States Patent and Trademark Office.*

The fiscal year 2005 Consolidated Appropriations Act (section 801 of Division B) provided that 35 U.S.C. 41(a), (b), and (d) shall be administered in a manner that revises patent application fees (35 U.S.C. 41(a)) and patent maintenance fees (35 U.S.C. 41(b)), and provides for a separate filing fee (35 U.S.C. 41(a)), search fee (35 U.S.C. 41(d)(1)), and examination fee (35 U.S.C. 41(a)(3)) during fiscal years 2005 and 2006. *See* Pub. L. 108–447, 118 Stat. 2809, 2924–30 (2004). The patent and trademark fee provisions of the fiscal year 2005 Consolidated Appropriations Act have been extended through September 30, 2011, via the Omnibus Appropriations Act, 2009. *See* Pub. L. 112–4, 125 Stat. 6 (2011); Pub. L. 111–322, 124 Stat. 3518 (2010); Pub. L. 111–317, 124 Stat. 3454 (2010); Pub. L. 111–290, 124 Stat. 3063 (2010); Pub. L. 111–242, 124 Stat. 2607 (2010); Pub. L. 111–224, 124 Stat. 2385 (2010); Pub. L. 111–117, 123 Stat. 3034 (2009); Pub. L. 111–8, 123 Stat. 524 (2009); Pub. L. 111–6, 123 Stat. 522 (2009); Pub. L. 111–5, 123 Stat. 115 (2009); Pub. L. 110–329, 122 Stat. 3574 (2008); Pub. L. 110–161, 121 Stat. 1844 (2007); Pub. L. 110–149, 121 Stat. 1819 (2007); Pub. L. 110–137, 121 Stat. 1454 (2007); Pub. L. 110–116, 121 Stat. 1295 (2007); Pub. L. 110–92, 121 Stat. 989 (2007); Pub. L. 110–5, 121 Stat. 8 (2007); Pub. L. 109–383, 120 Stat. 2678 (2006); Pub. L. 109–369, 120 Stat. 2642 (2006); and Pub. L. 109–289, 120 Stat. 1257 (2006). The USPTO anticipates the enactment of legislation that would extend the patent and trademark fee provisions of the fiscal year 2005 Consolidated Appropriations Act through fiscal year 2012.

*Fee Adjustment Level:* The patent statutory fees established by 35 U.S.C. 41(a) and (b) are proposed to be adjusted to reflect the most recent fluctuations occurring during the twelve-month period prior to publication of the final rule, as measured by the *Consumer Price Index for All Urban Consumers* (CPI–U). The Office of Management and Budget (OMB) has advised that in calculating these fluctuations, the USPTO should use CPI–U data as determined by the Secretary of Labor.

In accordance with previous fee-setting methodology, the USPTO proposes to adjust patent statutory fee amounts based on the most recent annual increase in the CPI–U, as reported by the Secretary of Labor, at the time the final rule is implemented. Proposed adjusted fee amounts are not included in this proposed rule in order to avoid confusion that could arise from using projected increases in the proposed rule that may not end up matching actual increases at the time of the final rule. Annual increases to the CPI–U are published monthly, and before the final fee amounts are published, the fee amounts may be adjusted based on actual fluctuations in the CPI–U. Adjusted patent statutory fee amounts based on the most recent annual increase in the CPI–U, as reported by the Secretary of Labor, will be published in a final rules notice.

The fee amounts will be rounded by applying standard arithmetic rules so that the amounts rounded will be convenient to the user. Fees for other than a small entity of $100 or more will be rounded to the nearest $10. Fees of less than $100 will be rounded to an even number so that any comparable small entity fee will be a whole number.

*General Procedures:* Any fee amount that is paid on or after the effective date of the proposed fee adjustment would be subject to the new fees then in effect. The amount of the fee to be paid will be determined by the time of filing. The time of filing will be determined either according to the date of receipt in the Office (37 CFR 1.6) or the date reflected on a proper Certificate of Mailing or

Transmission, where such a certificate is authorized under 37 CFR 1.8. Use of a Certificate of Mailing or Transmission is not authorized for items that are specifically excluded from the provisions of 37 CFR 1.8. Items for which a Certificate of Mailing or Transmission under 37 CFR 1.8 is not authorized include, for example, filing of national and international applications for patents. *See* 37 CFR 1.8(a)(2).

Patent-related correspondence delivered by the ''Express Mail Post Office to Addressee'' service of the United States Postal Service (USPS) is considered filed or received in the USPTO on the date of deposit with the USPS. *See* 37 CFR 1.10(a)(1). The date of deposit with the USPS is shown by the ''date-in'' on the ''Express Mail'' mailing label or other official USPS notation.

To ensure clarity in the implementation of the proposed new fees, a discussion of specific sections is set forth below.

**Discussion of Specific Rules**

*37 CFR 1.16 National application filing, and examination fees:* Section 1.16, paragraphs (a) through (e), (h) through (j) and (o) through (s), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI–U.

*37 CFR 1.17 Patent application and reexamination processing fees:* Section 1.17, paragraphs (a)(1) through (a)(5), (l), and (m), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI–U.

*37 CFR 1.18 Patent post allowance (including issue) fees:* Section 1.18, paragraphs (a) through (c), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI–U.

*37 CFR 1.20 Post issuance fees:* Section 1.20, paragraphs (c)(3)–(c)(4), and (d) through (g), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI–U.

*37 CFR 1.492 National stage fees:* Section 1.492, paragraphs (a), (c)(2), (d) through (f) and (j), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI–U.

*37 CFR 41.20 Fees:* Section 41.20, paragraphs (b)(1) through (b)(3), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI–U.

*Example of Fee Amount Adjustments:* Adjusted patent statutory fee amounts based on the most recent annual increase in the CPI–U, as reported by the Secretary of Labor, will be published in a final rules notice. Table 1 provides examples of possible fee adjustments based on the February 2010 to February 2011 annual CPI–U increase of 2.3%.

TABLE 1

| 37 CFR | Title | Current fee amount | Fee amount (2.3% increase) | Fee adjustment |
|---|---|---|---|---|
| 1.16(a)(1) | Filing of Utility Patent Application (on or after 12/8/2004) | $330, (SE) $165 | $340, (SE) $170 | $10, (SE) $5. |
| 1.16(a)(1) | Filing of Utility Patent Application (electronic filing for small entities)(on or after 12/8/2004). | $82 | $84 | $2. |
| 1.16(a)(2) | Utility Application Filing (before 12/8/2004) | $850, (SE) $425 | $870, (SE) $435 | $20, (SE) $10. |
| 1.16(b)(1) | Filing of Design Patent Application (on or after 12/8/2004) | $220, (SE) $110 | $230, (SE) $115 | $10, (SE) $5. |
| 1.16(b)(1) | Filing of Design Patent Application (CPA) (on or after 12/8/2004). | $220, (SE) $110 | $230, (SE) $115 | $10, (SE) $5. |
| 1.16(b)(2) | Design Application Filing (before 12/8/2004) | $380, (SE) $190 | $390, (SE) $195 | $10, (SE) $5. |
| 1.16(b)(2) | Design Application Filing (CPA) (before 12/8/2004) | $380, (SE) $190 | $390, (SE) $195 | $10, (SE) $5. |
| 1.16(c)(1) | Filing of Plant Patent Application (on or after 12/8/2004) | $220, (SE) $110 | $230, (SE) $115 | $10, (SE) $5. |
| 1.16(c)(2) | Plant Application Filing (before 12/8/2004) | $600, (SE) $300 | $610, (SE) $305 | $10, (SE) $5. |
| 1.16(d) | Provisional Application Filing | $220, (SE) $110 | $230, (SE) $115 | $10, (SE) $5. |
| 1.16(e)(1) | Filing of Reissue Patent Application (on or after 12/8/2004). | $330, (SE) $165 | $340, (SE) $170 | $10, (SE) $5. |
| 1.16(e)(1) | Filing of Reissue Patent Application (CPA) (on or after 12/8/2004). | $330, (SE) $165 | $340, (SE) $170 | $10, (SE) $5. |
| 1.16(e)(2) | Reissue Application Filing (before 12/8/2004) | $850, (SE) $425 | $870, (SE) $435 | $20, (SE) $10. |
| 1.16(e)(2) | Reissue Application Filing (CPA) (before 12/8/2004) | $850, (SE) $425 | $870, (SE) $435 | $20, (SE) $10. |
| 1.16(h) | Independent Claims in Excess of Three | $220, (SE) $110 | $230, (SE) $115 | $10, (SE) $5. |
| 1.16(h) | Reissue Independent Claims in Excess of Three | $220, (SE) $110 | $230, (SE) $115 | $10, (SE) $5. |
| 1.16(i) | Claims in Excess of Twenty | $52, (SE) $26 | $52, (SE) $26 | $0, (SE) $0. |
| 1.16(i) | Reissue Total Claims in Excess of Twenty | $52, (SE) $26 | $52, (SE) $26 | $0, (SE) $0. |
| 1.16(j) | Multiple Dependent Claims | $390, (SE) $195 | $400, (SE) $200 | $10, (SE) $5. |
| 1.16(o) | Utility Patent Examination | $220, (SE) $110 | $230, (SE) $115 | $10, (SE) $5. |
| 1.16(p) | Design Patent Examination | $140, (SE) $70 | $140, (SE) $70 | $0, (SE) $0. |
| 1.16(q) | Plant Patent Examination | $170, (SE) $85 | $170, (SE) $85 | $0, (SE) $0. |
| 1.16(r) | Reissue Patent Examination | $650, (SE) $325 | $660, (SE) $330 | $10, (SE) $5. |
| 1.16(s) | Utility Application Size Fee—For each additional 50 sheets that exceeds 100 sheets. | $270, (SE) $135 | $280, (SE) $140 | $10, (SE) $5. |
| 1.16(s) | Design Application Size Fee—For each additional 50 sheets that exceeds 100 sheets. | $270, (SE) $135 | $280, (SE) $140 | $10, (SE) $5. |
| 1.16(s) | Plant Application Size Fee—For each additional 50 sheets that exceeds 100 sheets. | $270, (SE) $135 | $280, (SE) $140 | $10, (SE) $5. |
| 1.16(s) | Reissue Application Size Fee—For each additional 50 sheets that exceeds 100 sheets. | $270, (SE) $135 | $280, (SE) $140 | $10, (SE) $5. |
| 1.16(s) | Provisional Application Size Fee—For each additional 50 sheets that exceeds 100 sheets. | $270, (SE) $135 | $280, (SE) $140 | $10, (SE) $5. |
| 1.17(a)(1) | Extension for Response within First Month | $130, (SE) $65 | $130, (SE) $65 | $0, (SE) $0. |
| 1.17(a)(2) | Extension for Response within Second Month | $490, (SE) $245 | $500, (SE) $250 | $10, (SE) $5. |
| 1.17(a)(3) | Extension for Response within Third Month | $1,110, (SE) $555 | $1,120, (SE) $560 | $10, (SE) $5. |
| 1.17(a)(4) | Extension for Response within Fourth Month | $1,730, (SE) $865 | $1,740, (SE) $870 | $10, (SE) $5. |
| 1.17(a)(5) | Extension for Response within Fifth Month | $2,350, (SE) $1,175 | $2,360, (SE) $1,180 | $10, (SE) $5. |
| 1.17(l) | Petition to Revive Unavoidably Abandoned Application | $540, (SE) $270 | $550, (SE) $275 | $10, (SE) $5. |

TABLE 1—Continued

| 37 CFR | Title | Current fee amount | Fee amount (2.3% increase) | Fee adjustment |
|---|---|---|---|---|
| 1.17(m) | Petition to Revive Unintentionally Abandoned Application | $1,620, (SE) $810 | $1,660, (SE) $830 | $40, (SE) $20. |
| 1.18(a) | Utility Issue | $1,510, (SE) $755 | $1,540, (SE) $770 | $30, (SE) $15. |
| 1.18(a) | Reissue Issue | $1,510, (SE) $755 | $1,540, (SE) $770 | $30, (SE) $15. |
| 1.18(b) | Design Issue | $860, (SE) $430 | $880, (SE) $440 | $20, (SE) $10. |
| 1.18(c) | Plant Issue | $1,190, (SE) $595 | $1,220, (SE) $610 | $30, (SE) $15. |
| 1.20(c)(3) | Reexamination Independent Claims in Excess of Three | $220, (SE) $110 | $230, (SE) $115 | $10, (SE) $5. |
| 1.20(c)(4) | Reexamination Total Claims in Excess of Twenty | $52, (SE) $26 | $52, (SE) $26 | $0, (SE) $0. |
| 1.20(d) | Statutory Disclaimer | $140, (SE) $70 | $140, (SE) $70 | $0, (SE) $0. |
| 1.20(e) | First Stage Maintenance | $980, (SE) $490 | $1,000, (SE) $500 | $20, (SE) $10. |
| 1.20(f) | Second Stage Maintenance | $2,480, (SE) $1,240 | $2,540, (SE) $1,270 | $60, (SE) $30. |
| 1.20(g) | Third Stage Maintenance | $4,110, (SE) $2,055 | $4,200, (SE) $2,100 | $90, (SE) $45. |
| 1.492(a) | Filing of PCT National Stage Application | $330, (SE) $165 | $340, (SE) $170 | $10, (SE) $5. |
| 1.492(c)(2) | PCT National Stage Examination—All Other Situations | $220, (SE) $110 | $230, (SE) $115 | $10, (SE) $5. |
| 1.492(d) | Independent Claims in Excess of Three | $220, (SE) $110 | $230, (SE) $115 | $10, (SE) $5. |
| 1.492(e) | Total Claims in Excess of Twenty | $52, (SE) $26 | $52, (SE) $26 | $0, (SE) $0. |
| 1.492(f) | Multiple Dependent Claims | $390, (SE) $195 | $400, (SE) $200 | $10, (SE) $5. |
| 1.492(j) | PCT National Stage Application Size Fee | $270, (SE) $135 | $280, (SE) $140 | $10, (SE) $5. |
| 41.20(b)(1) | Notice of Appeal | $540, (SE) $270 | $550, (SE) $275 | $10, (SE) $5. |
| 41.20(b)(2) | Filing a Brief in Support of an Appeal | $540, (SE) $270 | $550, (SE) $275 | $10, (SE) $5. |
| 41.20(b)(3) | Request for Oral Hearing | $1,080, (SE) $540 | $1,100, (SE) $550 | $20, (SE) $10. |

**Rulemaking Considerations**

*Initial Regulatory Flexibility Analysis:*

1. *Description of the reasons that action by the agency is being considered:* The USPTO is proposing to adjust the patent fees set under 35 U.S.C. 41(a) and (b) to ensure proper funding for effective operations. The patent fee CPI adjustment is a routine adjustment that has generally occurred on an annual basis when necessary to recover the higher costs of USPTO operations that occur due to the increase in the price of products and services.

2. *Succinct statement of the objectives of, and legal basis for, the proposed rules:* The objective of the proposed change is to adjust patent fees set under 35 U.S.C. 41(a) and (b) to recover the higher costs of USPTO operations. Patent fees are set by or under the authority provided in 35 U.S.C. 41, 119, 120, 132(b), 156, 157(a), 255, 302, 311, 376, section 532(a)(2) of the URAA, and 4506 of the AIPA. 35 U.S.C. 41(f) provides that fees established under 35 U.S.C. 41(a) and (b) may be adjusted every year to reflect fluctuations in the CPI over the previous twelve months.

3. *Description and estimate of the number of affected small entities:* The Small Business Administration (SBA) small business size standards applicable to most analyses conducted to comply with the Regulatory Flexibility Act are set forth in 13 CFR 121.201. These regulations generally define small businesses as those with fewer than a maximum number of employees or less than a specified level of annual receipts for the entity's industrial sector or North American Industry Classification System (NAICS) code. The USPTO, however, has formally adopted an alternate size standard as the size standard for the purpose of conducting an analysis or making a certification under the Regulatory Flexibility Act for patent-related regulations. *See Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations,* 71 FR 67109 (Nov. 20, 2006), 1313 *Off. Gaz. Pat. Office* 60 (Dec. 12, 2006). This alternate small business size standard is the previously established size standard that identifies the criteria entities must meet to be entitled to pay reduced patent fees. *See* 13 CFR 121.802. If patent applicants identify themselves on the patent application as qualifying for reduced patent fees, the USPTO captures this data in the Patent Application Location and Monitoring (PALM) database system, which tracks information on each patent application submitted to the USPTO.

Unlike the SBA small business size standards set forth in 13 CFR 121.201, this size standard is not industry-specific. Specifically, the USPTO definition of small business concern for Regulatory Flexibility Act purposes is a business or other concern that: (1) Meets the SBA's definition of a ''business concern or concern'' set forth in 13 CFR 121.105; and (2) meets the size standards set forth in 13 CFR 121.802 for the purpose of paying reduced patent fees, namely an entity: (a) whose number of employees, including affiliates, does not exceed 500 persons; and (b) which has not assigned, granted, conveyed, or licensed (and is under no obligation to do so) any rights in the invention to any person who made it and could not be classified as an independent inventor, or to any concern which would not qualify as a non-profit organization or a small business concern under this definition. *See Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations,* 71 FR at 67112 (November 20, 2006), 1313 *Off. Gaz. Pat. Office* at 63 (December 12, 2006).

The changes in this proposed rule will apply to any small entity that files a patent application, or has a pending patent application or unexpired patent. The changes in this proposed rule will specifically apply when an applicant or patentee pays an application filing or national stage entry fee, search fee, examination fee, extension of time fee, notice of appeal fee, appeal brief fee, request for an oral hearing fee, petition to revive fee, issue fee, or patent maintenance fee.

The USPTO has been advised that a number of small entity applicants and patentees do not claim small entity status for various reasons. *See Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations,* 71 FR at 67110 (November 20, 2006), 1313 *Off. Gaz. Pat. Office* at 61 (December 12, 2006). Therefore, the USPTO is also considering all other entities paying patent fees as well.

4. *Description of the projected reporting, recordkeeping and other compliance requirements of the proposed rules, including an estimate of the classes of small entities which will*

*be subject to the requirement and the type of professional skills necessary for preparation of the report or record:* This notice does not propose any reporting, recordkeeping and other compliance requirements. This notice proposes only to adjust patent fees (as discussed previously) to reflect changes in the CPI.

5. *Description of any significant alternatives to the proposed rules which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rules on small entities:* The alternative of not adjusting patent fees would have a lesser economic impact on small entities, but would not accomplish the stated objectives of applicable statutes. The USPTO is proposing to adjust the patent fees to ensure proper funding for effective operations. The patent fee CPI adjustment is a routine adjustment that has generally occurred on an annual basis to recover the higher costs of USPTO operations that occur due to the increase in the price of products and services and to recover the estimated cost to the USPTO for processing activities and services and materials relating to patents and trademarks, respectively, including proportionate shares of the administrative costs of the USPTO. The lack of proper funding for effective operations would result in a significant increase in patent pendency levels.

6. *Identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rules:* The USPTO is the sole agency of the United States Government responsible for administering the provisions of title 35, United States Code, pertaining to examination and granting patents. Therefore, no other Federal, state, or local entity shares jurisdiction over the examination and granting of patents.

Other countries, however, have their own patent laws, and an entity desiring a patent in a particular country must make an application for patent in that country, in accordance with the applicable law. Although the potential for overlap exists internationally, this cannot be avoided except by treaty (such as the Paris Convention for the Protection of Industrial Property, or the Patent Cooperation Treaty (PCT)). Nevertheless, the USPTO believes that there are no other duplicative or overlapping rules.

B. *Executive Order 13132 (Federalism):* This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

C. *Executive Order 12866 (Regulatory Planning and Review):* This rule making has been determined to be significant for purposes of Executive Order 12866 (Sept. 30, 1993), as amended by Executive Order 13258 (Feb. 26, 2002), and Executive Order 13422 (Jan. 18, 2007).

D. *Executive Order 13563 (Improving Regulation and Regulatory Review):* The Office has complied with Executive Order 13563 (Jan. 8, 2011). Specifically, the Office has: (1) Used the best available techniques to quantify costs and benefits, and has considered values such as equity, fairness and distributive impacts; (2) provided the public with a meaningful opportunity to participate in the regulatory process, including soliciting the views of those likely affected, by issuing this notice of proposed rule making and providing on-line access to the rule making docket; (3) attempted to promote coordination, simplification and harmonization across government agencies and identified goals designed to promote innovation; (4) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (5) ensured the objectivity of scientific and technological information and processes, to the extent applicable.

E. *Executive Order 13175 (Tribal Consultation):* This rule making will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

F. *Executive Order 13211 (Energy Effects):* This rule making is not a significant energy action under Executive Order 13211 because this rule making is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

G. *Executive Order 12988 (Civil Justice Reform):* This rule making meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

H. *Executive Order 13045 (Protection of Children):* This rule making is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

I. *Executive Order 12630 (Taking of Private Property):* This rule making will not effect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

J. *Congressional Review Act:* Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the USPTO will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the Government Accountability Office. The changes proposed in this notice are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this rule making is not likely to result in a ''major rule'' as defined in 5 U.S.C. 804(2).

K. *Unfunded Mandates Reform Act of 1995:* The changes proposed in this notice do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

L. *National Environmental Policy Act:* This rule making will not have any effect on the quality of environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

M. *National Technology Transfer and Advancement Act:* The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are inapplicable because this rule making does not contain provisions which involve the use of technical standards.

N. *Paperwork Reduction Act:* This proposed rule involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under

the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The collections of information involved in this proposed rule have been reviewed and approved by OMB. The Office is not resubmitting information collection requests to OMB for its review and approval at this time because the changes proposed in this notice revise the fees for existing information collection requirements under OMB control numbers 0651–0016, 0651–0021, 0651–0024, 0651–0031, 0651–0032, 0651–0033, 0651–0063 and 0651–0064. The USPTO will submit to OMB fee revision changes for the OMB control numbers 0651–0016, 0651–0021, 0651–0024, 0651–0031, 0651–0032, 0651–0033, 0651–0063 and 0651–0064 if the changes proposed in this notice are adopted.

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.

**List of Subjects**

*37 CFR Part 1*

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

*37 CFR Part 41*

Administrative practice and procedure, Inventions and patents, Lawyers.

Dated: June 8, 2011.

**David J. Kappos,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 2011–16001 Filed 6–24–11; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R05–OAR–2010–0973; FRL–9319–3]**

### Approval and Promulgation of Air Quality Implementation Plans; Illinois; Royal Fiberglass Pools, Inc. Adjusted Standard

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve into the Illinois State Implementation Plan (SIP) an adjusted standard for Royal Fiberglass Pools (''Royal'') at its Dix, Illinois facility. On November 8, 2010, the Illinois Environmental Protection Agency (IEPA) submitted to EPA for approval an adjustment to the general rule, Use of Organic Material Rule, commonly known as the eight pound per hour (8 lb/hr) rule, as it applies to emissions of volatile organic matter (VOM) from Royal's pool manufacturing facility. The adjusted standard relieves Royal from being subject to the general rule for VOM emissions from its Dix facility. EPA is approving this SIP revision because it will not interfere with attainment or maintenance of the ozone National Ambient Air Quality Standard (NAAQS).

**DATES:** Comments must be received on or before July 27, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2010–0545, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: aburano.douglas@epa.gov*
3. *Fax:* (312) 408–2279.
4. *Mail:* Doug Aburano, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Doug Aburano, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Final Rules section of this **Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:** Carolyn Persoon, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8290, *persoon.carolyn@epa.gov.*

**SUPPLEMENTARY INFORMATION:** In the Final Rules section of this **Federal Register**, EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: June 3, 2011.

**Susan Hedman,**

*Regional Administrator, Region 5.*

[FR Doc. 2011–15868 Filed 6–24–11; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 98

**[EPA–HQ–OAR–2011–0417; FRL–9323–3]**

**RIN 2060–AP99**

### Mandatory Reporting of Greenhouse Gases: Petroleum and Natural Gas Systems: Revisions to Best Available Monitoring Method Provisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to amend certain provisions related to best available monitoring methods in regulations for Petroleum and Natural Gas Systems of the Greenhouse Gas Reporting Rule. Specifically, EPA is proposing to extend the time period during which owners and operators of covered facilities would be permitted to use best available monitoring methods during 2011 without submitting a request to the Administrator for approval. In addition, EPA is proposing to expand the list of types of emissions sources for which owners and operators would not be required to submit a request to the Administrator to use best available monitoring methods for 2011 and extend the deadline by which owners and operators of covered facilities would request use of best

available monitoring methods for beyond 2011. These proposed amendments are in response to a request for reconsideration of specific provisions.

**DATES:** *Comments.* Comments must be received on or before July 27, 2011, unless a public hearing is held, in which case comments must be received on or before August 11, 2011.

*Public Hearing.* A public hearing will be held if requested. To request a hearing, please contact the person listed in the following **FOR FURTHER INFORMATION CONTACT** section by July 5, 2011. If requested, the hearing will be conducted on July 12, 2011, in the Washington, DC area. EPA will provide further information about the hearing on its webpage if a hearing is requested.

**ADDRESSES:** You may submit your comments, identified by docket ID No. EPA–HQ–OAR–2011–0417 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *E-mail: GHG_Reporting_Rule_Oil_And_Natural_Gas@epa.gov.* Include Docket ID No. *EPA–HQ–OAR–2011–0417* in the subject line of the message.
- *Fax:* (202) 566–9744.
- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 28221T, Attention Docket ID No. EPA–HQ–OAR–2011–0147, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand/Courier Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, Attention Docket ID No. EPA–HQ–OAR–2011–0147, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. *EPA–HQ–OAR–2011–0417,* Mandatory Reporting of Greenhouse Gases: Petroleum and Natural Gas Systems. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the *http://www.regulations.gov index.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available for viewing at the EPA Docket Center. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* (202) 343–9263; *fax number:* (202) 343–2342; *e-mail address: GHGReportingRule@epa.gov.*

*Worldwide Web (WWW).* In addition to being available in the docket, an electronic copy of today's proposal will also be available through the WWW. Following the Administrator's signature, a copy of this action will be posted on EPA's greenhouse gas reporting rule Web site at *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.*

*Additional information on Submitting Comments.* To expedite review of your comments by Agency staff, you are encouraged to send a separate copy of your comments, in addition to the copy you submit to the official docket, to Carole Cook, U.S. EPA, Office of Atmospheric Programs, Climate Change Division, Mail Code 6207–J, Washington, DC 20460, telephone (202) 343–9263, *e-mail address: GHGReportingRule@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

*Organization of this document.* The information presented in this preamble is organized as follows:

I. General Information
A. Does this action apply to me?
B. Acronyms and Abbreviations
II. Background
III. Proposed Amendments to 40 CFR part 98
IV. Statutory and Executive Order Reviews
A. Executive Order 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 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

## I. General Information

### *A. Does this action apply to me?*

These are proposed amendments to optional methods under an existing regulation. If finalized, these amended regulations could affect owners or operators of petroleum and natural gas systems. Regulated categories and entities include those listed in Table 1 of this preamble:

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY

| Source category | NAICS | Examples of affected facilities |
|---|---|---|
| Petroleum and Natural Gas Systems | 486210 | Pipeline transportation of natural gas. |

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY—Continued

| Source category | NAICS | Examples of affected facilities |
|---|---|---|
| | 221210 | Natural gas distribution facilities. |
| | 211 | Extractors of crude petroleum and natural gas. |
| | 211112 | Natural gas liquid extraction facilities. |

Table 1 of this preamble is not intended to be exhaustive, but rather provides a guide for readers regarding facilities likely to be affected by this action. Although Table 1 of this preamble lists the types of facilities of which EPA is aware that could be potentially affected by this action, other types of facilities not listed in the table could also be affected. To determine whether you are affected by this action, you should carefully examine the applicability criteria found in 40 CFR part 98, subpart W or the relevant criteria in the sections related to petroleum and natural gas systems. If you have questions regarding the applicability of this action to a particular facility, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*B. Acronyms and Abbreviations*

The following acronyms and abbreviations are used in this document.

API American Petroleum Institute
AXPC American Exploration & Production Council
BAMM best available monitoring methods
CAA Clean Air Act
CBI confidential business information
CEC Chesapeake Energy Corporation
CFR Code of Federal Regulations
EO Executive Order
EPA U.S. Environmental Protection Agency
FR **Federal Register**
GHG greenhouse gas
IBR incorporation by reference
ICR information collection request
ISO International Organization for Standardization
MRR mandatory GHG reporting rule
OMB Office of Management and Budget
RFA Regulatory Flexibility Act
RIA Regulatory Impact Analysis
SBA Small Business Administration
SBREFA Small Business Regulatory Enforcement and Fairness Act
U.S. United States
UMRA Unfunded Mandates Reform Act of 1995
USC United States Code

## II. Background

The EPA published Subpart W: Petroleum and Natural Gas Systems of the Greenhouse Gas Reporting Rule on November 30, 2010, 40 CFR part 98, subpart W (75 FR 74458) (subpart W). Included in the final rule were new provisions that were added in response to comments on the proposal allowing owners or operators the option of using best available monitoring methods (BAMM) for specified parameters in 40 CFR 98.233.

As stated in the preamble to the 2009 final rule (74 FR 56260), CAA section 114 provides EPA broad authority to require the information required to be gathered under subpart W. As discussed in the preamble to the initial proposed rule (74 FR 16448, April 10, 2009), CAA section 114(a)(1) authorizes the Administrator to require emissions sources, persons subject to the CAA, manufacturers of control or process equipment, or persons whom the Administrator believes may have necessary information to monitor and report emissions and provide such other information the Administrator requests for the purposes of carrying out any provision of the CAA. For further information about EPA's legal authority, see the preamble to the April 2009 (74 FR 16448) proposal and October 2010 (74 FR 56260) final rules for the Mandatory Reporting of Greenhouse Gases.

Following the publication of subpart W in the **Federal Register**, several industry groups requested reconsideration of several provisions in the final rule, including the provisions for BAMM. In a follow up action, EPA granted reconsideration and extended specific BAMM deadlines in a rule that was promulgated on April 25, 2011 (76 FR 22825).

In further response to that request for reconsideration of specific BAMM provisions, EPA is seeking comment on several proposed amendments to the BAMM provisions in this proposal, including extension of the time period during which owners and operators of covered facilities with emissions sources listed in 40 CFR 98.234(f)(2), (f)(3), (f)(4), and (f)(5)(iv) would be permitted to use BAMM during calendar year 2011 without having to request approval from the Administrator. Additionally, EPA is seeking comment on the proposed amendment to the BAMM provisions beyond 2011 outlined in this proposal which includes an initial submission of a notice of intent to request use of BAMM beyond 2011 followed by a submission of a BAMM request consistent with 40 CFR 98.234(f)(8)(ii) to the Administrator for approval to use BAMM beyond 2011.

## III. Proposed Amendments to 40 CFR Part 98

Subpart W of the GHG reporting rule includes provisions allowing owners and operators of covered facilities to use BAMM in lieu of specified data input requirements for determining greenhouse gas emissions in certain circumstances for specified emissions sources. Methods that constitute BAMM are: Supplier data; monitoring methods currently used by the facility that do not meet the specifications of a relevant subpart; engineering calculations; and/or other company records. When using BAMM, the owner or operator must use the equations and calculation methods set forth in 40 CFR 98.233, but may use BAMM to estimate the parameters in the equations as specified in the rule.

EPA carefully evaluated each emissions source outlined in subpart W, and the required calculation methodologies for determining greenhouse gas emissions from that emissions source. Based on this evaluation, EPA has identified the specific emission sources for which the use of BAMM would be appropriate. Those emission sources are categorized into the following four groups.

*Well-related emissions.* This group of emissions sources includes those well-related data that cannot reasonably be measured according to the monitoring and QA/QC requirements of subpart W such as well testing, venting, and flaring, for example.

*Specified activity data.* This group includes those activity data that cannot reasonably be obtained according to the monitoring and QA/QC requirements specified in subpart W such as cumulative hours of venting, days, or times of operation, for example.

*Leak Detection and Measurement.* This group includes those sources of emissions that require leak detection and/or measurement such as the measurement of equipment leaks from valves and connectors.

*Unique or Unusual Circumstances.* These circumstances include emission sources not covered under the previous three categories for which the owner or operator of a covered facility is facing unique or unusual circumstances, such as data collection methods that do not meet safety regulations, technical

infeasibility such as a compressor never having maintenance during the calendar year rendering the installation of a port or meter difficult, or legal issues rendering them unable to meet the requirements of subpart W.

EPA is proposing the following amendments to subpart W:

- *Best available monitoring methods for well-related emissions.* EPA is proposing to extend the time period for use of BAMM without EPA approval, by three months, such that owners and operators of facilities with emissions sources listed in 40 CFR 98.234(f)(2) would not be required to request approval by the Administrator to use BAMM between January 1, 2011 and December 31, 2011.
- *Best available monitoring methods for specified activity data.* EPA is proposing to extend the time period for use of BAMM without EPA approval, by three months, such that owners and operators of facilities with emissions sources listed in 40 CFR 98.234(f)(3) would not be required to request approval by the Administrator to use BAMM between January 1, 2011 and December 31, 2011.
- *Best available monitoring methods for leak detection and measurement.* EPA is proposing to allow owners and operators of facilities with emissions sources listed in 40 CFR 98.234(f)(4) to use BAMM between January 1, 2011 and December 31, 2011 without having to request approval from the Administrator.
- *Best available monitoring methods for unique or unusual circumstances.* EPA is proposing to allow owners and operators of facilities with emissions sources listed in 40 CFR 98.234(f)(5)(iv) to use BAMM between January 1, 2011 and December 31, 2011 without having to request approval from the Administrator.
- *Best available monitoring methods for use beyond December 31, 2011.* EPA is proposing to revise the introductory sentence in 40 CFR 98.234(f)(8) by removing reference to extreme circumstances. In addition, EPA is proposing to amend 40 CFR 98.234(f)(8)(i) such that owners and operators of facilities with emissions sources listed in 40 CFR 98.234(f)(8) may submit a notice of intent to submit a request for BAMM beyond 2011 to EPA by December 31, 2011. Facilities that submit a BAMM request consistent with 40 CFR 98.234(f)(8)(ii) by March 30, 2012 who have also submitted a notice of intent by December 31, 2011 would automatically be granted BAMM through June 30, 2012. Facilities which submit such a notice of intent but do not follow up with a BAMM request by March 30, 2012 would not be allowed to use BAMM after December 31, 2011.

Following promulgation of subpart W on November 30, 2010, industry groups sought reconsideration of several provisions in the final rule, including the provisions allowing owners and operators of facilities with emissions sources listed in 40 CFR 98.234(f)(2), (f)(3),(f)(4), and (f)(5)(iv) to use BAMM.

By letter dated January 31, 2011, Chesapeake Energy Corporation (CEC) and the American Exploration & Production Council (AXPC) stated that ''BAMM should be allowed without EPA approval for entities reporting under subpart W for the entire first reporting year 2011 and for all data necessary to conduct the calculations required under the rule.'' Also, by letter dated January 31, 2011, the American Petroleum Institute (API) stated that ''[u]pon reconsideration, API requests that EPA provide pre-approval for (1) leak detection and measurement * * *'' and also ''[u]pon reconsideration, API requests that EPA allow BAMM to be used for the onshore production sector and activity data categories through December 31, 2011.''

EPA met with several trade associations and companies that own or operate facilities subject to subpart W. During those meetings, several companies requested an extension of the BAMM provisions in order to complete initial equipment inventories and to secure internal resources to report data to EPA in accordance with the rule requirements. In particular, companies stated that a large number of data points that are necessary to determine greenhouse gas emissions using the calculation methodologies outlined in subpart W are not currently tracked by internal company data systems and may not be managed by the company in such a way that would enable those data to be readily reported to EPA in a timely manner.

By letter dated May 3, 2011 API submitted information to EPA regarding the number of sources for which information must be collected. The letter states that ''[g]iven the extraordinary scope of Subpart W—both the hundreds of thousands of discrete sites and sources whose emissions must be quantified and reported and their broad geographic dispersion—compliance with the monitoring and reporting deadlines and the deadlines to apply for approval to extend the use of BAMM are not only unrealistic but infeasible.'' The letter further states that ''[t]he Onshore Petroleum and Natural Gas Production segment of the Petroleum and Natural Gas Systems source category (Onshore Production) alone covers *hundreds of thousands* [emphasis in original] of well sites along with tens of thousands of sites ''associated with a well pad'' (which is not defined or discussed in the rule). These sites are widely dispersed across hundreds of thousands of square miles in all of the oil and gas producing basins across the United States. The seven additional industry segments subject to subpart W extend this coverage to tens of thousands of additional offshore platforms, onshore sites and facilities, and natural gas distribution sites. Within each of these industry segments, subpart W mandates that reporters monitor and determine emissions from multiple source types; for example, the Onshore Production portion of the rule covers 22 distinct source types. Each of these source types requires the collection of a broad variety of information, data points, analyses, models, and/or measurements to determine emissions and submit emission reports.''

The letter also states that ''[t]he problems created by the large number of facilities that are subject to the rule are exacerbated by their wide geographic distribution. Unlike a chemical plant or a refinery, oil and natural gas operations are spread out over huge geographic areas and are typically not staffed at all times. Often there is no electricity, difficult access, and little existing infrastructure or communications ability at these disparate locations. Given this geographic dispersion of oil and natural gas facilities, installation of any additional equipment, monitors, and/or data acquisition and transmitting systems will be very challenging. Even traveling to each of these sites requires significant time and effort. When this is combined with the specific monitoring methods demanded by the rule, reporters cannot realistically meet the rule's BAMM extension application deadlines or have the full suite of required monitoring and recordkeeping systems in place by September 30.''

For example, companies that own or operate facilities subject to subpart W, such as API members, and as discussed in API's May 3, 2011 correspondence, the data collection systems that would be necessary to collect and process the numerous inputs required for subpart W are very complex. Because of the extensive, inter-related, complex nature of these data collection systems, many companies described the need for automatic BAMM for emissions sources that fall under 40 CFR 98.234(f)(5)(iv). For some sources, it would be nearly impossible to gauge in advance the exact nature of the BAMM that would be needed; for example, if one specific tank pressure measurement was not available and an alternate method was required to be used, a company or facility may not have had advance knowledge of that need and may not have prepared a specific BAMM request for that alternate measurement by the BAMM application deadline.

Because EPA did not include specific BAMM provisions in the proposed rule

for subpart W (75 FR 18609), companies did not have the opportunity to comment on BAMM timelines and how those timelines would affect their facilities. Therefore, after evaluating the information provided, EPA has concluded that it is appropriate to propose extending the time period, to December 31, 2011, that owners and operators of covered facilities would be allowed to use BAMM without having to submit a request for approval from the Administrator. EPA believes these proposed amendments to the BAMM provisions are appropriate in order to provide sufficient time for companies to collect, prepare and submit data to EPA during the initial year of reporting.

In this action, EPA is proposing to amend 40 CFR part 98 subpart W to allow facilities with the emissions sources listed in 40 CFR 98.234(f)(2), (f)(3), (f)(4), and (f)(5)(iv) to automatically use BAMM, without EPA approval, for the entire 2011 reporting year.

We are also proposing to amend 40 CFR 98.234(f)(8) for owners and operators who want to request to use BAMM beyond 2011. In this proposal, owners or operators requesting to use BAMM beyond 2011 are required to electronically notify EPA by December 31, 2011 that they intend to apply for BAMM for unique or unusual circumstances such as data collection methods that do not meet safety, technical, or legal issues rendering them unable to meet the requirements of subpart W. Owners or operators must submit the full extension request for BAMM by March 30, 2012. The full extension request must include a list of specific source categories and parameters at the facility for which the owner or operator is seeking to use BAMM. The full request must also include a description of the unique or unusual circumstances, including data collection methods that do not meet safety regulations, methods that are technically infeasible, or specific laws or regulations that conflict with each specific source for which BAMM is being requested. In addition, the full request must include supporting documentation of how and when the owner or operator will come into full compliance with subpart W, including but not limited to acquiring necessary services or equipment to comply with all of subpart W reporting requirements. The contents of the full BAMM request for post 2011 remain unchanged from the 2010 final rule (75 FR 74508) with the exception that we are clarifying in this proposal that the circumstances under which BAMM may be requested beyond 2011 are not limited to concerns about safety, technical infeasibility or instances where meeting monitoring requirements under subpart W would conflict with specific laws or regulations. Other unique or unusual circumstances may be appropriate for requesting BAMM, if properly demonstrated. We are seeking comment only on these amendments to 40 CFR 98.234(f)(8)(iv) which we have proposed to change and not other elements of the post 2011 BAMM process.

Further, we would note that the notice of intent, due December 31, 2011 to request BAMM post 2011 is intended for known issues (e.g., a monitoring requirement in the rule is counter to another federal, state or local regulation). EPA does not intend for the proposed amendments to 40 CFR 98.234(f)(8) to lead to a submission of a notification of intent and a subsequent BAMM request consistent with 40 CFR 98.234(f)(8)(ii) by a facility to cover that facility in the event that the facility might need BAMM in a future year (sometimes referred to as a ''protective filing''). Submission of a BAMM request for these possible future issues (e.g, newly acquired operations) is covered under 40 CFR 98.234(f)(1), which states ''EPA reserves the right to review petitions after the deadline but will only consider and approve late petitions which demonstrate extreme or unusual circumstances.'' EPA recognizes that it is not reasonable to predict all potential future issues and, as such, reserves the right to consider those BAMM requests in future years, without the reporter's having to notify EPA by the December 31, 2011 notification of intent deadline described in 40 CFR 98.234(f)(8).

Once the owner or operator has notified EPA, by December 31, 2011, of their intent to apply for BAMM and has subsequently submitted a full extension request, by March 30, 2012, they can automatically use BAMM for the specific parameters identified in their request through June 30, 2012, regardless of the final determination by EPA on approval or denial of the BAMM request. This automatic extension would be necessary because under the proposed rule, facilities would have only been granted automatic BAMM through December 31, 2011. For facilities that are requesting BAMM for beyond 2011, BAMM must be extended automatically to provide EPA the time to review thoroughly the BAMM requests submitted for beyond 2011, while ensuring that the requesting facilities are not out of compliance with the rule during that review process. The owners and operators who apply for BAMM beyond 2011 must follow the requirements as stated in subpart W by July 1, 2012, unless EPA approves their BAMM extension request (due March 30, 2012). Under the proposal, facilities that submit a notice of intent but do not follow up with a BAMM request consistent with 40 CFR 98.234(f)(8)(ii) by March 30, 2012 cannot use BAMM after December 31, 2011.

EPA is seeking comment on these proposed deadlines for BAMM beyond 2011. EPA recognizes that there may be additional concerns related to BAMM for post 2011 that were raised in the petitions for reconsideration. Although EPA is aware of these concerns, we are not proposing amendments related to these concerns at this time. We are seeking comments only on the proposal to extend the BAMM deadlines (for both 2011 and post 2011) and to clarify that BAMM may be sought for unique or unusual (as opposed to ''extreme'') circumstances, including data collection methods that do not meet safety regulations, technical infeasibility and instances where subpart W monitoring requirements would conflict with regulations.

EPA is also re-numbering several paragraphs that were incorrectly numbered. 40 CFR 98.234(f)(8)(iii) is re-designated as 40 CFR 98.234(f)(8)(ii)(A). 40 CFR 98.234(f)(8)(iv) is re-designated as 40 CFR 98.234(f)(8)(ii)(B). 40 CFR 98.234(f)(8)(v) is re-designated as 40 CFR 98.234(f)(8)(ii)(C). 40 CFR 98.234(f)(8)(v)(C) is re-designated as 40 CFR 98.234(f)(8)(iii).

The Administrator has determined that this action is subject to the provisions of Clean Air Act (CAA) section 307(d). See CAA section 307(d)(1)(V)(the provisions of section 307(d) apply to ''such other actions as the Administrator may determine'').

## IV. Statutory and Executive Order Reviews

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

### *B. Paperwork Reduction Act*

This action does not impose any new information collection burden. These amendments affect provisions in the rule related to best available monitoring methods, which is an optional provision and is not mandatory. Furthermore, the proposed amendments would

significantly reduce the administrative burden on industry by removing the requirement to make a formal application to use best available monitoring methods in 2011. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations, 40 CFR part 98 subpart W (75 FR 74458), under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number [2060–0651]. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. The ICR number for 40 CFR part 98, subpart W is 2376.03.

*C. Regulatory Flexibility Act*

The 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 impacts of this proposed rule 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 today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

Based on these proposed amendments, certain companies would be granted additional time to use BAMM during 2011 without being required to submit an application for approval to the Administrator. In addition, these proposed amendments increase the scope of the types of companies who would be granted the option to use BAMM in 2011 without being required to submit an application for approval to the Administrator. Finally, companies who choose to request BAMM for 2012 and beyond would be given additional time by which they would be required to submit their application to the EPA Administrator for approval. We have therefore concluded that these proposed amendments will relieve regulatory burden for all affected small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

*D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, requires Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Federal agencies must also develop a plan to provide notice to small governments that might be significantly or uniquely affected by any regulatory requirements. The plan must enable officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and must inform, educate, and advise small governments on compliance with the regulatory requirements.

The proposed rule amendments 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, the proposed rule amendments are not subject to the requirements of section 202 and 205 of the UMRA. This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

The proposed amendments will not impose any new requirements that are not currently required for 40 CFR part 98, and the rule amendments would not unfairly apply to small governments. Therefore, this action is not subject to the requirements of section 203 of the UMRA.

*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 amendments apply to an optional provision in the final rule for subpart W, which applies to petroleum and natural gas facilities that emit greenhouse gases. Few, if any, State or local government facilities would be affected. This regulation also does not limit the power of States or localities to collect GHG data and/or regulate GHG emissions. 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). The proposed rule amendments would not result in any changes to the current requirements of 40 CFR part 98 subpart W. The amendments proposed in this rule only apply to optional provisions in 40 CFR part 98 subpart W. Thus, Executive Order 13175 does not apply to this action.

Although Executive Order 13175 does not apply to this action, EPA sought opportunities to provide information to Tribal governments and representatives during the development of the rule for subpart W promulgated on November 30, 2010. A summary of the EPA's consultations with Tribal officials is provided in Sections VIII.D and VIII.F of the preamble to the 2009 final rule and Section IV.F of the preamble to the 2010 final rule for subpart W (75 FR 74485).

*G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12(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 in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

*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 this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment because it is a rule addressing information collection and reporting procedures.

**List of Subjects in 40 CFR Part 98**

Environmental protection, Administrative practice and procedures, Greenhouse gases, Air pollution control, Monitoring, Reporting and recordkeeping requirements.

Dated: June 20, 2011.

**Lisa P. Jackson,**

*Administrator.*

For the reasons discussed in the preamble, EPA proposes to amend 40 CFR part 98 as follows:

## PART 98—[AMENDED]

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

**Authority:** 42 U.S.C. 7401–7671q.

## Subpart W [Amended]

2. Section 98.234 is amended as follows:

a. By revising paragraph (f)(2) introductory text.

b. By revising paragraph (f)(3) introductory text.

c. By revising paragraph (f)(4) introductory text.

d. By revising paragraph (f)(5).

e. By removing and reserving paragraph (f)(6).

f. By removing and reserving paragraph (f)(7).

g. By revising paragraph (f)(8).

The revisions read as follows:

### § 98.234 Monitoring and QA/QC Requirements

* * * * *

(f) * * *

(2) *Best available monitoring methods for well-related emissions.* During January 1, 2011 through December 31, 2011, owners and operators may use best available monitoring methods for any well-related data that cannot reasonably be measured according to the monitoring and QA/QC requirements of this subpart. These well-related sources are:

* * * * *

(3) *Best available monitoring methods for specified activity data.* During January 1, 2011 through December 31, 2011, owners or operators may use best available monitoring methods for activity data as listed below that cannot reasonably be obtained according to the monitoring and QA/QC requirements of this subpart. These sources are:

* * * * *

(4) *Best available monitoring methods for leak detection and measurement.* During January 1, 2011 through December 31, 2011, owners or operators may use best available monitoring methods for sources requiring leak detection and/or measurement. These sources include:

* * * * *

(5) *Requests for the use of best available monitoring methods.* (i) No request or approval by the Administrator is necessary to use best available monitoring methods between January 1, 2011 and December 31, 2011 for the sources specified in paragraph (f)(2) of this section.

(ii) No request or approval by the Administrator is necessary to use best available monitoring methods between January 1, 2011 and December 31, 2011 for sources specified in paragraph (f)(3) of this section.

(iii) No request or approval by the Administrator is necessary to use best available monitoring methods between January 1, 2011 and December 31, 2011 for sources specified in paragraph (f)(4) of this section.

(iv) No request or approval by the Administrator is necessary to use best available monitoring methods between January 1, 2011 and December 31, 2011 for sources not listed in paragraph (f)(2), (f)(3), and (f)(4) of this section.

(6) [Reserved]

(7) [Reserved]

(8) *Requests for extension of the use of best available monitoring methods beyond 2011 for sources listed in paragraphs (f)(2), (f)(3), (f)(4), and (f)(5)(iv) of this section.* The owner or operator must first provide the Administrator an initial electronic notification of intent to submit an extension request for use of best available monitoring methods beyond December 31, 2011 for unique or unusual circumstances which include data collection methods that do not meet safety regulations, a requirement being technically infeasible, or counter to other local, State, or Federal regulations. The owner or operator must follow-up this initial notification with an extension request containing the information specified in 98.234(f)(8)(ii). Facilities that submit both a timely notice of intent and extension request consistent with 98.234(f)(8)(ii) can automatically use BAMM through June 30, 2012, for the specific parameters identified in their notification of intent and BAMM request regardless of whether the BAMM request is ultimately approved. Facilities that submit a notice of intent but do not follow up with a BAMM request by March 30, 2012 cannot automatically use BAMM after December 31, 2011.

(i) *Timing of Request.* The initial electronic notice of intent to request BAMM must be submitted by December 31, 2011. The completed extension request must be submitted to the Administrator no later than March 30, 2012.

(ii) *Content of request.* Requests must contain the following information:

(A) A list of specific source categories and parameters for which the owner or operator is seeking use of best available monitoring methods.

(B) A description of the unique or unusual circumstances, such as data collection methods that do not meet safety regulations, technical infeasibility, or specific laws or regulations that conflict with each specific source for which an owner or operator is requesting use of best available monitoring methodologies.

(C) A detailed explanation and supporting documentation of how and when the owner or operator will receive the services or equipment to comply with all of this subpart W reporting requirements.

(iii) *Approval criteria.* To obtain approval to use BAMM after June 30, 2012, the owner or operator must demonstrate to the Administrator's satisfaction that the owner or operator faces unique or unusual circumstances such as data collection methods that do not meet safety regulations, technical infeasibility, or legal issues rendering them unable to meet the requirements of this subpart.

[FR Doc. 2011–16010 Filed 6–24–11; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

**[WC Docket No. 02–60; FCC 11–101]**

### Rural Health Care Support Mechanism

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) seeks comment on whether to make the ''grandfathered'' providers permanently eligible for discounted services under the rural health care program. Grandfathered providers do not currently qualify as ''rural,'' but play a key role in delivering health care services to surrounding regions that do qualify as ''rural'' today. Thus, we take these actions to ensure that health care providers located in rural areas can continue to benefit from connecting with grandfathered providers, and thereby provide health care to patients in rural areas.

**DATES:** Comments are due on or before July 27, 2011 and reply comments on or before August 11, 2011.

**ADDRESSES:** You may submit comments, identified by WC Docket No. 02–60, by any of the following methods:

- *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *Mail:* In addition, one copy of each paper filing must be sent to each of the following: (i) the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300 or via e-mail to *fcc@bcpiweb.com;* (ii) Chin Yoo, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW., Room 5–A441, Washington, DC 20554, *e-mail: Chin.Yoo@fcc.gov;* and (iii) Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW., Room 5–A452, Washington, DC 20554, *e-mail: Charles.Tyler@fcc.gov.*
- *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 phone:* 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Chin Yoo, Attorney, Wireline Competition Bureau, (202) 418–0295 or TTY: (202) 418–0484.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rulemaking (NPRM) in WC Docket No. 02–60, FCC 11–101, adopted June 20, 2011, and released June 21, 2011. This Notice of Proposed Rulemaking was also released with a companion Order (Order). The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. All filings related to the NPRM should refer to WC Docket No. 02–60. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. 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. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.
- In addition, one copy of each paper filing must be sent to each of the following: (i) The Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300 or via e-mail to *fcc@bcpiweb.com;* (ii) Chin Yoo, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW., Room 5–A441, Washington, DC 20554, e-mail: *Chin.Yoo@fcc.gov;* and (iii) Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW., Room 5–A452, Washington, DC 20554, *e-mail: Charles.Tyler@fcc.gov.*

*People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs

Bureau at 202–418–0530 (voice), 202–418–0432 (tty). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by *e-mail: FCC504@fcc.gov; phone:* 202–418–0530 or TTY: 202–418–0432.

## I. Introduction

1. In the accompanying Order, we adopt an interim rule permitting health care providers that are located in a ''rural area'' under the definition used by the Commission prior to July 1, 2005, and that have received a funding commitment from the rural health care program prior to July 1, 2005, to continue to be treated as if they are located in ''rural'' areas for purposes of determining eligibility for all universal service rural health care programs. In this Notice of Proposed Rulemaking (NPRM), we seek comment on whether to make the ''grandfathered'' providers permanently eligible for discounted services under the rural health care program. Grandfathered providers do not currently qualify as ''rural,'' but play a key role in delivering health care services to surrounding regions that do qualify as ''rural'' today. Thus, we take these actions to ensure that health care providers located in rural areas can continue to benefit from connecting with grandfathered providers, and thereby provide health care to patients in rural areas.

## II. Notice of Proposed Rulemaking

2. In July 2010, the Nebraska Public Service Commission (Nebraska PSC) filed a petition requesting that the FCC permanently grandfather health care providers that were temporarily grandfathered until 2011. In response to the Nebraska PSC petition, the Wireline Competition Bureau issued a public notice requesting comment on whether the Commission should grant the relief sought by the Nebraska PSC, either through permanent grandfather, permanent waiver, or other action, and interested parties had an opportunity to respond to the public notice. All but one of the commenting parties support permanent grandfathering to allow the petitioners and other similarly situated health care providers to continue to participate in rural health care programs. These parties argue that funding for grandfathered providers promotes telemedicine and other uses of broadband for rural health care purposes, and describe how rural communities would lose access to key health care services if such support were to cease. The parties also assert that the Commission should provide certainty and stability by granting permanent grandfathering relief rather than setting a pattern of piecemeal extensions. The Virginia Telehealth Network states that uncertainty about future eligibility limits providers' ability to respond to the needs of their patients, take advantage of new innovations, and utilize the cost savings of long-term contracts. Furthermore, commenters state that permanent grandfathering would preserve eligibility for facilities located in areas that remain unchanged in their essentially rural character, but whose urban/rural designations could shift back and forth based on minor population shifts.

3. We propose to permanently grandfather the approximately 235 health care providers that are located in a ''rural area'' as defined by the Commission prior to July 1, 2005, and received a funding commitment from the rural health care program prior to July 1, 2005. Under our proposed rule, these health care providers would continue to be treated as if they are located in ''rural'' areas for the purposes of determining eligibility for all universal service rural health care programs.

4. We seek comment on petitioners' and commenters' assertions that permanently grandfathering these providers will promote our goal of advancing access to broadband connectivity for health care purposes. We believe that discontinuance of discounted services would jeopardize the ability of grandfathered providers to continue offering essential health care services to rural areas. As noted above, grandfathered health care providers are not located in large urbanized areas, and the record indicates that grandfathered providers provide valuable services to areas identified as experiencing health care shortages. In some states, grandfathered health care providers are hub hospitals that play a central role in connecting rural providers and patients to a statewide or regional telehealth network. We believe that a permanent grandfather is consistent with our broad discretion to define the term ''rural.''

5. We seek comment on whether this is the appropriate time to permanently extend eligibility for grandfathered providers. In the *Second Report and Order,* 70 FR 6365, February 7, 2005, the Commission grandfathered these providers in order to ease the transition to the new definition of ''rural,'' allow providers to plan for the elimination of discounted services, and give the Commission time to review the effect of the new definition. In 2008, the Commission extended the grandfathering period for three years based on uncontested evidence of specific harms that would result if discounted services were to be discontinued. At that time, the Commission also noted the need for additional time to evaluate the effect of new ''rural'' definition on health care providers and its planned review of the Pilot Program.

6. While our consideration of broader reforms to the rural health care program remains pending, grandfathered providers have demonstrated over the past six years that they provide important services to areas and patients that do qualify as ''rural.'' Issuing another temporary extension would merely create ongoing and unnecessary uncertainty for program participants. Furthermore, the federal and Commission health IT policy priorities discussed above strongly weigh in favor of providing these grandfathered providers with the stability and certainty of a permanent rule modification. Commenters state that such certainty will assist grandfathered providers in moving forward with important initiatives (*e.g.,* Virginia's demonstration tele-stroke network), better respond to the needs of patients, and to continue to provide innovative telehealth care to needy populations in the most cost-effective manner. Thus, we disagree with the California PUC's position that we should only grant a defined time extension until we have had time to evaluate the Pilot Program and the progress under the current definition of ''rural.'' Finally, as noted above, annual support for discounted services to grandfathered providers currently constitutes less than one-half percent of the $400 million program cap, and there is no evidence that any currently eligible rural health care provider has been disadvantaged by the temporary grandfathering extensions. Therefore, we do not anticipate that health care providers eligible under our current rural definition will be disadvantaged by our permitting this limited universe of additional entities to remain eligible to receive discounted services. We seek comment on this analysis.

## III. Procedural Matters

### *A. Filing Requirements*

7. *Ex Parte Rules.* This NPRM will be treated as a ''permit-but-disclose'' proceeding subject to the ''permit-but-disclose'' requirements under section 1.1206(b) of the Commission's 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. It is generally required to have more than a one or two sentence description of the presented views and arguments. Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.

*B. Final Regulatory Flexibility Certification*

8. *Proposed Permanent Rule.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

9. An initial regulatory flexibility analysis (IRFA) was incorporated in the *Second Report and Order.* The Commission sought written public comment on the proposals in the *Second Report and Order,* including comment on the IRFA. No comments were received to the *Second Report and Order* or IRFA that specifically raised the issue of the impact of the proposed rules on small entities.

10. In this NPRM, we propose to adopt permanently the Commission's prior determination to grandfather those health care providers who were eligible under the Commission's definition of ''rural'' prior to the *Second Report and Order.* This has no effect on any parties that do not currently participate in the rural health care support program. It does not create any additional burden on small entities. We believe that this action imposes a minimal burden on the vast majority of entities, small and large, that are affected by this action.

11. Therefore, we certify that the requirements of the order will not have a significant economic impact on a substantial number of small entities.

12. In addition, the Notice of Proposed Rulemaking and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the **Federal Register**.

*C. Other Matters*

13. *Paperwork Reduction Act of 1995.* This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

**List of Subjects in 47 CFR Part 54**

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

**Proposed Rule**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 54 to read as follows:

## PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

**Authority:** 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

2. Amend § 54.601 by revising paragraph (a)(3)(i) to read as follows:

**§ 54.601 Eligibility.**

(a) * * *

(3) * * *

(i) Notwithstanding the definition of ''rural area'' in § 54.5, any health care provider that is located in a ''rural area'' under the definition used by the Commission prior to July 1, 2005, and received a funding commitment from the rural health care program prior to July 1, 2005, is eligible for support under this subpart.

* * * * *

[FR Doc. 2011–16060 Filed 6–24–11; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

### 49 CFR Part 393

**[Docket No. FMCSA–2010–0283]**

## Parts and Accessories Necessary for Safe Operation; Application for Exemption From the Natural Gas Vehicles for America

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Application for exemption; request for comment.

**SUMMARY:** The Federal Motor Carrier Safety Administration (FMCSA) requests public comment on an application for exemption submitted by National Gas Vehicles for America (NGVAmerica) regarding the provision in the Federal Motor Carrier Safety Regulations (FMCSRs) prohibiting the location of any part of a fuel system on a bus manufactured on or after January 1, 1973, ''within or above the passenger compartment.'' NGVAmerica states that the National Highway Traffic Safety Administration (NHTSA) has adopted safety standards specific to natural gas vehicles that do not restrict the location of such fuel systems. NGVAmerica plans to file a petition in the near future to request a modification to the FMCSRs and requests the exemption to allow buses equipped with roof-mounted natural gas tanks operating in interstate commerce—and therefore subject to the FMCSRs—to operate without penalty while the differences between the NHTSA and FMCSA regulations are resolved.

**DATES:** Comments must be received on or before July 27, 2011.

**ADDRESSES:** You may submit comments identified by DOT DMS Docket Number FMCSA–2010–0283 by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the Federal electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand Delivery:* Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

*Instructions:* All submissions must include the Agency name and docket

number for this notice. For detailed instructions on submitting comments and additional information on the exemption process, see the ''Public Participation'' heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the ''Privacy Act'' heading for further information.

*Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to Room W12–140, DOT Building, New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act System of Records Notice for the DOT Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

*Public participation:* The *http://www.regulations.gov* Web site is generally available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''Help'' section of the *http://www.regulations.gov* Web site and also at the DOT's *http://docketsinfo.dot.gov* Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

**FOR FURTHER INFORMATION CONTACT:** Mr. Luke W. Loy, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations, MC–PSV, (202) 366–0676; Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

**SUPPLEMENTARY INFORMATION:**

## Background

Section 4007 of the Transportation Equity Act for the 21st Century (TEA–21) [Pub. L. 105–178, June 9, 1998, 112 Stat. 107, 401] amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs). On August 20, 2004, FMCSA published a final rule implementing section 4007 (69 FR 51589). Under this rule, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the regulation (49 CFR 381.305). The Agency decision must be published in the **Federal Register** (49 CFR 381.315(b)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.315(c) and 49 CFR 381.300(b)).

## NGVAmerica's Application for Exemption

On April 9, 2010, NGVAmerica applied for a 2-year exemption from 49 CFR 393.65(b)(6) to allow motor carriers to operate buses with rooftop-mounted natural gas storage systems in interstate commerce. NGVAmerica requested that the ''exemption be granted to all operators of natural gas transit buses that have been manufactured in accordance with and that satisfy regulations adopted by the National Highway Traffic Safety Administration (NHTSA).'' A copy of the application is included in the docket referenced at the beginning of this notice.

Section 393.65 of the FMCSRs specifies the requirements for fuel systems for CMVs (49 CFR 393.65). These requirements apply to systems for containing and supplying fuel for the operation of motor vehicles or for the operation of auxiliary equipment installed on, or used in connection with, motor vehicles. Section 393.65(b)(6) prohibits any part of a fuel system of a bus manufactured on or after January 1, 1973, to be located ''within or above the passenger compartment.'' This regulation applies generally to any fuel system on a bus, and is not specific to buses with natural gas fuel systems.

NHTSA's Federal Motor Vehicle Safety Standard (FMVSS) No. 303, ''Fuel system integrity of compressed natural gas vehicles,'' specifies requirements for the integrity of motor vehicle fuel systems using compressed natural gas, and applies to passenger cars, multipurpose passenger vehicles, trucks, and buses that have a gross vehicle weight rating (GVWR) of 10,000 pounds or less, and to all school buses regardless of weight that use compressed natural gas as a motor fuel. FMVSS No. 303 does not apply to transit buses with a GVWR over 10,000 pounds.

FMVSS No. 304, ''Compressed natural gas fuel container integrity,'' specifies requirements for the integrity of compressed natural gas motor vehicle fuel containers, and applies to each passenger car, multipurpose passenger vehicle, truck, and bus that uses compressed natural gas as a motor fuel and to each container designed to store compressed natural gas as motor fuel onboard any motor vehicle. All compressed natural gas containers manufactured on or after March 26, 1995, must meet a pressure cycling test that evaluates the container's durability, a burst test to measure its strength, and a fire test to ensure adequate pressure relief characteristics. The rule also specifies labeling requirements.

In a final rule published in the **Federal Register** on August 15, 2005 (70 FR 48008), FMCSA created a new section in the FMCSRs to address requirements for compressed natural gas fuel containers. Section 393.68, ''Compressed natural gas fuel containers,'' cross-references NHTSA's requirements for compressed natural gas containers in FMVSS No. 304.

Neither FMVSS No. 303 nor FMVSS No. 304 specifies or limits the location of compressed natural gas fuel systems on motor vehicles.

In its exemption application, NGVAmerica notes that regulations promulgated by the Federal Transit Administration (FTA), another agency within the U.S. Department of Transportation, require applicants for Federal assistance to certify that any new bus they acquire has been tested in accordance with 49 CFR Part 665, ''Bus Testing.'' NGVAmerica states that, while 49 CFR 665.11 requires transit buses to ''meet all applicable Federal Motor Vehicle Safety Standards, as defined by the National Highway Traffic Safety Administration in part 571 of this title,'' that section does not reference or require compliance with the FMCSRs.

In support of its application, NGVAmerica states:

> In the case of low-floor transit buses, which are the dominant type of transit bus

now in production, all natural gas fuel storage systems are in fact located on the roof-top above the passenger compartment and have been for many years. In the 1990's, the American Public Transportation Association (APTA) developed a model specification for low-floor natural gas transit buses. The APTA specification was published in 2000 and it indicates that compressed natural gas storage cylinders can be mounted on the roof-top.[1] In fact, placement of compressed natural gas storage cylinders on the roof top of buses is actually preferable. A key distinction in the consideration of the storage of natural gas on the roof of a vehicle is that, unlike gasoline and diesel fuel, natural gas is lighter than air and as such would not puddle or accumulate below the roof of the bus or in the passenger compartment of the bus but rather it would rise away from the vehicle. It is believed the intent of the existing regulation is to avoid the risk of fuel entering the enclosed passenger space of the vehicle. While we have not searched the history of Part 393.65, we believe that it, like other similar regulations, were adopted at a time when only liquid fuels were used as motor fuels and thus it is highly unlikely the drafters of the regulation contemplated the use of a compressed fuel like natural gas.

In addition, the petitioner states:

In support of our request, we also note that the National Fire Protection Association (NFPA) has developed safety standards for compressed natural gas vehicles. NFPA Code 52 (or NFPA 52) specifically addresses the safety of gaseous fueled systems used on motor vehicles. It is the nationally recognized standard for compressed natural gas fueling systems. NFPA 52:6.3.2 provides that ''fuel supply containers on vehicles shall be permitted to be located within, below, or above the driver or passenger compartment, provided all connections to the container(s) are external to, or sealed and vented from, these compartments.'' Thus, this standard, like NHTSA's, allows compressed natural gas storage cylinders to be located on the roof-top or above the passenger compartment of transit buses.

NGVAmerica states that most transit buses are operated within and near large urban areas, and therefore operate intrastate. However, some transit agencies are multi-jurisdictional entities and do operate bus routes that cross State lines. These operations are subject to FMCSA jurisdiction unless those transit agencies qualify under 49 CFR 390.3(f)(2), which exempts ''transportation performed by the Federal government, a State, or any political subdivision of a State, or an agency established under a compact between States that has been approved by the Congress of the United States.''

NGVAmerica also cites recent incidents in which transit buses have been ticketed when driven across State lines while being delivered from a manufacturing plant to the purchasing transit operator for introduction into intrastate operation. In each of these instances, the buses (1) complied with the requirements of FMVSS Nos. 303 and 304, and (2) did not have any passengers (except the driver) when they were stopped and cited for noncompliance with § 393.65(b)(6) of the FMCSRs.

Given these facts, NGVAmerica contends that enforcement of § 393.65(b)(6) as currently written could impede the interstate transport of natural gas transit buses and place in jeopardy the daily use of thousands of natural gas transit buses.

Therefore, NGVAmerica requests that motor carriers be permitted to operate buses with natural gas containers located above the passenger compartment. NGVAmerica states that, given the properties of natural gas and the fact that the buses in question comply with FMVSS Nos. 303 and/or 304 and NFPA Code 52, requiring such carriers' compliance with § 393.65(b)(6) is unwarranted. Based on the above, NGVAmerica believes that granting the exemption will maintain a level of safety that is equivalent to the level of safety achieved without the exemption.

## Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on NGVAmerica's application for exemption from 49 CFR 393.65(b)(6). All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file in the public docket relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Issued on: June 21, 2011.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2011–15931 Filed 6–24–11; 8:45 am]

**BILLING CODE 4910–EX–P**

[1] APTA, *Standard Bus Procurement Guidelines: 40 ft. Low-Floor CNG Technical Specifications (2000)*; *http://www.apta.com/resources/reports and publications/Documents/lfeng.pdf.* This document states that ''[i]n the case of a low floor transit bus, the placement of tanks shall be limited to the roof of the vehicle or in the compartment above the engine of the vehicle.''

# Notices

Federal Register

Vol. 76, No. 123

Monday, June 27, 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

### Agricultural Marketing Service

**[Document No. AMS–FV–11–0045]**

### Fruit and Vegetable Industry Advisory Committee

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

**ACTION:** Notice of Reestablishment of the U.S. Department of Agriculture (USDA) Fruit and Vegetable Industry Advisory Committee and a Request for Nominations.

**SUMMARY:** The USDA intends to reestablish the Fruit and Vegetable Industry Advisory Committee (Committee). The purpose of the Committee is to examine the full spectrum of issues faced by the fruit and vegetable industry and provide suggestions and ideas to the Secretary of Agriculture on how USDA can tailor its programs to better meet the fruit and vegetable industry's needs. USDA also seeks nominations of individuals to be considered for selection as Committee members.

**DATES:** Written nominations must be received on or before July 15, 2011.

**ADDRESSES:** Nominations should be sent to Robert C. Keeney, Deputy Administrator, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Room 2077–S, Stop 0235, Washington, DC 20250–0235; Facsimile: (202) 720–0016. E-mail: *robert.keeney@usda.gov.*

**FOR FURTHER INFORMATION CONTACT:** Pamela Stanziani, Designated Federal Official; Phone: (202) 690–0182; E-mail: *Pamela.stanziani@usda.gov.*

**SUPPLEMENTARY INFORMATION:** Pursuant to the Federal Advisory Committee Act (FACA) (5 U.S.C. App.), notice is hereby given that the Secretary of Agriculture intends to reestablish the Fruit and Vegetable Industry Advisory Committee for two years. The purpose of the Committee is to examine the full spectrum of issues faced by the fruit and vegetable industry and provide suggestions and ideas to the Secretary on how USDA can tailor its programs to better meet the fruit and vegetable industry's needs. The Deputy Administrator of the Agricultural Marketing Service's Fruit and Vegetable Programs will serve as the Committee's Executive Secretary. Representatives from USDA mission areas and agencies affecting the fruit and vegetable industry will be called upon to participate in the Committee's meetings as determined by the Committee Chairperson.

Industry members will be appointed by the Secretary of Agriculture and serve 2–3 year terms. Membership will consist of up to twenty-five (25) members who represent the fruit and vegetable industry and will include individuals representing fruit and vegetable growers/shippers, wholesalers, brokers, retailers, processors, fresh cut processors, foodservice suppliers, state agencies involved in organic and non-organic fresh fruits and vegetables at local, regional and national levels, state departments of agriculture, and trade associations. The members of the reestablished Committee will elect the Chairperson and Vice Chairperson of the Committee. In absence of the Chairperson, the Vice-Chairperson will act in the Chairperson's stead.

The Secretary of Agriculture invites those individuals, organizations, and groups affiliated with the categories listed above to nominate individuals for membership on the reestablished Committee. Nominations should describe and document the proposed member's qualifications for membership to the Committee, and list their name, title, address, telephone, and fax number. The Secretary of Agriculture seeks a diverse group of members representing a broad spectrum of persons interested in providing suggestions and ideas on how USDA can tailor its programs to meet the fruit and vegetable industry's needs.

Individuals who are nominated will receive necessary forms from USDA for membership. The biographical information and clearance forms must be completed and returned to USDA within 10 working days of notification, to expedite the clearance process that is required before selection of Committee members by the Secretary of Agriculture.

Equal opportunity practices will be followed in all appointments to the Committee in accordance with USDA policies. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, persons with disabilities, and limited resource agriculture producers.

Dated: June 21, 2011.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2011–16013 Filed 6–24–11; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Siuslaw Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of Meeting.

**SUMMARY:** The Siuslaw Resource Advisory Committee will meet in Corvallis, OR. The purpose of the meeting is RAC FY12 Business, Elect Chairperson, Set FY12 Overhead Rate, Information Share, Public Forum, Project Selections.

**DATES:** The meeting will be held July 14, 2011 beginning at 8 a.m.

**ADDRESSES:** The meeting will be held at the Corvallis Forestry Sciences Lab, 3200 SW., Room 297, Jefferson Way, Corvallis, OR 97331.

**FOR FURTHER INFORMATION CONTACT:** Joni Quarnstrom, Siuslaw National Forest, 541/750–7075 or write to Forest Supervisor, Siuslaw National Forest, 4077 SW., Research Way, Corvallis, OR 97339.

**SUPPLEMENTARY INFORMATION:** A public input period will begin before 2012 project review. The meeting is expected to adjourn at 5 p.m.

Dated: June 20, 2011.

**Jeremiah C. Ingersoll,**

*Forest Supervisor.*

[FR Doc. 2011–15974 Filed 6–24–11; 8:45 am]

BILLING CODE 3410–11–P

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### Turning Point Solar LLC; Notice of Intent To Hold a Public Scoping Meeting and Prepare an Environmental Assessment

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice of Intent To Prepare an Environmental Assessment and Hold a Public Scoping Meeting.

**SUMMARY:** The Rural Utilities Service (RUS) intends to hold a public scoping meeting and prepare an Environmental Assessment (EA) to meet its responsibilities under the National Environmental Policy Act (NEPA), the Council on Environmental Quality's regulations for implementing NEPA (40 CFR parts 1500–1508), and RUS's Environmental and Policies and Procedures (7 CFR part 1794) in connection with potential impacts related to a proposal by Turning Point Solar LLC. The proposal consists of constructing a 49.9 megawatt (MW) ground-mounted solar photovoltaic generating facility in Noble County, Ohio. Turning Point Solar LLC is requesting that RUS provide a loan or loan guarantee for the proposal.

**DATES:** RUS will conduct a public scoping meeting in an open-house format on Thursday, July 14, 2011, from 5 to 9 p.m. at: Caldwell Elementary School, 44350 Fairground Road, Caldwell, Ohio 43724. Representatives from RUS and Turning Point Solar LLC will be available at the meeting to discuss the environmental review process, the proposal, and the scope of environmental issues currently under consideration. Written comments regarding the proposal may be submitted at the public scoping meeting or by August 15, 2011, to the RUS address provided in this Notice.

**ADDRESSES:** To send comments or for further information, please contact Ms. Lauren McGee, Environmental Scientist, USDA Rural Utilities Service, Engineering and Environmental Staff, 1400 Independence Avenue, SW., Stop 1571, Room 2244–S, Washington, DC 20250–1571, *telephone:* (202) 720–1482, *fax:* (202) 690–0649, or *e-mail: mailto: lauren.mcgee@wdc.usda.gov.*

An Alternatives Evaluation and Site Selection Study, which discusses the purpose and need for the proposal and the alternatives considered in the proposal's development, is available for public review at the RUS address provided in this Notice, at the following RUS Web site: *http://www.rurdev.usda.gov/UWP-ea.htm,* and at the following repository: Caldwell Public Library, 517 Spruce Street, Caldwell, OH 43724–0230; telephone: (740) 732–4506 for operating hours.

**SUPPLEMENTARY INFORMATION:** Turning Point Solar LLC proposes to construct a 49.9 MW solar generating facility in Brookfield Township, Noble County, Ohio. The proposal involves the installation of high-efficiency monocrystalline photovoltaic panels mounted on fixed solar racking equipment and the construction of access roads, a powerhouse, transmission improvements, and other supporting facilities. The applicant's proposed site for the proposal is located eight miles northwest of Caldwell, Ohio, on approximately 771 acres of reclaimed strip-mined land owned by Columbus Southern Power Company and Ohio Power Company, collectively American Electric Power Ohio (''AEP Ohio''). The land was mined by the Central Ohio Coal Company between 1969 and 1991, after which time it was reclaimed. The proposed generating facility would interconnect to AEP Ohio's South Cumberland 69kV substation, subject to completion of the PJM Generation Interconnection application process.

Among the alternatives that RUS will address in the EA is the No Action alternative, under which the proposal would not be undertaken. In the EA, the effects of the proposal will be compared to the existing conditions in the proposal area. Public health and safety, environmental impacts, and engineering aspects of the proposal will be considered in the EA.

RUS is the lead federal agency, as defined at 40 CFR 1501.5, for preparation of the EA. With this Notice, federally recognized Native American Tribes and federal agencies with jurisdiction or special expertise are invited to be cooperating agencies. Such tribes or agencies may make a request to RUS to be a cooperating agency by contacting the RUS contact provided in this Notice. Designated cooperating agencies have certain responsibilities to support the NEPA process, as specified at 40 CFR 1501.6(b).

As part of its broad environmental review process, RUS must take into account the effect of the proposal on historic properties in accordance with Section 106 of the National Historic Preservation Act (Section 106) and its implementing regulation, ''Protection of Historic Properties'' (36 CFR part 800). Pursuant to 36 CFR 800.2(d)(3), RUS is using its procedures for public involvement under NEPA to meet its responsibilities to solicit and consider the views of the public during Section 106 review. Accordingly, comments submitted in response to scoping will inform RUS decision-making in its Section 106 review process. Any party wishing to participate more directly with RUS as a ''consulting party'' in Section 106 review may submit a written request to the RUS contact provided in this Notice.

RUS will use input provided by government agencies, private organizations, and the public in the preparation of the EA. The EA will be available for review and comment for 30 days. If RUS finds, based on the EA, that the proposal will not have a significant effect on the quality of the human environment, RUS will prepare a Finding of No Significant Impact (FONSI). Notification of the EA and FONSI will be published in the **Federal Register** and in newspapers with circulation in the proposal's area. If substantive comments are received on the EA, RUS may provide an additional period (15 days) for public review following the publication of its FONSI. When appropriate to carry out the purposes of NEPA, RUS may impose, on a case-by-case basis, additional requirements associated with the preparation of an EA. If at any point in the preparation of an EA, RUS determines that the proposal will have a significant effect on the quality of the human environment, the preparation of an Environmental Impact Statement will be required.

Any final action by RUS related to the proposal will be subject to, and contingent upon, compliance with all relevant executive orders and federal, state, and local environmental laws and regulations in addition to the completion of the environmental review requirements as prescribed in RUS's Environmental Policies and Procedures, 7 CFR part 1794, as amended.

Dated: June 20, 2011.

**Richard Fristik,**

*Acting Director, Engineering and Environmental Staff, USDA, Rural Utilities Service.*

[FR Doc. 2011–15957 Filed 6–24–11; 8:45 am]

BILLING CODE 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:* Bureau of Economic Analysis (BEA).

*Title:* Expenditures Incurred by Recipients of Biomedical Research Awards from the National Institutes of Health (NIH).

*OMB Control Number:* 0608–0069.

*Form Number:* None.

*Type of Request:* Regular submission.

*Number of Respondents:* 150.

*Average Hours per Response:* 8 hours.

*Estimated Total Annual Burden Hours:* 1,200.

*Needs and Uses:* The survey to obtain the distribution of expenditures incurred by recipients of biomedical research awards from the National Institutes of Health Research (NIH) will provide information on how the NIH award amounts are expended across several major categories. This information, along with wage and price data from other published sources, will be used to generate the Biomedical Research and Developmental Price Index (BRDPI). The Bureau of Economic Analysis (BEA) of the Department of Commerce develops this index for the National Institutes of Health (NIH) under reimbursable contract. The BRDPI is an index of prices paid for the labor, supplies, equipment, and other inputs required to perform the biomedical research the NIH supports in its intramural laboratories and through its awards to extramural organizations. The BRDPI is a vital tool for planning the NIH research budget and analyzing future NIH programs. A survey of award recipient entities is currently the only means for updating the expenditure categories that are used to prepare the BRDPI.

A survey questionnaire with a cover letter that includes a brief description of, and rationale for, the survey will be sent to potential respondents by the first week of June of each year. A report of the respondent's expenditures of the NIH award amounts, following the proposed format for expenditure categories attached to the survey's cover letter, will be requested to be returned no later than 60 days after mailing. Survey respondents will be selected on the basis of award levels, which determine the weight of the respondent in the biomedical research and development price index. BEA proposes to survey 150 organizations that receive NIH biomedical research awards. This will include the top 100 academic organizations in awards received and the top 50 nonacademic organizations in awards received. Based on awards data for FY 2007 by type of organization (the most recent data available from NIH at this writing), academic organizations received $16.1 billion in awards, compared with $6.5 billion received by nonacademic organizations. The top 100 academic recipients received $14.0 billion, representing 86.9 percent of all awards going to academic organizations. The top 50 nonacademic organizations received $3.6 billion, representing 56.3 percent of all awards going to nonacademic institutions. The combined sample of 150 organizations will thus account for $17.7 billion in total NIH awards, representing 78.1 percent of all awards given in FY 2007.

*Affected Public:* Businesses or other for-profit institutions, and not-for-profit institutions.

*Frequency:* Annual.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* 45 CFR subpart C, Post-Award Requirements, sections 74.21 and 74.53; 42 U.S.C. 282; Economy Act (31 U.S.C. 1535 and 1536); 15 U.S.C. 1525; and 15 U.S.C. 1527a.

*OMB Desk Officer:* Paul Bugg, (202) 395–3093.

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 Street and Constitution Avenue, NW., Washington DC 20230, or via e-mail 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 Paul Bugg, OMB Desk Officer, Fax number (202) 395–7245, or via e-mail at *pbugg@omb.eop.gov.*

Dated: June 22, 2011.

**Glenna Mickelson,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2011–16021 Filed 6–24–11; 8:45 am]

BILLING CODE 3510–06–P

## DEPARTMENT OF COMMERCE

### Office of the Secretary

### Estimates of the Voting Age Population for 2010

**AGENCY:** Office of the Secretary, Commerce.

**ACTION:** General Notice Announcing Population Estimates.

**SUMMARY:** This notice announces the voting age population estimates as of July 1, 2010, for each state and the District of Columbia. We are providing this notice in accordance with the 1976 amendment to the Federal Election Campaign Act, Title 2, United States Code, Section 441a(e). It is important to note that these estimates are based on Census 2000. Therefore, there may be differences between these estimates and results released from Census 2010.

**FOR FURTHER INFORMATION CONTACT:** Enrique Lamas, Chief, Population Division, U.S. Census Bureau, Room HQ–5H174, Washington, DC 20233, at 301–763–2071.

**SUPPLEMENTARY INFORMATION:** Under the requirements of the 1976 amendment to the Federal Election Campaign Act, Title 2, United States Code, Section 441a(e), I hereby give notice that the estimates of the voting age population for July 1, 2010, for each state and the District of Columbia are as shown in the following table.

ESTIMATES OF THE POPULATION OF VOTING AGE FOR EACH STATE AND THE DISTRICT OF COLUMBIA: JULY 1, 2010

| Area | Population 18 and over | Area | Population 18 and over |
|---|---|---|---|
| United States | 234,518,398 | | |
| Alabama | 3,599,303 | Missouri | 4,589,980 |
| Alaska | 527,205 | Montana | 764,058 |
| Arizona | 4,940,296 | Nebraska | 1,359,656 |
| Arkansas | 2,195,465 | Nevada | 1,977,693 |
| California | 27,795,779 | New Hampshire | 1,043,155 |
| Colorado | 3,865,036 | New Jersey | 6,691,782 |
| Connecticut | 2,727,907 | New Mexico | 1,514,872 |
| Delaware | 685,978 | New York | 15,167,513 |
| District of Columbia | 494,192 | North Carolina | 7,188,327 |
| Florida | 14,616,271 | North Dakota | 511,050 |
| Georgia | 7,324,792 | Ohio | 8,840,340 |

ESTIMATES OF THE POPULATION OF VOTING AGE FOR EACH STATE AND THE DISTRICT OF COLUMBIA: JULY 1, 2010—Continued

| Area | Population 18 and over | Area | Population 18 and over |
|---|---|---|---|
| Hawaii | 1,006,338 | Oklahoma | 2,796,489 |
| Idaho | 1,143,651 | Oregon | 2,986,164 |
| Illinois | 9,777,437 | Pennsylvania | 9,880,374 |
| Indiana | 4,861,307 | Rhode Island | 833,168 |
| Iowa | 2,313,538 | South Carolina | 3,515,754 |
| Kansas | 2,133,356 | South Dakota | 620,912 |
| Kentucky | 3,323,606 | Tennessee | 4,847,129 |
| Louisiana | 3,397,965 | Texas | 18,210,592 |
| Maine | 1,048,523 | Utah | 1,951,049 |
| Maryland | 4,385,947 | Vermont | 500,054 |
| Massachusetts | 5,203,385 | Virginia | 6,103,947 |
| Michigan | 7,623,767 | Washington | 5,170,543 |
| Minnesota | 4,038,685 | West Virginia | 1,439,342 |
| Mississippi | 2,194,892 | Wisconsin | 4,372,515 |
| | | Wyoming | 417,319 |

Source: U.S. Census Bureau, Population Division
Note: These estimates are based on Census 2000 and do not reflect results from Census 2010.

I have certified these counts to the Federal Election Commission.

Dated: June 15, 2011.

**Gary Locke,**

*Secretary, U.S. Department of Commerce.*

[FR Doc. 2011–15968 Filed 6–24–11; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Proposed Information Collection; Comment Request; Annual Report from Foreign-Trade Zones

**AGENCY:** International Trade Administration.

**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 continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before August 26, 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 and instructions should be directed to Christopher J. Kemp, Office of Foreign-Trade Zones, (202) 482–0862, or e-mail, *Christopher.Kemp@trade.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

The Foreign-Trade Zone Annual Report is the vehicle by which Foreign-Trade Zone grantees report annually to the Foreign-Trade Zones Board, pursuant to the requirements of the Foreign-Trade Zones Act (19 U.S.C. 81a–81u). The annual reports submitted by grantees are the only complete source of compiled information on FTZs. The data and information contained in the reports relates to international trade activity in FTZs. The reports are used by the Congress and the Department to determine the economic effect of the FTZ program. The reports are also used by the FTZ Board and other trade policy officials to determine whether zone activity is consistent with U.S. international trade policy, and whether it is in the public interest. The public uses the information regarding activities carried out in FTZs to evaluate their effect on industry sectors. The information contained in annual reports also helps zone grantees in their marketing efforts.

### II. Method of Collection

The Foreign-Trade Zone Annual Report has been collected from zone grantees in paper format. Beginning with the 2011 reporting year, the Foreign-Trade Zones Board plans to use a Web-based collection method.

### III. Data

*OMB Control Number:* 0625–0109.

*Form Number:* ITA 359P.

*Type of Review:* Regular submission.

*Affected Public:* State, local, or tribal governments or not-for-profit institutions.

*Estimated Number of Respondents:* 163.

*Estimated Time per Response:* 12 to 95 hours (depending on size and structure of foreign-trade zone).

*Estimated Total Annual Burden Hours:* 12,815.

*Estimated Total Annual Cost to Public:* $0.

### 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: June 21, 2011

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2011–15985 Filed 6–24–11; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–970]**

### Multilayered Wood Flooring From the People's Republic of China: Notice of Amended Preliminary Determination of Sales at Less Than Fair Value

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**DATES:** *Effective Date:* June 27, 2011.

**SUMMARY:** The Department of Commerce (''Department'') has determined that it made certain significant ministerial errors in the preliminary determination of sales at less than fair value in the antidumping duty investigation of multilayered wood flooring from the People's Republic of China (''PRC''), as described below in the **SUPPLEMENTARY INFORMATION** section of this notice. The Department has corrected these errors and has re-calculated the antidumping duty margin for a mandatory respondent, for exporters eligible for a separate rate, and for the PRC-wide rate, as described below in the ''Amended Preliminary Determination'' section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Charles Riggle, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: 482–0650.

**SUPPLEMENTARY INFORMATION:**

On May 26, 2011, the Department published its affirmative preliminary determination in this proceeding that multilayered wood flooring from the PRC is being, or is likely to be, sold in the United States at less than fair value, as provided by section 773 of the Tariff Act of 1930, as amended (the ''Act''). *See Multilayered Wood Flooring From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value,* 76 FR 30656 (May 26, 2011) (''*Preliminary Determination''*).

On May 31, 2011, Riverside Plywood Corporation, Samling Elegant Living Trading (Labuan) Limited, Samling Global USA, Inc., Samling Riverside Co., Ltd. and Suzhou Times Flooring (collectively, the ''Samling Group'') and Vicwood Industry (Suzhou) Co., Ltd. (''Vicwood'') submitted timely ministerial error allegations with respect to the Department's *Preliminary Determination.* Therefore, in accordance to section 351.224(e) of the Department's regulations, we have made changes, as discussed below, to the *Preliminary Determination.*

**Period of Investigation**

The period of investigation (''POI'') is April 1, 2010, through September 30, 2010. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was October 2010. *See* 19 CFR 351.204(b)(1).

**Scope of Investigation**

Multilayered wood flooring is composed of an assembly of two or more layers or plies of wood veneer(s) [1] in combination with a core. The several layers, along with the core, are glued or otherwise bonded together to form a final assembled product. Multilayered wood flooring is often referred to by other terms, *e.g.,* ''engineered wood flooring'' or ''plywood flooring.'' Regardless of the particular terminology, all products that meet the description set forth herein are intended for inclusion within the definition of subject merchandise.

All multilayered wood flooring is included within the definition of subject merchandise, without regard to: dimension (overall thickness, thickness of face ply, thickness of back ply, thickness of core, and thickness of inner plies; width; and length); wood species used for the face, back and inner veneers; core composition; and face grade. Multilayered wood flooring included within the definition of subject merchandise may be unfinished (*i.e.,* without a finally finished surface to protect the face veneer from wear and tear) or ''prefinished'' (*i.e.,* a coating applied to the face veneer, including, but not exclusively, oil or oil-modified or water-based polyurethanes, ultra-violet light cured polyurethanes, wax, epoxy-ester finishes, moisture-cured urethanes and acid-curing formaldehyde finishes.) The veneers may be also soaked in an acrylic-impregnated finish. All multilayered wood flooring is included within the definition of subject merchandise regardless of whether the face (or back) of the product is smooth, wire brushed, distressed by any method or multiple methods, or hand-scraped. In addition, all multilayered wood flooring is included within the definition of subject merchandise regardless of whether or not it is manufactured with any interlocking or connecting mechanism (for example, tongue-and-groove construction or locking joints). All multilayered wood flooring is included within the definition of the subject merchandise regardless of whether the product meets a particular industry or similar standard.

The core of multilayered wood flooring may be composed of a range of materials, including but not limited to hardwood or softwood veneer, particleboard, medium-density fiberboard (MDF), high-density fiberboard (HDF), stone and/or plastic composite, or strips of lumber placed edge-to-edge.

Multilayered wood flooring products generally, but not exclusively, may be in the form of a strip, plank, or other geometrical patterns (*e.g.,* circular, hexagonal). All multilayered wood flooring products are included within this definition regardless of the actual or nominal dimensions or form of the product.

Specifically excluded from the scope are cork flooring and bamboo flooring, regardless of whether any of the sub-surface layers of either flooring are made from wood. Also excluded is laminate flooring. Laminate flooring consists of a top wear layer sheet not made of wood, a decorative paper layer, a core-layer of high-density fiberboard, and a stabilizing bottom layer. Imports of the subject merchandise are provided for under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.2510; 4412.31.2520; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.3175; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.2510; 4412.32.2520; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.5600; 4412.39.1000; 4412.39.3000; 4412.39.4011; 4412.39.4012; 4412.39.4019; 4412.39.4031; 4412.39.4032; 4412.39.4039; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5010; 4412.39.5030; 4412.39.5050; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3131; 4412.94.3141; 4412.94.3160; 4412.94.3171; 4412.94.4100; 4412.94.5100; 4412.94.6000; 4412.94.7000; 4412.94.8000; 4412.94.9000; 4412.94.9500; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160;

[1] A ''veneer'' is a thin slice of wood, rotary cut, sliced or sawed from a log, bolt or flitch. Veneer is referred to as a ply when assembled.

4412.99.3170; 4412.99.4100; 4412.99.5100; 4412.99.5710; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.99.9500; 4418.71.2000; 4418.71.9000; 4418.72.2000; and 4418.72.9500.

In addition, imports of subject merchandise may enter the United States under the following HTSUS subheadings: 4409.10.0500; 4409.10.2000; 4409.29.0515; 4409.29.0525; 4409.29.0535; 4409.29.0545; 4409.29.0555; 4409.29.0565; 4409.29.2530; 4409.29.2550; 4409.29.2560; 4418.71.1000; 4418.79.0000; and 4418.90.4605.

While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise is dispositive.

**Significant Ministerial Error**

Ministerial errors are defined in section 735(e) of the Act as ''errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.'' Section 351.224(e) of the Department's regulations provides that the Department ''will analyze any comments received and, if appropriate, correct any significant ministerial error by amending the preliminary determination * * *.'' *See* 19 CFR 361.224(e). A significant ministerial error is defined as a ministerial error, the correction of which, either singly or in combination with other errors, would result in (1) A change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin calculated in the original (erroneous) preliminary determination, or (2) a difference between a weighted-average dumping margin of zero (or *de minimis*) and a weighted-average dumping margin of greater than *de minimis* or vice versa. *See* 19 CFR 351.224(g).

In accordance with 19 CFR 351.224(e) and (g)(1), the Department is amending the preliminary determination of sales at less than fair value in the antidumping duty investigation of multilayered wood flooring from the PRC to reflect the correction of significant ministerial errors it made in the margin calculations regarding the mandatory respondent in this investigation, the Samling Group. *See also* Memorandum from Brandon Petelin and Erin Kearney, International Trade Analysts to Abdelali Elouaradia, Office Director, ''Preliminary Determination of Antidumping Duty Investigation on Multilayered Wood Flooring from the People's Republic of China: Allegations of Ministerial Errors,'' dated June 20, 2011 (''Ministerial Error Memo'').

**Ministerial Error Allegation**

*a. Manufacturing Overhead Ratio*

The Samling Group argues that the Department erred by inadvertently applying an incorrect ratio for the Samling Group's manufacturing overhead ratio in the calculation of normal value. The Department agrees, and finds that this error qualifies as a ministerial error in accordance with section 735(e) of the Act. *See* Ministerial Error Memo at 2–3.

*b. Deduction of Warranty Expenses*

The Samling Group argues that the Department committed a ministerial error by failing to deduct all price adjustments reported in the Sampling Group's other discounts. The Department disagrees and finds that it intentionally deducted certain price adjustments from U.S. price, while intentionally not deducting price adjustments related to warranty expenses. Therefore, we find this calculation is not an error on its part. *See id.* at 3–4.

*c. Supplier Distance*

The Samling Group argues that the Department committed a ministerial error by applying actual supplier distance for one of its raw materials instead of applying the shortest distance from the factory to the nearest port. The Department agrees, and finds that this error qualifies as a ministerial error in accordance with section 735(e) of the Act. *See id.* at 4.

The Department determines that correcting these errors would result in a change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin calculated in the original (erroneous) preliminary determination, and thus has corrected these errors. As a result, the Department has recalculated the Samling Group's preliminary margin.

*d. Separate Rate Status of a Separate Rate Applicant*

Vicwood claims that the Department erred by not including its exporters' names in the preliminary determination. The Department disagrees that it committed a ministerial error by omitting Vicwood's exporters' names. *See id.* at 4.

**PRC-Wide Rate**

In the preliminary determination the Department found that the use of adverse facts available (''AFA'') is appropriate to determine the PRC-wide rate. *See Preliminary Determination,* at 30662. The petition identified rates of 194.49 and 280.60 percent.[2] These rates are higher than any of the calculated rates assigned to individually examined companies. Thus, as AFA, the Department's practice would be to assign the rate of 280.60 percent to the PRC-wide entity. Section 776(c) of the Act, however, requires the Department to corroborate, to the extent practicable, secondary information used as facts available. While there were U.S. prices within the range of the prices contained in the petition, the normal value information contained in the petition does not have probative value for purposes of this preliminary determination. Thus, with respect to AFA, for the preliminary determination, we assigned the PRC-wide entity the rate of 82.65 percent, the highest calculated transaction-specific rate among mandatory respondents. *See Preliminary Determination,* at 30662. For the amended preliminary determination, we have assigned the PRC-wide entity a margin of 27.12 percent, the highest calculated transaction-specific rate among mandatory respondents after correcting the significant ministerial errors. No corroboration of this rate is necessary because we are relying on information obtained in the course of this investigation, rather than secondary information.[3]

**Margin for the Separate Rate Companies**

As discussed above, the Department has preliminarily determined that in addition to the individually investigated entities, 73 other companies have demonstrated their eligibility for a separate rate. Normally, the Department's practice is to establish a separate rate margin for these entities based on the average of the rates we calculated for the mandatory respondents, excluding any rates that were zero, *de minimis,* or based entirely

[2] *See Multilayered Wood Flooring from the People's Republic of China: Initiation of Antidumping Investigation,* 75 FR 70714 (November 18, 2010).

[3] See 19 CFR 351.308(c) and (d) and section 776(c) of the Act; *see also Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China,* 73 FR 35652, 35653 (June 24, 2008), and accompanying Issues and Decision Memorandum at 1.

on AFA.[4] In the instant investigation, all calculated margins were equal to zero or *de minimis.* Therefore, we have used the simple average of the mandatory respondents and PRC-wide entity to obtain the separate rate of 6.78 percent.[5]

**Amended Preliminary Determination**

We are publishing this amended preliminary determination pursuant to 19 CFR 351.224(e). As a result of this amended preliminary determination, we have revised the antidumping rate for Samling Group. In addition, we have revised the separate rate based on the mandatory respondents' revised dumping margin.

As a result of our correction of significant ministerial errors in the *Preliminary Determination,* we have determined that the following weighted-average dumping margins apply:

| Exporter | Producer | Weighted average margin |
|---|---|---|
| Zhejiang Layo Wood Industry Co., Ltd | Zhejiang Layo Wood Industry Co., Ltd | *0.00 |
| The Samling Group** | The Samling Group** | *0.29 |
| Zhejiang Yuhua Timber Co., Ltd | Zhejiang Yuhua Timber Co., Ltd | *0.00 |
| Jiaxing Brilliant Import & Export Co., Ltd | Zhejiang Layo Wood Industry Co., Ltd | 6.78 |
| MuDanJiang Bosen Wood Industry Co., Ltd | MuDanJiang Bosen Wood Industry Co., Ltd | 6.78 |
| MuDanJiang Bosen Wood Industry Co., Ltd | Dun Hua Sen Tai Wood Co., Ltd | 6.78 |
| Huzhou Chenghang Wood Co., Ltd | Huzhou Chenghang Wood Co., Ltd | 6.78 |
| Hangzhou Hanje Tec Co., Ltd | Zhejiang Jiechen Wood Industry Co., Ltd | 6.78 |
| Nakahiro Jyou Sei Furniture (Dalian) Co., Ltd | Nakahiro Jyou Sei Furniture (Dalian) Co., Ltd | 6.78 |
| Shenyang Haobainian Wooden Co., Ltd | Shenyang Sende Wood Co., Ltd | 6.78 |
| Shenyang Haobainian Wooden Co., Ltd | Shenyang Haobainian Wooden Co., Ltd | 6.78 |
| Shenyang Haobainian Wooden Co., Ltd | Shanghai Demeijia Wooden Co., Ltd | 6.78 |
| Dalian Dajen Wood Co., Ltd | Dalian Dajen Wood Co., Ltd | 6.78 |
| HaiLin LinJing Wooden Products, Ltd | HaiLin LinJing Wooden Products, Ltd | 6.78 |
| Dun Hua Sen Tai Wood Co., Ltd | Dun Hua Sen Tai Wood Co., Ltd | 6.78 |
| Dunhua Jisheng Wood Industry Co., Ltd | Dunhua Jisheng Wood Industry Co., Ltd | 6.78 |
| Hunchun Forest Wolf Industry Co., Ltd | Hunchun Forest Wolf Industry Co., Ltd | 6.78 |
| Guangzhou Panyu Southern Star Co., Ltd | Guangzhou Jiasheng Timber Industry Co., Ltd | 6.78 |
| Nanjing Minglin Wooden Industry Co., Ltd | Nanjing Minglin Wooden Industry Co., Ltd | 6.78 |
| Zhejiang Fudeli Timber Industry Co., Ltd | Zhejiang Fudeli Timber Industry Co., Ltd | 6.78 |
| Suzhou Dongda Wood Co., Ltd | Suzhou Dongda Wood Co., Ltd | 6.78 |
| Guangzhou Pan Yu Kang Da Board Co., Ltd | Guangzhou Pan Yu Kang Da Board Co., Ltd | 6.78 |
| Kornbest Enterprises Ltd | Guangzhou Pan Yu Kang Da Board Co., Ltd | 6.78 |
| Metropolitan Hardwood Floors, Inc | Dalian Huilong Wooden Products Co., Ltd | 6.78 |
| Metropolitan Hardwood Floors, Inc | Mudanjiang Bosen Wood Co., Ltd | 6.78 |
| Metropolitan Hardwood Floors, Inc | Nakahiro Jyou Sei Furniture (Dalian) Co., Ltd | 6.78 |
| Metropolitan Hardwood Floors, Inc | Hunchun Forest Wolf Wooden Industry Co., Ltd | 6.78 |
| Metropolitan Hardwood Floors, Inc | Kemian Wood Industry (Kunshan) Co., Ltd | 6.78 |
| Metropolitan Hardwood Floors, Inc | Shenyang Haobainian Wooden Co., Ltd | 6.78 |
| Zhejiang Longsen Lumbering Co., Ltd | Zhejiang Longsen Lumbering Co., Ltd | 6.78 |
| Xinyuan Wooden Industry Co., Ltd | Xinyuan Wooden Industry Co., Ltd | 6.78 |
| Dasso Industrial Group Co., Ltd | Dasso Industrial Group Co., Ltd | 6.78 |
| Hong Kong Easoon Wood Technology Co., Ltd | Dasso Industrial Group Co., Ltd | 6.78 |
| Armstrong Wood Products Kunshan Co., Ltd | Armstrong Wood Products Kunshan Co., Ltd | 6.78 |
| Baishan Huafeng Wooden Product Co., Ltd | Baishan Huafeng Wooden Product Co., Ltd | 6.78 |
| Changbai Mountain Development and Protection Zone Hongtu Wood Industry Co., Ltd. | Changbai Mountain Development and Protection Zone Hongtu Wood Industry Co., Ltd. | 6.78 |
| Changzhou Hawd Flooring Co., Ltd | Changzhou Hawd Flooring Co., Ltd | 6.78 |
| Dalian Jiuyuan Wood Industry Co., Ltd | Dalian Jiuyuan Wood Industry Co., Ltd | 6.78 |
| Dalian Penghong Floor Products Co., Ltd | Dalian Penghong Floor Products Co., Ltd | 6.78 |
| Dongtai Fuan Universal Dynamics LLC | Dongtai Fuan Universal Dynamics LLC | 6.78 |
| Dunhua City Dexin Wood Industry Co., Ltd | Dunhua City Dexin Wood Industry Co., Ltd | 6.78 |
| Dunhua City Hongyuan Wood Industry Co., Ltd | Dunhua City Hongyuan Wood Industry Co., Ltd | 6.78 |
| Dunhua City Jisen Wood Industry Co., Ltd | Dunhua City Jisen Wood Industry Co., Ltd | 6.78 |
| Dunhua City Wanrong Wood Industry Co., Ltd | Dunhua City Wanrong Wood Industry Co., Ltd | 6.78 |
| Fusong Jinlong Wooden Group Co., Ltd | Fusong Jinlong Wooden Group Co., Ltd | 6.78 |
| Fusong Qianqiu Wooden Product Co., Ltd | Fusong Qianqiu Wooden Product Co., Ltd | 6.78 |
| GTP International | Jiangsu Senmao Bamboo and Wood Industry Co., Ltd | 6.78 |
| GTP International | Jiafeng Wood (Suzhou) Co., Ltd | 6.78 |
| GTP International | Suzhou Dongda Wood Co., Ltd | 6.78 |
| GTP International | Kemian Wood Industry (Kunshan) Co., Ltd | 6.78 |
| Guangdong Yihua Timber Industry Co., Ltd | Guangdong Yihua Timber Industry Co., Ltd | 6.78 |
| HaiLin LinJing Wooden Products, Ltd | HaiLin LinJing Wooden Products, Ltd | 6.78 |
| Huzhou Fulinmen Imp & Exp. Co., Ltd | Huzhou Fulinmen Wood Floor Co., Ltd | 6.78 |
| Huzhou Fuma Wood Bus. Co., Ltd | Huzhou Fuma Wood Bus. Co., Ltd | 6.78 |
| Jiafeng Wood (Suzhou) Co., Ltd | Jiafeng Wood (Suzhou) Co., Ltd | 6.78 |
| Jiashan Hui Jia Le Decoration Material Co., Ltd | Jiashan Hui Jia Le Decoration Material Co., Ltd | 6.78 |

[4] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 71 FR 77373, 77377 (December 26, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 72 FR 19690 (April 19, 2007); *1-Hydroxyethylidene-1,1-Diphosphonic Acid from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 74 FR 10545, 10546 (March 11, 2009) (''*HEDP from the PRC.*''

[5] *See HEDP from the PRC,* 74 FR 10545, 10546.

| Exporter | Producer | Weighted average margin |
|---|---|---|
| Jilin Forest Industry Jinqiao Flooring Group Co., Ltd | Jilin Forest Industry Jinqiao Flooring Group Co., Ltd | 6.78 |
| Karly Wood Product Limited | Karly Wood Product Limited | 6.78 |
| Kunshan Yingyi-Nature Wood Industry Co., Ltd | Kunshan Yingyi-Nature Wood Industry Co., Ltd | 6.78 |
| Puli Trading Ltd | Baiying Furniture Manufacturer Co., Ltd | 6.78 |
| Shanghai Eswell Timber Co., Ltd | Shanghai Eswell Timber Co., Ltd | 6.78 |
| Shanghai Lairunde Wood Co., Ltd | Shanghai Lairunde Wood Co., Ltd | 6.78 |
| Shanghai New Sihe Wood Co., Ltd | Shanghai New Sihe Wood Co., Ltd | 6.78 |
| Shanghai Shenlin Corporation | Shanghai Shenlin Corporation | 6.78 |
| Shenzhenshi Huanwei Woods Co., Ltd | Shenzhenshi Huanwei Woods Co., Ltd | 6.78 |
| Vicwood Industry (Suzhou) Co., Ltd | Vicwood Industry (Suzhou) Co., Ltd | 6.78 |
| Xiamen Yung De Ornament Co., Ltd | Xiamen Yung De Ornament Co., Ltd | 6.78 |
| Xuzhou Shenghe Wood Co., Ltd | Xuzhou Shenghe Wood Co., Ltd | 6.78 |
| Yixing Lion-King Timber Industry Co., Ltd | Yixing Lion-King Timber Industry Co., Ltd | 6.78 |
| Jiangsu Simba Flooring Industry Co., Ltd | Yixing Lion-King Timber Industry Co., Ltd | 6.78 |
| Zhejiang Biyork Wood Co., Ltd | Zhejiang Biyork Wood Co., Ltd | 6.78 |
| Zhejiang Dadongwu GreenHome Wood Co., Ltd | Zhejiang Dadongwu GreenHome Wood Co., Ltd | 6.78 |
| Zhejiang Desheng Wood Industry Co., Ltd | Zhejiang Desheng Wood Industry Co., Ltd | 6.78 |
| Zhejiang Shiyou Timber Co., Ltd | Zhejiang Shiyou Timber Co., Ltd | 6.78 |
| Zhejiang Tianzhen Bamboo & Wood Development Co., Ltd | Zhejiang Tianzhen Bamboo & Wood Development Co., Ltd | 6.78 |
| Chinafloors Timber (China) Co., Ltd | Chinafloors Timber (China) Co., Ltd | 6.78 |
| Shanghai Lizhong Wood Products Co., Ltd | Shanghai Lizhong Wood Products Co., Ltd | 6.78 |
| Fine Furniture (Shanghai) Limited | Fine Furniture (Shanghai) Limited | 6.78 |
| Huzhou Sunergy World Trade Co., Ltd | Zhejiang Haoyun Wood Co., Ltd | 6.78 |
| Huzhou Sunergy World Trade Co., Ltd | Nanjing Minglin Wooden Industry Co., Ltd | 6.78 |
| Huzhou Sunergy World Trade Co., Ltd | Zhejiang AnJi XinFeng Bamboo & Wood Co., Ltd | 6.78 |
| Huzhou Jesonwood Co., Ltd | Zhejiang Jeson Wood Co., Ltd | 6.78 |
| Huzhou Jesonwood Co., Ltd | Huzhou Jesonwood Co., Ltd | 6.78 |
| A&W (Shanghai) Woods Co., Ltd | A&W (Shanghai) Woods Co., Ltd | 6.78 |
| A&W (Shanghai) Woods Co., Ltd | Suzhou Anxin Weiguang Timber Co., Ltd | 6.78 |
| Fu Lik Timber (HK) Company Limited | Guangdong Fu Lin Timber Technology Limited | 6.78 |
| Yekalon Industry, Inc./Sennorwell International Group (Hong Kong) Limited. | Jilin Xinyuan Wooden Industry Co., Ltd | 6.78 |
| Kemian Wood Industry (Kunshan) Co., Ltd | Kemian Wood Industry (Kunshan) Co., Ltd | 6.78 |
| Dalian Kemian Wood Industry Co., Ltd | Dalian Kemian Wood Industry Co., Ltd | 6.78 |
| Dalian Huilong Wooden Products Co., Ltd | Dalian Huilong Wooden Products Co., Ltd | 6.78 |
| Jiangsu Senmao Bamboo and Wood Industry Co., Ltd | Jiangsu Senmao Bamboo and Wood Industry Co., Ltd | 6.78 |
| PRC-wide Entity | | 27.12 |

* *de minimis*

** The Samling Group consists of the following companies: Baroque Timber Industries (Zhongshan) Co., Ltd., Riverside Plywood Corporation, Samling Elegant Living Trading (Labuan) Limited, Samling Riverside Co., Ltd., and Suzhou Times Flooring Co., Ltd.

The collection of bonds or cash deposits and suspension of liquidation will be revised according to the rates calculated in these amended preliminary results. Because these amended rates result in a reduced bond or cash deposit, they will be effective retroactively to May 26, 2011, the date of publication of the Preliminary Determination, and parties will be notified of this determination, in accordance with section 733(d) and (f) of the Act.

### International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the International Trade Commission (''ITC'') of our amended preliminary determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of the preliminary determination or 45 days after our final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation, of the subject merchandise.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.224(e).

Dated: June 20, 2011.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 2011–16070 Filed 6–24–11; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before July 18, 2011. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. at the U.S. Department of Commerce in Room 3720.

*Docket Number:* 11–031. *Applicant:* Tulane University, 6823 St. Charles Avenue, New Orleans, LA 70118. *Instrument:* Vitrobot sample preparation robot. *Manufacturer:* FEI Inc., The Netherlands. *Intended Use:* The instrument will be used to prepare colloidal suspensions and biological

materials for high-resolution imaging with a field emission transmission electron microscope. *Justification for Duty-Free Entry:* There are no instruments of the same general category being manufactured in the United States that can substitute for the Vitrobot for the intended use. *Application accepted by Commissioner of Customs:* June 10, 2011.

*Docket Number:* 11–033. *Applicant:* Temple University, 1900 N. 13th Street, Philadelphia, PA 19122. *Instrument:* Super low temperature Scanning Tunneling Microscope. *Manufacturer:* UNISOKU Co., Ltd., Japan. *Intended Use:* The instrument will be used in Ph.D. research, to study the electronic properties in solid state superconductors, semiconductors and magnetic materials. *Justification for Duty-Free Entry:* Instruments of the same general category being manufactured in the United States do not offer the level of low operating temperatures and magnetic field applications required for the intended use. *Application accepted by Commissioner of Customs:* June 9, 2011.

*Docket Number:* 11–034. *Applicant:* University of Chicago, Argonne National Laboratory, 9700 South Cass Avenue, Lemont, IL 60439. *Instrument:* Solar spectrum simulation array system. Manufacturer: Atlas Material Testing Technology, Germany. *Intended Use:* The instrument will simulate solar radiation for an existing vehicle and component testing cell, to evaluate vehicle-level control solutions for mitigating temperature-related impacts on energy consumption. *Justification for Duty-Free Entry:* There are no instruments of the same general category being manufactured in the United States. *Application accepted by Commissioner of Customs:* June 9, 2011.

*Docket Number:* 11–035. *Applicant:* University of California, Los Angeles, 760 Westwood Plaza, Box 77, Los Angeles, CA 90095. *Instrument:* Slicescope microscope. *Manufacturer:* Scientifica Ltd., U.K. *Intended Use:* The instrument will be used to examine the electrochemical properties of neurons, as part of research into the neurochemical effects of addictive drugs. *Justification for Duty-Free Entry:* There are no instruments of the same general category being manufactured in the United States. *Application accepted by Commissioner of Customs:* June 10, 2011.

*Docket Number:* 11–036. *Applicant:* Smith College, 44 College Lane, Northampton, MA 01063. *Instrument:* Quanta 450 Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* The instrument will be used for biological, chemical, geological, and paleontological research, to identify and study a variety of minerals, glass, biofilms, nanotubes, nanofibers and other natural materials. *Justification for Duty-Free Entry:* There are no instruments of the same general category being manufactured in the United States. *Application accepted by Commissioner of Customs:* June 10, 2011.

Dated: June 20, 2011.

**Gregory W. Campbell,**

*Director, Subsidies Enforcement Office, Office of Policy, Import Administration.*

[FR Doc. 2011–16068 Filed 6–24–11; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

### Lawrence Technological University, et al.; Notice of Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Ave, NW., Washington, DC 20230.

*Comments:* None received. *Decision:* Approved. We know of no instrument of equivalent scientific value to the foreign instrument described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of its order.

*Docket Number:* 11–022. *Applicant:* Lawrence Technological University, 21000 W. 10 Mile Road, Southfield, MI 48075. *Instrument:* FEI Quanta 450 FEG Electron Microscope. *Manufacturer:* FEI Company, Brno, Czech Republic. *Intended Use:* See notice at 76 FR 29725, May 23, 2011. *Reasons:* The instrument will be used to study polymers for biomedical applications; metals and ceramics used in orthopaedic implants; cement used in construction; lubricated components in automotives; and electrode materials in lithium ion batteries.

*Docket Number:* 11–027. *Applicant:* U.C. Davis, One Shields Avenue, Davis, CA 95616. *Instrument:* Sacher Lasertechnik Laser System. *Manufacturer:* Sacher Lasertechnik, LLC, Marburg, Germany. *Intended Use:* See notice at 76 FR 29725, May 23, 2011. *Reasons:* The instrument will be used for scientific research related to the development of a new optical technique for analyzing biological cells, for applications in biological and biomedical sciences.

Dated: June 20, 2011.

**Gregory W. Campbell,**

*Director, Subsidies Enforcement Office, Office of Policy, Import Administration.*

[FR Doc. 2011–16069 Filed 6–24–11; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–810]**

### Certain Welded Stainless Steel Pipes From the Republic of Korea: Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Amended Final Results

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On May 26, 2011, the United States Court of International Trade (CIT) sustained the Department of Commerce's (the Department's) results of redetermination as applied to respondent SeAH Steel Corporation (SeAH) pursuant to the CIT's remand order in *SeAH Steel Corporation* v. *United States and Bristol Metals,* Slip Op. 11–33 (March 29, 2011) (*SeAH II*). *SeAH Steel Corporation* v. *United States,* Court No. 09–00248 (Ct. Int'l Trade May 26, 2011) (*SeAH III*) (affirming the Department's Final Results of Redetermination Pursuant to Remand, Court No. 09–00248, dated April 26, 2011, available at *http://ia.ita.doc.gov/remands*). Consistent with the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), as clarified by *Diamond Sawblades Mfrs. Coalition* v. *United States,* 612 F.3d. 1348 (Fed. Cir. 2010) (*Diamond Sawblades*), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's *Final Results* and is amending the final results of the administrative review of the antidumping duty order on certain welded stainless steel pipes from the Republic of Korea covering the period of review (POR) of December 1, 2006, through November 30, 2007 with respect to SeAH. *See Certain Welded Stainless Steel Pipes From the Republic of Korea: Final Results of Antidumping Duty Administrative Review,* 74 FR 31242 (June 30, 2009) (*Final Results*)

and accompanying Issues and Decision Memorandum.

**DATES:** *Effective Date:* June 6, 2011.

**FOR FURTHER INFORMATION CONTACT:** Myrna Lobo or Milton Koch, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–2371 or (202) 482–2584, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On June 30, 2009, the Department issued its final results in the antidumping duty review of certain welded stainless steel pipes from the Republic of Korea covering the POR of December 1, 2006, through November 30, 2007. *See Final Results.* SeAH challenged the following aspects of the Department's *Final Results:* (1) The decision to depart from its practice of using an annual cost averaging period and to instead rely on quarterly costs for the sales below cost test; (2) the decision not to apply its normal ''90/60'' day window period for comparing home market and U.S. sales; (3) the use of an adjusted weighted average annual cost recovery test that incorporated an indexing methodology; and (4) the application of the major input rule with regard to hot-rolled stainless steel coils purchased from a company affiliated with SeAH.

In *SeAH Steel Corporation* v. *United States,* 704 F. Supp. 2d 1353 (Ct. Int'l Trade 2010), the CIT affirmed the Department's decisions to rely on quarterly average costs and to not apply the ''90/60'' day window in making price-to-price comparisons. The CIT granted the Department's request for a voluntary remand to consider steel specification data for the major input analysis and remanded to the Department for further explanation the adjusted weighted average annual cost recovery test that incorporated an indexing methodology.

On September 17, 2010, the Department filed its first remand redetermination explaining its indexed cost recovery methodology in detail. The Department also determined in its remand redetermination that it was appropriate to consider SeAH's steel specification data in its major input analysis, and accordingly adjusted and recalculated the major input analysis conducted in the *Final Results.*

On March 29, 2011, the CIT concluded in *SeAH II* that the adjusted cost recovery methodology which was employed by the Department in the *Final Results* and further explained in the first remand redetermination, was inconsistent with the text of the cost recovery statutory provision. The Court directed the Department to employ a cost recovery test using an unadjusted annual weighted average per unit cost of production. The CIT also affirmed the Department's use of the steel specification data in the first remand redetermination with respect to the Department's major input analysis.

On April 26, 2011, the Department filed its second remand redetermination (*Remand Results*). In accordance with the Court's instructions, the Department recalculated SeAH's dumping margin by employing an unadjusted annual weighted average per unit cost of production for the POR in its cost recovery test.

On May 26, 2011, the CIT sustained the Department's *Remand Results* in *SeAH III.* As a result of the two remand redeterminations, SeAH's antidumping margin changed from 9.05 percent to 6.01 percent.

## Timken Notice

In its decision in *Timken,* 893 F.2d at 341, as clarified by *Diamond Sawblades,* the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's holding in *SeAH III,* sustaining the Department's *Remand Results,* constitutes a final decision of that court that is not in harmony with the Department's *Final Results.* This notice is published in fulfillment of the publication requirements of *Timken.* Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. The cash deposit rate will remain the company-specific rate established for the subsequent and most recent period during which the respondents were reviewed. *See Certain Welded Stainless Steel Pipes From the Republic of Korea: Final Results of Antidumping Duty Administrative Review,* 75 FR 27987 (May 19, 2010).

## Amended Final Results

Because there is now a final court decision with respect to SeAH, the dumping margin is:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| SeAH Steel Corporation (SeAH) | 6.01 |

In the event the CIT's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct U.S. Customs and Border Protection to assess antidumping duties on entries of the subject merchandise during the POR from SeAH based on the revised assessment rates calculated by the Department.

This notice is issued and published in accordance with sections 516A(e), 751(a)(1), and 777(i)(1) of the Act.

Dated: June 20, 2011.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 2011–16067 Filed 6–24–11; 8:45 am]

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# DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–570–831]**

## Fresh Garlic From the People's Republic of China: Final Results and Final Rescission, in Part, of the 2008–2009 Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On December 22, 2010, the Department of Commerce (Department) published the preliminary results of the administrative review of the antidumping duty order on Fresh Garlic from the People's Republic of China (PRC) covering the period of review (POR) of November 1, 2008, through October 31, 2009.

Based on the analysis of the record and the comments received, the Department has made certain changes to the margin calculation for the individually examined respondent, Shenzhen Xinboda Industrial Co. Ltd. (Xinboda). The Department also has assigned a separate rate to four fully-cooperative producers/exporters which were not selected for individual examination, but which demonstrated their eligibility for separate rate status. In addition, the Department is rescinding the review with respect to eight exporters who timely submitted ''no shipment'' certifications. Finally, the Department finds that 17 companies subject to this review, including mandatory respondents, Jinxiang Tianma Freezing Storage Co., Ltd.

(Tianma Freezing) and Shenzhen Greening Trading Co. Ltd. (Shenzhen Greening), did not demonstrate their eligibility for separate rate status and thus will be considered part of the PRC-Wide Entity for purposes of these final results.

**DATES:** *Effective Date:* June 27, 2011.

**FOR FURTHER INFORMATION CONTACT:** Scott Lindsay, David Lindgren, Nicholas Czajkowski, or Lingjun Wang, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0780, (202) 482–3870, (202) 482–1395, and (202) 482–2316, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On December 22, 2010, the Department published in the **Federal Register** the preliminary results of the 2008–2009 administrative review of the antidumping duty order on fresh garlic from the PRC. *See Fresh Garlic from the People's Republic of China: Preliminary Results of, Partial Rescission of, and Intent to Rescind, in Part, the 15th Antidumping Duty Administrative Review,* 75 FR 80458 (December 22, 2010) (*Preliminary Results*).[1] Since the *Preliminary Results,* the following events have occurred.

On January 10, 2011, the Department extended the deadline for submission of surrogate value information to January 24, 2011; the Department also extended the deadline for submission of case briefs. On January 20, 2011, Xinboda timely requested a hearing to address the issues related to surrogate values. On January 24, 2011, the Fresh Garlic Producers Association (FGPA) and its individual members [2] (collectively, Petitioners) and Xinboda both timely submitted publicly available surrogate value data to value Xinboda's factors of production.

On January 13, 2011, and January 28, 2011, in accordance with 19 CFR 351.303(g), Jinxiang Hejia Co., Ltd. (Hejia) submitted two certifications which were not enclosed with the no-shipments certificate that Hejia submitted on January 13, 2010.

On February 3, 2011, both Petitioners and Xinboda submitted rebuttal comments concerning the valuation of factors of production. On February 4, 2011, Xinboda submitted photographs which were referenced in its submission made on February 3, 2011, but which were unavailable for filling at that time. On February 14, 2011, Petitioner submitted rebuttal comments to Xinboda's February 3 submission concerning surrogate values for factors of production.

On March 7, 2011, the Department issued a no-shipment inquiry to the U.S. Customs and Border Protection (CBP) regarding fresh garlic from the PRC exported by Hejia. On March 9, 2011, the Department placed the inquiry on the record of this review and notified interested parties.[3]

On March 25, 2011, Xinboda submitted a response to the third supplemental questionnaire.

On April 1, 2011, the Department placed on the record of this review DLC Trading Inc.'s 2009 public request for a changed circumstances review, along with Xinboda's 2010 response to the request and the Department's decision not to initiate a changed circumstances review.[4] On April 4, 2011, the Department issued a verification agenda to Xinboda. From April 12, 2011, through April 19, 2011, Department officials conducted verification of Xinboda and its affiliated producer, Zhengzhou Dadi Garlic Industry Co., Ltd. (Dadi). On April 28, 2011, upon return from the verification, the Department officials who conducted verification received an e-mail to which three photographs were attached. Because the e-mail and the attached photographs pertained to verification, and because the subject of this e-mail was similar to the claims made in the 2009 request for a changed circumstances review, the Department conducted various internet searches in an attempt to corroborate the information contained in the e-mail allegation. The results of our internet research called into question the facts on the record and the Department placed the e-mail and the results of our research on the record on May 9, 2011.[5]

On May 13, 2011, the Department released the verification report for Xinboda. Also on May 13, 2011, the Department notified the parties about the due dates for submitting factual information in accordance with 19 CFR 351.301(c)(1) ''to rebut, clarify, or correct'' the information placed on the record by the Department. At the same time, the Department set the schedule for the case briefs and rebuttal briefs. On May 20, 2011, Xinboda submitted its case brief and factual information to rebut or correct the information placed on the record by the Department. Also on May 20, 2011, Jinan Farmlady Trading Co., Ltd. submitted its comments. On May 27, 2011, after receiving a one-day extension from the Department, Petitioners submitted a rebuttal brief. On June 1, 2011, the Department returned the rebuttal brief to Petitioners due to untimely filed new factual information. On June 2, 2011, Xinboda requested the Department to strike further portions of Petitioners' rebuttal brief. On June 3, 2011, Petitioners re-filed the rebuttal brief after removing untimely filed new factual information. Also on June 3, 2011, after determining that Petitioners had made affirmative arguments in the rebuttal brief, the Department requested Petitioners to strike the new arguments and resubmit the rebuttal brief. On June 6, 2011, Petitioners re-filed the rebuttal brief after removing the new arguments.

On June 7, 2011, the Department conducted a hearing pursuant to Xinboda's request mentioned above.

On June 9, 2011, the Department placed on the record its response to Xinboda's concern regarding administrative protective order (APO) access for DLC Trading, Inc.[6]

## Period of Review

The POR is November 1, 2008, through October 31, 2009.

## Scope of the Order

The products covered by the order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay. The scope of the order

[1] The Department initiated this review for 84 producers/exporters. Based on timely withdrawal of requests for review, the Department rescinded the review with respect to 54 producers/exporters in the *Preliminary Results.* The remaining 30 producers/exporters are discussed in these final results.

[2] The individual members of the FGPA are Christopher Ranch L.L.C., The Garlic Company, Valley Garlic, and Vessey and Company, Inc.

[3] *See* Memorandum to the File, Re: No Shipment Inquiry re Fresh Garlic from China Exported by Jinxiang Hejia Co., Ltd. (March 9, 2011).

[4] *See* Memorandum to the File, Re: 15th Administrative Review of Antidumping Duty Order on Fresh Garlic from People's Republic of China: Placing on the Record Documents Related to DLC Trading Co., Ltd.'s request for a Changed Circumstance Review of Shenzhen Xinboda Industrial Co., Ltd. (April 1, 2011) .

[5] *See* Memorandum to the File, Re: 15th Administrative Review of Antidumping Duty Order on Fresh Garlic from People's Republic of China: Placing on the Record Documents and Information Related to Shenzhen Xinboda Industrial Co., Ltd. (May 9, 2011).

[6] *See* Memorandum to the File, Re: Administrative Review of Fresh Garlic from the People's Republic of China: APO Access for DLC Trading Inc. (June 9, 2011).

does not include the following: (a) Garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed. The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the Harmonized Tariff Schedule of the United States (HTSUS).

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive. In order to be excluded from the order, garlic entered under the HTSUS subheadings listed above that is (1) Mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to U.S. Customs and Border Protection to that effect.

**Analysis of Comments Received**

All issues addressed in the case and rebuttal briefs by parties in this review are discussed in the Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, regarding, ''Issues and Decision Memorandum for the Final Results of the 15th Administrative Review of Fresh Garlic from the People's Republic of China,'' dated June 20, 2011 (Decision Memorandum), which is hereby adopted by this notice. A list of the issues that parties raised and to which we responded in the Decision Memorandum follows as Appendix I to this notice. The Decision Memorandum is a public document and is on file in the Central Records Unit (CRU), Main Commerce Building, Room 7046, and is also accessible on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the Decision Memorandum are identical in content.

**Changes Since the Preliminary Results**

Based on our review of the record, including additional information placed on the record by Hejia and the Department, the Department is rescinding the review with respect to Hejia. *See* ''Final Rescission, in Part, Based on No Shipments'' section, below.

Based on the surrogate value information placed on the record by the parties, and comments received from interested parties, the Department has revised the surrogate value for garlic bulbs by expanding the period during which prices for large-size garlic were averaged and by applying a garlic-specific wholesale price index. The Department has also changed the source of the financial ratios. In addition, based on the results of verification, the Department has added water as a factor of production and calculated a surrogate value for the water consumed in the production of subject merchandise at one of Xinboda/Dadi's production facilities. Furthermore, as a result of verification, the Department has added freight between Xinboda/Dadi's production facilities as a factor of production.[7] Finally, in the *Preliminary Results,* the Department did not take into account in the margin program the inland freight reported by Xinboda for certain factors of production; we have corrected this omission for these final results. A full discussion of these changes and the Department's calculations is contained in the Decision Memorandum, Final Calculation Memorandum[8] and Final SV Memorandum.[9]

**Final Rescission, In Part, Based on No Shipments**

As discussed in the *Preliminary Results,* Hebei Golden Bird Trading Co., Ltd., Jinan Yipin Corporation Ltd., Jining Yongjia Trade Co., Ltd., Qingdao Tiantaixing Foods Co., Ltd., Shandong Chenhe Int'l Trading Co., Ltd., Qingdao Sea-line International Trading Co., Ltd., and Shanghai LJ International Trading Co. each timely certified that it had no shipments during the POR. After we verified the claims with CBP and examined CBP shipment data, the Department announced its intent to rescind the administrative review with respect to these companies in the *Preliminary Results.* No parties commented on our preliminary intent to rescind. Thus, there is no information or argument on the record of the current review that warrants reconsidering our preliminary decision to rescind. Therefore, we are rescinding this administrative review with respect to all seven aforementioned companies.

As noted above, Hejia certified it had no shipments during the POR. The Department confirmed Hejia's claim by issuing a no-shipment inquiry to CBP and examining electronic CBP data.[10] We received no responses from CBP regarding our no-shipment inquiry. Our examination of shipment data from CBP for Hejia indicated that there were no entries of subject merchandise which it exported during the POR and no information has been submitted to suggest that Hejia had shipments of subject merchandise during the POR. Therefore, we are rescinding this administrative review with respect to Hejia.

**Separate Rates**

In proceedings involving non-market economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be eligible for a separate rate.[11] In the *Preliminary Results,* the Department found that Xinboda, Jinan Farmlady Trading Co., Ltd. (Farmlady), Qingdao Xintianfeng Foods Co., Ltd. (QXF), Shandong Longtai Fruits and Vegetables Co., Ltd. (Longtai), and Weifang Hongqiao International Logistic Co., Ltd. (Hongqiao) demonstrated their eligibility for separate rate status. *See Preliminary Results,* 75 FR at 80461. For the final results, we continue to find that the evidence placed on the record of this review by Xinboda, Farmlady, QXF, Longtai, and Hongqiao demonstrates both a *de jure* and *de facto* absence of government control, with respect to their exports of the merchandise under review, and, thus, these companies are eligible for separate rate status. The per-unit separate rate to

[7] *See* Memorandum to the File, Re: Verification of the Sales and Factors Response of Shenzhen Xinboda Industrial Co., Ltd. in the Antidumping Administrative Review of Fresh Garlic from People's Republic of China (May 13, 2011) at 10–11 and 19.

[8] *See* Memorandum to the File, Re: Administrative Review of Fresh Garlic from the People's Republic of China: Calculation Memorandum for the Final Results of Shenzhen Xinboda Industrial Co., Ltd. (June 20, 2011) (Final Calculation Memorandum).

[9] *See* Memorandum to the File, Re: Administrative Review of Fresh Garlic from the People's Republic of China: Surrogate Values for the Final Results (June 20, 2011) (Final SV Memorandum).

[10] *See* Memorandum to the File, Re: No Shipment Inquiry re Fresh Garlic from China Exported by Jinxiang Hejia Co., Ltd. (March 9, 2011).

[11] *See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585 (May 2, 1994).

be applied to Farmlady, QXF, Longtai, and Hongqiao is discussed in the ''Margin for the Separate Rate Companies'' section, below.

As discussed in the *Preliminary Results,* the Department found that Shenzhen Greening and Tianma Freezing, two mandatory respondents, did not respond to the initial questionnaire. Thus, these two companies have not demonstrated their eligibility for separate rate status and will be considered part of the PRC-Wide Entity for purposes of this review. *See* ''Application of Total AFA to the PRC-Wide Entity'' section, below. In addition, in the *Preliminary Results,* the Department found 16 other companies were part of the PRC-Wide Entity because they were subject to the review but did not submit separate rate documentation. Hejia was among these 16 companies but, as discussed above, the Department is rescinding its review. For the remaining 15 companies, there is no information on the record of this review that warrants reconsideration of our preliminary decision to consider them part of the PRC-wide entity. Therefore, the Department has found that these 15 companies, plus the two uncooperative mandatory respondents, are part of the PRC-Wide Entity. *See* Appendix II.

**Margin for the Separate Rate Companies**

As discussed above, the Department continues to find that Farmlady, QXF, Longtai, and Hongqiao have demonstrated their eligibility for a separate rate. For the exporters subject to a review that are determined to be eligible for separate rate status, but are not selected as individually examined respondents, the Department generally weight-averages the rates calculated for the individually examined respondents, excluding any rates that are zero, *de minimis,* or adverse facts available (AFA).[12] Consistent with the Department's practice, in the *Preliminary Results,* the Department preliminarily determined that the margin to be assigned to these separate companies should be the rate calculated for the single cooperative mandatory respondent, Shenzhen Xinobda; for these final results, the Department continues to assign the rate calculated for the single cooperative mandatory respondent to Farmlady, QXF, Longtai, and Hongqiao.

**Verification**

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), we verified the information submitted by Xinboda for use in our final results of review.[13] We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by Xinboda.

**Use of Facts Otherwise Available and AFA**

Section 776(a) of the Act provides that the Department shall apply ''facts otherwise available'' if (1) Necessary information is not on the record, or (2) an interested party or any other person (A) Withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard 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 applicable requirements established by the administering authority'' if the information is timely, can be verified, 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 supplied if it can do so without undue difficulties.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. For the reasons discussed below, the Department determines that, in accordance with sections 776(a)(1), 776(a)(2) and 776(b) of the Act, the use of AFA is appropriate for the final results with respect to the PRC-Wide Entity, which includes Shenzhen Greening and Tianma Freezing.

**Application of Total AFA to the PRC-Wide Entity**

Because Shenzhen Greening and Tianma Freezing were selected as mandatory respondents, but did not respond to the initial questionnaire, they did not demonstrate eligibility for separate rate status. Thus, for purposes of this review, Shenzhen Greening and Tianma Freezing are considered part of the PRC-Wide Entity. Further, because these two companies, which are part of the PRC-Wide Entity, did not respond to the questionnaire, the Department determines that the PRC-Wide Entity withheld information requested by the Department in accordance with sections 776(a)(2)(A) and (B) of the Act, and significantly impeded the proceeding in accordance with section 776(a)(2)(C) of the Act.

As a result, the Department is basing the dumping margin of the PRC-Wide Entity on the facts otherwise available on the record. No other party provided any additional information regarding the PRC-Wide Entity. In addition, because Shenzhen Greening and Tianma Freezing, which are part of the PRC-Wide Entity, failed to cooperate to the best of their ability, we find the PRC-Wide Entity did not provide the requested information, which was in the sole possession of the respondents and could not be obtained otherwise.[14] Hence, pursuant to section 776(b) of the Act, the Department has determined

[12] *See, e.g., Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Results of New Shipper Review and Partial Rescission of Administrative Review,* 73 FR 8273, 8279 (February 13, 2008), unchanged in *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review,* 73 FR 49162 (August 20, 2008).

[13] *See* Memorandum to the File, Re: Verification of the Sales and Factors Response of Shenzhen Xinboda Industrial Co., Ltd. in the Antidumping Duty Administrative Review of Fresh Garlic from the People's Republic of China (May 9, 2011).

[14] *See Nippon Steel Corporation* v. *United States,* 337 F.3d 1373, 1383 (Fed. Cir. 2003), where the Court of Appeals for the Federal Circuit (CAFC) provided an explanation of the ''failure to act to the best of its ability'' standard noting that the Department need not show intentional conduct existed on the part of the respondent, but merely that a ''failure to cooperate to the best of a respondent's ability'' existed (*i.e.,* information was not provided ''under circumstances in which it is reasonable to concluded that less than full cooperation has been shown'').

that, when selecting from among the facts otherwise available, an adverse inference is warranted with respect to the PRC-Wide Entity.

**Selection of AFA Rate**

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) provide that the Department may rely on information derived from (1) The petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. The Department's practice is to select an AFA rate that is sufficiently adverse ''as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner'' and that ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' [15] Specifically, the Department's practice in reviews, in selecting a rate as total AFA, is to use the highest rate on the record of the proceeding which, to the extent practicable, can be corroborated (assuming the rate is based on secondary information).[16] The Court of International Trade (CIT) and the CAFC have affirmed decisions to select the highest margin from any prior segment of the proceeding as the AFA rate on numerous occasions.[17] In choosing the appropriate balance between providing a respondent with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin reflects ''a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.'' [18] Therefore, as AFA, the Department has assigned the PRC-Wide Entity a dumping margin of $4.71 per kilogram, the highest calculated per-unit rate on the record of any segment of this proceeding.

**Corroboration of Secondary Information Used as AFA**

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.[19] To corroborate means that the Department will satisfy itself that the secondary information to be used has probative value.[20] To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.[21] Independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.[22]

As discussed above, the $4.71 per kilogram is the highest rate on the record of any segment of this antidumping duty order. This rate was calculated using the *ad valorem* rate contained in the petition in the original investigation of garlic from the PRC and was applied to the PRC-Wide Entity in the immediately preceding administrative review.[23] Furthermore, no information has been presented in this review that calls into question the reliability of the information, thus, the Department finds that the information is reliable. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin.[24] Similarly, the Department does not apply a margin that has been discredited.[25] None of these circumstances are present with respect to the rate being used here.

Moreover, the rate selected is the rate currently applicable to the PRC-Wide Entity. The CAFC has held that the Department ''is permitted to use a 'common sense inference that the highest prior margin is the most probative evidence of current margins because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.' '' [26] In this regard, we note that no party has provided information related to the PRC-Wide Entity's actual rate of dumping and we have not received any comments on this matter. As there is no information on the record of this review that demonstrates that this rate is not appropriate to use as AFA for the PRC-Wide Entity in the current review, we determine that this rate has relevance.

[15] *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909, 8911 (February 23, 1998); *see also Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review,* 70 FR 69937, 69939 (November 18, 2005) and the Statement of Administrative Action accompany the Uruguay Round Agreement Act, H.R. Rep. No. 316, 103d Cong., 2d Sess. 870 (SAA).

[16] *See Glycine from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review,* 74 FR 15930, 15934 (April 8, 2009), unchanged in *Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 74 FR 41121 (August 14, 2009); *see also Fujian Lianfu Forestry Co., Ltd.* v. *United States,* 638 F. Supp. 2d 1325, 1336 (CIT August 10, 2009) (''Commerce may, of course, begin its total AFA selection process by defaulting to the highest rate in any segment of the proceeding, but that selection must then be corroborated, to the extent practicable.'').

[17] *See, e.g., NSK Ltd.* v. *United States,* 346 F. Supp. 2d 1312, 1335 (CIT 2004) (affirming a 73.55 percent total AFA rate, the highest available dumping margin calculated for a different respondent in the investigation); *Kompass Food Trading International* v. *United States,* 24 CIT 678, 683–84 (2000) (affirming a 51.16 percent total AFA rate, the highest available dumping margin for a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd.* v. *United States,* 360 F. Supp. 2d 1339, 1348 (CIT 2005) (affirming a 223.01 percent total AFA rate, the highest available dumping margin for a different respondent in a previous administrative review).

[18] *Rhone Poulenc, Inc.* v. *United States,* 899 F.2d 1185, 1190 (CAFC 1990).

[19] *See* SAA.

[20] *See id.*

[21] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outsider Diameter, and Components Thereof, From Japan: Final Results of Antidumping Duty Administrative Reviews and Termination in Part,* 62 FR 11825 (March 13, 1997).

[22] *See Notice of Preliminary Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan,* 68 FR 35627 (June 16, 2003), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: High and Ultra High Voltage Ceramic Station Post Insulators from Japan,* 68 FR 62560 (November 5, 2003); and *Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada,* 70 FR 12181, 12183–84 (March 11, 2005).

[23] *See, e.g., Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 14th Antidumping Duty Administrative Review,* 75 FR 34976 (June 21, 2010).

[24] *See, e.g., Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812, 6814 (February 22, 1996).

[25] *See D&L Supply Co.* v. *United States,* 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated).

[26] *KYD, Inc.* v. *United States,* 607 F.3d 760 (Fed. Cir. 2010) (quoting *Rhome Poulenc, Inc.* v. *United States,* 899 F.2d at 1190).

As this rate is both reliable and relevant, we determine that it has probative value, and is thus in accordance with the requirement under section 776(c) of the Act, that secondary information be corroborated to the extent practicable.

**Final Results of Review**

As a result of our review, we determine that the following margins exist for the period November 1, 2008, through October 31, 2009.[27]

| Manufacturer/exporter | Weighted-average margin (dollars per kilogram) |
|---|---|
| Shenzhen Xinboda Industrial Co., Ltd | $0.06 |
| Jinan Farmlady Trading Co., Ltd | 0.06 |
| Qingdao Xintianfeng Foods Co., Ltd | 0.06 |
| Shandong Longtai Fruits and Vegetables Co., Ltd | 0.06 |
| Weifang Hongqiao International Logistic Co., Ltd | 0.06 |
| PRC-Wide Entity (*see* Appendix II) | 4.71 |

**Assessment Rates**

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. The Department will direct CBP to assess importer-specific assessment rates based on the resulting per-unit (*i.e.,* per kilogram) amount on each entry of the subject merchandise during the POR. The Department intends to issue appropriate assessment instructions for such companies directly to CBP 15 days after the publication of this notice in the **Federal Register**.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be the rate established in these final results of review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, a zero cash deposit rate will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of $4.71 per kilogram; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

**Notification to Interested Parties**

This notice also serves as a reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with regulations and terms of an APO is a violation which is subject to sanction.

**Disclosure**

In accordance with 19 CFR 351.224(b), we will disclose the calculations performed for these final results to parties in this proceeding within five days of the date of publication of this notice.

We are issuing and publishing this notice of these final results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 20, 2011.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

## Appendix I

Comment 1: Whether the Application of Total Adverse Facts Available to Xinboda Is Warranted
Comment 2: Whether the Department Properly Compiled the Record Regarding Allegations Against Xinboda
Comment 3: Surrogate Values for Garlic Bulbs
Comment 4: Wholesale Price Index
Comment 5: Xinboda's Water Valuation
Comment 6: Surrogate Financial Ratios
Comment 7: Surrogate Wage Rates
Comment 8: Partial Rescission in Administrative Reviews
Comment 9: Means To Exclude Separate Rate Companies From Administrative Reviews
Comment 10: Zeroing in Administrative Reviews

## Appendix II

Companies under Review Subject to the PRC-Wide Entity Rate

1. Anqiu Friend Food Co., Ltd.
2. Chengwu County Yuanxiang Industry & Commerce Co., Ltd.
3. Heze Ever-Best International Trade Co., Ltd. (f/k/a Shandong Heze International Trade and Developing Company)
4. Jinxiang Dongyun Freezing Storage Co., Ltd. (a/k/a Jinxiang Eastward Shipping Import and Export Limited Company).
5. Jinxiang Shanyang Freezing Storage Co., Ltd.
6. Linshu Dading Private Agricultural Products Co., Ltd.
7. Qingdao Saturn International Trade Co., Ltd.
8. Qufu Dongbao Import & Export Trade Co., Ltd.
9. Shandong Wonderland Organic Food Co., Ltd.

[27] As discussed in the *Preliminary Results,* the Department selected four mandatory respondents. In the *Preliminary Results,* the Department rescinded this review with respect to Harmoni and found Tianma Freezing and Shenzhen Greening to be part of the PRC-Wide Entity.

10. Shanghai Ever Rich Trade Company
11. Shenzhen Fanhui Import & Export Co., Ltd.
12. Taian Fook Huat Tong Kee Pte. Ltd.
13. Taiyan Ziyang Food Co., Ltd.
14. Weifang Shennong Foodstuff Co., Ltd.
15. XuZhou Simple Garlic Industry Co., Ltd.
16. Jinxiang Tianma Freezing Storage Co., Ltd.
17. Shenzhen Greening Trading Co., Ltd.

[FR Doc. 2011–16072 Filed 6–24–11; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XA504**

### Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Regional Administrator, Southwest Region, NMFS, has made a preliminary determination that an application for an Exempted Fishing Permit (EFP) warrants further consideration. The application was submitted by members of the Pacific sardine fishing industry who request an exemption from seasonal closures of the directed fishery to conduct a survey designed to estimate the population size of Pacific sardine. NMFS requests public comment on the application. NMFS will make a final decision about whether to issue an EFP after consideration of those comments.

**DATES:** Comments must be received by July 12, 2011.

**ADDRESSES:** You may submit comments on this notice identified by 0648–XA504 by any one of the following methods:

- *Mail:* Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802.
- *Fax:* (562) 980–4047, *Att:* Joshua Lindsay.

**FOR FURTHER INFORMATION CONTACT:** A copy of the application can be viewed at the following Web site: *http://swr.nmfs.noaa.gov;* or by contacting Joshua Lindsay, Southwest Region, NMFS, (562) 980–4034; *joshua.lindsay@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** On May 25, 2011, NMFS published a final rule implementing the harvest guideline (HG) and annual specifications for the 2011 Pacific sardine fishing season off the U.S. West Coast (76 FR 30276). As part of these management measures the Council recommended, and NMFS approved, that 4,200 metric tons (mt) of the maximum harvest guideline (HG) be initially subtracted and set aside for potential industry-based research projects. Members of the Pacific sardine fishing industry, concerned about the difficulty of securing fishing vessels for research purposes during the normal fishing season, requested this separate allocation so that they could conduct research fishing activities after fishing is closed. The 4,200 mt set-aside was intended to allow for potential research fishing in the second seasonal period (July 1–September 14, 2009) and third seasonal period (September 15–December 31, 2009), to continue if that period's directed fishery allocation is reached and directed fishing is closed.

An EFP is required to conduct the fishing activities proposed by the applicants to occur when directed fishing is otherwise not allowed. At the March 2011 Council meeting, the Council reviewed an EFP application that proposed to utilize 2,700 mt of the 4,200 mt initially set aside. The applicants proposed using 2,700 mt to replicate the summer survey conducted under similar EFPs in 2009 and 2010, but with an expanded sample size. The proposal went forward for public comment and was reviewed by the Council again at their April meeting, at which time the Council recommended that NMFS approve and issue the EFP. Any public comment received in response to this notice will be considered by NMFS in determining whether to approve and issue the EFP.

One of the goals set forth in the EFP application is the development of an index of biomass for Pacific sardine, with the desire that this index be included in the subsequent Pacific sardine stock assessment. If NMFS does not issue an EFP, then the set-aside will be re-allocated to the directed harvest allocation of the third allocation period. Any research set aside attributed to an EFP for use during the closed fishing time in the second allocation period (prior to September 15), but not utilized, would also roll into the directed fishery allocation for the third allocation period.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: June 22, 2011.

**Margo Schulze-Haugen,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2011–16037 Filed 6–24–11; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XA518**

### Endangered Species; File No. 16253

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; receipt of application.

**SUMMARY:** Notice is hereby given that NMFS Southeast Fisheries Science Center (SEFSC; Responsible Party: Bonnie Ponwith), has applied in due form for a permit to take green (*Chelonia mydas*), Kemp's ridley (*Lepidochelys kempii*), hawksbill (*Eretmochelys imbricata*), leatherback (*Dermochelys coriacea*), olive ridley (*Lepidochelys olivacea*), and loggerhead (*Caretta caretta*) sea turtles for scientific research.

**DATES:** Written, telefaxed, or e-mail comments must be received on or before July 27, 2011.

**ADDRESSES:** The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 16253 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)427–8401; fax (301)713–0376;

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978)281–9328; fax (978)281–9394; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727)824–5312; fax (727)824–5309.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division

- by e-mail to *NMFS.Pr1Comments@noaa.gov* (include the File No. in the subject line of the e-mail),
- by facsimile to (301)713–0376, or
- at the address listed above.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed

above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

**FOR FURTHER INFORMATION CONTACT:** Kristy Beard or Amy Hapeman, (301)427–8401.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant requests a five-year permit to conduct research on leatherback, loggerhead, green, hawksbill, olive ridley, and Kemp's ridley sea turtles in the Atlantic Ocean, Gulf of Mexico, Caribbean Sea and their tributaries. The purpose of the research is to evaluate modifications to commercial fishing gear to mitigate sea turtle interactions and capture under two projects, Project A (Turtle Excluder Device Evaluations in Atlantic and Gulf of Mexico Trawl Fisheries) and Project B (Modifications to Longline Fisheries Gear). These evaluations and subsequent gear modifications could help to reduce incidental turtle bycatch in the gear types studied and provide data to improve stock assessments, assess the impact of anthropogenic activities, and better manage and recover these species. Annual requested take numbers under Project A are: 225 loggerheads, 98 Kemp's ridleys, 82 leatherbacks, 47 greens, 33 hawksbills, 33 olive ridleys, and 85 unidentified/hybrid turtles. A subset of these animals would be captured during trawl research; the rest of the turtles would be captured within fisheries managed by another Federal authority. Annual requested take numbers under Project B are: 28 loggerheads, 3 Kemp's ridleys, 30 leatherbacks, 4 greens, 4 hawksbills, 3 olive ridleys, and 3 unidentified/hybrid turtles. All animals would be handled, measured, weighed, photographed, flipper tagged, passive integrated transponder tagged, skin biopsied, and released.

Dated: June 21, 2011.

**P. Michael Payne,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2011–16043 Filed 6–24–11; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XA512**

### Caribbean Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Catch Share Panel of the Caribbean Fishery Management Council will hold a public meeting to discuss the issues contained in the enclosed agenda.

**DATES:** The meeting will be held on July 20, 2011, from 7 p.m. to 9:30 p.m.

**ADDRESSES:** The meeting will be held at the Holiday Inn Hotel in Mayaguez, Puerto Rico.

**FOR FURTHER INFORMATION CONTACT:** Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–2577; *telephone:* (787) 766–5926.

**SUPPLEMENTARY INFORMATION:** The Catch Share Panel of The Caribbean Fishery Management Council will hold a public meeting to discuss the following agenda items:

- Discussion Outline of Work Done and Schedule of Meetings.
- Next Surveys:

—Landings Data.

—Socio-Economic Aspects Deep-Water Fish Fishery.

- Other Issues.

### Special Accomodations

This meeting is physically accessible to people with disabilities. Simultaneous interpretation will be provided (English-Spanish) if necessary. For more information or request for sign language interpretation and other auxiliary aids, please contact Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico, 00918–2577; *telephone:* (787) 766–5926, at least 5 days prior to the meeting date.

Dated: June 21, 2011.

**Tracey L. Thompson,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2011–15929 Filed 6–24–11; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XA519**

### Gulf of Mexico Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Council to convene a public meeting.

**SUMMARY:** The Gulf of Mexico Fishery Management Council will convene a meeting of the Ad Hoc Commercial Reef Fish Individual Fishing Quota (IFQ) Advisory Panel.

**DATES:** The meeting will convene from 8:30 a.m. to 4:30 p.m. on Thursday, July 14, 2011.

**ADDRESSES:** The meeting will be held at the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: (813) 348–1630.

*Council address:* Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607.

**FOR FURTHER INFORMATION CONTACT:** Dr. Assane Diagne, Economist; Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

**SUPPLEMENTARY INFORMATION:** The Ad Hoc Commercial Reef Fish Individual Fishing Quota (IFQ) Advisory Panel IFQ advisory panel will discuss issues related to the design, implementation, evaluation, and monitoring of reef fish IFQ programs in the Gulf of Mexico.

Copies of the agenda and other related materials can be obtained by calling (813) 348–1630 or can be downloaded from the Council's ftp site, ftp.gulfcouncil.org.

Although other non-emergency issues not on the agenda may come before the Scientific and Statistical Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Advisory Panel will be restricted to those issues specifically identified in the agenda 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 action to address the emergency.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council (*see* **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: June 21, 2011.

**Tracey L. Thompson,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2011–15911 Filed 6–24–11; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

**[Docket ID: USAF–2011–0018]**

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice to delete a system of records.

**SUMMARY:** The Department of the Air Force is deleting a systems of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on July 27, 2011 unless comments are received which result in a contrary determination.

**ADDRESSES:** Send comments, identified by docket number and/Regulatory Information Number (RIN) and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**ADDRESSES:** Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information officer, ATTN: SAF/XCPPI, 1800 Air Force Pentagon, Washington, DC 20330–1800.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles J. Shedrick, Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information officer, ATTN: SAF/XCPPI, 1800 Air Force Pentagon, Washington, DC 20330–1800, or by phone at 703–696–6488.

**SUPPLEMENTARY INFORMATION:** The Department of the Air Force systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Air Force proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: June 21, 2011.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**Deletion:**

**F036 HAF A**

Air Force Outreach Request System (February 19, 2009, 74 FR 7401).

**REASON:**

The Air Force Outreach Request System does not retrieve records by personally identifiable information (PII).

[FR Doc. 2011–15987 Filed 6–24–11; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Army

**[Docket ID USA–2011–0015]**

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice to Amend a System of Records.

**SUMMARY:** The Department of the Army is proposing to amend a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** The changes will be effective on July 27, 2011 unless comments are received that would result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by docket number and/Regulatory Information Number (RIN) and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Mr Leroy Jones, Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905, or by phone at (703) 428–6185.

**SUPPLEMENTARY INFORMATION:** The Department of the Army systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the Federal Register and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: June 22, 2011.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**A0027–1k DAJA**

**SYSTEM NAME:**

Judge Advocate General Professional Conduct Files (March 15, 2011, 76 FR 13997).

* * * * *

**CHANGES:**

**SYSTEM LOCATION:**

Delete entry and replace with ''Primary location: United States Army Office of The Judge Advocate General, Professional Responsibility Branch, 2200 Army Pentagon, Room 2B517, Washington, DC 20310–2200.

**Secondary locations:**

Offices of The Judge Advocate General at Army Commands, Army Service Component Commands, Direct Reporting Units, field operating agencies, installations and activities Army-wide. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.''

* * * * *

**RETENTION AND DISPOSAL:**

Delete entry and replace with ''Professional conduct inquiry founded files maintained at the United States Army Office of The Judge Advocate General, Professional Responsibility Branch are destroyed by shredding paper copies and erasure off computers in the local office 5 years after the Judge Advocate Legal Service (JALS) member leaves the JALS or 5 years after the case is closed for non-JALS members, unless the non-JALS member is the subject of another monitoring, open, or founded case, then 5 years after the latest case is closed.

Legal office mismanagement inquiry founded files maintained at the United States Army Office of The Judge Advocate General, Professional Responsibility Branch are destroyed by shredding paper copies and erasure off computers 5 years after the Judge Advocate Legal Service (JALS) member leaves the JALS or 5 years after the case is closed unless the JALS member is the subject of another monitoring, open, or founded case, then 5 years after the latest case is closed, whichever is applicable.

Professional conduct inquiry and legal office mismanagement inquiry unfounded files or inquiry-not-warranted files maintained at the United States Army Office of The Judge Advocate General, Professional Responsibility Branch are destroyed 3 years after the case is closed.

Professional conduct inquiry founded, unfounded or inquiry-not-warranted files, legal office mismanagement inquiry founded, and unfounded or inquiry-not-warranted files, maintained in other Judge Advocates General (JAG) offices are destroyed by shredding paper copies and erasure off computers in those offices 3 years after the case is closed.''

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with ''United States Army Office of The Judge Advocate General, Professional Responsibility Branch, 2200 Army Pentagon, Room 2B517, Washington, DC 20310–2200.''

**NOTIFICATION PROCEDURE:**

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the United States Army Office of The Judge Advocate General, Professional Responsibility Branch, 2200 Army Pentagon, Room 2B517, Washington, DC 20310–2200.

All written inquiries should provide the full name and current mailing address and any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

**IF EXECUTED OUTSIDE THE UNITED STATES:**

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

**IF EXECUTED WITHIN THE UNITED STATES, ITS TERRITORIES, POSSESSIONS, OR COMMONWEALTHS:**

'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

**RECORD ACCESS PROCEDURES:**

Delete entry and replace with ''Individuals seeking access to records about themselves should address written inquiries to the United States Army Office of The Judge Advocate General, Professional Responsibility Branch, 2200 Army Pentagon, Room 2B517, Washington, DC 20310–2200.

All written inquiries should provide the full name, and current mailing address and any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

**IF EXECUTED OUTSIDE THE UNITED STATES:**

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

**IF EXECUTED WITHIN THE UNITED STATES, ITS TERRITORIES, POSSESSIONS, OR COMMONWEALTHS:**

'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

* * * * *

**A0027–1K DAJA**

**SYSTEM NAME:**

Judge Advocate General Professional Conduct Files.

**SYSTEM LOCATION:**

Primary location: United States Army Office of The Judge Advocate General, Professional Responsibility Branch, 2200 Army Pentagon, Room 2B517, Washington, DC 20310–2200.

**SECONDARY LOCATIONS:**

Offices of The Judge Advocate General at Army Commands, Army Service Component Commands, Direct Reporting Units, field operating agencies, installations and activities Army-wide. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Judge Advocates, civilian attorneys of the Judge Advocate Legal Service, and civilian attorneys subject to the disciplinary authority of The Judge Advocate General who have been the subject of a complaint related to their impairment, professional conduct or mismanagement or when a court has convicted, diverted, or sanctioned the attorney, or has found contempt or an ethics violation, or the attorney has been disciplined elsewhere.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records include subject's name, current mailing address, complaints with substantiating documents, tasking memoranda, preliminary screening inquiry (PSI) reports and mismanagement inquiry reports (containing sensitive personal information pertaining to the underlying allegations of personal and professional misconduct in witness statements and other documents, and inquiry officers' findings and recommendations), supervisory Judge Advocate recommendations and actions, staff memoranda to Judge Advocate General's Corps leadership, Professional Responsibility Committee opinions, memoranda related to disciplinary actions, responses from subjects, and correspondence with Governmental agencies and professional licensing authorities.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 3037, Judge Advocate General,

Deputy Judge Advocate General, and general officers of Judge Advocate General's Corps: appointment; duties; Rules for Courts-Martial (RCM) Rule 109, Manual for Courts-Martial United States (2008 Edition); Army Regulation 690–300, Civilian Personnel Employment; Army Regulation 27–1, Legal Services, Judge Advocate Legal Services; and Army Regulation 27–26, Rules of Professional Conduct for Lawyers.

**PURPOSE(S):**

To protect the integrity of the Army and government legal profession; to assist The Judge Advocate General in the evaluation, management, administration, and regulation of, and inquiry into, the delivery of legal services by offices and personnel under his jurisdiction; to document founded violations of the rules of professional responsibility and mismanagement; to take adverse action and appropriate disciplinary action against those found to have violated the rules of professional responsibility or committed mismanagement; to record disposition of professional responsibility and mismanagement complaints; and to report founded violations of the rules of professional responsibility to professional licensing authorities and to current and prospective government employers.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, records contained within this system may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To professional licensing authorities (for example, state and federal disciplinary agencies); and to current and prospective government employers.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices shall also apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

**STORAGE:**

Paper records in file folders and electronic computer records.

**RETRIEVABILITY:**

By subject's name.

**SAFEGUARDS:**

Records are maintained in locked offices and/or in locked file cabinets in secured buildings or on military installations protected by police patrols. All information is maintained in secured areas accessible only to designated individuals having official need therefore in the performance of official duties. Computer stored information is password protected.

**RETENTION AND DISPOSAL:**

Professional conduct inquiry founded files maintained at the United States Army Office of The Judge Advocate General, Professional Responsibility Branch are destroyed by shredding paper copies and erasure off computers in the local office 5 years after the Judge Advocate Legal Service (JALS) member leaves the JALS or 5 years after the case is closed for non-JALS members, unless the non-JALS member is the subject of another monitoring, open, or founded case, then 5 years after the latest case is closed.

Legal office mismanagement inquiry founded files maintained at the United States Army Office of The Judge Advocate General, Professional Responsibility Branch are destroyed by shredding paper copies and erasure off computers 5 years after the Judge Advocate Legal Service (JALS) member leaves the JALS or 5 years after the case is closed unless the JALS member is the subject of another monitoring, open, or founded case, then 5 years after the latest case is closed, whichever is applicable.

Professional conduct inquiry and legal office mismanagement inquiry unfounded files or inquiry-not-warranted files maintained at the United States Army Office of The Judge Advocate General, Professional Responsibility Branch are destroyed 3 years after the case is closed.

Professional conduct inquiry founded, unfounded or inquiry-not-warranted files, legal office mismanagement inquiry founded, and unfounded or inquiry-not-warranted files, maintained in other Judge Advocates General (JAG) offices are destroyed by shredding paper copies and erasure off computers in those offices 3 years after the case is closed.

**SYSTEM MANAGER(S) AND ADDRESS:**

United States Army Office of The Judge Advocate General, Professional Responsibility Branch, 2200 Army Pentagon, Room 2B517, Washington, DC 20310–2200.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the United States Army Office of The Judge Advocate General, Professional Responsibility Branch, 2200 Army Pentagon, Room 2B517, Washington, DC 20310–2200.

All written inquiries should provide the full name and current mailing address and any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

**IF EXECUTED OUTSIDE THE UNITED STATES:**

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

**IF EXECUTED WITHIN THE UNITED STATES, ITS TERRITORIES, POSSESSIONS, OR COMMONWEALTHS:**

'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to records about themselves should address written inquiries to the United States Army Office of The Judge Advocate General, Professional Responsibility Branch, 2200 Army Pentagon, Room 2B517, Washington, DC 20310–2200.

All written inquiries should provide the full name, and current mailing address and any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

**IF EXECUTED OUTSIDE THE UNITED STATES:**

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

**IF EXECUTED WITHIN THE UNITED STATES, ITS TERRITORIES, POSSESSIONS, OR COMMONWEALTHS:**

'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

**RECORDS SOURCES CATEGORIES:**

Information is received from individuals as well as from federal, state, and local authorities, and includes preliminary screening inquiry reports and other Army and military records, state bar records and other attorney licensing authority records, law enforcement records, educational institution records, and any other relevant records or information.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 2011–15988 Filed 6–24–11; 8:45 am]

**BILLING CODE 5001–06–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 July 27, 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: June 22, 2011.

**Darrin A. King,**

*Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

### Office of Special Education and Rehabilitative Services

*Type of Review:* Revision.

*Title of Collection:* Special Education—Individual Reporting on Regulatory Compliance Related to the Personnel Development Program's Service Obligation and the Government Performance and Results Act (GPRA).

*OMB Control Number:* 1820–0686.

*Agency Form Number(s):* N/A.

*Frequency of Responses:* On occasion; Monthly; Quarterly; Semi-Annually; Biennially.

*Affected Public:* Individuals or household; Not-for-profit institutions; State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

*Total Estimated Number of Annual Responses:* 82,645.

*Total Estimated Annual Burden Hours:* 30,028.

*Abstract:* The data collection under this revision and renewal request is governed by the ''Additional Requirements'' section of the Personnel Preparation to Improve Services and Results for Children with Disabilities—Combined Priority for Personnel Preparation and Preparation of Leadership Personnel notice, published in the **Federal Register** on March 25, 2005 and by Sections 304.23–304.30 of the June 5, 2006, regulations that implement Section 662(h) of the Individuals with Disabilities Education Act Amendments of 2004, which require that individuals who receive a scholarship through the Personnel Development Program funded under the Act subsequently provide special education and related services to children with disabilities for a period of two years for every year for which assistance was received. Scholarship recipients who do not satisfy the requirements of the regulations must repay all or part of the cost of assistance, in accordance with regulations issued by the Secretary. These regulations implement requirements governing, among other things, the service obligation for scholars, reporting requirements by grantees, and repayment of scholarships by scholars. In order for the Federal government to ensure that the goals of the program are achieved, certain data collection, recordkeeping, and documentation are necessary. In addition this data collection is governed by the Government Performance and Results Act (GPRA). GPRA requires Federal agencies to establish performance measures for all programs, and the Office of Special Education Programs' has established performance measures for the Personnel Development Program. Data collection from scholars who have received scholarships under the Personnel Development Program is necessary to evaluate these measures.

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 4557. 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. 2011–16041 Filed 6–24–11; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Applications for New Awards; Centers for Independent Living

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Notice.

### Overview Information

*Centers for Independent Living Notice inviting applications for new awards for fiscal year (FY) 2011.*

*Catalog of Federal Domestic Assistance (CFDA) Numbers:* 84.132A.

DATES:

*Applications Available:* June 27, 2011.

*Deadline for Transmittal of Applications:* July 27, 2011.

*Deadline for Intergovernmental Review:* September 26, 2011.

**Full Text of Announcement**

**I. Funding Opportunity Description**

*Purpose of Program:* This program provides support for planning, conducting, administering, and evaluating centers for independent living (centers) that comply with the standards and assurances in section 725 of part C of title VII of the Rehabilitation Act of 1973, as amended (Act), consistent with the design included in the State plan for establishing a statewide network of centers.

**Program Authority:** 29 U.S.C. 796f–1.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, and 97. (b) The regulations for this program in 34 CFR parts 364 and 366.

**Note:** The regulations in 34 CFR part 79 apply to all applicants except Federally recognized Indian Tribes.

**II. Award Information**

*Type of Award:* Discretionary grant.

*Estimated Available Funds:* $346,527.

*Estimated Number of Awards:* 2.

| States and Outlying Areas | Estimated Available Funds | Estimated Number of Awards |
|---|---|---|
| American Samoa | $154,046 | 1 |
| Washington | $192,481 | 1 |

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months.

**III. Eligibility Information**

1. *Eligible Applicants:* To be eligible to apply, an applicant must—

(a) Be a consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agency;

(b) Have the power and authority to—

(1) Carry out the purpose of part C of title VII of the Act and perform the functions listed in section 725(b) and (c) of the Act and subparts F and G of 34 CFR part 366 within a community located within a State or in a bordering State; and

(2) Receive and administer—

(i) Funds under 34 CFR part 366;

(ii) Funds and contributions from private or public sources that may be used in support of a center; and

(iii) Funds from other public and private programs;

(c) Be able to plan, conduct, administer, and evaluate a center consistent with the standards and assurances in section 725(b) and (c) of the Act and subparts F and G of 34 CFR part 366;

(d) Either—

(1) Not currently be receiving funds under part C of chapter 1 of title VII of the Act; or

(2) Propose the expansion of an existing center through the establishment of a separate and complete center except that the governing board of the existing center may serve as the governing board of the new center at a different geographical location;

(e) Propose to serve one or more of the geographic areas that are identified as unserved or underserved by the States and Outlying Areas listed under *Estimated Number of Awards;* and

(f) Submit appropriate documentation demonstrating that the establishment of a new center is consistent with the design for establishing a statewide network of centers in the State plan of the State or Outlying Area whose geographic area or areas the applicant proposes to serve.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

**IV. Application and Submission Information**

1. *Address to Request Application Package:* ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.132A.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

3. *Submission Dates and Times:*

*Applications Available:* June 27, 2011.

*Deadline for Transmittal of Applications:* July 27, 2011.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7 *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

*Deadline for Intergovernmental Review:* September 26, 2011.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined in the Grants.gov 3–Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*).

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

*a. Electronic Submission of Applications*

Applications for grants under the Centers for Independent Living program, CFDA Number 84.132A, must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Centers for Independent Living competition at *http://www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.132, not 84.132A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- 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. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a .PDF (Portable Document) format only. If you upload a file type other than a .PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

*Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:* If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing

instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

**Note:** The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

*Exception to Electronic Submission Requirement:* You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Timothy Beatty, U.S. Department of Education, 400 Maryland Avenue, SW., room 5089, Potomac Center Plaza (PCP), Washington, DC 20202–2800. FAX: (202) 245–7593.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

*b. Submission of Paper Applications by Mail*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.132A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

*c. Submission of Paper Applications by Hand Delivery*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.132A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

**Note for Mail or Hand Delivery of Paper Applications:** If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

## V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 366.27 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

Additional factors we consider in selecting an application for an award are comments regarding the application, if any, by the Statewide Independent Living Council in the State in which the applicant is located (see 34 CFR 366.25).

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Pursuant to the Government Performance and Results Act of 1993 (GPRA), the Department measures outcomes in the following three areas to evaluate the overall effectiveness of projects funded under this competition: (1) The effectiveness of individual services in enabling consumers to access previously unavailable transportation, appropriate accommodations to receive health care services, and/or assistive technology resulting in increased independence in at least one significant life area; (2) the effectiveness of individual services designed to help consumers move out of institutions and into community-based settings; and (3) the extent to which projects are participating in community activities to expand access to transportation, health care, assistive technology, and housing for individuals with disabilities in their communities. Grantees will be required to report annually on the percentage of their consumers who achieve their individual goals in the first two areas and on the percentage of their staff, board members, and consumers involved in community activities related to the third area.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

## VII. Agency Contact

**FOR FURTHER INFORMATION CONTACT:** Timothy Beatty, U.S. Department of Education, 400 Maryland Avenue, SW., room 5057, PCP, Washington, DC 20202–2800. Telephone: (202) 245–6156.

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

## VIII. Other Information

*Accessible Format:* Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Service Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *http://www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: June 22, 2011.

**Alexa Posny,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2011–16046 Filed 6–24–11; 8:45 am]

**BILLING CODE 4000–01–P**

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## DEPARTMENT OF EDUCATION

## Applications for New Awards; Rehabilitation Research and Training Center—Interventions To Promote Community Living Among Individuals With Disabilities

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Notice.

### Overview Information

National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Research and Training Center (RRTC)—Interventions to Promote Community Living Among Individuals with Disabilities Notice inviting applications for new awards for fiscal year (FY) 2011.

*Catalog of Federal Domestic Assistance (CFDA) Number:* 84.133B–1.

**DATES:**

*Applications Available:* June 27, 2011.

*Date of Pre-Application Meeting:* July 18, 2011.

*Deadline for Transmittal of Applications:* August 11, 2011.

### Full Text of Announcement

### I. Funding Opportunity Description

*Purpose of Program:* The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act) (29 U.S.C. 701 *et seq.*).

*RRTCs*

The purpose of the RRTCs, which are funded through the Disability and Rehabilitation Research Projects and Centers Program, is to improve the effectiveness of services authorized

under the Rehabilitation Act, through advanced research, training, technical assistance, and dissemination activities in general problem areas, as specified by NIDRR. Such activities are designed to benefit rehabilitation service providers, individuals with disabilities, and the family members or other authorized representatives of individuals with disabilities. Additional information on the RRTC program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#RRTC.*

*Priorities:* This competition includes two absolute priorities. The *General RRTC Requirements priority* is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program, published in the **Federal Register** on February 1, 2008 (73 FR 6132) and the *RRTC on Interventions to Promote Community Living Among Individuals with Disabilities* priority is from the notice of final priority for this program, published elsewhere in this issue of the **Federal Register.**

*Absolute Priorities:* For FY 2011 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

(1) *General RRTC Requirements.*

(2) *RRTC on Interventions to Promote Community Living Among Individuals with Disabilities.*

**Note:** The full text of these priorities is included in the pertinent notice of final priority or priorities published in the **Federal Register** and in the application package for this program.

**Program Authority:** 29 U.S.C. 762(g) and 764(b)(2).

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on February 1, 2008 (73 FR 6132). (d) The notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

**Note:** The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

## II. Award Information

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* $700,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2012 from the list of approved but unfunded applicants from this competition.

*Maximum Award:* We will reject any application that proposes a budget exceeding $700,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

*Estimated Number of Awards:* 1.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months.

## III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian Tribes and Tribal organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

## IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this competition as follows: CFDA number 84.133B–1.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 125 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and narrative budget justification; other required forms; an abstract, Human Subjects narrative, Part III project narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

*Applications Available:* June 27, 2011.

*Date of Pre-Application Meeting:* Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. The pre-application meeting will be held on July 18, 2011. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1:00 p.m. and 3:00 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or for an individual

consultation, contact either Lynn Medley or Marlene Spencer as follows: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue, SW., room 5140, Potomac Center Plaza (PCP), Washington, DC 20202–2700. Telephone: (202) 245–7338 or by e-mail: *Lynn.Medley@ed.gov.* Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue, SW., room 5133, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by e-mail: *Marlene.Spencer@ed.gov.*

*Deadline for Transmittal of Applications:* August 11, 2011.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined in the Grants.gov 3–Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*).

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

*a. Electronic Submission of Applications*

Applications for grants under RRTC on Interventions to Promote Community Living Among Individuals with Disabilities, CFDA number 84.133B–1, must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the RRTC on Interventions to Promote Community Living Among Individuals with Disabilities at *http://www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.133, not 84.133B).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- 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. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic

submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must upload any narrative sections and all other attachments to your application as files in a .PDF (Portable Document) format only. If you upload a file type other than a .PDF or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

*Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:* If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

**Note:** The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

*Exception to Electronic Submission Requirement:* You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue, SW., room 5133, PCP, Washington, DC 20202–2700. FAX: (202) 245–7323.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

*b. Submission of Paper Applications by Mail*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133B–1), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

*c. Submission of Paper Applications by Hand Delivery*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133B–1), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

**Note for Mail or Hand Delivery of Paper Applications:** If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

## V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 350.54 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through a review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The percentage of NIDRR-supported fellows, post-doctoral trainees, and doctoral students who publish results of NIDRR-sponsored research in refereed journals.
- The number of accomplishments (*e.g.,* new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new NIDRR grants that assess the effectiveness of interventions, programs, and devices using rigorous methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *http://www.ed.gov/about/offices/list/opepd/sas/index.html.*

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

## VII. Agency Contacts

**FOR FURTHER INFORMATION CONTACT:** Lynn Medley or Marlene Spencer as follows:

Lynn Medley, U.S. Department of Education, 400 Maryland Avenue, SW., room 5140, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7338 or by e-mail: *Lynn.Medley@ed.gov.*

Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue, SW., room 5133, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by e-mail: *Marlene.Spencer@ed.gov.*

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

## VIII. Other Information

*Accessible Format:* Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll-free, at 1–800–877–8339.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *http://www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: June 21, 2011.

**Alexa Posny,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2011–16031 Filed 6–24–11; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

**[CFDA Number: 84.133B–1]**

## Final Priority; Rehabilitation Research and Training Center—Interventions To Promote Community Living Among Individuals with Disabilities

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Notice of final priority.

**SUMMARY:** The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for a Rehabilitation Research and Training Center (RRTC) on Interventions to Promote Community Living Among Individuals with Disabilities. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2011 and later years. We take this action to focus research attention on areas of national need. We intend this priority to contribute to improved participation and community living outcomes for individuals with disabilities and their families.

**DATES:** *Effective Date:* This priority is effective July 27, 2011.

**FOR FURTHER INFORMATION CONTACT:** Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue, SW., room 5133, Potomac Center Plaza (PCP), Washington, DC 20202–2700. Telephone: (202) 245–7532 or by e-mail: *marlene.spencer@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** This notice of final priority (NFP) is in concert with National Institute on Disability and Rehabilitation Research (NIDRR's) currently approved Long-Range Plan (Plan). The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine the best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

This notice announces a priority that NIDRR intends to use for RRTC competitions in FY 2011 and possibly later years. However, nothing precludes NIDRR from publishing additional priorities if needed. Furthermore, NIDRR is under no obligation to make an award for this priority. The decision to make an award will be based on the quality of applications received and available funding.

*Purpose of Program:* The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act) (29 U.S.C. 701 *et seq.*).

### RRTC Program

The purpose of the RRTCs, which are funded through the Disability and Rehabilitation Research Projects and Centers Program, is to improve the effectiveness of services authorized under the Rehabilitation Act, through advanced research, training, technical assistance, and dissemination activities in general problem areas, as specified by NIDRR. Such activities are designed to benefit rehabilitation service providers, individuals with disabilities, and the family members or other authorized representatives of individuals with disabilities. Additional information on the RRTC program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#RRTC.*

### Statutory and Regulatory Requirements of RRTCs

RRTCs must—

- Carry out coordinated advanced programs of rehabilitation research;
- Provide training, including graduate, pre-service, and in-service training, to help rehabilitation personnel more effectively provide rehabilitation services to individuals with disabilities;
- Provide technical assistance to individuals with disabilities, their representatives, providers, and other interested parties;
- Disseminate informational materials to individuals with disabilities, their representatives, providers, and other interested parties; and
- Serve as centers of national excellence in rehabilitation research for individuals with disabilities, their representatives, providers, and other interested parties.

Applicants for RRTC grants must also demonstrate in their applications how they will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds.

**Program Authority:** 29 U.S.C. 762(g) and 764(b)(2).

*Applicable Program Regulations:* 34 CFR part 350.

We published a notice of proposed priority (NPP) for NIDRR's Disability and Rehabilitation Research Projects and Centers Program in the **Federal Register** on March 29, 2011 (76 FR 17400). That notice contained background information and our reasons for proposing this particular priority.

### Public Comment

In response to our invitation in the notice of proposed priority, four parties submitted comments on the proposed priority.

Generally, we do not address technical and other minor changes. In addition, we do not address general comments that raised concerns not directly related to the proposed priority.

*Analysis of Comments and Changes:* An analysis of the comments and of any changes in the priority since publication of the notice of proposed priority follows.

*Comment:* Two commenters recommended that NIDRR revise this priority so that it focuses on research about the role that natural community supports, such as faith-based organizations, can play in supporting individuals with disabilities to live independently and participate in the community. The first commenter suggested that we require the RRTC to provide training and resources to faith-

based organizations to facilitate their partnerships with residential providers and other human services agencies that serve individuals with disabilities. The second commenter suggested that we revise the priority to focus on the role of faith-based organizations in supporting the community participation of youth with disabilities. This second commenter also suggested that we should revise the priority to focus on the role of faith-based organizations in supporting the community participation of ethnic minorities with disabilities and individuals with disabilities living in rural areas.

*Discussion:* Nothing in this priority precludes applicants from proposing research or training projects that focus on the role of faith-based organizations in facilitating the community participation and independent living of individuals with disabilities. Applicants are also free to propose research and training efforts that focus on specific populations of individuals with disabilities, including youth, ethnic minorities, and individuals living in rural areas, who have disabilities. NIDRR does not want to limit applicants' ability to propose projects that address other important topics or populations, by specifically requiring research and training related to specific populations, or on faith-based organizations.

*Changes:* None.

*Comment:* One commenter noted that the background statement supporting the priority emphasizes the transition of individuals with disabilities from institutions into the community as well as continuity of community living to avoid reinstitutionalization. The commenter suggested that this emphasis be reflected more explicitly in the five areas described in paragraph (b) of the priority.

*Discussion:* NIDRR intended paragraph (b) of the priority to have a strong focus on supporting the transition from institutions to the community, and the continuity of community living among individuals with disabilities. We do not believe a change is necessary to highlight this focus because the opening sentence of paragraph (b) clearly states that NIDRR intends the RRTC to contribute to the outcome of improved services and supports needed to participate fully in the community, including services and supports needed to transition from institutions to the community, and to maintain continuity of community living by individuals with disabilities. The five areas in paragraph (b) from which applicants must choose are areas in which policies, programs, or strategies can be identified or designed and tested to support this outcome.

*Changes:* None.

*Comment:* One commenter noted that health and community participation are linked among people with disabilities. For this reason, the commenter recommended that we revise paragraph (b) of the priority to include ''healthy living'' as one of the areas from which applicants must choose to focus their research efforts.

*Discussion:* NIDRR agrees that health and health services are related to community participation outcomes among individuals with disabilities, and that applicants should be allowed to choose a focus on services and supports related to health, and we are revising paragraph (b) of the priority accordingly.

*Changes:* NIDRR has modified the priority to add health as one of the areas from which applicants can choose to focus their research efforts.

*Comment:* None.

*Discussion:* Upon further review of paragraph (c)(1) of the priority, we determined that it would be clearer to expressly mention the topics to be included in the RRTC's required systematic review.

*Changes:* We have revised paragraph (c)(1) of the priority to clarify that the RRTC must conduct systematic reviews of research on services and supports that provide opportunities for the population of individuals with disabilities to participate fully in the community.

**Final Priority**

*Priority—Rehabilitation Research and Training Center (RRTC) on Interventions to Promote Community Living Among Individuals with Disabilities*

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for a Rehabilitation Research and Training Center (RRTC) on Interventions to Promote Community Living Among Individuals with Disabilities. The RRTC must conduct rigorous research, training, technical assistance, and dissemination activities that contribute to improved community participation and community living outcomes for individuals with disabilities, including individuals transitioning into the community from nursing homes and other health and community institutions. Under this priority, the RRTC must contribute to the following outcomes:

(a) Increased knowledge about how the barriers to and experiences of community living may differ across sociodemographic and geographic groups within the diverse population of individuals with disabilities. The RRTC must contribute to the outcome by conducting research on the extent to which access to community services and supports and community participation outcomes are related to sociodemographic factors (*e.g.,* race, ethnicity, income level, education level), the geographic area in which individuals reside (*e.g.,* rural or urban areas), or disability characteristics (*e.g.,* disability severity or type of disabling condition).

(b) Improved services and supports that provide opportunities for the population of individuals with disabilities to participate fully in the community, including the services and supports needed to transition from institutions, nursing homes, and other health and community institutions, to the community and to maintain continuity of community living (*i.e.,* community living without interruption due to hospitalization or institutionalization). The RRTC must contribute to this outcome by identifying or developing and then testing policies, programs, or strategies that improve community living services and supports for individuals with disabilities. In this regard, the RRTC must focus its efforts on at least two of the following areas: Housing; transportation; health; and recreational, community, and civic activities. In carrying out this requirement, the RRTC must also take into account the findings from paragraph (a) of this priority. The policies, programs, or strategies to be tested under this paragraph (b) may include strategies that integrate or coordinate services from different areas.

(c) Increased incorporation of research findings into practice or policy. The RRTC must contribute to this outcome by coordinating with appropriate NIDRR-funded knowledge translation grantees to advance or add to their work by—

(1) Conducting systematic reviews of research on services and supports that provide opportunities for the population of individuals with disabilities to participate fully in the community and developing research syntheses consistent with standards, guidelines, and procedures established by the knowledge translation grantees;

(2) Using knowledge translation strategies identified as promising by the knowledge translation grantees to increase the use of research findings;

(3) Collaborating with centers for independent living and other stakeholder groups to develop, implement, or evaluate strategies to

increase utilization of the research findings; and

(4) Conducting training and dissemination activities to facilitate the utilization of the research findings by community-based organizations and other service providers, policymakers, and individuals with disabilities.

*Types of Priorities*

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

*Absolute priority:* Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

*Competitive preference priority:* Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

*Invitational priority:* Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

**Note:** This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register.**

*Executive Order 12866:* This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this final regulatory action.

The potential costs associated with this final regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this final regulatory action, we have determined that the benefits of the final priority justify the costs.

*Summary of Potential Costs and Benefits*

The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well established over the years in that similar projects have been completed successfully. This final priority will generate new knowledge through research, development, and knowledge translation activities. Another benefit of this final priority is that the establishment of a new RRTC will improve the lives of individuals with disabilities and their family members. The new RRTC will generate and promote the use of new information that will improve the options for individuals with disabilities with regard to community living and community participation.

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *http://www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: June 21, 2011.

**Alexa Posny,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2011–16035 Filed 6–24–11; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Proposed Subsequent Arrangement

**AGENCY:** Office of Nonproliferation and International Security, National Nuclear Security Administration, Department of Energy.

**ACTION:** Proposed subsequent arrangement.

**SUMMARY:** This notice is being issued under the authority of section 131a. of the Atomic Energy Act of 1954, as amended. The Department is providing notice of a proposed subsequent arrangement under the Agreement for Cooperation Concerning Civil Uses of Nuclear Energy Between the Government of the United States of America and the Government of Canada and the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy Between the United States of America and the European Atomic Energy Community.

**DATES:** This subsequent arrangement will take effect no sooner than July 12, 2011.

**FOR FURTHER INFORMATION CONTACT:** Mr. Sean Oehlbert, Office of Nonproliferation and International Security, National Nuclear Security Administration, Department of Energy. Telephone: 202–586–3806 or e-mail: *Sean.Oehlbert@nnsa.doe.gov.*

**SUPPLEMENTARY INFORMATION:** This subsequent arrangement concerns the retransfer of 924,556 kg of U.S.-origin natural uranium hexafluoride (UF6) (67.60% U), 625,000 kg of which is uranium, from Cameco Corporation (Cameco) in Saskatoon, Saskatchewan, Canada, to URENCO in Capenhurst Works, Chester, United Kingdom. The material, UF6 produced from U.S.-origin concentrates, which currently is located at Cameco, will be transferred to URENCO for toll-enrichment at their Capenhurst UK facility. The material originally was obtained by Cameco from Crowe Butte Resources, Inc. pursuant to export license XSOU8798. In accordance with section 131a. of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement concerning the retransfer of nuclear material of United States origin will not be inimical to the common defense and security.

Dated: May 17, 2011.

For the Department of Energy.

**Anne M. Harrington,**

*Deputy Administrator, Defense Nuclear Nonproliferation.*

[FR Doc. 2011–16019 Filed 6–24–11; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

**[Docket Number EERE–2011–BT–NOA–0039]**

### Technology Evaluation Process

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

**ACTION:** Notice of request for information (RFI) comment period extension.

**SUMMARY:** This is an extension of a prior RFI seeking comment on a proposed commercial buildings technology evaluation process. The stakeholder comment period is being extended an additional 30 days to give potential participants additional time to provide responses and comments on the information contained within the RFI.

DOE seeks comments and information related to a commercial buildings technology evaluation process. DOE is seeking to create a process for evaluating emerging and underutilized energy efficient technologies for commercial buildings based on the voluntary submittal of product test data. The program would be centered on a publicly accessible listing of products that meet minimum energy efficiency criteria specified for the applicable technology type. Evaluation under the criteria would be based on product test data submitted by manufacturers, then analyzed by DOE to generate information related to the energy savings of the products. For those products that met the specified minimum energy efficiency criteria, the results of such analyses would be made publicly available. The program would provide centralized information on the analysis factors in a manner that would make results directly comparable between products within the same technology type or area.

**DATES:** Written comments and information are requested on or before July 27, 2011.

**ADDRESSES:** Interested persons may submit comments, identified by docket number EERE–2011–BT–NOA–0039, by any of the following methods. Your response should be limited to 3 pages. Questions relative to responding to this RFI may be sent to the same mailbox in advance of your response, and will be answered via e-mail.

- *E-mail:* to *TechID-RFI-2011-NOA-0039@ee.doe.gov.* Include EERE–2011–BT– NOA–0039 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Revisions to Energy Efficiency Enforcement Regulations, EERE–2011–BT– NOA–0039, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Phone:* (202) 586–2945. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. *Phone:* (202) 586–2945. Please submit one signed paper original.

*Instructions:* All submissions received must include the agency name and docket number.

**FOR FURTHER INFORMATION CONTACT:** Direct requests for additional information may be sent to Mr. Alan Schroeder, 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. *Telephone:* 202–586–0158. *E-mail: Alan.Schroeder@ee.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

### Request for Comment

On May 26, 2011, the U.S. Department of Energy (DOE) issued an RFI regarding a process for evaluating emerging and underutilized energy efficient technologies for commercial buildings based on the voluntary submittal of product test data. 76 FR 30696. As explained in the RFI, the program would be centered on a publicly accessible listing of products that meet minimum energy efficiency criteria specified for the applicable technology type. Evaluation under the criteria would be based on product test data submitted by manufacturers, then analyzed by DOE to generate information related to the energy savings of the products. For those products that met the specified minimum energy efficiency criteria, the results of such analyses would be made publicly available. The program would provide centralized information on the analysis factors in a manner that would make results directly comparable between products within the same technology type or area.

The RFI originally provided June 27, 2011, as the date by which comments were to be submitted. DOE is extending the comment period until July 27, 2011. The May 26, 2011 RFI provides additional detail on the program under consideration as well as the specific questions on which DOE is seeking comment.

### Disclaimer and Important Notes

The RFI has been issued solely for information and program planning purposes; the RFI does not constitute a formal solicitation for proposals or abstracts. Responses to the RFI will be treated as information only. DOE will not provide reimbursement for costs incurred in responding to the RFI. Respondents are advised that DOE is under no obligation to acknowledge receipt of the information received or provide feedback to respondents with respect to any information submitted under the RFI. Responses to the RFI do not bind DOE to any further actions related to this topic.

### Confidential Business Information

According to 10 CFR 1004.11, any person submitting information 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).

Issued in Washington, DC, on June 21, 2011.

**Kathleen B. Hogan,**

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

[FR Doc. 2011–16012 Filed 6–24–11; 8:45 am]

**BILLING CODE 6450–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OECA–2010–0368; FRL–9324–7]**

## Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Polymeric Coating of Supporting Substrates Facilities (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

**DATES:** Additional comments may be submitted on or before July 27, 2011.

**ADDRESSES:** Submit your comments, referencing docket ID number EPA–HQ–OECA–2010–0368, to: (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Learia A. Williams, Office of Compliance and Enforcement, Mail Code 2227A, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone number:* (202) 564–4113; *fax number:* (202) 564–0050; *e-mail address: williams.learia@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 2, 2010 (75 FR 30812), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2010–0368 which is available for public viewing online at *http://www.regulations.gov*, in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to either submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

*Title:* NSPS for Polymeric Coating of Supporting Substrates Facilities (Renewal).

*ICR Numbers:* EPA ICR Number 1284.09 OMB Control Number 2060–0181.

*ICR Status:* This ICR is scheduled to expire on July 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. 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 title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

*Abstract:* NSPS for Polymeric Coating of Supporting Substrates Facilities are subject to the General Provisions at 40 CFR part 60, subpart A, and any changes, or additions to these Provisions specified at 40 CFR part 60, subpart VVV.

Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 82 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Owners or operators of polymeric coating of supporting substrates facilities.

*Estimated Number of Respondents:* 56.

*Frequency of Response:* Initially, quarterly, and semiannually.

*Estimated Total Annual Hour Burden:* 13,108.

*Estimated Total Annual Cost:* $1,866,424, which includes $1,229,924 in labor costs, $48,500 in capital/startup costs, and $588,000 in operation and maintenance (O&M) costs.

*Changes in the Estimates:* The small increase in burden and cost to the Respondents and the Agency from the

most recently approved ICR are due to an increase in the number of expected respondents and use of recently available labor rates. There is no change in the calculation methodology for labor hours and Agency costs in this ICR compared to the previous ICR due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for the respondents is very low. There have been no program changes.

Dated: June 21, 2011

**John Moses,**

*Director, Collection Strategies Division.*

[FR Doc. 2011–16029 Filed 6–24–11; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OECA–2010–0371; FRL–9324–9]**

## Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Marine Tank Vessel Loading Operations (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

**DATES:** Additional comments may be submitted on or before July 27, 2011.

**ADDRESSES:** Submit your comments, referencing docket ID number EPA–HQ–OECA–2010–0371 to (1) EPA online using *http://www regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone number:* (202) 564–4113; *fax number:* (202) 564–0050; *e-mail address: williams.learia@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 2, 2010 (75 FR 30812), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2010–0371, which is available for public viewing online at *http://www.regulations.gov*, and in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to either submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

*Title:* NESHAP for Marine Tank Vessel Loading Operations (Renewal).

*ICR Numbers:* EPA ICR Number 1679.07, OMB Control Number 2060–0289.

*ICR Status:* This ICR is schedule to expire on July 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. 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 title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in both 40 CFR part 9 and 48 CFR chapter 15, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain-EPA regulations is consolidated in 40 CFR part 9.

*Abstract:* The National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Marine Tank Vessel Loading Operations were proposed on May 13, 1994, promulgated on September 19, 1995, and a proposed amendment on October 21, 2010 was promulgated on April 21, 2011.

These regulations apply maximum achievable control technology (MACT) standards to existing facilities and new facilities that load marine tank vessels with petroleum or gasoline and have aggregate actual Hazardous Air Pollutants (HAP) emissions of 10 tons or more of HAP, or 25 tons or more of all HAP combined. In addition, these regulations apply reasonably available control technology (RACT) standards to facilities with an annual throughput of 10 million or more barrels of gasoline or 200 million or more barrels of crude oil. This ICR also covers owners or operators of existing marine tank vessel loading operations (MTVLO) that emit less than 10 tons per year of each individual HAP, and less than 25 tons/year of all HAP combined, located at major sources of HAP that loads more than 1 million barrels/yr of gasoline, as well as owners or operators of existing off-shore terminals that load gasoline.

Owners or operators of marine tank vessel loading facilities subject to the rule must maintain a file of these measurements, and retain the file for at least five years following the date of such measurements, maintenance reports, and records. All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 63, subpart Y and 40 CFR part 63, subpart A, as authorized in section 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

In order to ensure compliance with these standards, adequate reporting and recordkeeping are necessary. In the absence of such information, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 12 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining, information, and disclosing and providing information. All existing ways will have to adjust to comply with any previously applicable instructions and requirements that have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Marine tank vessel loading operations.

*Estimated Number of Respondents:* 804.

*Frequency of Response:* Initially, occasionally, annually, and semiannually.

*Estimated Total Annual Hour Burden:* 9,872.

*Estimated Total Annual Cost:* $926,209, which includes $926,209 in labor costs, no capital/startup costs, and no operation and maintenance (O&M) costs.

There is no increase in the number of affected facilities or the number of responses as compared to the previous ICR. There is, however, an increase in the estimated burden cost as currently identified in the OMB Inventory of Approved Burdens. The change in burden cost is due to the use of a more recent labor rates.

Dated: July 21, 2011.

**John Moses,**

*Director, Collection Strategies Division.*

[FR Doc. 2011–16038 Filed 6–24–11; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OAR–2011–0371; FRL–9425–1]**

## Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Reporting and Recordkeeping Requirements for National Volatile Organic Compound Emission Standards for Architectural Coatings, EPA ICR Number 1750.06, OMB Control Number 2060–0393

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB) with changes to the ICR burden estimates. This ICR is scheduled to expire on December 31, 2011. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Additional comments may be submitted on or before August 26, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2011–0371 by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.* Include Docket ID Number EPA–HQ–OAR–2011–0371 in the subject line of the message.
- *Fax:* (202) 566–1741.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket Information Center, 1200 Pennsylvania Avenue, NW.; Mail Code: 6102T, Washington, DC 20460.
- *Hand Delivery:* To send comments or documents through a courier service, the address to use is: EPA Docket Center, Public Reading Room, EPA West, Room 334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are accepted only during the Docket's normal hours of operation—8:30 a.m. to 4:30 p.m., Monday through Friday. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Electronic Docket ID No. EPA–HQ–OAR–2011–0371. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Do not submit information that you consider to be CBI or otherwise to be protected through *http://www.regulations.gov* or e-mail. The Web site is an ''anonymous access'' system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to us without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If we cannot read your comment as a result of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption and be free of any defects or viruses. For additional information about EPA public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

**FOR FURTHER INFORMATION CONTACT:** Kim Teal, Office of Air and Radiation, Office of Air Quality Planning and Standards, Mail Code E143–03, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5580; fax number: (919) 541–3470; e-mail address: *teal.kim@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### How can I access the docket and/or submit comments?

The EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2011–0371 which is available either electronically at *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room 334, 1301 Constitution Avenue, NW., Washington, DC 20004. The normal business hours are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone for the Reading Room is 202–566–1744, and the

telephone for the Air Docket is 202–1742.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

**What information particularly interests the EPA?**

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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. In particular, the EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that the EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

**What should I consider when I prepare my comments for the EPA?**

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by the EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**To what information collection activity or ICR does this apply?**

Docket ID No. EPA–HQ–OAR–2011–0371.

*Affected Entities:* Entities potentially affected by this action as respondents are manufacturers, distributors, or importers of architectural and industrial maintenance coatings and coating components for sale or distribution in the United States, including the District of Columbia and all United States territories.

*Title:* Reporting and Recordkeeping Requirements for National Volatile Organic Compound Emission Standards for Architectural Coatings (40 CFR part 59).

*ICR number:* EPA ICR Number 1750.06, OMB Control Number 2060–0393.

*ICR status:* This ICR is currently scheduled to expire on December 31, 2011. 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 the EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

*Abstract:* The EPA is required under section 183(e) of the Clean Air Act to regulate volatile organic compound emissions from the use of consumer and commercial products. Pursuant to section 183(e)(3), the EPA published a list of consumer and commercial products and a schedule for their regulation (60 FR 15264). Architectural and industrial maintenance coatings were included on the list, and the standards for such coatings are codified at 40 CFR part 59, subpart D. The information collection includes initial reports and periodic recordkeeping necessary for the EPA to ensure compliance with Federal standards for volatile organic compounds in architectural coatings. Respondents are manufacturers, distributors, and importers of architectural coatings. Responses to the collection are mandatory under 40 CFR part 59, Subpart D—National Volatile Organic Compound Emission Standards for Architectural Coatings. All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in 40 CFR part 2, Subpart B—Confidentiality of Business Information.

The EPA provided notice and sought comments on the previous ICR renewal on July 25, 2008 (73 FR 43440), pursuant to 5 CFR 1320.8(d). The EPA received no comments to that notice.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 30 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

*Estimated total number of potential respondents:* 500.

*Frequency of response:* On occasion.

*Estimated total average number of responses for each respondent:* One or less per year.

*Estimated total annual burden hours:* 14,981.

*Estimated total annual costs:* $1,292,486. This includes $1,292,486 in labor costs and no capital investment or maintenance and operational costs.

**Are there changes in the estimates from the last approval?**

There are no changes being made to the estimates in this ICR from what the EPA estimated in the earlier renewal of this ICR.

**What is the next step in the process for this ICR?**

The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, the EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: June 22, 2011.

**Mary E. Henigin,**

*Acting Director, Office Sector Policies and Programs Division.*

[FR Doc. 2011–16034 Filed 6–24–11; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OECA–2010–0377; FRL–9324–6]**

## Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Solvent Extraction for Vegetable Oil Production (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

**DATES:** Additional comments may be submitted on or before July 27, 2011.

**ADDRESSES:** Submit your comments, referencing docket ID number EPA–HQ–OECA–2010–0377, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov*.

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 2, 2010 (75 FR 30812), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2010–0377, which is available for public viewing online at *http://www.regulations.gov*, or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

*Title:* NESHAP for Solvent Extraction for Vegetable Oil Production (Renewal).

*ICR Numbers:* EPA ICR Number 1947.05, OMB Control Number 2060–0471.

*ICR Status:* This ICR is scheduled to expire on July 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. 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 title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

*Abstract:* The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 63, subpart GGGG.

Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 185 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Owners or operators of vegetable oil production facilities.

*Estimated Number of Respondents:* 101.

*Frequency of Response:* Initially, on-occasion and annually.

*Estimated Total Annual Hour Burden:* 39,385.

*Estimated Total Annual Cost:* $2,512,947, which includes $2,512,947 in labor costs, no capital/startup costs, and no operation and maintenance (O&M) costs.

*Changes in the Estimates:* There is no change in the labor hours or cost in the ICR compared to the previous ICR. This is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for the industry is very low, negative or non-existent. Therefore, the labor hours and cost figures in the previous ICR reflect the current burden to the respondents and are reiterated in this ICR.

Dated: June 21, 2011.

**John Moses,**

*Director, Collection Strategies Division.*

[FR Doc. 2011–16032 Filed 6–24–11; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–R07–OW–2011–0540; FRL–9324–5]**

## Notice of a Regional Project Waiver of Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the City of Columbia, MO

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The EPA is hereby granting a waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality] to the City of Columbia, MO (''City'') for the purchase of several foreign manufactured components of heating/ventilation/air conditioning systems (HVAC Systems) in Columbia, Missouri. This HVAC system consists of three (3) heat pumps and the associated packaged air handlers and one (1) air conditioning system condensing unit. The system is manufactured by Trane Commercial Systems in Monterrey, Mexico. This is a project specific waiver and only applies to the use of the specified product for the ARRA project being proposed. Any other ARRA recipient that wishes to use the same product must apply for a separate waiver based on project specific circumstances. Based upon critical performance requirements and project specifications for the HVAC systems, a list of potential manufacturers and project schedule submitted by the City and its consulting engineer, it has been determined that there are currently no domestically manufactured HVAC systems available to meet the City's project specifications. The Regional Administrator is making this determination based on the review and recommendations of the Clean Water State Revolving Fund (CWSRF) staff. The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to Section 1605 of ARRA. This action permits the purchase of the Trane Commercial Systems foreign manufactured HVAC systems. The City of Columbia, MO has provided sufficient documentation to support their waiver request.

**DATES:** *Effective Date:* June 27, 2011.

**FOR FURTHER INFORMATION CONTACT:** Christopher Simmons, Environmental Engineer, Water Wetlands and Pesticides Division (WWPD), (913) 551–7237, U.S. EPA, Region 7, 901 N. Fifth Street, Kansas City, KS 66101.

**SUPPLEMENTARY INFORMATION:** In accordance with ARRA Section 1605(c), the EPA hereby provides notice that it is granting a project waiver of the requirements of Section 1605 (a) of Public Law 111–5, Buy American requirements, to the City of Columbia, MO (''City'') for the purchase of non-domestically manufactured Trane HVAC systems consisting of three (3) heat pumps and the associated packaged air handlers and one (1) air conditioning system condensing unit, to meet the City's design and performance specifications as part of its proposed Wastewater Treatment Facility Phase 1 Improvement Project in Columbia, MO.

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or a public works project unless all of the iron, steel, and manufactured goods used in the project is produced in the United States, or unless a waiver is provided to the recipient by the head of the appropriate agency, here the EPA. A waiver may be provided if EPA determines that (1) Applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

The City of Columbia, MO is proposing a Wastewater Treatment Facility (WWTF) Phase 1 Improvement Project that includes the use of non-domestically manufactured Trane HVAC systems. The new HVAC systems to be installed in the WWTF provides adequate indoor air quality by conditioning the air in the occupied space, diluting and removing contaminants from indoor air while providing proper pressurization. Project specifications for a density analyzer require the following to meet the design and performance criteria:

(1) Each component of the HVAC system must be compatible with all other parts of the system;

(2) Where two (2) or more units of the same class of equipment are required, they shall be the product of the same manufacturer.

The Clean Water State Revolving Fund (CWSRF) staff has reviewed this waiver request and has determined that the supporting documentation provided by the City of Columbia, MO establishes both a proper basis to specify a particular manufactured good, and that there is no domestic manufactured good currently available. The information provided is sufficient to meet the following criteria listed under Section 1605(b) of the ARRA and in the April 28, 2009 Memorandum: Iron, steel, and the manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

The Heating/Ventilation/Air Conditioning (HVAC) systems are manufactured non-domestically by the Trance Commercial Systems located in Monterrey, Mexico. All supporting documentation and independent research and communication with manufacturers of HVAC systems conducted by EPA's national contractor demonstrate that there are no U.S. manufacturers able to meet the project specifications. None of the companies contacted by EPA's national contractor manufacture HVAC systems, which can meet the specifications, in the United States.

EPA has also evaluated Columbia, MO's waiver request to determine if its submission is considered late or if it could be considered timely, as per the OMB Guidance at 2 CFR 176.120. EPA will generally regard waiver requests with respect to components that were

specified in the bid solicitation or in a general/primary construction contract as ''late'' if submitted after the contract date. However, EPA could also determine that a request be evaluated as timely, though made after the date that the contract was signed, if the need for a waiver was not reasonably foreseeable.

In this case, there are no U.S. manufacturers that meet Columbia, MO's project specification for the HVAC systems. The waiver request was not made prior to the contract being signed because initially the manufacturer said their product was manufactured in the U.S. Trane Commercial Systems has since moved manufacturing of some products to Monterrey, Mexico. In light of the unexpected change in the manufacturing location, the City could not have reasonably foreseen the need at the time of contract award to submit a waiver request. EPA will therefore consider Columbia, MO's waiver request, an unforeseeable late request, as though it had been timely made.

Furthermore, the purpose of the ARRA is to stimulate economic recovery by funding current infrastructure construction, not to delay projects that are ''shovel ready'' by requiring potential SRF eligible recipients, such as the City of Columbia, MO, to revise their design standards and specifications as well as their construction schedule. There are no domestic manufacturers that can provide HVAC systems that meet the specifications of this WWTF improvement project. To delay this construction would directly conflict with a fundamental economic purpose of ARRA, which is to create or retain jobs.

The April 28, 2009 EPA HQ Memorandum, ''Implementation of Buy American provisions of Public Law 111–5, the 'American Recovery and Reinvestment Act of 2009' '' (''Memorandum''), defines *reasonably available quantity* as ''the quantity of iron, steel, or relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design.'' The same Memorandum defines ''satisfactory quality'' as ''the quality of steel, iron or manufactured good specified in the project plans and designs.''

The March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the temporary authority to issue exceptions to Section 1605 of the ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients.

Having established both a proper basis to specify the particular manufactured good required for this project and that this manufactured good was not available from a producer in the United States, the City is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5. This waiver permits use of ARRA funds for the purchase of a non-domestic manufactured Trane Commercial Systems Heating/Ventilation/Air Conditioning Systems documented in City's waiver request submittal dated February 18, 2011. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

**Authority:** Pub. L. 111–5, section 1605.

Dated: June 14, 2011.

**Karl Brooks,**

*Regional Administrator, Region 7.*

[FR Doc. 2011–16048 Filed 6–24–11; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC 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.

**DATES:** Written PRA comments should be submitted on or before August 26, 2011. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–0325.

*Title:* Section 80.605, U.S. Coast Guard Coordination.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents and Responses:* 10 respondents and 10 responses.

*Estimated Time per Response:* 1.1 hours.

*Frequency of Response:* On occasion reporting requirement.

*Obligation To Respond:* Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 4, 303, 307(e), 309, and 332, 48 Stat. 1066, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted.

*Total Annual Burden:* 11 hours.

*Annual Cost Burden:* None.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Needs and Uses:* Section 80.605 is necessary because applicants are required to obtain written permission from the Coast Guard in the area where radio-navigation/radio-location devices are located. This rule insures that no hazard to marine navigation will result from the grant of applications for non-selectable transponders and shore based radio-navigation aids. The Coast Guard is responsible for making this determination under 14 U.S.C. 18. Section 308(b) of the Communications

Act of 1934, as amended, 47 U.S.C. 308(b) mandates that the Commission have such facts before it to determine whether an application should be granted or denied. The potential hazard to navigation is a critical factor in determining whether this type of radio device should be authorized.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2011–16022 Filed 6–24–11; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collection Being Reviewed by the Federal Communications Commission

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC 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.

**DATES:** Written PRA comments should be submitted on or before August 26, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0501.

*Title:* Section 73.1942 Candidates Rates; Section 76.206 Candidate Rates; Section 76.1611 Political Cable Rates and Classes of Time.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents and Responses:* 18,111 respondents; 412,110 responses.

*Estimated Time per Response:* 0.5 hours to 20 hours.

*Frequency of Response:* Recordkeeping requirement; On occasion reporting requirement; Semi-annual requirement; Third party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i) and 315 of the Communications Act of 1934, as amended.

*Total Annual Burden:* 948,719 hours.

*Total Annual Cost:* None.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Needs and Uses:* Section 315 of the Communications Act directs broadcast stations and cable operators to charge political candidates the ''lowest unit charge of the station'' for the same class and amount of time for the same period, during the 45 days preceding a primary or runoff election and the 60 days preceding a general or special election.

47 CFR 73.1942 requires broadcast licensees and 47 CFR 76.206 requires cable television systems to disclose any station practices offered to commercial advertisers that enhance the value of advertising spots and different classes of time (immediately preemptible, preemptible with notice, fixed, fire sale, and make good). These rule sections also require licensees and cable TV systems to calculate the lowest unit charge.

Broadcast stations and cable systems are also required to review their advertising records throughout the election period to determine whether compliance with these rule sections require that candidates receive rebates or credits. 47 CFR 76.1611 requires systems to disclose to candidates information about rates, terms, conditions and all value-enhancing discount privileges offered to commercial advertisers.

*OMB Approval Number:* 3060–0896.

*Title:* Broadcast Auction Form Exhibits.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other-for profit entities, Not-for-profit institutions, State, local or tribal government.

*Number of Respondents and Responses:* 3,000 respondents and 7,605 responses.

*Estimated Hours per Response:* 0.5 hours–2 hours.

*Obligation to Respond:* On occasion reporting requirement. The statutory authority for this collection of information is contained in Sections 154(i) and 309 of the Communications Act of 1934, as amended.

*Annual Hour Burden:* 8,628 hours.

*Annual Cost Burden:* $16,735,750.

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Privacy Impact Assessment(s):* No impact(s).

*Needs and Uses:* The Commission's rules require that broadcast auction participants submit exhibits disclosing ownership, bidding agreements, bidding credit eligibility and engineering data. These data are used by Commission staff to ensure that applicants are qualified to participate in Commission auctions and to ensure that license winners are entitled to receive the new entrant bidding credit, if applicable. Exhibits regarding joint bidding agreements are designed to prevent collusion. Submission of engineering exhibits for non-table services enables the Commission to determine which applications are mutually exclusive.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2011–16023 Filed 6–24–11; 8:45 am]

**BILLING CODE P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting Notice

**AGENCY:** Federal Election Commission.

**DATE AND TIME:** Thursday, June 30, 2011 at 10 a.m.

**PLACE:** 999 E Street, NW., Washington, DC (Ninth Floor).

**STATUS:** This Meeting will be Open to the Public.

**ITEMS TO BE DISCUSSED:** Correction and Approval of the Minutes for the Meeting of June 15, 2011.

Draft Advisory Opinion 2011–11: Mr. Stephen Colbert.

Draft Advisory Opinion 2011–12: Majority PAC and House Majority PAC.

Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Commission Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the hearing date.

**PERSON TO CONTACT FOR INFORMATION:** Judith Ingram, Press Officer, Telephone: (202) 694–1220.

**Shawn Woodhead Werth,**

*Secretary and Clerk of the Commission.*

[FR Doc. 2011–16211 Filed 6–23–11; 4:15 pm]

BILLING CODE 6715–01–M

## DEPARTMENT OF DEFENSE

## General Services Administration;

## National Aeronautics and Space Administration

**[OMB Control No. 9000–0018; Docket 2011–0079; Sequence 2]**

## Federal Acquisition Regulation; Information Collection; Certification of Independent Price Determination and Parent Company and Identifying Data

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Regulatory Secretariat (MVCB) will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning certification of independent price determination and parent company and identifying data.

*Public comments are particularly invited on:* Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before July 27, 2011.

**ADDRESSES:** Submit comments identified by Information Collection 9000–0018 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''Information Collection 9000–0018'' under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0018''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0018'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., Washington, DC 20417. *Attn:* Hada Flowers/IC 9000–0018.

*Instructions:* Please submit comments only and cite Information Collection 9000–0018, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Anthony Robinson, Procurement Analyst, Contract Policy Branch, GSA (202) 501–2658 or e-mail *Anthony.robinson@gsa.gov.*

**SUPPLEMENTARY INFORMATION:**

### A. Purpose

Agencies are required to report under 41 U.S.C. 252(d) and 10 U.S.C. 2305(d) suspected violations of the antitrust laws (*e.g.,* collusive bidding, identical bids, uniform estimating systems, *etc.*) to the Attorney General.

As a first step in assuring that Government contracts are not awarded to firms violating such laws, offerors on Government contracts must complete the certificate of independent price determination. An offer will not be considered for award where the certificate has been deleted or modified. Deletions or modifications of the certificate and suspected false certificates are reported to the Attorney General.

### B. Annual Reporting Burden

*Respondents:* 64,250.
*Responses per Respondent:* 20.
*Total Responses:* 1,285,000.
*Hours per Response:* .01.
*Total Burden Hours:* 12,850.
*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Branch (MVCB), 1275 First Street, NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0018, Certification of Independent Price Determination and Parent Company and Identifying Data, in all correspondence.

Dated: June 9, 2011.

**Millisa Gary,**

*Acting Director, Federal Acquisition Policy Division.*

[FR Doc. 2011–16054 Filed 6–24–11; 8:45 am]

BILLING CODE 6820–EP–P

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0164; Docket 2011–0079; Sequence 20]**

## Federal Acquisition Regulation; Submission for OMB Review; Contractor Business Ethics Compliance Program and Disclosure Requirements

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Regulatory Secretariat (MVCB) will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning contractor business ethics compliance program and disclosure requirements.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper

performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before August 26, 2011.

**ADDRESSES:** Submit comments identified by Information Collection 9000–0164, Contractor Business Ethics Compliance Program and Disclosure Requirements, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''Information Collection 9000–0164, Contractor Business Ethics Compliance Program and Disclosure Requirements'', under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0164, Contractor Business Ethics Compliance Program and Disclosure Requirements''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0164, Contractor Business Ethics Compliance Program and Disclosure Requirements'', on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., Washington, DC 20417. *Attn:* Hada Flowers/IC 9000–0164, Contractor Business Ethics Compliance Program and Disclosure Requirements.

*Instructions:* Please submit comments only and cite Information Collection 9000–0164, Contractor Business Ethics Compliance Program and Disclosure Requirements, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Anthony Robinson, Procurement Analyst, Acquisition Policy Division, GSA (202) 501–2658 or e-mail *Anthony.Robinson@gsa.gov.*

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

The collection applies to the FAR requirements for a contractor code of business ethics and conduct, an internal control system, and disclosure to the Government of certain violations of criminal law, violations of the civil False Claims Act, or significant overpayments.

**B. Annual Reporting Burden**

*Respondents:* 284.
*Responses per Respondent:* 1.
*Total Responses:* 284.
*Hours per Response:* 60.
*Total Burden Hours:* 17,040.
*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Branch (MVCB), 1275 First Street, NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0164, Contractor Business Ethics Compliance Program and Disclosure Requirements, in all correspondence.

Dated: June 8, 2011.

**Millisa Gary,**

*Acting Director, Office of Governmentwide Acquisition Policy.*

[FR Doc. 2011–16058 Filed 6–24–11; 8:45 am]

**BILLING CODE 6820–EP–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Meeting of the Secretary's Advisory Committee on Human Research Protections

**AGENCY:** Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health.

**ACTION:** Notice.

**SUMMARY:** Pursuant to Section 10(a) of the Federal Advisory Committee Act, U.S.C. Appendix 2, notice is hereby given that the Secretary's Advisory Committee on Human Research Protections (SACHRP) will hold its twenty-fifth meeting. The meeting will be open to the public. Information about SACHRP and the meeting agenda will be posted on the SACHRP Web site at: *http://www.dhhs.gov/ohrp/sachrp/mtgings/index.html.*

**DATES:** The meeting will be held on Tuesday, July 19, 2011 from 8:30 a.m. until 5 p.m. and Wednesday, July 20, 2011 from 8:30 a.m. until 5 p.m.

**ADDRESSES:** U.S. Department of Health and Human Services, 200 Independence Avenue, SW., Hubert H. Humphrey Building, Room 800, Washington, DC 20201.

**FOR FURTHER INFORMATION CONTACT:** Jerry Menikoff, M.D., J.D., Director, Office for Human Research Protections (OHRP), or Julia Gorey, J.D., Executive Director, SACHRP; U.S. Department of Health and Human Services, 1101 Wootton Parkway, Suite 200, Rockville, Maryland 20852; 240–453–8141; *fax:* 240–453–6909; *e-mail address: Julia.Gorey@hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Under the authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, SACHRP was established to provide expert advice and recommendations to the Secretary of Health and Human Services and the Assistant Secretary for Health on issues and topics pertaining to or associated with the protection of human research subjects.

On July 19, 2011, SACHRP will hear a presentation by the Executive Director of the Presidential Commission for the Study of Bioethical Issues focusing on the work of the Commission; this will be followed by SACHRP discussion. After lunch, SACHRP will hear the report of the Subpart A Subcommittee (SAS). SAS is charged with developing recommendations for consideration by SACHRP regarding the application of subpart A of 45 CFR part 46 in the current research environment; this Subcommittee was established by SACHRP in October 2006. Recommendations to be discussed focus on the return of research results to subject, internet-based research, and improvements to the informed consent process.

On July 20, 2011, the morning will open with a report from the Subcommittee on Harmonization (SOH). The SOH was established by SACHRP at its July 2009 meeting, and is charged with identifying and prioritizing areas in which regulations and/or guidelines for human subjects research adopted by various agencies or offices within HHS would benefit from harmonization, consistency, clarity, simplification and/or coordination. In the afternoon, SACHRP will hear a panel of speakers discussing consequences and processes surrounding scientific misconduct and fraud.

Public Comment will be heard on both days.

Public attendance at the meeting is limited to space available. Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact persons. Members of the public will have the opportunity to provide comments on

both days of the meeting. Public comment will be limited to five minutes per speaker. Any members of the public who wish to have printed materials distributed to SACHRP members for this scheduled meeting should submit materials to the Executive Director, SACHRP, prior to the close of business July 15, 2011.

Dated: June 21, 2011.

**Jerry Menikoff,**

*Director, Office for Human Research Protections, Executive Secretary, Secretary's Advisory Committee on Human Research Protections.*

[FR Doc. 2011–16051 Filed 6–24–11; 8:45 am]

BILLING CODE 4150–36–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Comment Request

*Title:* Head Start Program Information Report.

*OMB No.:* 0980–0017.

*Description:* The Office of Head Start within the Administration for Children and Families, United States Department of Health and Human Services, is proposing to renew authority to collect information using the Head Start Program Information Report (PIR). The PIR provides information about Head Start and Early Head Start services received by the children and families enrolled in Head Start programs. The information collected in the PIR is used to inform the public about these programs and to make periodic reports to Congress about the status of children in Head Start programs as required by the Head Start Act.

*Respondents:* Head Start and Early Head Start Program Grant Recipients.

*Annual Burden Estimates:*

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| Annual PIR | 2,690 | 1 | 4 hours | 10,760 |
| Monthly Enrollment (Grantees only) | 1,600 | 12 | 3 minutes | 960 |
| Contacts, Locations and Reportable Conditions | 2,690 | 1 | 15 minutes | 672 |

Estimated Total Annual Burden Hours: 12,392.

*Additional Information:* Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, *Fax:* 202–395–7285, *E-mail: OIRA_SUBMISSION@OMB.EOP.GOV, Attn:* Desk Officer for the Administration for Children and Families.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 2011–16014 Filed 6–24–11; 8:45 am]

BILLING CODE 4184–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Comment Request

*Title:* ACF–535 LIHEAP Quarterly Allocation Estimates.

*OMB No.:* 0970–0037.

*Description:* The LIHEAP Quarterly Allocation Estimates, ACF Form-535 is a one-page form that is sent to 50 State grantees and to the District of Columbia. It is also sent to Tribal Government grantees that receive over $1 million annually for the Low Income Home Energy Assistance Program (LIHEAP). Grantees are asked to complete and submit the form in the 4th quarter of each year. The data collected on the form are grantees estimates of obligations they expect to make each quarter for the upcoming fiscal year for the LIHEAP program. This is the only method used to request anticipated distributions of the grantees LIHEAP funds. The information is used to develop apportionment requests to OMB and to make grant awards based on grantees anticipated needs. Information collected on this form is not available through any other Federal source.

Submission of the form is voluntary.

*Respondents:* State Governments.

ANNUAL BURDEN ESTIMATES:

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| LIHEAP Quarterly Allocation Estimate, ACF–535 | 55 | 1 | 0.25 | 13.75 |

Estimated Total Annual Burden Hours: 13.75.

*Additional Information:* Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it

within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, *Fax:* 202–395–7285, *E-mail: OIRA_SUBMISSION@OMB.EOP.GOV*, *Attn:* Desk Officer for the Administration for Children and Families.

**Robert Sargis.**

*Reports Clearance Officer.*

[FR Doc. 2011–15958 Filed 6–24–11; 8:45 am]

**BILLING CODE 4184–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–N–0471]**

### 2011 Scientific Meeting of the National Antimicrobial Resistance Monitoring System; Public Meeting; Request for Comments

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public meeting; request for comments.

The Food and Drug Administration (FDA) is announcing a public meeting entitled: ''2011 Scientific Meeting of the National Antimicrobial Resistance Monitoring System.'' The topic to be discussed is animal and retail sampling methods for the National Antimicrobial Resistance Monitoring System (NARMS).

*Date and Time:* The public meeting will be held on July 20, 2011, from 8 a.m. to 5 p.m.

*Location:* The public meeting will be held at Holiday Inn Select St. Louis Downtown Convention Center Hotel, 811 North 9th Street, St. Louis, MO 63101, 314–421–4000, FAX: 314–421–5974.

*Contact Person:* Aleta Sindelar, Center for Veterinary Medicine (HFV–3), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9004, FAX: 240–276–9001, e-mail: *Aleta.Sindelar@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** The main purpose of the meeting is to explore ways in which NARMS can improve sampling using current resources. Other topics include:

(1) How should NARMS define adequate sampling for resistance trends?

(2) What are some additional sources for unbiased food animal samples?

(3) What additional information should NARMS collect and report?

*Requests for Oral Presentations:* Interested persons may present data, information, or views, orally or in writing, on the topic of the discussion of the meeting. Written submissions may be made to the contact person on or before July 6, 2011. Oral presentations from the public during the open public comment period will be scheduled between approximately 2 and 3 p.m. on July 20, 2011. Those desiring to make oral presentations should notify the contact person by July 6, 2011, and submit a brief statement of the general nature of information they wish to present and an indication of the approximate time requested to make their presentation. Time allotted for each presentation may be limited. The contact person will inform each speaker of their schedule prior to the meeting.

Registration is not required for this meeting, however, early arrival is recommended because seating may be limited.

If you need special accommodations due to a disability, please contact Aleta Sindelar (see *Contact Person*) at least 7 days in advance.

*Comments:* Regardless of attendance at the public meeting, interested persons may submit to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, either electronic or written comments regarding this document. Submit electronic comments to *http://www.regulations.gov.* It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. The docket will remain open for written or electronic comments for 30 days following the meeting.

*Agenda:* The meeting will address goals and challenges of surveying retail meats and food animals for antimicrobial susceptibility in foodborne bacteria. The agenda for the public meeting will be made available on the Agency's Web site at *http://www.fda.gov/AnimalVeterinary/SafetyHealth/AntimicrobialResistance/NationalAntimicrobialResistanceMonitoringSystem/ucm059135.htm.*

*Transcripts:* FDA will prepare a meeting transcript and make it available on the Agency's Web site (*see Agenda*) after the meeting. FDA anticipates that transcripts will be available approximately 60 business days after the meeting. The transcript will be available for public examination at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday. A transcript will also be available in either hardcopy or on CD–ROM after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg. Rockville, MD 20857.

Dated: June 16, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–15982 Filed 6–24–11; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Submission for OMB review; comment request Health Information National Trends Survey 4 (HINTS 4) (NCI)

*Summary:* Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 22, 2011 (76 FR 22714) and allowed 60-days for public comment. One public comment was received on April 23, 2011 which commented on the number of previous surveys and expense. An e-mail response was sent on April 25, 2011, stating, ''Thank you for your comments. We will take your comments into consideration.'' The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

*Proposed Collection: Title:* Health Information National Trends Survey 4 (HINTS 4) (NCI) (OMB 0925–0538, Exp 11/30/2008). *Type of Information Collection Request: Reinstatement with Change. Need and Use of Information Collection:* HINTS 4 will provide NCI with a comprehensive assessment of the American public's current access to, and

use of, information about cancer across the cancer care continuum from cancer prevention, early detection, diagnosis, treatment, and survivorship. The content of the survey will focus on understanding the degree to which members of the general population understand vital cancer prevention messages. More importantly, this NCI survey will couple knowledge-related questions with inquiries into the communication channels through which understanding is being obtained, and assessment of cancer-related behavior. The Public Health Services Act, Sections 411 (42 U.S.C. 285a) and 412 (42 U.S.C. 285a-1.1 and 285a-1.3), outline the research and information dissemination mission of the NCI which authorizes the collection of this information. *Frequency of Response:* Once. *Affected Public:* Individuals. *Type of Respondents:* U.S. adults (persons aged 18+). The annual reporting burden is documented in the table below. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

| Data collection cycle | Type of respondent | Number of respondents | Frequency of response | Average time per response minutes/hour | Annual hour burden |
|---|---|---|---|---|---|
| Cycle 1 | Mail survey | 3,533 | 1 | 30/60 (.5) | 1,766.5 |
| Cycle 2 | Mail survey | 3,533 | 1 | 30/60 (.5) | 1,766.5 |
| Cycle 3 | Mail survey | 3,500 | 1 | 30/60 (.5) | 1,750 |
| Cycle 4 | Mail survey | 3,500 | 1 | 30/60 (.5) | 1,750 |
| Total | | | | | 7,033 |

*Request for Comments:* Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function 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 the use of appropriate automated, electronic, mechanical, or other technological 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:* NIH Desk Officer, Office of Management and Budget, at *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Bradford W. Hesse, PhD, Project Officer, National Cancer Institute, NIH, EPN 4068, 6130 Executive Boulevard, MSC 7365, Bethesda, Maryland 20892–7365, or call non-toll free number 301–594–9904 or fax your request to 301–480–2198, or e-mail your request, including your address, to *hesseb@mail.nih.gov.*

*Comments Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: June 20, 2011.

**Vivian Horovitch-Kelley,**

*NCI Project Clearance Liaison, National Institutes of Health.*

[FR Doc. 2011–15994 Filed 6–24–11; 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. Appendix 2) 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 purpose of this meeting is to evaluate requests for preclinical development resources, biologics, clinical assays and other developmental programs for potential new therapeutics for the treatment of cancer. The outcome of the evaluation will provide information to internal NCI committees that will decide whether NCI should support requests and make available contract resources for development of the potential therapeutic to improve the treatment of various forms of cancer. The research proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposed research projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel, Clinical Assay Development Program (CADP).

*Date:* July 27, 2011.

*Time:* 9 a.m.–4 p.m.

*Agenda:* To review grant applications for the CADP.

*Place:* Bethesda Marriott North Hotel, 5701 Marinelli Road, Bethesda, MD 20852.

*Contact Person:* Dr. Barbara Conley, Executive Secretary, Clinical Assay Development Program (CADP), National Cancer Institute, NIH, 6130 Executive Boulevard, Room 6035A, Bethesda, MD 20892, 301–496–8639, *conleyba@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: June 21, 2011.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2011–15997 Filed 6–24–11; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, July 7, 2011, 8 a.m. to July 8, 2011, 5 p.m., Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852 which was published in the **Federal Register** on May 16, 2011, 76FR28236.

This notice is amending the dates and times of the meeting from July 7–8, 2011, 8 a.m. to 5 p.m. to the following dates and times: July 6th—7:30 to 10 p.m., July 7th—8 a.m. to 5 p.m., and July 8th—8 a.m. to 4 p.m. The meeting is closed to the public.

Dated: June 21, 2011.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2011–15999 Filed 6–24–11; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meetings

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 meetings.

The meetings 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 Special Emphasis Panel, Core Infrastructure and Methological Research for Cancer Epidemiology Cohorts,

*Date:* July 12, 2011,

*Time:* 8 a,m, to 5 p,m

*Agenda:* To review and evaluate grant applications.

*Place:* Lorien Hotel and Spa, 1600 King Street, Alexandria, VA 22314.

*Contact Person:* Marvin L. Salin, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 7073, Bethesda, MD 20892–8329, 301–496–0694, *msalin@mail.nih.gov.*

*Name of Committee:* National Cancer Institute Special Emphasis Panel, Melanoma P01.

*Date:* July 13, 2011.

*Time:* 12:30 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* National Cancer Institute, 6116 Executive Blvd, Room 8018, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Delia Tang, M.D., Scientific Review Officer, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., Room 8123, MSC 8328, Bethesda, MD 20892, 301–496–2330, *tangd@mail.nih.gov.*

*Name of Committee:* National Cancer Institute Special Emphasis Panel, Small Grants Program for Cancer Epidemiology.

*Date:* July 21–22, 2011.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Legacy Hotel and Meeting Center, 1775 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Joyce C. Pegues, B.S., B.A., Ph..D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, NIH National Cancer Institute, 6116 Executive Boulevard, Room 7149, Bethesda, MD 20892–8329, 301–594–1286, *peguesj@mail.nih.gov.*

*Name of Committee:* National Cancer Institute Special Emphasis Panel, Feasibility Studies for Collaborative Interaction for Minority Institution/Cancer Center Partnership (P20).

*Date:* July 28–29, 2011.

*Time:* 8 a.m. to 5 p.m

*Agenda:* To review and evaluate grant applications.

*Place:* Marriott Bethesda North Conference & Center, 5701 Marinelli Road, North Bethesda, MD 20852.

*Contact Person:* Clifford W Schweinfest, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8050a, Bethesda, MD 20892–8329, 301–402–9415, *schweinfestcw@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: June 21, 2011.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2011–16000 Filed 6–24–11; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Council of Councils.

The meeting will be open to the public as indicated below, 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.

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 because the premature disclosure of grant applications and the discussions would likely to significantly frustrate implementation of recommendations.

*Name of Committee:* Council of Councils.

*Date:* August 15, 2011.

*Open:* 1 p.m. to 2: p.m.

*Agenda:* Discussion of NIH Director's Early Independence Awards program and review process. See: *http://grants.nih.gov/grants/guide/rfa-files/RFA-RM-10-019.html.* Dial-in number: 866–695–1528. *Conference code:* 6971723704

*Place:* National Institutes of Health, Building 1, 1 Center Drive, Room 260, Bethesda, MD 20892, (Telephone Conference Call).

*Closed:* 2 p.m. to 4 p.m.

*Agenda:* To review and evaluate second-level review of NIH Director's Early Independence Awards grant applications.

*Place:* National Institutes of Health, Building 1, 1 Center Drive, Room 260, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Robin Kawazoe, Executive Secretary, Division of Program Coordination, Planning, and Strategic Initiatives, Office Of The Director, NIH, Building 1, ROOM 260B, Bethesda, MD 20892, *KAWAZOER@mail.nih.gov.*

Additional information, including the meeting agenda is available on the Council of Council's home page: *http://dpcpsi.nih.gov/council/.*

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. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: June 21, 2011.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2011–15998 Filed 6–24–11; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of General Medical Sciences; 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 of General Medical Sciences Special Emphasis Panel, MBRS Score Meeting.

*Date:* July 26–27, 2011.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Room 3AN12B, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Helen R. Sunshine, PhD, Chief, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12F, Bethesda, MD 20892, 301–594–2881, *sunshinh@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: June 21, 2011.

**Jennifer Spaeth**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2011–15995 Filed 6–24–11; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID: FEMA–2011–0008]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request, 1660–0044; Emergency Management Institute Follow-Up Evaluation Survey

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice; 30-day notice and request for comments; extension, without change, of a currently approved information collection; OMB No. 1660–0044; FEMA Form 519–0–1 (Presently FEMA Form 95–56), Post-Course Evaluation Questionnaire.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

**DATES:** Comments must be submitted on or before July 27, 2011.

**ADDRESSES:** Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or e-mail address *FEMA–Information-Collections-Management@dhs.gov.*

**SUPPLEMENTARY INFORMATION:**

### Collection of Information

*Title:* Emergency Management Institute Follow-up Evaluation Survey.

*Type of Information Collection:* Extension, without change, of a currently approved information collection.

*OMB Number:* OMB No. 1660–0044.

*Form Titles and Numbers:* FEMA Form 519–0–1 (Presently FEMA Form 95–56), Post-Course Evaluation Questionnaire.

*Abstract:* The Emergency Management Institute Follow-up Survey allows trainees at the Emergency Management Institute to self-assess the knowledge and skills gained through emergency management-related courses and the extent to which they have been beneficial and applicable in the conduct of their official positions. The information collected is used to review course content and offerings for program planning and management purposes.

*Affected Public:* Individuals or households, State, local or Tribal government.

*Estimated Number of Respondents:* 3,800.

*Frequency of Response:* Once.

*Estimated Average Hour Burden per Respondent:* .25 burden hours.

*Estimated Total Annual Burden Hours:* 950 burden hours.

*Estimated Cost:* There are no annual start-up or capital costs.

Dated: June 13, 2011.

**Lesia M. Banks,**

*Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 2011–16024 Filed 6–24–11; 8:45 am]

**BILLING CODE 9111–27–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–1989–DR; Docket ID FEMA–2011–0001]**

### Oklahoma; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Oklahoma (FEMA–1989–DR), dated June 6, 2011, and related determinations.

**DATES:** *Effective Date:* June 16, 2011.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Oklahoma is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of June 6, 2011.

Caddo County for Individual Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2011–16025 Filed 6–24–11; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–1975–DR; Docket ID FEMA–2011–0001]**

### Arkansas; Amendment No. 8 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Arkansas (FEMA–1975–DR), dated May 2, 2011, and related determinations.

**DATES:** *Effective Date:* June 16, 2011.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Arkansas is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 2, 2011.

Arkansas, Monroe, Phillips, and Poinsett Counties for Public Assistance, including direct Federal assistance (already designated for Individual Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2011–16026 Filed 6–24–11; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–1975–DR; Docket ID FEMA–2011–0001]**

### Arkansas; Amendment No. 7 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Arkansas (FEMA–1975–DR), dated May 2, 2011, and related determinations.

**DATES:** *Effective Date:* June 6, 2011.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this declared disaster is now April 14, 2011, through and including June 3, 2011.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2011–16028 Filed 6–24–11; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5529–N–01]**

### Notice of Regulatory Waiver Requests Granted for the First Quarter of Calendar Year 2011

**AGENCY:** Office of the General Counsel, HUD.

**ACTION:** Notice.

**SUMMARY:** Section 106 of the Department of Housing and Urban Development

Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on January 1, 2011, and ending on March 31, 2011.

**FOR FURTHER INFORMATION CONTACT:** For general information about this notice, contact Camille E. Acevedo, Associate General Counsel for Legislation and Regulations, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10282, Washington, DC 20410–0500, telephone 202–708–1793 (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.

For information concerning a particular waiver that was granted and for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waivers that have been granted in the first quarter of calendar year 2011.

**SUPPLEMENTARY INFORMATION:** Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request; and

e. State how additional information about a particular waiver may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

This notice follows procedures provided in HUD's Statement of Policy on Waiver of Regulations and Directives issued on April 22, 1991 (56 FR 16337). In accordance with those procedures and with the requirements of section 106 of the HUD Reform Act, waivers of regulations are granted by the Assistant Secretary with jurisdiction over the regulations for which a waiver was requested. In those cases in which a General Deputy Assistant Secretary granted the waiver, the General Deputy Assistant Secretary was serving in the absence of the Assistant Secretary in accordance with the office's Order of Succession.

This notice covers waivers of regulations granted by HUD from January 1, 2011 through March 31, 2011. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Fair Housing and Equal Opportunity, the Office of Housing, and the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the regulatory section of title 24 of the Code of Federal Regulations (CFR) that is being waived. For example, a waiver of a provision in 24 CFR part 58 would be listed before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement that appears in 24 CFR and that is being waived. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver of regulations that involve the same initial regulatory citation are in time sequence beginning with the earliest-dated regulatory waiver.

Should HUD receive additional information about waivers granted during the period covered by this report (the first quarter of calendar year 2011) before the next report is published (the second quarter of calendar year 2011), HUD will include any additional waivers granted for the first quarter in the next report.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: June 20, 2011.

**Helen R. Kanovsky,**

*General Counsel.*

## Appendix

*Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development January 1, 2011 Through March 31, 2011*

**Note to Reader:** More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of regulatory waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory waivers granted by the Office of Community Planning and Development.

II. Regulatory waivers granted by the Office of Housing.

III. Regulatory waivers granted by the Office of Public and Indian Housing.

### I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 58.22(a).

*Project/Activity:* The city park project in Joshua, TX entails the acquisition and development of a 19.35 acre park. The park includes the construction of the following: Multi use trails, baseball fields, splash station, basketball court, playground, restroom and concession facility, a ¾-acre excavated fishing pond, fishing pier, and enhancing the native landscaping on the western side of the park.

Plans for the park were underway prior to any indication that Congress would appropriate an Economic Development Special Purpose grant for its construction. The subject grant was funded through the Consolidated Appropriations Act 2010, signed into law on December 16, 2009, which provided special project grant funding to the City of Joshua for land acquisition, construction, and equipment for park areas.

The City of Joshua did not understand the environmental requirements as described in the Economic Development Initiative Special Project application kit and proceeded to enter into construction contracts for the park after the grant was appropriated, but before completing the environmental review

and receiving an approved Request for Release of Funds from HUD.

*Nature of Requirement:* The regulation requires that an environmental review be performed and a Request for Release of Funds be completed and certified prior to the commitment of non-HUD funds to a project using HUD funds.

*Granted By:* Mercedes Márquez, Assistant Secretary for Community Planning and Development.

*Date Granted:* March 8, 2011.

*Reason Waived:* The waiver was granted because the above project would further the HUD mission and advance HUD program goals to develop viable, quality communities; the City of Joshua lacked experience administering HUD grants and the City stated it did not intend to violate HUD's environmental requirements. No HUD funds were committed. The waiver was conditioned upon the removal of an adjacent 500 gallon above ground residential propane tank. The granting of a waiver will not result in any unmitigated, adverse environmental impact.

*Contact:* Danielle Schopp, Office of Environment and Energy, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7250, Washington, DC 20410–7000, telephone (202) 402–4442.

• *Regulation:* 24 CFR 92.254(b)(2).

*Project/Activity:* Pierce County, Washington requested a waiver of the principal residency requirement to enable it to assist an elderly woman whose home is substandard and in need of rehabilitation. Because her husband permanently resides in a nursing home, a waiver of the principal residency requirement was needed to permit the County to rehabilitate her home with HOME funds.

*Nature of Requirement:* The HOME Program regulations at 24 CFR 92.254(b)(2) requires that owner-occupied housing to be rehabilitated with HOME funds be the principal residence of its owners. Consequently, a HOME participating jurisdiction (PJ) cannot provide HOME-funded, rehabilitation assistance to a unit that does not qualify if the owners do not maintain the property as their principal residence.

*Granted By:* Mercedes Márquez, Assistant Secretary for Community Planning and Development.

*Reason Waived:* A waiver of the principal residency requirement was granted to assist an elderly woman whose home is substandard and in need of rehabilitation because her husband, who is one of the owners, permanently resides in a nursing home.

*Contact:* Virginia Sardone, Acting Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7164, Washington, DC 20410–7000, telephone (202) 708–2470.

• *Regulation:* 24 CFR 570.206(a)(4) and 92.207(a)(4).

*Project/Activity:* The Los Angeles County of California, requested a waiver of 24 CFR 570.206(a)(4) and 92.207(a)(4), to provide for use of a long-term capital lease to acquire real property for program administrative purposes, beginning with its July 1, 2008, program year start date.

*Nature of Requirement:* The regulations at 24 CFR 570.206(a)(4) and 92.207(a)(4) limit expenditures for program administrative space to rental and maintenance costs, but do not provide for the purchase or acquisition of administrative office space. The intent of the regulation is to preclude the use of program funds for long-term acquisition financing because of the uncertainty of annual appropriations for CDBG and HOME programs.

*Granted By:* Mercedes Márquez, Assistant Secretary for Community Planning & Development.

*Date Granted:* February 9, 2011.

*Reason Waived:* The waiver request of Los Angeles County cited as good cause the long-term and short-term savings that result from the ultimate acquisition of the office building. In addition to having all the County's offices in the same building, access to public transportation for both employees and the general public, this waiver allowed for the acquisition of an asset without lease payments at the end of 30 years.

*Contact:* Julia Neidecker-Gonzales, Office of Block Grant Assistance, Entitlement Communities Division, Office of Community Planning and Development, 451 Seventh Street, SW., Room 7282, Washington, DC 20410–7000, telephone: (202) 708–1577.

*Date Granted:* March 15, 2011.

• *Regulation:* Section III.A. of the Notice of Allocations, Application Procedures, and Requirements for Homeless Prevention and Rapid Re-Housing Program (HPRP) Grantees under the American Recovery and Reinvestment Act of 2009 (Recovery Act of 2009), issued March 19, 2009 (HPRP Notice).

*Project/Activity:* HPRP grantee, the State of Montana, requested a waiver of section III.A. of the HPRP Notice in order to retain and use a portion of its grant funds to pay the costs of its Homeless Management Information System (HMIS) to collect data on the activities and persons assisted under its HPRP grant.

*Nature of Requirement:* Section III.A. of the HPRP Notice provides that a state grantee must make available all of its formula allocation, except for an appropriate share of funds for administrative costs, to units of general local government and private nonprofit organizations in the state to carry out all eligible activities.

*Granted By:* Mercedes Márquez, Assistant Secretary for Community Planning and Development.

*Date Granted:* February 7, 2011.

*Reason Waived:* The grantee provided sufficient information for HUD to conclude the following: (1) The HMIS is already in place; (2) the HMIS is administered by the State of Montana; and (3) the alternative proposal of utilizing a fee structure to administer HMIS and meet the requirements in the Recovery Act would impose additional administrative burdens for the State.

*Contact:* Ann M. Oliva, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410–7000, telephone (202) 708–4300.

## II. Regulatory Waivers Granted by the Office of Housing—Federal Housing Administration (FHA)

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 203.37a(b)(2).

*Project/activity:* Properties eligible for FHA-insured mortgages.

*Nature of Requirement:* Generally, a mortgage for a property will not be eligible for FHA insurance if the contract of sale for the purchase of the property is executed within 90 days of the prior acquisition by the seller.

*Granted By:* David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

*Date Granted:* January 28, 2011 (extends existing waiver through December 31, 2011)

*Reason Waived:* By notice published in the **Federal Register** on February 3, 2011 (76 FR 6149), HUD announced the extension of the availability of the temporary waiver of its regulation that prohibits the use of FHA financing to purchase single family properties that are being resold within 90 days of the previous acquisition, until December 31, 2011. This waiver, which was originally issued in January 2010, took effect for all sales contracts executed on or after

February 1, 2010. In extending the waiver, HUD determined that acquiring, rehabilitating and the reselling recently acquired properties to prospective homeowners often takes less than 90 days. During this period of abandoned and foreclosed homes, prohibiting the use of FHA mortgage insurance for a subsequent resale within 90 days of acquisition adversely impacts the willingness of sellers to allow contracts from potential FHA buyers because they must consider holding costs and the risk of vandalism associated with allowing a property to sit vacant over a 90-day period of time. Extending the existing waiver continues to permit buyers to use FHA-insured financing to purchase HUD-owned properties, bank-owned properties, or properties resold through private sales. The extension of the waiver allows homes to resell as quickly as possible, helping to stabilize real estate prices and to revitalize neighborhoods and communities.

*Contact:* Karin B. Hill, Director, Office of Single Family Housing Program Development, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9278, Washington, DC 20410–8000, telephone (202) 402–7308.

• *Regulation:* 24 CFR 207.258b.

*Project/activity:* Section 232 insurance for healthcare facilities.

*Nature of Requirement:* The regulations at 24 CFR 207.258b addresses partial payment of claims and provides that when the Commissioner receives notice under 24 CFR 207.258 of a mortgagee's intention to file an insurance claim and to assign the mortgage to the Commissioner, the Commissioner may request the mortgagee, in lieu of assignment, to accept a partial payment of claim under the mortgage insurance contract. The regulations specify the conditions under which a partial payment of claim may be made, but the regulations exclude healthcare facilities insured under Section 232 of the National Housing Act from eligibility to accept partial payment of claim.

*Granted By:* David H. Stevens, Assistant Secretary for Housing—Federal Housing Commissioner.

*Date Granted:* March 11, 2011

*Reason Waived:* Through Mortgagee Letter 2011–15, issued March 11, 2011, the requirements of 24 CFR 207.258b were waived to remove the prohibition of allowing healthcare facilities to benefit from partial payment of claim. The statute does not exclude healthcare facilities and the applicable regulations are being updated to reflect the statutory authorization.

*Contact:* John Hartung, Supervisory Account Executive, Division of Residential Care Facilities, Office of Healthcare Program, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (314) 539–6333.

• *Regulation:* 24 CFR 219.220(b).

*Project/Activity:* Forest Hills Cooperative, Ann Arbor, Michigan—FHA Project Number 044–44158/59/60/61/62. The owner requested approval to defer repayment of the Flexible Subsidy Operating Assistance loan on this project to restore financial soundness and complete needed rehabilitation.

*Nature of Requirement:* Section 219.220(b) governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996 states: ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of these actions would typically terminate FHA involvement with the property, and the Flexible Subsidy loan would be repaid, in whole, at that time.

*Granted By:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* January 10, 2011.

*Reason Waived:* This waiver was granted in order to allow the owner to re-amortize the Flexible Subsidy Operating Assistance Loan over a 30-year period, execute and record a new Rental Use Agreement for the term of the re-amortized Residual Receipts Note. With the increase of the availability of funds, the property's financial soundness would be stabilized and much-needed rehabilitation can take place. The property would be preserved as an affordable housing resource.

*Contact:* Marilyn M. Edge, Acting Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6164, Washington, DC 20410–8000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 219.220(b).

*Project/Activity:* In-Chu-Co Apartments, Chapel Hill, North Carolina—FHA Project Number 053–44032. The owner requested to defer repayment of the Flexible Subsidy Operating Assistance Loan on this project until the maturity date of the proposed HUD insured loan to restore financial and physical soundness to the property.

*Nature of Requirement:* Section 219.220(b) governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996 states: ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of these actions would typically terminate FHA involvement with the property, and the Flexible Subsidy loan would be repaid, in whole, at that time.''

*Granted By:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* January 26, 2011.

*Reason Waived:* The owner requested waiver of the requirement to defer repayment of this loan because there is insufficient cash flow from projected revenues from project operations to make monthly debt service payments for repayment of the Flexible Subsidy Operating Loans. The project is 37 years old, has urgent physical needs such as repairs, replacements and updates required by the Project's Capital Needs Assessment. Waiver of this regulation allowed the owner to obtain new financing to repay the existing loans over the term of the new mortgage loan and carryout needed rehabilitation. A new Rental Use Agreement will be recorded ahead of any new financing extending the affordability of the project for 40 years.

*Contact:* Marilyn M. Edge, Acting Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6164, Washington, DC 20410–8000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 219.220(b).

*Project/Activity:* Danube Apartments, Dorchester, Massachusetts—FHA Project Number 023–55165. The owner requested to defer repayment of the Flexible Subsidy Operating Assistance Loan to achieve the long-term preservation of the project.

*Nature of Requirement:* Section 219.220(b) governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996 states: ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of these actions would typically terminate FHA involvement with the property, and the Flexible Subsidy loan would be repaid, in whole, at that time.

*Granted By:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 15, 2011.

*Reason Waived:* The owner requested and was granted a waiver to defer repayment of the Flexible Subsidy

Operating Assistance Loan at the time of repayment of the mortgage. This waiver allowed the owner to utilize funds to complete many necessary repairs at the project, thereby strengthening the physical and financial stability of the project. The owner executed a new 40-year Rental Use Agreement. This waiver also prevented displacement of tenants and serve to preserve this project as an affordable housing resource.

*Contact:* Marilyn M. Edge, Acting Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6164, Washington, DC 20410–8000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

*Project/Activity:* PCA Senior Residence, Astoria, NY, Project Number: 012–EE346/NY36–S061–002.

*Nature of Requirement:* Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

*Granted by:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* January 21, 2011.

*Reason Waived:* The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources and additional time was needed to achieve an initial closing.

*Contact:* Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.130(b).

*Project/Activity:* PCA Senior Residence, Astoria, NY, Project Number: 012–EE346/NY36–S061–002.

*Nature of Requirement:* Section 891.130(b) prohibits an identity of interest between the sponsor or owner (or Borrower, as applicable) and any development team member or between development team members until two years after final closing.

*Granted by:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* January 28, 2011.

*Reason Waived:* To permit an identity of interest for this mixed financed project between the ownership entity and the joint developer, and between the contractor and joint developer.

*Contact:* Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

*Project/Activity:* Park Side Apartments, Terra Alta, WV, Project Number: 045–EE031/WV15–S071–002.

*Nature of Requirement:* Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

*Granted by:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* January 4, 2011.

*Reason Waived:* Additional time was needed to review the revised closing documents and for the project to achieve an initial closing.

*Contact:* Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

*Project/Activity:* Lane Manor, Lithonia, GA, Project Number: 061–EE166/GA06–S081–002.

*Nature of Requirement:* Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

*Granted by:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* January 6, 2011.

*Reason Waived:* Additional time was needed to complete the preparation and submission of the firm commitment application and to achieve an initial closing.

*Contact:* Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

*Project/Activity:* Evergreen Terrace, Albany, OH, Project Number: 043–EE124/OH16–S081–003.

*Nature of Requirement:* Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

*Granted by:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* January 12, 2011.

*Reason Waived:* Additional time was needed to start initial closing.

*Contact:* Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

*Project/Activity:* Delta Twp—202, Albion, MI, Project Number: 047–EE048/MI33–S081–001.

*Nature of Requirement:* Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

*Granted by:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* January 12, 2011.

*Reason Waived:* Additional time was needed to receive and review the site plans, revise the construction drawings, to resubmit the firm commitment application, and reach an initial closing.

*Contact:* Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

*Project/Activity:* Bakersfield Senior Apartments, Bakersfield, CA, Project Number: 122–EE208/CA16–S081–001.

*Nature of Requirement:* Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

*Granted by:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* January 20, 2011.

*Reason Waived:* Additional time was needed for the sponsor/owner to seek tax credits, prepare and submit the firm commitment application and for the project to achieve an initial closing.

*Contact:* Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW.,

room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

*Project/Activity:* Leeway Welton Apartments, New Haven, CT, Project Number: 017–HD041/CT26–Q071–002.

*Nature of Requirement:* Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

*Granted by:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* January 21, 2011.

*Reason Waived:* Additional time was needed to issue the firm commitment application and for a decision to be made of the zoning appeal.

*Contact:* Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

*Project/Activity:* Park Side Apartments, Terra Alta, WV, Project Number: 045–EE031/WV15–S071–002.

*Nature of Requirement:* Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

*Granted by:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* January 21, 2011.

*Reason Waived:* Additional time was needed to review the closing documents and reach an initial closing.

*Contact:* Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

*Project/Activity:* Kearney Court, New Holland, OH, Project Number: 043–EE122/OH16–S081–001.

*Nature of Requirement:* Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

*Granted by:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* January 21, 2011.

*Reason Waived:* Additional time was needed to start initial closing.

*Contact:* Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

*Project/Activity:* San Marino Apartments, San Marino, CA, Project Number: 143–EE062/CA43–S061–001.

*Nature of Requirement:* Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

*Granted by:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* January 31, 2011.

*Reason Waived:* Additional time was needed to reach initial/final closing.

*Contact:* Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

*Project/Activity:* Newbury Senior Housing, Newberry, NH, Project Number: 024–EE120/NH36–S081–006.

*Nature of Requirement:* Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

*Granted by:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* January 31, 2011.

*Reason Waived:* Additional time was needed to resubmit the site and architectural plans to the Zoning Board for approval, resubmit the firm commitment application and for the project to be initially closed.

*Contact:* Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

*Project/Activity:* The Apartments at St. Elizabeth's, Linden, NJ, Project Number: 031–HD155/NJ39–Q081–001.

*Nature of Requirement:* Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

*Granted by:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* February 1, 2011.

*Reason Waived:* Additional time was needed for the project to achieve an initial closing.

*Contact:* Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

*Project/Activity:* Willow Glen Apartments (aka Newton Falls), Newton Falls, OH,

Project Number: 042–EE223/OH12–S071–009.

*Nature of Requirement:* Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

*Granted by:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* February 3, 2011.

*Reason Waived:* Additional time was needed for the initial closing package to be reviewed and for the project to achieve an initial closing.

*Contact:* Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

*Project/Activity:* Volunteers of America National Services, Gary, IN, Project Number: 073–EE125/IN36–S081–003.

*Nature of Requirement:* Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

*Granted by:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* February 4, 2011.

*Reason Waived:* Additional time was needed for the sponsor/owner to submit the firm commitment application and for the project to reach an initial closing.

*Contact:* Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

*Project/Activity:* Woodbourne House, Louisville, KY, Project Number: 083–EE112/KY36–S081–003.

*Nature of Requirement:* Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

*Granted by:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* February 4, 2011.

*Reason Waived:* Additional time was needed for the sponsor/owner's application for the low income housing tax credits to be processed and for the project to reach an initial closing.

*Contact:* Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

*Project/Activity:* The Cedars Apartments, Grants Pass, OR, Project Number: 126–HD048/OR16–Q081–004.

*Nature of Requirement:* Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

*Granted by:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* February 4, 2011.

*Reason Waived:* Additional time was needed to review initial closing documents and for the project to reach an initial closing.

*Contact:* Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

*Project/Activity:* Edward Marx Apartments, Chicago, IL, Project Number: 071–EE244/IL06–S081–012.

*Nature of Requirement:* Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

*Granted by:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* February 4, 2011.

*Reason Waived:* Additional time was needed to review the initial closing package and reach an initial closing.

*Contact:* Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

*Project/Activity:* Russell School Apartments, Lexington, KY, Project Number: 083–EE113/KY36–S081–004.

*Nature of Requirement:* Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

*Granted by:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* February 4, 2011.

*Reason Waived:* Additional time was needed for the sponsor/owner to receive a decision on their request to utilize the previous General Wage Decision chart and for the project to reach an initial closing.

*Contact:* Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

*Project/Activity:* Kelsey Village Apartments, Sacramento, CA

Project Number: 136–HD022/CA30–Q071–002.

*Nature of Requirement:* Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

*Granted by:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* February 4, 2011.

*Reason Waived:* Additional time was needed for the sponsor/owner to prepare and submit the firm commitment application, for review of the application and for the project to reach an initial closing.

*Contact:* Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

*Project/Activity:* Westcliff Pines Senior Apartments, Las Vegas, NV, Project Number: 125–EE131/NV25–S081–001.

*Nature of Requirement:* Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

*Granted by:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* February 14, 2011.

*Reason Waived:* Additional time was needed to review the firm commitment application and other mixed finance documents and for the project to reach an initial closing.

*Contact:* Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

*Project/Activity:* Armstrong Place Senior Apartments, San Francisco, CA, Project Number: 121–EE194/CA36–S061–006.

*Nature of Requirement:* Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

*Granted by:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* February 14, 2011.

*Reason Waived:* Additional time was needed for this capital advance upon completion mixed finance project to complete its rent up in order to receive the construction pay off funds from the State of California' Multifamily Housing Program (MHP) and for the project to reach an final closing.

*Contact:* Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

*Project/Activity:* Villa Davis (fka Triple R Behavioral Health), Maricopa County, AZ, Project Number: 123–HD044/AZ20–Q081–001.

*Nature of Requirement:* Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

*Granted by:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* February 17, 2011.

*Reason Waived:* Additional time was needed for the project to achieve an initial closing.

*Contact:* Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

*Project/Activity:* Mosaic Housing XXI–Memphis, Memphis, TN, Project Number: 081–HD025/TN40–Q081–001.

*Nature of Requirement:* Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

*Granted by:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* February 23, 2011.

*Reason Waived:* Additional time was needed for the plans and specifications to be revised and resubmitted for further architectural review and for the project to achieve an initial closing.

*Contact:* Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

*Project/Activity:* Roeser Haciendas Senior Housing, Phoenix, AZ, Project Number: 123–EE107/AZ20–S081–001.

*Nature of Requirement:* Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

*Granted by:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 3, 2011.

*Reason Waived:* Additional time was needed for the City of Phoenix Housing Department to receive archaeological data recovery and site monitoring information on the site, for the firm commitment application to be submitted and for the project to achieve an initial closing.

*Contact:* Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

*Project/Activity:* Margaret Wagner Housing II, Cleveland Heights, OH, Project Number: 042–EE233/OH12–S081–008.

*Nature of Requirement:* Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

*Granted by:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 3, 2011.

*Reason Waived:* Additional time was needed for the project to achieve initial closing.

*Contact:* Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

*Project/Activity:* Sonrisa Apartments, Tucson, AZ, Project Number: 123–HD043/AZ20–Q081–003.

*Nature of Requirement:* Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

*Granted by:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 3, 2011.

*Reason Waived:* Additional time was needed for the firm commitment application to be revised and the project to achieve initial closing.

*Contact:* Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

*Project/Activity:* Colter Commons, Phoenix, AZ, Project Number: 123–EE109/AZ20–S081–003.

*Nature of Requirement:* Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

*Granted by:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 3, 2011.

*Reason Waived:* Additional time was needed for the firm commitment application to be submitted and for the project to achieve initial closing.

*Contact:* Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

*Project/Activity:* The Village at Oasis Park Phase I, Mesa, AZ, Project Number: 123–HD042/AZ20–Q081–002.

*Nature of Requirement:* Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

*Granted by:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 3, 2011.

*Reason Waived:* Additional time was needed for the firm commitment application to be issued and for the project to achieve initial closing.

*Contact:* Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

*Project/Activity:* Victory Oaks at Saint Camillus, Silver Spring, MD, Project Number: 000–EE067/MD39–S081–003.

*Nature of Requirement:* Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

*Granted by:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 8, 2011.

*Reason Waived:* Additional time was needed for the access road to be dedicated to the project, the firm commitment to be submitted and for the project to reach an initial closing.

*Contact:* Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

*Project/Activity:* Benedict's Place, Cherry Hill, NJ, Project Number: 035–EE056/NJ39–S081–003.

*Nature of Requirement:* Section 891.165 provides that the duration of

the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

*Granted by:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 17, 2011.

*Reason Waived:* Additional time was needed for the firm commitment application to be submitted and reviewed and for the project to achieve initial closing.

*Contact:* Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

*Project/Activity:* Estabrook Place, San Leandro, CA, Project Number: 121–EE203/CA39–S071–007.

*Nature of Requirement:* Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

*Granted by:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 30, 2011.

*Reason Waived:* Additional time was needed for the initial/final closing documents to be submitted and reviewed for this Capital Advance Upon Completion mixed finance project.

*Contact:* Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.805 and 24 CFR 891.830(b).

*Project/Activity:* Armory Lane Housing, Vergennes, VT, Project Number: 024–EE136/VT36–S091–004.

*Nature of Requirement:* Section 891.805 requires that the Sole General Partner of the Mixed Finance Owner be a Private Nonprofit Organization with a 501(c)(3) or 501(c)(4) tax exemption (in the case of supportive housing for the elderly), or a Nonprofit Organization with a 501 (c)(3) (in the case of supportive housing for persons with disabilities. Section 891.830(b) requires that capital advance funds be drawn down only in an approved ratio to other funds, in accordance with a drawdown schedule approved by HUD.

*Granted by:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 30, 2011.

*Reason Waived:* To permit the sole general partner of the subject project to be a for-profit corporation that is wholly owned and controlled by the nonprofit sponsor. Also to allow the capital advance to be drawn down in one requisition, to pay off that portion of a bridge or construction financing, or bonds that strictly relate to capital advance eligible costs after completion of construction at initial/final closing.

*Contact:* Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.410(c).

*Project/Activity:* Parker Heights Apartments, Butler, Pennsylvania—FHA Project Number 033–EE019/PA28–S921–003. The project is experiencing difficulty leasing units to eligible very low-income elderly applicants.

*Nature of Requirement:* Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959, as amended by Section 801 of the National Affordable Housing Act of 1990. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

*Granted by:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 23, 2011.

*Reason Waived:* The management agent, the Housing Authority of the County of Butler, had aggressively marketed units but continues to experience vacancy problems at the project. Waiver of this regulation allowed the Housing Authority to lease units to low-income, near-elderly applicants for a period of 12 months. Applicants who apply after the waiver period must strictly meet the Section 202 statutory and regulatory requirements, including being very low-income elderly. This waiver will allow the property to rent-up its vacant units and thereby stabilize the project's financial status and prevent foreclosure of the property. This is a one-year, one-time waiver.

*Contact:* Marilyn M. Edge, Acting Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6164, Washington, DC 20410–8000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c).

*Project/Activity:* Heritage Senior Homes, Hanna City, Illinois—FHA Project Number: 072–EE164. The property is located in a very rural area and has been experiencing difficulty attracting eligible very-low income elderly applicants.

*Nature of Requirement:* Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959, as amended by Section 801 of the National Affordable Housing Act of 1990. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

*Granted by:* David H. Stevens, Assistant Secretary for Housing -Federal Housing Commissioner.

*Date Granted:* February 1, 2011.

*Reason Waived:* This one-year, one-time waiver was granted to allow the owner to admit low-income and near-elderly applicants. However, first priority will be given to all qualified eligible applicants who meet the Section 202 very low-income guidelines. This waiver will assist in curing the existing vacancy problem, thereby stabilizing the project's current physical and financial status and preventing foreclosure. The property will continue as an affordable housing resource for the community.

*Contact:* Marilyn M. Edge, Acting Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6164, Washington, DC 20410–8000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c).

*Project/Activity:* Pheasant Run Apartments, Brookings, South Dakota—FHA Project Number SDD99–S051–002. This project is located in a very rural area with few conveniences for senior citizens. The owner/managing agent has requested waiver of the very low-income and elderly restriction to permit admission of low-income, near-elderly applicants to alleviate current vacancy problems at the property.

*Nature of Requirement:* Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959, as amended by Section 801 of the National Affordable Housing Act of 1990. Section 891.410(c) limits occupancy to very low-income elderly

persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

*Granted by:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* February 3, 2011.

*Reason Waived:* This regulatory waiver was granted to cure the project's current vacancy problems. There was insufficient demand to fill the units with very low-income elderly applicants. However, first priority will be given to all qualified eligible applicants who meet the Section 202 very low-income guidelines. The owner/managing agent will have the flexibility to lease to qualified low-income, near elderly applicants only when there are no very low-income elderly applicants on the waiting list, thereby allowing the project to operate successfully and achieve full occupancy for the long term financial viability of the project.

*Contact:* Marilyn M. Edge, Acting Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6164, Washington, DC 20410–8000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c).

*Project/Activity:* Jewish Tower II (Zaban Tower), Atlanta, Georgia—FHA Project Number 061–EE047. This project is located in a very rural area with few conveniences for senior citizens.

*Nature of Requirement:* Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959, as amended by Section 801 of the National Affordable Housing Act of 1990. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

*Granted by:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* January 26, 2011.

*Reason Waived:* The owner/managing agent requested waiver of the very low-income and elderly restriction to permit admission of lower-income, near-elderly applicants to alleviate current vacancy problems at the property. However, first priority will be given to all qualified eligible applicants who meet the Section 202 very low-income guidelines. This one-year, one-time waiver will assist the owner in renting up vacant units and allow the project to operate successfully and achieve full occupancy for the long term financial viability of the project.

*Contact:* Marilyn M. Edge, Acting Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6164, Washington, DC 20410–8000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c).

*Project/Activity:* Kimberly Meadows, Nelsonville, Ohio—FHA Project Number 043–EH321. This Section 202 Housing for the Elderly property is experiencing severe vacancy problems.

*Nature of Requirement:* Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959, as amended by Section 801 of the National Affordable Housing Act of 1990. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

*Granted by:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 14, 2011.

*Reason Waived:* This project is located in a very rural area with few conveniences for senior citizens. The owner/managing agent requested waiver of the very low-income and elderly restriction to permit admission of lower-income, near-elderly applicants to alleviate the current vacancy problems at the property. However, first priority will be given to all qualified eligible applicants who meet the Section 202 very low-income guidelines. This one-year, one-time waiver will assist the owner in renting up vacant units and allow the project to operate successfully and achieve full occupancy for the long term financial viability of the project.

*Contact:* Marilyn M. Edge, Acting Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6164, Washington, DC 20410–8000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c).

*Project/Activity:* The Cottages of Delta Acres, Incorporated, Clarendon, Arkansas, FHA Project Number 082–EE127. This project is located in a very rural area with few conveniences for senior citizens. The owner/managing agent is having financial difficulty at the present occupancy level.

*Nature of Requirement:* Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959, as amended by Section 801 of the National Affordable Housing Act of 1990. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

*Granted by:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 14, 2011.

*Reason Waived:* This regulatory waiver was granted to allow the owner flexibility to lease units to applicants who are low-income and near-elderly, thereby assisting in alleviating the severe vacancy problem at the project. However, first priority will be given to all qualified eligible applicants who meet the Section 202 very low-income guidelines. This one-year, one-time waiver will assist the owner in achieving full occupancy at the project and maintain this project as an affordable housing resource for this community.

*Contact:* Marilyn M. Edge, Acting Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6164, Washington, DC 20410–8000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c).

*Project/Activity:* Rainbow of Challenges Homes of Bradley, Incorporated, Bradley, Arkansas—FHA Project Number 082–HD077. This project is located in a remote location and is experiencing difficulty at the present occupancy level.

*Nature of Requirement:* Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959, as amended by Section 801 of the National Affordable Housing Act of 1990. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

*Granted by:* David H. Stevens, Assistant Secretary for Housing-Federal Housing Commissioner.

*Date Granted:* March 23, 2011.

*Reason Waived:* This property is restricted to very low-income, disabled applicants. The owner/managing agent has aggressively marketed these units to the target population with little success. Waiver of this regulation allowed admission of low-income, disabled applicants when there are no very low-income disabled applicants to fill vacant units. This one-year, one-time waiver will assist the owner in achieving full

occupancy for the long term financial viability of the project.

*Contact:* Marilyn M. Edge, Acting Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 6164, Washington, DC 20410–8000, telephone (202) 708–3730.

**III. Regulatory Waivers Granted by the Office of Public and Indian Housing**

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 5.801(d)(1).

*Project/Activity:* Newark Housing Authority, (NJ002), Newark, NJ.

*Nature of Requirement:* The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

*Granted By:* Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

*Date Granted:* January 31, 2011.

*Reason Waived:* The HA contends that their unaudited financial submission for fiscal year end (FYE) March 31, 2010, was finally approved by the Real Estate Assessment Center (REAC) on January 10, 2011. The unaudited financial submission was rejected by REAC staff twice before. Usually, the HAs use the results of the unaudited financial submission as the starting point of the audit. The waiver was granted and the additional time will permit the HA to input and complete the March 31, 2010, audited financial information.

*Contact:* Johnson Abraham, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410, telephone (202) 475–8583.

• *Regulation:* 24 CFR 5.801(d)(1).

*Project/Activity:* Punta Gorda Housing Authority, (FL060), Punta Gorda, FL.

*Nature of Requirement:* The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

*Granted By:* Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

*Date Granted:* January 31, 2011.

*Reason Waived:* The HA contends that it needs additional time to submit its fiscal year end (FYE) March 31, 2010, audited financial submission. The additional time was needed because staffing changes adversely impacted the HA's ability to complete the auditors' open items in a timely and satisfactory manner. The waiver was granted and the additional time will permit the HA to input and complete the March 31, 2010, audited financial data, no later than March 31, 2011.

*Contact:* Johnson Abraham, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410, telephone (202) 475–8583.

• *Regulation:* 24 CFR 5.801(d)(1).

*Project/Activity:* Kent County Housing Authority, (MI198), Grand Rapids, MI.

*Nature of Requirement:* The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

*Granted By:* Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

*Date Granted:* March 18, 2011.

*Reason Waived:* The HA, a Section 8 only entity, is requesting a waiver of the audited financial reporting requirements for fiscal year end (FYE) June 30, 2010. The HA contends that due to the inability of the County's Independent Public Accountant to complete the audit on time, additional time was needed to submit its audited financial information. Specifically, the County of Kent's (Primary Government) FYE is December 31, 2010, while the HA's FYE is June 30, 2010, thereby causing a timing difference between the audited due date. The waiver was granted and the HA must submit the audited financial submission by August 31, 2011.

*Contact:* Johnson Abraham, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410, telephone (202) 475–8583.

• *Regulation:* 24 CFR 982.505(c)(3).

*Project/Activity:* Garfield County Housing Authority (GCHA), Garfield County, CO.

*Nature of Requirement:* Section 982.505(c)(3) states that, if the amount on the payment standard schedule is decreased during the term of the housing assistance payments (HAP) contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning on the effective date of the family's second regular reexamination following the effective date of the decrease.

*Granted By:* Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

*Date Granted:* February 16, 2011.

*Reason Waived:* This waiver was granted because this cost-saving measure would enable the GCHA to manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

*Contact:* Laure Rawson, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

*Project/Activity:* Fairfax County Redevelopment and Housing Authority (FCRHA), Fairfax County, VA.

*Nature of Requirement:* Section 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

*Granted By:* Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

*Date Granted:* March 3, 2011.

*Reason Waived:* The applicant, who is disabled, requires a one-level accessible unit. To provide this reasonable accommodation so the client could be assisted in this unit and pay no more than 40 percent of his adjusted income toward the family share, the FCRHA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

*Contact:* Laure Rawson, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.51.

*Project/Activity:* Walworth County Housing Authority (WCHA), Walworth County, WI.

*Nature of Requirement:* This regulation requires competitive selection of owner proposals for project-based voucher (PBV) assistance unless the units were competitively selected under a similar competitive process for local, state or federal funds.

*Granted By:* Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

*Date Granted:* February 7, 2011.

*Reason Waived:* Hartwell Apartments serves single, disabled individuals who were chronically homeless. The project was funded under the Continuum of Care (COC) Homeless Assistance Program; however, in 2008 no funds could be requested under the COC for leasing or operations which greatly impacted the fiscal health of the building. A waiver was granted so that rental assistance could be funded through the PBV program for this unique project with its vulnerable population.

*Contact:* Laure Rawson, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

[FR Doc. 2011–16047 Filed 6–24–11; 8:45 am]

BILLING CODE 4210–67–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE)

### Ocean Energy Safety Advisory Committee; Notice of Meeting

**AGENCY:** Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** The Ocean Energy Safety Advisory Committee will meet at the Astor Crowne Plaza Hotel in New Orleans, Louisiana.

**DATES:** Wednesday, July 13, 2011, from 1 p.m. to 5 p.m. and Thursday, July 14, 2011, from 8:30 a.m. to 5 p.m.

**ADDRESSES:** The Astor Crowne Plaza Hotel, 739 Canal Street, New Orleans, Louisiana 70130, telephone (504) 962–0500.

**FOR FURTHER INFORMATION CONTACT:** Dr. Brad J. Blythe at the Bureau of Ocean Energy Management, Regulation and Enforcement, 381 Elden Street, Mail Stop 4040, Herndon, Virginia 20170–4187. He can be reached by telephone at (703) 787–1636 or by electronic mail at *brad.blythe@boemre.gov.*

**SUPPLEMENTARY INFORMATION:** The Ocean Energy Safety Advisory Committee consists of representatives from industry, Federal Government agencies, non-governmental organizations, and the academic community. It provides policy advice to the Secretary of the Interior through the Director of BOEMRE on matters relating to ocean energy safety, including, but not limited to drilling and workplace safety, well intervention and containment, and oil spill response.

The agenda for Wednesday, July 13, will address the progress of outreach on industry and academic initiatives relevant to the work of the Committee.

The agenda for Thursday, July 14, will address subcommittee progress, and include discussions of Federal initiatives relevant to the work of the Committee.

The meeting is open to the public. Approximately 100 visitors can be accommodated on a first-come-first-served basis. Members of the public will have the opportunity to comment on a first-come-first-served basis during the time allotted for public comment and may submit written comments to the Ocean Energy Safety Advisory Committee during the meeting or by email to the Committee at *OESC@boemre.gov.*

Minutes of the Ocean Energy Safety Advisory Committee meeting will be available for public inspection on the Committee's Web site at: *http://www.boemre.gov/mmab/EnergySafety.htm.*

**Authority:** Federal Advisory Committee Act, Pub. L. 92–463, 5 U.S.C. Appendix 1, and the Office of Management and Budget's Circular No. A–63, Revised.

Dated: June 22, 2011.

**Michael R. Bromwich,**

*Director, Bureau of Ocean Energy Management, Regulation and Enforcement.*

[FR Doc. 2011–16027 Filed 6–24–11; 8:45 am]

BILLING CODE 4310–MR–P

## DEPARTMENT OF THE INTERIOR

### U.S. Geological Survey

**[USGS—GX10RB0000SDP00]**

### Agency Information Collection: Comment Request for National Gap Analysis Program Evaluation

**AGENCY:** United States Geological Survey (USGS), Interior.

**ACTION:** Notice of a new collection.

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to the Office of Management and Budget (OMB) an information collection request (ICR) for a new collection of information: National Gap Analysis Program Evaluation. This notice provides the public and other Federal agencies an opportunity to comment on the paperwork burden of this information collection request.

**DATES:** You must submit comments on or before July 27, 2011.

**ADDRESSES:** Please submit written comments on this information collection directly to the Office of Management and Budget (OMB) Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior via e-mail to *OIRA_DOCKET@omb.eop.gov* or fax at 202–395–5806; and identify your submission as 1028–NEW. Please also submit a copy of your written comments to Phadrea Ponds, USGS Information Collection Clearance Officer, U.S. Geological Survey, 2150–C, Centre Avenue, Fort Collins, CO 80526–8118 (mail); 970–226–9230 (fax); or *pondsp@usgs.gov* (e-mail). Please reference Information Collection 1028–NEW, GAPSURVEY in the subject line.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Joan Ratz by e-mail at *ratzj@usgs.gov.* To see a copy of the entire ICR submitted to OMB, go to *http://www.reginfo.gov* (Information Collection Review, Currently under Review).

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

The U.S. Geological Survey (USGS) will design and conduct a survey that will be used to evaluate the performance of the National Gap Analysis Program (GAP). The information collected will provide information for the Program's annual performance plan as required by the Government Performance and Results Act (GPRA). Scientists and staff in the Policy Analysis and Science Assistance Branch of the USGS will conduct this on-line survey.

Information from this survey will provide GAP managers with scientifically sound data that can be used to: (1) Prepare strategic planning and performance documents, (2) measure user satisfaction, and (3) understand user needs. Additionally, this survey can target performance issues relate to education and outreach,

technology and data quality. Due to the nature of this collection, all identified respondents will have: (1) An active e-mail address and (2) skills in GIS and computer operations.

**II. Data**

*OMB Control Number:* None. This is a new collection.

*Title:* National Gap Analysis Program (GAP) Evaluation.

*Type of Request:* New.

*Frequency of Collection:* This is a one-time survey.

*Respondent's Obligation:* Voluntary.

*Estimated Annual Number and Description of Respondents:* Approximately 594 non-federal current and past users of the USGS National Gap Analysis Program (GAP).

*Annual Burden Hours:* 273 hours; we estimate the public reporting burden averages 28 minutes per response.

*Estimated Annual Reporting and Recordkeeping "Hour" Burden:* We have not identified any "non-hour cost" burdens associated with this collection of information.

**III. Request for Comments**

On February 24, 2009 we published a **Federal Register** notice (74 FR 8269) announcing that we would submit this ICR to OMB for approval and soliciting comments. The comment period closed on April 27, 2009. We did not receive any comments in response to that notice.

We again invite comments concerning this ICR on: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) ways to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. 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 anytime. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: June 7, 2011.

**Martha N. Garcia,**

*Acting Deputy Associate Director for Ecosystems*

[FR Doc. 2011–15963 Filed 6–24–11; 8:45 am]

BILLING CODE 4310–AM–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLMT926000–11–L19100000–BJ0000–LRCME0R04778]**

### Notice of Filing of Plats of Survey; Montana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of filing of plat of survey.

**SUMMARY:** The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, on July 27, 2011.

**DATES:** Protests of the survey must be filed before July 27, 2011 to be considered.

**ADDRESSES:** Protests of the survey should be sent to the Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669.

**FOR FURTHER INFORMATION CONTACT:** Steve Toth, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5121 or (406) 896–5009. 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 above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** This survey was executed at the request of the Bureau of Indian Affairs, Rocky Mountain Region, Billings, Montana, and was necessary to determine individual and tribal trust lands.

The lands we surveyed are:

**Principal Meridian, Montana**

T. 27 N., R. 55 E.

The plat, in one sheet, representing the dependent resurvey of a portion of the 13th Guide Meridian East, through Township 27 North, a portion of the north boundary, a portion of the subdivisional lines, a portion of the subdivision of sections 4, 5, 7, and 8, and the adjusted original meanders of the former left bank of the Missouri River, downstream, through sections 4, 5, 7, and 8, the subdivision of sections 5, 7, and 8, and the survey of the meanders of the present left bank of the Missouri River and informative traverse, downstream, through sections 4, 5, 7, and 8, the limits of erosion, through a portion of sections 7 and 8, and certain division of accretion lines in Township 27 North, Range 55 East, Principal Meridian, Montana, was accepted June 13, 2011.

We will place a copy of the plat, in one sheet, and related field notes we described in the open files. They will be available to the public as a matter of information. If the BLM receives a protest against this survey, as shown on this plat, in one sheet, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file this plat, in one sheet, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

**Authority:** 43 U.S.C. Chap. 3.

**Steve L. Toth,**

*Acting Chief Cadastral Surveyor, Division of Resources.*

[FR Doc. 2011–15976 Filed 6–24–11; 8:45 am]

BILLING CODE 4310–DN–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[61510–8451–0000; MTM 80092]**

### Notice of Proposed Withdrawal Extension and Notification of a Public Meeting; Montana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Fish and Wildlife Service (FWS) filed a petition/application to extend the duration of Public Land Order (PLO) No. 6997, as corrected, for an additional 20-year term. PLO No. 6997 withdrew 891,442.36 acres of Federal mineral estate from location and entry under the United States mining laws to protect the Charles M. Russell National Wildlife Refuge (CMR NWR). The surface is protected by an overlapping withdrawal. This notice gives an opportunity for the public to comment on the proposed withdrawal extension and announces the date, time, and location of a public meeting.

**DATES:** Comments must be received on or before September 26, 2011. Notice is

hereby given that a public meeting will be held August 11, 2011.

**ADDRESSES:** Comments should be sent to the Montana State Director, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669.

**FOR FURTHER INFORMATION CONTACT:** Danielle Kepford, Fish and Wildlife Service, 406–538–8706, Ext. 25, or Sandra Ward, Bureau of Land Management, Montana State Office, 406–896–5052.

**SUPPLEMENTARY INFORMATION:** The FWS has filed a petition/application to extend the duration of the withdrawal created by PLO No. 6997 (58 FR 50518 (1993)), as corrected (58 FR 58593 (1993)), for an additional 20-year term and is incorporated herein by reference. The PLO withdrew 891,442.36 acres of Federal mineral estate from location and entry under the United States mining laws to protect the CMR NWR. The withdrawal will expire September 27, 2013, unless extended.

The purpose of the proposed extension is to continue the protection of the CMR NWR and its mission to preserve, restore, and manage in a generally natural setting a portion of the nationally significant Missouri River breaks and associated ecosystems for optimum wildlife resources and provide compatible human benefits associated with its wildlife and wild lands.

The use of a right-of-way, interagency agreement, or cooperative agreement would not provide adequate protection.

There are no suitable alternative sites available.

Water will not be needed to fulfill the purpose of the requested withdrawal extension.

On or before September 26, 2011, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing to the BLM Montana State Director at the address above. Electronic mail, facsimile, or telephone comments will not be considered properly filed.

Comments, including names and street addresses of respondents, and records relating to the application will be available for public review at the BLM Montana State Office, 5001 Southgate Drive, Billings, Montana, during regular business hours.

Before including your address, phone number, e-mail address, or other personal identifying information in your comments, be advised 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 from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Notice is hereby given that a public meeting in connection with the proposed withdrawal extension will be held on August 11, 2011 at the Yogo Inn, 211 East Main Street, Lewistown, Montana. A notice of the time and place will also be published in at least one newspaper of local jurisdiction no less than 30 days before the scheduled meeting date. Interested parties may make oral statements and may file written statements at the meeting. All statements received will be considered before any recommendation concerning the proposed extension is submitted to the Assistant Secretary for Land and Minerals Management for final action.

The application will be processed in accordance with the regulations set forth in 43 CFR 2310.4.

**Authority:** 43 CFR 2310.3–1.

**Christina Miller,**

*Acting Chief, Branch of Land Resources.*

[FR Doc. 2011–15959 Filed 6–24–11; 8:45 am]

**BILLING CODE 4310–55–P**

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[LLCA930000.L58790000.EU0000; CACA 050512]**

## Notice of Realty Action: Competitive Sale of Public Lands in Colusa, Glenn, and Lake Counties, California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action.

**SUMMARY:** The Bureau of Land Management (BLM) Ukiah Field Office proposes to sell four parcels of public land totaling 1,003.40 acres in Colusa, Glenn, and Lake Counties, California. The sale will be conducted as a competitive bid auction in which interested bidders must submit written sealed bids equal to, or greater than, the appraised fair market value of the land.

**DATES:** Comments regarding the proposed sale must be received by the BLM on or before August 11, 2011. Sealed bids must be received no later than 3 p.m., Pacific Time on September 26, 2011 at the address specified below. Other deadline dates for payments are specified in the **SUPPLEMENTARY INFORMATION** section below. Sealed bids will be opened on September 27, 2011, which will be the sale date.

**ADDRESSES:** Written comments concerning the proposed sale should be sent to the Field Manager, BLM Ukiah Field Office, 2550 North State Street, Ukiah, California 95482. Sealed bids must also be submitted to this address. More detailed information regarding the proposed sale and the land involved, including maps and appraisals may be reviewed during normal business hours between 8 a.m. and 4 p.m. at the Ukiah Field Office.

**FOR FURTHER INFORMATION CONTACT:** Alice Vigil, Realty Specialist 707–468–4082 or via e-mail at *alice_vigil@ca.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 above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The following public lands are proposed for competitive sale in accordance with Sections 203 and 209 of the Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1713 and 1719):

**Mount Diablo Meridian**

**Parcel No. 1**

T. 18 N., R. 5 W.,
sec. 30, lots 1 to 4, inclusive.
The area described contains 43.40 acres, more or less, in Colusa and Glenn Counties.

**Parcel No. 2**

T. 15 N., R. 10 W.,
sec. 15, W½W½ and SE¼SW¼.
The area described contains 200 acres, more or less, in Lake County.

**Parcel No. 3**

T. 15 N., R. 10 W.,
sec. 22.
The area described contains 640 acres, more or less, in Lake County.

**Parcel No. 4**

T. 15 N., R. 10 W.,
sec. 27, W½NW¼ and NW¼SW¼.
The area described contains 120 acres, more or less, in Lake County.

The public lands have been identified as suitable for disposal in the BLM's September 2006 Ukiah Resource Management Plan, as amended, because they are isolated from large blocks of public land and are considered to be difficult and uneconomic to manage as part of the public lands. Parcels Nos. 2, 3, and 4 lack legal access, which increases the difficulty of managing them as part of the public lands. In addition, they are not needed for any Federal purpose. The BLM has completed a mineral potential report which identified oil and gas resources in Parcel No. 1 and geothermal

resources in Parcel Nos. 2, 3, and 4. Otherwise, there are no other mineral values in the lands. The BLM proposes to reserve oil and gas mineral interests in Parcel No. 1 and geothermal mineral interests in Parcel Nos. 2, 3, and 4 and convey all other Federal mineral interests with the sale of the lands. On June 27, 2011, the above described lands will be segregated from all forms of appropriation under the public land laws, including the mining laws, except the sale provisions of the FLPMA. Until completion of the sale, the BLM will no longer accept land use applications affecting the public lands, except applications for the amendment of previously filed right-of-way (ROW) applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2807.15. The segregation will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or June 27, 2013, unless extended by the BLM State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date. Proceeds from the sale will be deposited into the Federal Land Disposal Account, pursuant to the Federal Land Transaction Facilitation Act of July 25, 2000. The lands will not be sold until at least August 26, 2011. Any patent issued would contain the following terms, conditions, and reservations:

1. A reservation of a right-of-way to the United States for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

2. A reservation of all oil and gas mineral resources to the United States together with the right to prospect for, mine and remove such mineral resources under applicable law and any regulations as the Secretary of the Interior may prescribe, along with all necessary access and exit rights (Parcel No. 1).

3. A reservation of all geothermal mineral resources to the United States together with the right to prospect for, mine, and remove such mineral resources under applicable law and any regulations as the Secretary of the Interior may prescribe, along with all necessary access and exit rights (Parcel Nos. 2, 3, and 4).

4. Subject to such rights as Colusa and Glenn County may have under Revised Statute 2477 for Rail Canyon Road and County Road 401 on Parcel No. 1 (Colusa and Glenn County may apply for, and BLM may grant, permanent easements for these roads prior to conveyance).

5. An appropriate indemnification clause protecting the United States from claims arising out of the patentee's use, occupancy, and/or operators of the patented lands.

6. Additional terms and conditions that the authorized officer deems appropriate.

The parcels may be subject to applications for ROWs received prior to publication of this Notice if processing the application would not adversely affect the marketability or appraised value of the land. Interested bidders are advised to obtain an Invitation For Bids (IFB) from the BLM Ukiah Field Office at the address above or by calling (707) 468–4082. Bidders must follow the instructions in the IFB to participate in the bidding process. Sealed bids must be for not less than the federally approved fair market value. Each sealed bid must include a certified check, money order, bank draft, or cashier's check made payable in U.S. dollars to the order of the Bureau of Land Management, for 10 percent of the amount of the bid. The highest qualifying bidder among the qualified bids received for the sale will be declared the high bid and the high bidder will receive written notice. Bidders submitting matching high bid amounts will be provided an opportunity to submit supplemental bids. The BLM Ukiah Field Manager will determine the method of supplemental bidding, which may be by oral auction or additional sealed bids. The successful bidder must submit the remainder of the full bid price in the form of a certified check, money order, bank draft, or cashier's check made payable in U.S. dollars to the Bureau of Land Management prior to the expiration of 180 days from the date of the sale. Personal checks will not be accepted. Failure to submit the full bid price prior to, but not including, the 180th day following the day of the sale will result in the forfeiture of the 10 percent bid deposit to the BLM in accordance with 43 CFR 2711.3–1(d). No exceptions will be made. The BLM will return checks submitted by unsuccessful bidders by U.S. mail. The BLM may accept or reject any or all offers, or withdraw any parcel of land or interest therein from sale, if, in the opinion of the BLM authorized officer, consummation of the sale would not be fully consistent with the FLPMA or other applicable law or is determined to not be in the public interest. Under Federal law, public lands may only be conveyed to U.S. citizens 18 years of age or older; a corporation subject to the laws of any State or of the United States; a State, State instrumentality, or political subdivision authorized to hold property, or an entity legally capable of conveying and holding lands under the laws of the State of California. Certification of qualifications, including citizenship or corporation or partnership, must accompany the sealed bid. A bid to purchase the land will constitute an application for conveyance of the mineral interests of no known value, and in conjunction with the final payment, the high bidder will be required to pay a $50 non-refundable filing fee and any applicable administrative costs for processing the conveyance of the mineral interests. If not sold, the land described in this Notice may be identified for sale later without further legal notice and may be offered for sale by sealed bid, internet auction, or oral auction. In order to determine the value, through appraisal, of the land proposed to be sold, certain extraordinary assumptions may have been made of the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this Notice, the BLM gives notice that these assumptions may not be endorsed or approved by units of local government. It is the buyer's responsibility to be aware of all applicable local government policies, laws, and regulations that would affect the lands, including any required dedication of lands for public uses. It is also the buyer's responsibility to be aware of existing or projected uses of nearby properties. When conveyed out of Federal ownership, the lands will be subject to any applicable reviews and approvals by the respective unit of local government for proposed future uses, and any such reviews and approvals will be the responsibility of the buyer. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer. Detailed information concerning the proposed land sale including the reservations, sale procedures and conditions, appraisal, planning and environmental documents, and a mineral report are available for review at the location identified in ''Addresses'' above. Public Comments regarding the proposed sale may be submitted in writing to the attention of the BLM Ukiah Field Manager (see **ADDRESSES** above) on or before August 11, 2011. Comments received in electronic form, such as e-mail or facsimile, will not be considered. Any adverse comments regarding the proposed sale will be reviewed by the BLM State Director or other authorized official of the Department of the Interior, who may sustain, vacate, or modify this realty

action in whole or in part. In the absence of timely filed objections, this realty action will become the final determination of the Department of the Interior. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised 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 from public review your personal identifying information, we cannot guarantee that we will be able to do so.

**Authority:** 43 CFR 2711.1–2(a) and (c).

**Tom Pogacnik,**

*Deputy State Director, Natural Resources.*

[FR Doc. 2011–15966 Filed 6–24–11; 8:45 am]

**BILLING CODE 4310–40–P**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### Notice of Proposed Information Collection for 1029–0067

**AGENCY:** Office of Surface Mining Reclamation and Enforcement.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM or We) is announcing that the information collection request for the restriction on financial interests of State employees has been forwarded to the Office of Management and Budget (OMB) for review and reauthorization. The information collection package was previously approved and assigned clearance number 1029–0067. This notice describes the nature of the information collection activity and the expected burden and cost.

**DATES:** OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, you should submit your comments to OMB by July 27, 2011, in order to be assured of consideration.

**ADDRESSES:** Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of the Interior Desk Officer, by telefax at (202) 395–5806 or via e-mail to *OIRA_Docket@omb.eop.gov.* Also, please send a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 202—SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov.* Please refer to OMB control number 1029–0067 in your correspondence.

**FOR FURTHER INFORMATION CONTACT:** To request a copy of the information collection package, contact John Trelease at (202) 208–2783, or electronically to *jtrelease@osmre.gov.* You may also view the collection at *http://www.reginfo.gov/public/do/PRAMain* (Information Collection Review, Currently Under Review, Agency is Department of the Interior, DOI–OSMRE).

**SUPPLEMENTARY INFORMATION:** OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. We have submitted a request to OMB to renew its approval for the collection of information for 30 CFR 705 and the Form OSM–23, Restriction on Financial Interests of State Employees. We are requesting a 3-year term of approval for this information collection activity.

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 number for this collection of information is 1029–0067. Responses are mandatory.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on 30 CFR 705 was published on March 28, 2011 (76 FR 17150). No comments were received. This notice provides you with an additional 30 days in which to comment on the following information collection activity:

*Title:* 30 CFR 705—Restriction on Financial Interests of State Employees.

*OMB Control Number:* 1029–0067.

*Summary:* Respondents supply information on employment and financial interests. The purpose of the collection is to ensure compliance with section 517(g) of the Surface Mining Control and Reclamation Act of 1977, which places an absolute prohibition on employees of regulatory authorities having a direct or indirect financial interest in underground or surface coal mining operations.

*Bureau Form Number:* OSM–23.

*Frequency of Collection:* Entrance on duty and annually.

*Description of Respondents:* Any State regulatory authority employee or member of advisory boards or commissions established in accordance with State law or regulation to represent multiple interests who performs any function or duty under the Surface Mining Control and Reclamation Act.

*Total Annual Responses:* 3,642.

*Total Annual Burden Hours:* 1,218.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the addresses listed under **ADDRESSES.** Please refer to OMB control number 1029–0067 in your correspondence.

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.

Dated: June 20, 2011.

**Stephen M. Felch,**

*Acting Chief, Division of Regulatory Support.*

[FR Doc. 2011–15837 Filed 6–24–11; 8:45 am]

**BILLING CODE 4310–05–M**

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

**[OJP; BJA Docket No. 1558]**

### Meeting of the Public Safety Officer Medal of Valor Review Board

**AGENCY:** Office of Justice Programs (OJP), Bureau of Justice Assistance (BJA).

**ACTION:** Notice of meeting.

**SUMMARY:** This is an announcement of a meeting via conference call of the Public Safety Officer Medal of Valor Review Board to vote on the position of Board Chairperson, review issues relevant to the nomination review process, discuss pending ceremonies and upcoming activities and other relevant Board issues related thereto. The meeting/conference call date and time is listed below.

**DATES:** July 20, 2011, 2 p.m. to 3 p.m. E.T.

**ADDRESSES:** This meeting will take place in the form of a conference call.

**FOR FURTHER INFORMATION CONTACT:** Gregory Joy, Policy Advisor, Bureau of Justice Assistance, Office of Justice Programs, 810 7th Street, NW., Washington, DC 20531, by telephone at (202) 514–1369, toll free (866) 859–2687, or by e-mail at *gregory.joy@usdoj.gov.*

**SUPPLEMENTARY INFORMATION:** The Public Safety Officer Medal of Valor Review Board carries out those advisory functions specified in 42 U.S.C. 15202. Pursuant to 42 U.S.C. 15201, the President of the United States is authorized to award the Public Safety Officer Medal of Valor, the highest national award for valor by a public safety officer.

The purpose of this meeting/conference call is to vote on the position of Board Chairperson, review issues relevant to the nomination review process, pending ceremonies and upcoming activities and other relevant Board issues related thereto.

This meeting/conference call is open to the public at the offices of the Bureau of Justice Assistance. For security purposes, members of the public who wish to participate must register at least seven (7) days in advance of the meeting/conference call by contacting Mr. Joy. All interested participants will be required to meet at the Bureau of Justice Assistance, Office of Justice Programs; 810 7th Street, NW., Washington, DC and will be required to sign in at the front desk. **Note:** Photo identification will be required for admission. Additional identification documents may be required.

Access to the meeting/conference call will not be allowed without prior registration. Anyone requiring special accommodations should contact Mr. Joy at least seven (7) days in advance of the meeting. Please submit any comments or written statements for consideration by the Review Board in writing at least seven (7) days in advance of the meeting date.

**Pamela J. Cammarata,**

*Associate Deputy Director, Bureau of Justice Assistance.*

[FR Doc. 2011–15996 Filed 6–24–11; 8:45 am]

**BILLING CODE 4410–18–P**

## DEPARTMENT OF JUSTICE

### Parole Commission

### Sunshine Act Meeting Federal Register Citation of Previous Announcement: 76 FR 35472, June 17, 2011

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 10 a.m., Tuesday, June 21, 2011.

**CHANGES IN THE MEETING:** Removal of agenda item 5: Discussion and vote on a final rule on revising guidelines for rating crack cocaine offenses.

**CONTACT PERSON FOR MORE INFORMATION:** Patricia W. Moore, Staff Assistant to the Chairman, U.S. Parole Commission, 90 K Street, NE., 3rd Floor, Washington, DC 20530, (202) 346–7009.

Dated: June 21, 2011.

**Rockne Chickinell,**

*General Counsel, U.S. Parole Commission.*

[FR Doc. 2011–15836 Filed 6–24–11; 8:45 am]

**BILLING CODE 4410–31–M**

## MARINE MAMMAL COMMISSION

### Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information

**AGENCY:** Marine Mammal Commission.

**ACTION:** Proposed guidelines; request for comments.

**SUMMARY:** The Marine Mammal Commission proposes to adopt guidelines to ensure and maximize the quality, objectivity, utility, and integrity of information disseminated by the agency in accordance with the directive issued by the Office of Management and Budget (67 FR 8452–8460), pursuant to section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001.

**DATES:** Comments on these proposed guidelines must be received by July 27, 2011.

**ADDRESSES:** Comments may be submitted by the following methods:

- *E-mail:* to *mmc@mmc.gov.* The subject line should read: Information quality guidelines.
- *Fax:* (301) 504–0099, Attn: Michael L. Gosliner.
- *Mail:* Marine Mammal Commission; Attn.: Michael L. Gosliner, General Counsel, 4340 East-West Highway, Room 700, Bethesda, MD 20814.

**FOR FURTHER INFORMATION CONTACT:** Michael L. Gosliner, General Counsel, Marine Mammal Commission, 4340 East-West Highway, Room 700, Bethesda, MD 20814; telephone: (301) 504–0087; fax: (301) 504–0099.

**Background**

Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554) directs the Office of Management and Budget (OMB) to issue government-wide guidelines that ''provide policy and procedural guidance to federal agencies for ensuring and maximizing the quality, objectivity, utility and integrity of information (including statistical information) disseminated by Federal agencies.'' Pursuant to this directive, OMB issued guidelines on 22 February 2002 (67 FR 8452–8460) that direct each federal agency to (1) Issue its own guidelines ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated by the agency; (2) establish administrative mechanisms to allow affected persons to seek and obtain correction of information that does not comply with the OMB guidelines or the agency's guidelines, and (3) report periodically to the director of OMB on the number and nature of complaints received by the agency regarding the accuracy of information disseminated by the agency and how such complaints were handled by the agency.

In compliance with the OMB directive, the Marine Mammal Commission is proposing agency guidelines intended to ensure and maximize the quality, objectivity, utility, and integrity of information that is disseminated by the agency.

The Marine Mammal Commission was established under the Marine Mammal Protection Act of 1972 to provide independent oversight of the marine mammal conservation policies and programs being carried out by federal agencies. The Commission is charged with developing, reviewing, and making recommendations on domestic and international actions and policies of all federal agencies with respect to marine mammal protection and conservation and with carrying out a research program. In carrying out its mission, the Commission develops and disseminates scientific and other information and reviews information provided by other federal agencies.

**Definitions**

The following definitions, which are consistent with the definitions included in the directive published by OMB on 22 February 2002, are used in and apply to the Marine Mammal Commission's guidelines—

1. ''Affected'' persons are those who use, may benefit from, or may be

harmed by the disseminated information.

2. ''Dissemination'' means agency-initiated or sponsored distribution of information to the public. Dissemination does not include the distribution of information limited to government employees or agency contractors or grantees; intra- or inter-agency use of or sharing of government information; and responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act, or other similar law. This definition also does not include distribution limited to correspondence with individuals or persons, press releases, archival records, public filings, subpoenas, or adjudicative processes.

3. ''Influential,'' when used in the phrase ''influential scientific, financial, or statistical information,'' means that the agency can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important public policy and private sector decisions.

4. ''Information'' means any communication or representation of facts or data in any medium or form including textual, numerical, cartographic, narrative, or audiovisual.

5. ''Integrity'' refers to security—the protection of information from unauthorized access or revision—to ensure that the information is not compromised through corruption or falsification.

6. ''Objectivity'' is a measure of whether disseminated information is accurate, reliable, and unbiased and whether that information is presented in an accurate, clear, complete, and unbiased manner.

7. ''Person'' means an individual, partnership, association, corporation, business trust, or legal representative, an organized group of individuals, a regional, national, state, territorial, tribal, or local government or branch, or a political subdivision of a state, territory, tribal, or local government, or a branch of a political subdivision, or an international organization.

8. ''Quality'' encompasses the ''utility,'' ''objectivity,'' and ''integrity'' of disseminated information. Thus, the government-wide guidelines and the Commission's guidelines may refer to these statutory terms collectively as ''quality.''

9. ''Reproducibility'' means that the information is capable of being substantially reproduced, subject to an acceptable degree of imprecision. For information judged to be more or less influential, the degree of imprecision that is tolerated will be reduced or increased accordingly. With respect to analytic results, ''capable of being substantially reproduced'' means that independent analysis of the original or supporting data using identical methods would generate similar analytic results, subject to an acceptable degree of imprecision or error.

10. ''Transparency'' refers to a clear description of the methods, data sources, assumptions, outcomes, and related information that will allow a data user to understand how the information product was designed or produced.

11. ''Utility'' refers to the usefulness of the information to the Commission, other federal agencies, and other intended users, including the public.

**Scope of the Guidelines**

*Information Disseminated and Covered by these Guidelines:* Subject to the exceptions noted below, all information disseminated by the agency is subject to these guidelines. This includes Commission reports and recommendations provided to other agencies, and postings to the Commission's Web site.

*Information Not Covered by these Guidelines:* The following information and communications are not covered by the applicable data quality requirements and not subject to these guidelines—

- Information for which distribution is intended to be limited to government employees or agency contractors or grantees.
- Information for which distribution or sharing is intended to be limited to intra- or inter-agency use.
- Responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act, or other similar law.
- Information relating solely to correspondence with individuals or persons.
- Press releases, fact sheets, press conferences, or similar communications in any medium that announce, support the announcement of, or give public notice of information that the Commission has disseminated elsewhere.
- Archival records, including library holdings.
- Archival information disseminated by the Commission before October 1, 2002, and still maintained as archival material.
- Public filings.
- Subpoenas.
- Information limited to adjudicative processes, such as pleadings, including information developed during the conduct of any criminal or civil action or administrative enforcement action, investigation, or audit against specific parties, or information distributed in documents limited to administrative action determining the rights and liabilities of specific parties under applicable statutes and regulations.
- Solicitations (*e.g.,* program announcements and requests for proposals).
- Hyperlinks to information that another person disseminates, as well as paper-based information from other sources referenced, but not approved or endorsed by the Commission.
- Policy manuals and management information produced for the internal management and operations of the Commission and not primarily intended for public dissemination.
- Information presented to Congress as part of legislative or oversight processes, such as testimony of Commission officials, and information or drafting assistance provided to Congress in connection with proposed or pending legislation, that is not simultaneously disseminated to the public. (However, information that would otherwise be covered by applicable guidelines is not exempted from compliance merely because it is also presented to Congress.)
- Documents not authored by the Commission and not intended to represent the Commission's views, including information authored and distributed by Commission grantees, as long as the documents are not disseminated by the Commission (*see* definition of ''dissemination'').
- Research data, findings, reports and other materials published or otherwise distributed by employees or by Commission contractors or grantees that are identified as not representing Commission's views.
- Opinions where the presentation makes it clear that what is being offered is not the official view of the Commission.

**Information Quality Standards and Pre-dissemination Review**

The Marine Mammal Commission remains committed to ensuring the quality, objectivity, utility, and integrity of the information it disseminates. To meet this objective, the Commission has established various pre-dissemination review procedures. The applicable review procedures vary depending on the type of information being disseminated and the extent to which such information is considered influential.

All reports disseminated by the Commission undergo multiple levels of review by knowledgeable individuals

prior to publication to ensure that the information each report contains is of a high quality and supports the conclusions reached. In addition to the report drafters, reviewers generally include other staff members, members of the Commission's Committee of Scientific Advisors on Marine Mammals, and the Commissioners. When appropriate, Commission reports also are provided to other agencies, experts outside the federal government, and stakeholders in the relevant issue for review prior to publication.

Section 203(c) of the Marine Mammal Protection Act (16 U.S.C. 1403(c)) requires the Commission to consult with its Committee of Scientific Advisors on Marine Mammals ''on all studies and recommendations which it may propose to make or has made, on research programs conducted or proposed to be conducted [by the Commission], and on all applications for scientific permits.'' The Committee of Scientific Advisors consists of nine scientists ''knowledgeable in marine ecology and marine mammal affairs'' appointed by the Chairman of the Commission after consulting with the Chairman of the Council on Environmental Quality, the Secretary of the Smithsonian Institution, the Director of the National Science Foundation, and the Chairman of the National Academy of Sciences. This appointment process helps to ensure that the Commission has ready access to a panel of knowledgeable experts in matters related to marine mammals and marine science, including members from the academic community and elsewhere outside of government. By submitting all agency recommendations and research programs to the Committee for review prior to adoption or dissemination, the Commission not only obtains policy advice, but has, in essence, a standing peer-review body to vet the quality of the information on which Commission recommendations are based before it is disseminated.

Information posted on the Commission's Web site consists largely of Commission reports and recommendations. These documents already have been subjected to extensive review prior to being disseminated. Other information also may be posted on the Web site, including information on marine mammal species and issues of special concern. As with other materials disseminated by the Commission, and as appropriate, such information is vetted by Commission staff, members of the Committee of Scientific Advisors on Marine Mammals, the Commissioners, and outside experts prior to posting.

In exigent circumstances (*e.g.,* when responding to emergencies such as oil spills or unusual mortality events that pose a risk to natural resources), it may not be possible for the Commission to provide full review of information prior to dissemination. In such cases, the Commissioners, the Commission's Executive Director, or the Commission's General Counsel may waive temporarily the information quality standards applicable to the dissemination of information. To the extent practicable, the Commission will provide public notice of any such waiver, explaining the reason for the waiver, identifying the official responsible for issuing the waiver, and indicating the expected duration of the waiver. To the extent practicable, full review of information disseminated under a waiver will be conducted after release of that information and revisions will be made as appropriate.

**Information Integrity**

The Commission does not have the resources to maintain its own Web site, but has contracted for the maintenance and posting of material to the Commission's site. That contractor is responsible for and has instituted safeguards and security measures to protect the integrity of the information that it posts to the Commission's Web site.

**Administrative Process for Correction of Information**

*Overview:* Any affected person (see definition above) may request, where appropriate, timely correction of disseminated information that does not comply with applicable information quality guidelines. The burden of proof is on the requester to show both the necessity for and type of correction sought.

*Procedures for Submission of Initial Requests for Correction:* An initial request for correction of disseminated information must be made in writing and submitted to: General Counsel, Marine Mammal Commission, 4340 East-West Highway, Room 700, Bethesda, MD 20814.

and marked to indicate that it is an information correction request. Any request for correction must include—

1. A description of the facts or data the requester seeks to have corrected;
2. An explanation of how the requester is an affected person with respect to the disputed facts or data;
3. The factual basis for believing the facts or data sought to be corrected are inconsistent with Commission or OMB information guidelines;
4. A proposed resolution, including the factual basis for believing the facts or data in the requester's proposed resolution are correct;
5. The consequences of not adopting the proposed resolution; and
6. The requester's contact information, including name, address, daytime telephone number, and e-mail address.

No initial request for correction will be considered under these procedures if the request concerns—

1. A matter not involving ''information'' as defined in these guidelines;
2. Information that has not been ''disseminated'' as defined in these guidelines;
3. Disseminated information, the correction of which would serve no useful purpose;
4. Requests that are deemed to be duplicative, repetitious, or frivolous; or
5. Information that is disseminated in the course of a rulemaking or other administrative process that provides an opportunity for public comment and includes a mechanism for disputing or challenging the information in question.

Within 60 days of the receipt of a properly filed request, the Commission will provide a final decision on the request or a statement of the status of the request and an estimated decision date.

*Action by the Responsible Official on Initial Requests for Correction:* Upon receipt of a properly filed request, the responsible official will make a preliminary determination as to whether the request reasonably demonstrates, on the strength of the assertions made in the request alone, and assuming they are true and correct, that the information disseminated was based on a misapplication or non-application of the Commission's applicable information quality standards. The responsible official will communicate his or her initial determination concerning the sufficiency of a request, and otherwise specify the status of the request to the requester, usually within 30 days of receipt. A final determination that a request does not state a proper claim will be communicated, along with an explanation of the deficiencies, to the requester, usually within 60 days of receipt. The requester may correct the deficiencies, otherwise amend, and resubmit the request.

If the responsible official preliminarily determines that a properly filed request indicates that there may be a valid claim, the Commission will institute an objective review process to investigate and analyze relevant material in a manner consistent with

established internal procedures to determine whether the disseminated information complies with the Commission's information quality standards. During such a review the Commission may consult with members of its Committee of Scientific Advisors on Marine Mammals or outside experts to obtain their views on the quality, objectivity, utility, and integrity of the disputed information. After considering the record as a whole, the responsible official will make an initial decision as to whether the information should be corrected and what, if any, corrective action should be taken. At its discretion, the Commission may provide the requester with an opportunity to discuss the request with the responsible official or other reviewers.

If the Commission determines that corrective action is appropriate, corrective measures may be taken through a number of forms, including, but not limited to, personal contacts via letter or telephone, form letters, press releases, postings on an appropriate Web site, or withdrawal or amendment of the information in question. The form of corrective action will be determined by the nature and timeliness of the information involved and such factors as the significance of the error, the use or anticipated use of the information, and the magnitude of the error.

The responsible official will communicate his or her decision or indicate the status of the request to the requester, usually within 60 days of receipt of the request. That communication will specify the agency's initial decision, the basis for that decision, and whether, and, if so, what corrective action has been or will be taken. In addition, an initial decision will indicate the name and title of the official responsible for making the decision, a notice that the requester may appeal an initial denial within 30 days of that denial, and the name and title of the official to whom an appeal may be submitted. An initial denial will become a final agency decision if no appeal is filed within 30 days of that denial.

*Appeal from an Initial Denial:* An appeal of an initial denial must be filed within 30 days of the date of the initial decision. Any such appeal must be in writing and addressed to the official identified in the initial decision. An appeal of an initial denial must include:

1. The requester's name, current home or business address, and telephone number or e-mail address (in order to ensure timely communication);

2. A copy of the original request and any correspondence regarding the initial denial; and

3. A statement of the reasons why the requester believes the initial denial to be in error.

The official responsible for considering an appeal will be a Commissioner or a senior staff member who was not materially involved in reviewing the initial request or in making the initial decision. A decision concerning the appeal will be based on the entirety of the information in the appeal record. Generally, no opportunity for a personal appearance, oral argument, or hearing concerning the appeal will be provided; however, at his or her discretion, the official responsible for considering the appeal may discuss the request with the appellant. The official responsible for considering the appeal will communicate his or her decision to the requester, usually within 60 calendar days of receipt of the appeal.

**Reporting Requirements**

The Commission will submit an annual report to OMB by 1 January of each year specifying the number and type of correction requests received during the previous year and how any such requests were resolved. The Commission will submit its initial report in the first reporting cycle following adoption of final guidelines.

Dated: June 21, 2011.

**Timothy J. Ragen,**

*Executive Director, Marine Mammal Commission.*

[FR Doc. 2011–15953 Filed 6–24–11; 8:45 am]

BILLING CODE 6820–31–P

## NATIONAL CREDIT UNION ADMINISTRATION

### Sunshine Act Meeting

**TIME AND DATE:** 8:30 a.m., Wednesday, June 29, 2011.

**PLACE:** Board Room, 7th Floor, Room 7047, 1775 Duke Street (All visitors must use Diagonal Road Entrance), Alexandria, VA 22314–3428.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** 1. Voluntary Prepayment of Corporate Stabilization Fund Assessment.

**FOR FURTHER INFORMATION CONTACT:** Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

**Mary Rupp,**

*Board Secretary.*

[FR Doc. 2011–16197 Filed 6–23–11; 4:15 pm]

BILLING CODE 7535–01–P

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Meeting of National Council on the Humanities

**AGENCY:** The National Endowment for the Humanities.

**ACTION:** Notice of meeting.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given that the National Council on the Humanities will meet in Washington, DC on July 14–15, 2011.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support from and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. A portion of the morning and afternoon sessions on July 14–15, 2011, will not be open to the public pursuant to subsections (c)(4), (c)(6) and (c)(9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and information the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the sessions on July 14, 2011 will be as follows:

**Committee Meetings**

*(Open to the Public)*

Policy Discussion

9–10:30 a.m.

Challenge Grants and Federal/State Partnership—Room 507

Digital Humanities—Room 402

Education Programs—Room M–07

Preservation and Access—Room 415

Public Programs—Room 421

Research Programs—Room 315

*(Closed to the Public)*

Discussion of Specific Grant Applications and Programs Before the Council

10:30 a.m. until

Challenge Grants and Adjourned Federal/State Partnership—Room 507
Digital Humanities—Room 402
Education Programs—Room M–07
Preservation and Access—Room 415
Public Programs—Room 421
Research Programs—Room 315

2–3:30 p.m.

Jefferson Lecture/National Humanities Medals Committee—Room 527

The morning session of the meeting on July 15, 2011 will convene at 9 a.m., in the first floor Council Room M–09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:

A. Minutes of the Previous Meeting
B. Reports
1. Introductory Remarks
2. Presentation on the 400th Anniversary of the *King James Bible* by Dr. Stephen Enniss, Chief Librarian of the Folger Shakespeare Library
3. Staff Report
4. Congressional Report
5. Budget Report
6. Reports on Policy and General Matters
a. Challenge Grants and Federal/State Partnership
b. Digital Humanities
c. Education Programs
d. Preservation and Access
e. Public Programs
f. Research Programs
g. Jefferson Lecture/National Humanities Medals

The remainder of the proposed meeting will be given to the consideration of specific applications and will be closed to the public for the reasons stated above.

Further information about this meeting can be obtained from Michael P. McDonald, Advisory Committee Management Officer, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or by calling (202) 606–8322, TDD (202) 606–8282. Advance notice of any special needs or accommodations is appreciated.

**Michael P. McDonald,**
*Advisory Committee Management Officer.*

[FR Doc. 2011–15967 Filed 6–24–11; 8:45 am]

**BILLING CODE 7536–01–P**

## NATIONAL SCIENCE FOUNDATION

### Committee Management Renewals

The National Science Foundation (NSF) management officials having responsibility for the advisory committees listed below have determined that renewing these groups for another two years is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

*Committees:*

Proposal Review Panel for Research on Learning in Formal and Informal Settings, #59
Advisory Committee for Biological Sciences, #1110
Advisory Committee for Education and Human Resources, #1119
Advisory Committee for Polar Programs, #1130
Advisory Committee for Engineering, #1170
Alan T. Waterman Award Committee, #1172
Advisory Panel for Integrative Activities, #1373
Proposal Review Panel for Earth Sciences, #1569
Advisory Committee for Geosciences, #1755
Proposal Review Panel for Geosciences, #1756
Proposal Review Panel for Social Behavioral and Economic Sciences, #1766
Proposal Review Panel for Biological Infrastructure, #10743
Proposal Review Panel for Environmental Biology, #10744
Proposal Review Panel for Integrative Organismal Systems, #10745
Proposal Review Panel for Molecular and Cellular Biosciences, #10746
Proposal Review Panel for Behavioral and Cognitive Sciences, #10747
Proposal Review Panel for Social and Economic Sciences, #10748
Proposal Review Panel for International Science and Engineering, #10749
Proposal Review Panel for Atmospheric and Geospace Sciences, #10751
Proposal Review Panel for Ocean Sciences, #10752
Advisory Committee for Cyberinfrastructure, #25150

Effective date for renewal is July 1, 2011. For more information, please contact Susanne Bolton, NSF, at (703) 292–7488.

Dated: June 22, 2011.

**Susanne Bolton,**
*Committee Management Officer.*

[FR Doc. 2011–16020 Filed 6–24–11; 8:45 am]

**BILLING CODE 7555–01–P**

## NATIONAL SCIENCE FOUNDATION

### National Science Board; Sunshine Act Meetings; Notice

The National Science Board's Committee on Strategy and Budget, pursuant to NSF regulations (45 CFR Part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of National Science Board business and other matters specified, as follows:

**DATE AND TIME:** Wednesday, July 6, 2011 at 8 a.m.–3 p.m., EDT.

**SUBJECT MATTER:** Discussion of NSF's FY 2013 Budget.

**STATUS:** Closed.

This meeting will be held by teleconference originating at the National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Please refer to the National Science Board Web site (*http://www.nsf.gov/nsb/notices/*) for information or schedule updates, or contact: Blane Dahl, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

**Ann Ferrante,**
*Writer-Editor.*

[FR Doc. 2011–16101 Filed 6–23–11; 11:15 am]

**BILLING CODE 7555–01–P**

## NATIONAL SCIENCE FOUNDATION

### National Science Board; Sunshine Act Meetings; Notice

The National Science Board's Committee on Strategy and Budget, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of National Science Board business and other matters specified, as follows:

**DATE AND TIME:** Wednesday, July 6th at 8 a.m.–3 p.m., E.D.T.

**SUBJECT MATTER:** Discussion of NSF's FY 2013 Budget.

**STATUS:** Closed.

This meeting will be held at the National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Please refer to the National Science Board Web site (*http://www.nsf.gov/nsb/notices/*) for information or schedule updates, or *contact:* Blane Dahl, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. *Telephone:* (703) 292–7000.

**Ann Ferrante,**

*Writer-Editor.*

[FR Doc. 2011–16112 Filed 6–23–11; 4:15 pm]

**BILLING CODE 7555–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon written request, copies available from:* U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*

Rule 15g–2; SEC File No. 270–381; OMB Control No. 3235–0434.

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'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The ''Penny Stock Disclosure Rules'' (Rule 15g–2, 17 CFR 240.15g–2) require broker-dealers to provide their customers with a risk disclosure document, as set forth in Schedule 15G, prior to their first non-exempt transaction in a ''penny stock.'' As amended, the rule requires broker-dealers to obtain written acknowledgement from the customer that he or she has received the required risk disclosure document. The amended rule also requires broker-dealers to maintain a copy of the customer's written acknowledgement for at least three years following the date on which the risk disclosure document was provided to the customer, the first two years in an accessible place.

The risk disclosure documents are for the benefit of the customers, to assure that they are aware of the risks of trading in ''penny stocks'' before they enter into a transaction. The risk disclosure documents are maintained by the broker-dealers and may be reviewed during the course of an examination by the Commission.

There are approximately 253 broker-dealers that could potentially be subject to current Rule 15g–2. The Commission estimates that approximately 5% of registered broker-dealers are engaged in penny stock transactions, and thereby subject to the Rule (5% × approximately 5,063 registered broker-dealers = 253 broker-dealers). The Commission estimates that each one of these firms processes an average of three new customers for penny stocks per week. Thus, each respondent processes approximately 156 penny stock disclosure documents per year. If communications in tangible form alone are used to satisfy the requirements of Rule 15g–2, then the copying and mailing of the penny stock disclosure document takes no more than two minutes. Thus, the total associated burden is approximately 2 minutes per response, or an aggregate total of 312 minutes per respondent. Since there are 253 respondents, the current annual burden is 78,936 minutes (312 minutes per each of the 253 respondents) or 1,316 hours for this third party disclosure burden. In addition, broker-dealers incur a recordkeeping burden of approximately two minutes per response when filing the completed penny stock disclosure documents as required pursuant to the Rule 15(g)(2)(c), which requires a broker-dealer to preserve a copy of the written acknowledgement pursuant to Rule 17a–4(b) of the Exchange Act,. Since there are approximately 156 responses for each respondent, the respondents incur an aggregate recordkeeping burden of 78,936 minutes (253 respondents × 156 responses for each × 2 minutes per response) or 1,316 hours, under Rule 15g–2. Accordingly, the current aggregate annual hour burden associated with Rule 15g–2 (that is, assuming that all respondents provide tangible copies of the required documents) is approximately 2,632 hours (1,316 third party disclosure hours + 1,316 recordkeeping hours).

The burden hours associated with Rule 15g–2 may be slightly reduced when the penny stock disclosure document required under the rule is provided through electronic means such as e-mail from the broker-dealer (*e.g.,* the broker-dealer respondent may take only one minute, instead of the two minutes estimated above, to provide the penny stock disclosure document by e-mail to its customer). In this regard, if each of the customer respondents estimated above communicates with his or her broker-dealer electronically, the total ongoing respondent burden is approximately 1 minute per response, or an aggregate total of 156 minutes (156 customers × 1 minutes per respondent). Assuming 253 respondents, the annual third party disclosure burden, if electronic communications were used by all customers, is 39,468 minutes (156 minutes per each of the 253 respondents) or 658 hours. If all respondents were to use electronic means, the recordkeeping burden is 78,936 minutes or 1,316 hours (the same as above). Thus, if all broker-dealer respondents obtain and send the documents required under the rules electronically, the aggregate annual hour burden associated with Rule 15g–2 is 1,974 (658 hours + 1,316 hours).

In addition, if the penny stock customer requests a paper copy of the information on the Commission's Web site regarding microcap securities, including penny stocks, from his or her broker-dealer, the printing and mailing of the document containing this information takes no more than two minutes per customer. Because many investors have access to the Commission's Web site via computers located in their homes, or in easily accessible public places such as libraries, then, at most, a quarter of customers who are required to receive the Rule 15g–2 disclosure document request that their broker-dealer provide them with the additional microcap and penny stock information posted on the Commission's Web site. Thus, each broker-dealer respondent processes approximately 39 requests for paper copies of this information per year or an aggregate total of 78 minutes per respondent (2 minutes per customer × 39 requests per respondent). Since there are 253 respondents, the estimated annual burden is 19,734 minutes (78 minutes per each of the 253 respondents) or 329 hours. This is a third party disclosure type of burden.

We have no way of knowing how many broker-dealers and customers will choose to communicate electronically. Assuming that 50 percent of respondents continue to provide documents and obtain signatures in tangible form and 50 percent choose to communicate electronically to satisfy the requirements of Rule 15g–2, the total aggregate burden hours is 3,948 ((aggregate burden hours for documents and signatures in tangible form × 0.50 of the respondents = 1,316 hours) + (aggregate burden hours for electronically signed and transmitted documents × 0.50 of the respondents = 987 hours) + (aggregate burden hours for recordkeeping of tangible documents × 0.50 of the respondents = 658) + (aggregate burden hours for

recordkeeping of electronically filed documents = 658) + (329 burden hours for those customers making requests for a copy of the information on the Commission's Web site)).

Written 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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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.

Comments should be directed to: Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted within 60 days of this notice.

June 21, 2011.

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011–16006 Filed 6–24–11; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on June 29, 2011 at 10 a.m., in the Auditorium, Room L–002.

The subject matter of the Open Meeting will be:

**Note:** The Commission will consider whether to propose rules under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act to establish business conduct standards for security-based swap dealers and major security-based swap participants.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: June 22, 2011.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011–16086 Filed 6–23–11; 11:15 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–64706; File No. SR–FINRA–2011–027]**

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Amend FINRA Trade Reporting Rules Relating to OTC Transactions in Equity Securities That Are Part of a Distribution and Transfers of Equity Securities To Create or Redeem Instruments Such as ADRs and ETFs

June 20, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 9, 2011, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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

FINRA is proposing to amend FINRA Rules 6282, 6380A, 6380B and 6622 relating to trade reporting over-the-counter (''OTC'') transactions in equity securities to (1) Clarify the existing exception for transactions that are part of a distribution of securities and impose certain notice requirements on members relying on the exception for transactions that are part of an ''unregistered secondary distribution''; and (2) expressly exclude from the trade reporting requirements transfers of equity securities for the purpose of creating or redeeming instruments such as American Depositary Receipts (''ADRs'') and exchange-traded funds (''ETFs'').

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Background

Under FINRA trade reporting rules, members are required to report OTC transactions in equity securities to FINRA unless they fall within an express exception. As a general matter, when members report OTC trades, FINRA facilitates the public dissemination of the trade information and/or assesses regulatory transaction fees under Section 3 of Schedule A to the FINRA By-Laws (''Section 3'')[3] and the Trading Activity Fee (''TAF'').[4] Under FINRA trade reporting rules, certain transactions and transfers are not reported to FINRA at all (*e.g.,* trades executed and reported through an exchange and transfers made pursuant to an asset purchase agreement that has been approved by a bankruptcy court), while other transactions must be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Pursuant to Section 31 of the Act, FINRA and the national securities exchanges are required to pay transaction fees and assessments to the SEC that are designed to recover the costs related to the government's supervision and regulation of the securities markets and securities professionals. FINRA obtains its Section 31 fees and assessments from its membership in accordance with Section 3.

[4] The TAF is one of the member regulatory fees FINRA uses to fund its member regulation activities, market regulation activities, financial monitoring and policymaking, rulemaking and enforcement activities. Among others, the TAF is assessed for the sale of all exchange registered securities wherever executed and OTC equity securities. *See* FINRA By-Laws, Schedule A, 1(b)(2).

reported to FINRA for regulatory transaction fee assessment purposes only (*e.g.,* away from the market sales and transfers in connection with certain corporate control transactions).[5] Members must have policies and procedures and internal controls in place to determine whether a transaction qualifies for an exception under the rules.

Transactions That Are Part of a Securities Distribution

FINRA rules contain an exception from the trade reporting requirements for transactions that are effected in connection with a distribution of securities, specifically:

> Transactions that are part of a primary distribution by an issuer or of a registered secondary distribution (other than ''shelf distributions'') or of an unregistered secondary distribution.[6]

Thus, transactions that are part of a distribution (other than a secondary shelf distribution) are not reported to FINRA or publicly disseminated, and they are not assessed regulatory transaction fees under Section 3 or the TAF. This exception was adopted to align the FINRA trade reporting requirements with the Consolidated Tape Association and the Nasdaq Unlisted Trading Privileges plans, which expressly identify transactions that are not to be reported to the tape.[7]

FINRA is proposing to amend its rules[8] to clarify that for purposes of this trade reporting exception, ''distribution'' has the meaning set forth under SEC Regulation M.[9] A ''distribution'' is defined under Rule 100 of Regulation M as ''an offering of securities, whether or not subject to registration under the Securities Act, that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods.''[10]

In addition, FINRA is proposing to adopt Supplementary Material in Rules 6282, 6380A, 6380B and 6622 that is specifically applicable to the trade reporting exception for transactions that are part of an ''unregistered secondary distribution.'' Pursuant to the proposed Supplementary Material, members that would otherwise have the trade reporting obligation under FINRA rules[11] must provide notice to FINRA that they are relying on this exception. The member also must provide the following information to FINRA for each transaction that is part of the unregistered secondary distribution and not trade reported: security name and symbol, execution date, execution time, number of shares, trade price and parties to the trade. Such notice and information must be provided no later than three (3) business days following trade date. If the trade executions will occur over multiple days, then initial notice and available information must be provided no later than three (3) business days following the first trade date and final notice and information must be provided no later than three (3) business days following the last trade date.

The proposed Supplementary Material also requires that the member retain records sufficient to document the basis for relying on this trade reporting exception, including but not limited to, the basis for determining that the transactions are part of an unregistered secondary distribution, as defined under Rule 100 of Regulation M. In other words, members must be able to demonstrate that the ''magnitude of the offering'' and ''special selling efforts'' criteria under Regulation M have been satisfied. The mere assertion that the order was large sized or a block or that execution of the order was ''worked'' by a member will usually not by itself be sufficient. Additionally, members must be able to provide evidence of compliance with any applicable notification requirements under FINRA Rule 5190. Rule 5190 imposes certain notice requirements on members participating in distributions of listed and unlisted securities and is designed to ensure that FINRA receives pertinent distribution-related information from its members in a timely fashion to facilitate its Regulation M compliance program. Thus, if a member is relying on this exception from the trade reporting requirements, FINRA would expect to see that the requisite notice under Rule 5190 also has been provided.[12]

FINRA is reiterating that the proposed rule change imposes on members a notice requirement only and not a trade reporting requirement. Accordingly, as is the case today, these transactions will not be trade reported (*i.e.,* through the Alternative Display Facility, a Trade Reporting Facility or the OTC Reporting Facility), nor will they be disseminated to the public. In addition, as is the case today, these transactions will not be assessed regulatory transaction fees under Section 3 or the TAF.

FINRA believes that the proposed rule change is necessary to ensure that members interpret this trade reporting exception correctly and report all transactions that are reportable under FINRA rules. For example, under current rules, large block trades (even those at a significant discount from the current market price) must be reported to FINRA for tape dissemination purposes and are assessed regulatory transaction fees under Section 3 and the TAF. The proposed rule change clarifies that the trade reporting exception does not apply to block trades, unless they otherwise meet the definition of distribution under Regulation M.

Transfers of Equity Securities To Create or Redeem Instruments Such as ADRs and ETFs

FINRA also is proposing to amend its rules[13] to expressly exclude from the trade reporting requirements any transfer of equity securities for the sole purpose of creating or redeeming an instrument that evidences ownership of or otherwise tracks the underlying securities transferred. Such transfers are not considered OTC transactions for purposes of the trade reporting rules and thus are not reportable events.

The proposed rule change codifies current guidance and practice in this area. For example, FINRA has previously stated that the conversion of foreign ordinary shares into ADRs (or vice versa) at a bank depository is not a trade reportable event.[14] Similarly, when a financial institution or ''authorized participant'' deposits with an ETF a basket of securities (or other assets) and receives the ETF creation unit in return, these are not trade reportable events.[15] Because the transfer of equity securities to create or redeem

[5] *See* Rules 6282(i) (Alternative Display Facility), 6380A(e) (FINRA/Nasdaq Trade Reporting Facility), 6380B(e) (FINRA/NYSE Trade Reporting Facility) and 6622(e) (OTC Reporting Facility).

[6] *See* Rules 6282(i)(1)(A), 6380A(e)(1)(A), 6380B(e)(1)(A) and 6622(e)(1)(A).

[7] *See, e.g., Notice to Members* 75–42 (June 1975).

[8] *See* Rules 6282(i)(1)(A), 6380A(e)(1)(A), 6380B(e)(1)(A) and 6622(e)(1)(A).

[9] 17 CFR 242.100–105.

[10] 17 CFR 242.100.

[11] In transactions between members, the ''executing party,'' as defined by rule, is required to report the trade, and in transactions between a member and a non-member or customer, the member is required to report. *See* Rules 6282(b); 6380A(b) and 7230A(c); 6380B(b) and 7230B(c); and 6622(b) and 7330(c).

[12] FINRA notes that the proposed notice requirement is separate and distinct from the Regulation M-related notice requirements under Rule 5190. Accordingly, providing notice under the trade reporting rules does not relieve a member of any obligations it may have under Rule 5190, nor does it impact the timing of any notice required under Rule 5190.

[13] *See* Rules 6282(i)(1), 6380A(e)(1), 6380B(e)(1) and 6622(e)(1).

[14] *See Notice to Members* 07–25 (May 2007).

[15] For a general discussion of ETFs, including the creation of ETFs, *see* Securities Act Release No. 8901 (March 11, 2008), 73 FR 14618 (March 18, 2008) (Proposed rule relating to exchange-traded funds; File No. S7–07–08).

instruments such as ADRs and ETFs is not considered an OTC transaction subject to real-time trade reporting and dissemination under FINRA rules, it is not assessed regulatory transaction fees under Section 3 or the TAF.

FINRA notes, however, that purchases and sales of the securities that are to be transferred for the purpose of creating or redeeming instruments such as ADRs and ETFs and subsequent purchases and sales of the instruments in the secondary market are OTC transactions and must be reported to FINRA in accordance with the trade reporting rules.[16] Additionally, purchases and sales of the underlying securities in order to track the performance of an instrument such as an ADR or ETF, without actually creating the instrument, are trade reportable. Such transactions are subject to regulatory transaction fees under Section 3 and the TAF.[17]

FINRA is proposing that the proposed rule change will be effective 90 days following the date of Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[18] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will clarify the interpretation and application of the current exception from the trade reporting requirements for transactions that are part of a distribution and will enhance market transparency by helping to ensure that transactions that are not part of an ''unregistered secondary distribution,'' such as large block trades, are properly reported. Additionally, FINRA believes that the proposed rule change will clarify members' obligations with respect to the reporting of transfers of equity securities to create or redeem instruments such as ADRs and ETFs under FINRA trade reporting rules.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be 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 Number SR–FINRA–2011–027 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–FINRA–2011–027. 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 FINRA. 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–FINRA–2011–027 and should be submitted on or before July 18, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011–16005 Filed 6–24–11; 8:45 am]

**BILLING CODE 8011–01–P**

[16] FINRA reminds members that with respect to ADR swap transactions (sometimes called ''cross-book'' transactions), because the ADRs and the ordinary shares are separate securities and are executed in separate transactions, both the ADR and the foreign ordinary share transactions must be reported separately to FINRA for public dissemination, as required by FINRA rules. *See Notice to Members* 07–25 (May 2007).

[17] FINRA notes that secondary market transactions in instruments such as ADRs and ETFs must be reported in accordance with the rules and guidance that govern the reporting of OTC transactions. For example, members are required by rule to include the date and time of execution in all trade reports submitted to FINRA; the date and time of execution are the date and time when the parties have agreed to all essential terms of the transaction, including trade price and number of shares.

[18] 15 U.S.C. 78*o*–3(b)(6).

[19] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–64717; File No. SR–FINRA–2011–029]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Exemptions from the Order Audit Trail System Recording and Reporting Requirements

June 21, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 14, 2011, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

FINRA is proposing to amend FINRA Rule 7470 to extend for four years FINRA's ability to exempt certain members from the recording and reporting requirements of the Order Audit Trail System (''OATS'') Rules (''OATS Rules'') for manual orders received by the member.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA 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

On September 28, 2005, the SEC approved amendments to the OATS Rules that, among other things, permitted FINRA to grant exemptive relief from the OATS reporting requirements for manual orders.[4] In 2006, FINRA's exemptive authority was expanded to include the authority to exempt manual orders received by members from the OATS recording requirements.[5] At a minimum, under FINRA Rule 7470, members must meet the following criteria to be eligible to request an exemption from the OATS recording and reporting requirements for manual orders: (1) The member and current control affiliates and associated persons of the member have not been subject within the last five years to any final disciplinary action, and within the last ten years to any disciplinary action involving fraud; (2) the member has annual revenues of less than $2 million; (3) the member does not conduct any market making activities in any security subject to the OATS Rules; (4) the member does not execute principal transactions with its customers (with limited exceptions for principal transactions executed pursuant to error corrections); and (5) the member does not conduct clearing or carrying activities for other firms.[6] An exemption granted by FINRA pursuant to Rule 7470 is for a maximum of two years; however, a member that continues to meet the criteria may request subsequent exemptions at or prior to the expiration of a grant of exemptive relief.[7] Finally, Rule 7470 includes a sunset provision of five years from the original effective date of the rule, which was July 10, 2006. Consequently, Rule 7470 is set to expire as of July 10, 2011.

FINRA adopted this exemptive authority so that it would have the ability to grant relief to members that meet certain criteria in situations where, for example, the reporting of order information would be unduly burdensome for the member or where temporary relief from the rules, in the form of additional time to achieve compliance, would permit the members to avoid unnecessary expense or hardship.[8] FINRA believes that these concerns continue to be present for many firms and, consequently, proposes to extend the period for FINRA to grant exemptive relief for an additional four years. In addition, as part of the its recent proposal to create a consolidated audit trail across self-regulatory organizations, the SEC is evaluating, among other things, the impact of consolidated audit trail requirements on smaller member firms.[9] FINRA believes it is appropriate to allow firms that have received an exemption from OATS to continue to rely on their current exemption (or request an additional two-year exemption) until the scope and application of the SEC's consolidated audit trail is determined.

FINRA is not proposing any substantive changes to the criteria necessary for firms to qualify for an exemption because FINRA believes that the criteria continue to ensure that only those firms with limited revenue, no recent final disciplinary actions, and limited business models will be eligible for exemptions.[10]

FINRA has filed the proposed rule change for immediate effectiveness. The operative date will be July 9, 2011.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[11] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will provide a continued way to exempt manual orders received by certain small firms from the OATS Rules and avoid imposing potentially unnecessary expense or hardship on those firms that qualify for the exemption.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 52521 (September 28, 2005), 70 FR 57909 (October 4, 2005).

[5] *See* Securities Exchange Act Release No. 53580 (March 30, 2006), 71 FR 17529 (April 6, 2006). In 2006, the exemptive provision was also relocated from NASD Rule 6955(d) to NASD Rule 6958. As of December 15, 2008, NASD Rule 6958 was renumbered as FINRA Rule 7470. *See* FINRA *Regulatory Notice* 08–57 (October 2008).

[6] *See* FINRA Rule 7470(a).

[7] *See* FINRA Rule 7470(b).

[8] *See* Securities Exchange Act Release No. 52521 (September 28, 2005), 70 FR 57909 (October 4, 2005).

[9] *See* Securities Exchange Act Release No. 62174 (May 26, 2010), 75 FR 32556 (June 8, 2010).

[10] FINRA notes that although many of the members relying on current exemptions pursuant to Rule 7470 also qualify for the exception from the definition of ''Reporting Member'' in Rule 7410(o), some firms relying on exemptions route orders to multiple clearing firms or otherwise fail to meet the exception in Rule 7410(o).

[11] 15 U.S.C. 78*o*–3(b)(6).

the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13]

FINRA has requested that the Commission waive the requirement that the rule change, by its terms, not become operative for 30 days after the date of the filing as set forth in Rule 19b–4(f)(6)(iii).[14] FINRA believes that the proposed rule change should become operative on July 9, 2011, to avoid any lapse in the application of the rule. The Commission agrees that it is consistent with the protection of investors and the public interest to allow FINRA's limited exemptive authority to grant relief to members that meet certain criteria from the OATS recording and reporting requirements to continue without a lapse. Therefore, the Commission hereby grants a waiver of the 30-day operative delay.[15]

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. 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 Number SR–FINRA–2011–029 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–FINRA–2011–029. 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 FINRA. 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–FINRA–2011–029 and should be submitted on or before July 18, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011–15965 Filed 6–24–11; 8:45 am]

**BILLING CODE 8011–01–P**

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). Among other things, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that FINRA has satisfied the pre-filing notice requirement.

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For the purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–64715; File No. SR–NASDAQ–2011–084]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend NASDAQ Rule 4763

June 21, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 15, 2011, The NASDAQ Stock Market LLC (the ''Exchange'' or ''NASDAQ'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The 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 the Substance of the Proposed Rule Change

The Exchange is filing this proposed rule change to amend NASDAQ Rule 4763 to modify the Exchange's procedures for early termination of the short sale price test restrictions of Rule 201 of Regulation SHO. The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/*, at NASDAQ's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On February 26, 2010, the Commission adopted amendments to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Rules 200(g) and 201 of Regulation SHO.[3] The amendments became effective on May 10, 2010, and compliance was required by February 28, 2011.[4] The amendments to Rule 201 require trading centers [5] such as NASDAQ to establish, maintain, and enforce certain written policies and procedures reasonably designed to comply with the rule.[6] NASDAQ is proposing to amend NASDAQ Rule 4763 to modify the Exchange's procedures for early termination of the short sale price test restrictions of Rule 201 based on a triggering transaction that another exchange or SRO has determined was a clearly erroneous execution pursuant to the rules of that exchange or SRO.

Under NASDAQ Rule 4763(d), Duration of Short Sale Price Test, once triggered, the short sale price test restriction shall remain in effect until the next trading day when a national best bid for the covered security is calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan,[7] as provided for in Rule 201(b)(1)(ii) (the ''Short Sale Period''). The duration of the Short Sale Period may differ under two different scenarios provided for in Rule 4763.[8] First, if the Exchange determines pursuant to NASDAQ Rule 4763(d)(1) that the short sale price test restriction for a covered security was triggered because of a clearly erroneous execution,[9] NASDAQ may lift the short sale price test restriction before the Short Sale Period ends for covered securities for which the Exchange is the listing market.[10] Second, if NASDAQ determines pursuant to NASDAQ Rule 4763(d)(2) that the prior day's closing price for a covered security is incorrect in the System and resulted in an incorrect determination of the Trigger Price,[11] the Exchange may correct the prior day's NASDAQ official closing price and lift the short sale price test restriction before the Short Sale Period ends.

For securities for which the Exchange is the listing market, NASDAQ Rule 4763 currently addresses only clearly erroneous triggering transactions deemed to be clearly erroneous executions under the Exchange's rules, and does not address situations where another exchange or SRO determines, under its respective rules, that a triggering transaction was a clearly erroneous execution. To address this scenario, the Exchange proposes to amend NASDAQ Rule 4763(d) to provide that the Exchange may also lift the short sale price test restrictions before the Short Sale Period ends, for covered securities for which the Exchange is the listing market, if the Exchange has been informed by another exchange or SRO that a transaction in the covered security that occurred at the Trigger Price was a clearly erroneous execution, as determined by that exchange or SRO under its rules.[12]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, in that it is designed to, among other things, prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposal is designed to refine the Exchange's written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security in violation of the short sale price test restrictions established in NASDAQ Rule 4763 and Rule 201. To that end, the proposed rule change expands the ability of the Exchange, as a listing market, to lift short sale price test restrictions to include situations where the Exchange has been informed by another exchange or SRO that a transaction in the covered security that occurred at the Trigger Price was a clearly erroneous execution, as determined by that exchange or SRO under its rules.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Rather, the change will promote greater competition by allowing NASDAQ to adopt functionality already in use at competing national securities exchanges.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has

[3] See Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010) (File No. S7–08–09; Amendments to Regulation SHO) (''Rule 201 Adopting Release''). In the Rule 201 Adopting Release, the Commission also adopted amendments to Rule 200(g) of Regulation SHO to include a ''short exempt'' marking requirement. 17 CFR 242.200(g).

[4] See Securities Exchange Act Release No. 63247 (November 4, 2010), 75 FR 68702 (November 9, 2010) (File No. S7–08–09).

[5] Rule 201(a)(9) states the term ''trading center'' will have the same meaning as in Rule 600(b)(78). 17 CFR 242.201(a)(9). Rule 600(b)(78) of Regulation NMS defines a ''trading center'' as ''a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.'' 17 CFR 242.600(b)(78).

[6] See 17 CFR 242.201(b). As a general matter, Rule 201 requires trading centers to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid if the price of that covered security decreases by 10% or more from the covered security's prior day's closing price. 17 CFR 242.201(b)(1)(i).

[7] See 17 CFR 242.201(b)(1)(ii). See also Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, Q&A No. 2.1.

[8] In addition, if the price of a covered security declines intra-day by at least 10% on a day on which the security is already subject to the short sale price test restriction of Rule 201, the restriction will be re-triggered and, therefore, will continue in effect for the remainder of that day and the following day. See Rule 201 Adopting Release, 75 FR at 11253, n. 290. In addition, Rule 201 does not place any limit on the frequency or number of times the circuit breaker can be re-triggered with respect to a particular stock. See Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, Q&A No. 2.2.

[9] See NASDAQ Rule 4762 which cross-references NASDAQ Rule 11890 for the standard of determining when a trade is ''clearly erroneous.'' The terms of a transaction executed on NASDAQ are ''clearly erroneous'' when there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security. A transaction made in clearly erroneous error and cancelled by both parties or determined by NASDAQ to be clearly erroneous will be removed from the consolidated tape.

[10] See 17 CFR 242.201(a)(3).

[11] The term ''Trigger Price'' is used in Rule 4763(b) to refer to a decrease of 10% or more in a security's price from the security's closing price on the listing market at the end of regular trading hours on the prior day.

[12] The Exchange will only lift the short sale price test restrictions before the Short Sale Period ends under these circumstances when informed by another exchange or SRO that a triggering transaction has been determined to be a clearly erroneous execution under the rules of the exchange or SRO, consistent with the authority of that exchange or SRO for making such determinations.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16]

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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[17] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.[18] NASDAQ has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become effective and operative immediately upon filing, pursuant to Section 19(b)(3)(A) of the Act [19] and Rule 19b–4(f)(6) [20] thereunder. The Exchange believes that waiver of the delayed operative date is appropriate because the proposed rule change is consistent with the original objective of Rule 4763 (*i.e.,* to permit the Exchange to lift the short sale price test restrictions before the end of a Short Sale Period in the event of a clearly erroneous triggering trade). Specifically, the current rule only addresses triggering transactions deemed to be clearly erroneous executions under the Exchange's rules. The proposed change would permit the Exchange to lift the short sale price test restrictions before the Short Sale Period ends, for covered securities for which the Exchange is the listing market, if the Exchange has been informed by another exchange or SRO that a transaction in the covered security that occurred at the Trigger Price was a clearly erroneous execution, as determined by that exchange or SRO under its rules.

The Exchange believes that this proposal is ''non-controversial'' because it merely seeks to implement additional protections against the triggering of short sale price test restrictions based on transactions determined by an exchange or SRO to be clearly erroneous executions under the rules of that exchange or SRO. For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a ''noncontroversial'' rule change under paragraph (f)(6) of Rule 19b–4.[21]

The Commission has considered the Exchange's request to waive the 30-day operative delay, and hereby grants the request.[22] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will permit the Exchange to lift the short sale price test restrictions of Rule 201, in a covered security for which the Exchange is the listing market, when such restrictions were triggered by a transaction that another exchange or SRO has determined to be a clearly erroneous execution, under the rules of that exchange or SRO. For this reason, the Commission designates the proposed rule change to be operative upon filing.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2011–084 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–NASDAQ–2011–084. 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 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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NASDAQ–2011–084, and should be submitted on or before July 18, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011–15916 Filed 6–24–11; 8:45 am]

**BILLING CODE 8011–01–P**

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] *Id.*

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4.

[21] 17 CFR 240.19b–4(f)(6).

[22] For the purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–64713; File No. SR–NASDAQ–2011–082]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Align Certain Disclosure Requirements in Nasdaq's Corporate Governance Rules with Similar Disclosure Requirements in the Commission's Rules

June 21, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 9, 2011, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'')

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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 the Substance of the Proposed Rule Change

Nasdaq proposes to align certain disclosure requirements in Nasdaq's corporate governance rules with similar disclosure requirements in the Commission's rules. Nasdaq will implement the proposed rule change thirty days after the date of the filing. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.[5]

* * * * *

### 5605. Boards of Directors and Committees.

(a) No change.

IM–5605. No change.

(b) Independent Directors

(1) Majority Independent Board

A majority of the board of directors must be comprised of Independent Directors as defined in Rule 5605(a)(2). The Company*, other than a Foreign Private Issuer,* must [disclose in its annual proxy (or, if the Company does not file a proxy, in its Form 10–K or 20–F) those directors that the board of directors has determined to be independent under Rule 5605(a)(2).] *comply with the disclosure requirements set forth in Item 407(a) of Regulation S–K. A Foreign Private Issuer must disclose in its next annual report (e.g., Form 20–F or 40–F) those directors that the board of directors has determined to be independent under Rule 5605(a)(2).*

(A) No change.

IM–5605–1. No change.

(2) No change.

IM–5605–2. No change.

(c)—(e) No change.

* * * * *

### 5615. Exemptions from Certain Corporate Governance Requirements

This rule provides the exemptions from the corporate governance rules afforded to certain types of Companies, and sets forth the phase-in schedules for initial public offerings, Companies emerging from bankruptcy and Companies transferring from other markets. This rule also describes the applicability of the corporate governance rules to controlled companies and sets forth the phase-in schedule afforded to Companies ceasing to be controlled companies.

(a)—(b) No change.

(c) How the Rules Apply to a Controlled Company

(1) No change.

(2) Exemptions Afforded to a Controlled Company

A Controlled Company is exempt from the requirements of Rules 5605(b), (d) and (e), except for the requirements of subsection (b)(2) which pertain to executive sessions of Independent Directors. A Controlled Company, *other than a Foreign Private Issuer,* relying upon this exemption must [disclose in its annual meeting proxy statement (or, if the Company does not file a proxy, in its Form 10–K or 20–F) that it is a Controlled Company and the basis for that determination.] *comply with the disclosure requirements set forth in Instruction 1 to Item 407(a) of Regulation S–K. A Foreign Private Issuer must disclose in its next annual report (e.g., Form 20–F or 40–F) that it is a Controlled Company and the basis for that determination.*

(3) No change.

* * * * *

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Nasdaq proposes to make changes to Rules 5605(b)(1) and 5615(c)(2) to align certain disclosure requirements with the applicable disclosure requirements of Item 407(a) of Regulation S–K[6] and incorporate those requirements into Nasdaq rules.

Nasdaq currently requires a listed company to disclose in its annual proxy (or if the company does not file a proxy, in its Form 10–K or 20–F) those directors that the board of directors has determined to be independent.[7] Nasdaq proposes to replace its current disclosure requirement in Listing Rule 5605(b)(1) with a reference to the disclosure requirement in Item 407(a) of Regulation S–K, which requires similar disclosure.[8] As a result, a listed company, other than a foreign private issuer, that does not make the disclosure required under Item 407(a) of Regulation S–K will be out of compliance with Nasdaq's rules. A foreign private issuer, which is not subject to Item 407(a) of Regulation S–K, will continue to be required to make the disclosure in its annual report.

Nasdaq believes that the disclosure requirements in current Nasdaq Listing Rule 5605(b)(1) and Item 407(a) of Regulation S–K are substantially similar and, to the extent they differ, Item 407(a) requires more disclosure.[9] As a result, incorporating these additional disclosure requirements from Item 407(a) of Regulation S–K into Nasdaq's rules will avoid duplication and confusion and enhance overall disclosures by its listed companies.

Nasdaq also currently requires a company to disclose that it is a controlled company, the basis for that determination, and that it is relying on the exemption for a controlled company from the requirements to have a majority independent board and independent director oversight of executive officer compensation and director nominations.[10] Nasdaq proposes to replace this disclosure requirement with a reference to the disclosure requirement in Instruction 1 to Item 407(a) of Regulation S–K, which requires similar disclosure.[11] As a

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at *http://nasdaqomx.cchwallstreet.com.*

[6] 17 CFR 229.407(a).

[7] Nasdaq Listing Rule 5605(b)(1).

[8] *See* 17 CFR 229.407(a) (requiring a company to, among other things, identify each director that is independent and explain the factors considered by the board in making its independence determination).

[9] *Id.* Differences include where Item 407(a)(2) of Regulation S–K requires specific disclosures when a registrant uses its own definitions when determining whether directors and director nominees are independent and where Item 407(a)(3) of Regulation S–K requires specific disclosures of any transactions, relationships or arrangements not disclosed pursuant to Item 404 of Regulation S–K that were considered by the board in determining independence.

[10] Nasdaq Listing Rule 5615(c)(2).

[11] *See* 17 CFR 229.407(a) (in instruction 1, requiring a company that is relying on an exemption to disclose the exemption relied upon

Continued

result, a controlled company, other than a foreign private issuer, that does not make the disclosure required under Instruction 1 to Item 407(a) of Regulation S–K will be out of compliance with Nasdaq's rules. A foreign private issuer, which is not subject to Item 407(a) of Regulation S–K, will continue to be required to make the disclosure in its annual report. Nasdaq believes that the disclosure requirements in current Nasdaq Listing Rule 5615(c)(2) and Instruction 1 to Item 407(a) of Regulation S–K are substantially similar.[12]

Nasdaq believes that the proposed changes will avoid duplication and confusion, given that the current Nasdaq disclosure requirements are duplicative of the disclosure required by Item 407(a), and will facilitate compliance for listed companies while continuing to provide transparency to investors. As a result of the changes, Nasdaq rules will be harmonized with the applicable disclosure requirements of Item 407(a) of Regulation S–K without substantively lessening any of Nasdaq's regulatory requirements for listed companies.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[13] in general and with Section 6(b)(5) of the Act,[14] in particular. The proposed rule change would remove disclosure requirements in Nasdaq's rules that are similar to Commission disclosure requirements and provide cross references to Commission requirements. Nasdaq believes the proposed amendments are consistent with the protection of investors and the public interest, as they simply harmonize Nasdaq's disclosure requirements with those of the Commission and, therefore, do not substantively lessen Nasdaq's regulatory requirements for listed companies. As such, the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule does not (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission,[15] the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6) thereunder.[17]

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.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2011–082 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–NASDAQ–2011–082. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room 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 Nasdaq. 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–NASDAQ–2011–082 and should be submitted on or before July 18, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011–15964 Filed 6–24–11; 8:45 am]

**BILLING CODE 8011–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #12580 and #12581]**

### Mississippi Disaster Number MS–00048

**AGENCY:** U.S. Small Business Administration.

and explain the basis for concluding that such exemption is applicable).

[12] *Id.*

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(5).

[15] The Exchange has satisfied this requirement.

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 200.30–3(a)(12).

**ACTION:** ACTION: Amendment 1.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Mississippi (FEMA–1983–DR), dated 05/11/2011.

*Incident:* Flooding.

*Incident Period:* 05/03/2011 through 06/17/2011.

**EFFECTIVE DATE:** 06/17/2011.

*Physical Loan Application Deadline Date:* 07/11/2011.

*EIDL Loan Application Deadline Date:* 02/13/2012.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for the State of Mississippi, dated 05/11/2011 is hereby amended to establish the incident period for this disaster as beginning 05/03/2011 and continuing through 06/17/2011 .

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2011–16044 Filed 6–24–11; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #12645 and #12646]**

### Montana Disaster #MT–00063

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Montana (FEMA–1996–DR), dated 06/17/2011.

*Incident:* Severe Storms and Flooding.

*Incident Period:* 04/03/2011 and continuing.

*Effective Date:* 06/17/2011.

*Physical Loan Application Deadline Date:* 08/16/2011.

*Economic Injury (EIDL) Loan Application Deadline Date:* 03/19/2012.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 06/17/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Big Horn, Blaine, Broadwater, Carbon, Carter, Cascade, Chouteau, Custer, Dawson, Fallon, Fergus, Garfield, Golden Valley, Hill, Judith Basin, McCone, Meagher, Musselshell, Petroleum, Phillips, Powder River, Prairie, Roosevelt, Rosebud, Stillwater, Sweet Grass, Treasure, Valley, Wheatland, Wibaux, Yellowstone, and the Crow, Fort Belknap, Northern Cheyenne, and Rocky Boy's Reservations.

The Interest Rates are:

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Non-Profit Organizations with Credit Available Elsewhere ..... | 3.250 |
| Non-Profit Organizations without Credit Available Elsewhere ..... | 3.000 |
| *For Economic Injury:* | |
| Non-Profit Organizations without Credit Available Elsewhere ..... | 3.000 |

The number assigned to this disaster for physical damage is 12645B and for economic injury is 12646B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2011–16053 Filed 6–24–11; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration # 12617 and # 12618]**

### Illinois Disaster Number IL–00030

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Illinois (FEMA–1991–DR), dated 06/07/2011.

*Incident:* Severe Storms and Flooding.

*Incident Period:* 04/19/2011 through 06/14/2011.

*Effective Date:* 06/14/2011.

*Physical Loan Application Deadline Date:* 08/08/2011.

*EIDL Loan Application Deadline Date:* 03/07/2012.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for the State of Illinois, dated 06/07/2011 is hereby amended to establish the incident period for this disaster as beginning 04/19/2011 and continuing through 06/14/2011.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2011–16055 Filed 6–24–11; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #12599 and #12600]**

### Kentucky Disaster Number KY–00040

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 4.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA–1976–DR), dated 05/19/2011.

*Incident:* Severe Storms, Tornadoes, and Flooding.

*Incident Period:* 04/12/2011 through 05/20/2011.

**EFFECTIVE DATE:** 06/17/2011.

*Physical Loan Application Deadline Date:* 07/18/2011.

*EIDL Loan Application Deadline Date:* 02/21/2012.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance,

U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for the Commonwealth of Kentucky, dated 05/19/2011 is hereby amended to re-establish the incident period for this disaster as beginning 04/12/2011 and continuing through 05/20/2011.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2011–16049 Filed 6–24–11; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF STATE

**[Public Notice 7510]**

### Culturally Significant Object Imported for Exhibition; Determinations: ''Ostalgia''

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the object to be included in the exhibition ''Ostalgia'', imported from abroad for temporary exhibition within the United States, is of cultural significance. The object, ''Three Capacity Men,'' is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at The New Museum, New York, New York, from on or about July 6, 2011, until on or about October 9, 2011, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a description of the exhibit object, contact Kevin M. Gleeson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone:* (202) 632–6473). The mailing address is U.S. Department of State, SA–5, Suite 5H03, 2200 C Street, NW., Washington, DC 20522–0505.

Dated: *June 16, 2011.*

**Ann Stock,**

*Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2011–16059 Filed 6–24–11; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Notice of Final Federal Agency Actions on Proposed Highway in California

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Limitation on Claims for Judicial Review of Actions by FHWA.

**SUMMARY:** This notice announces actions taken by the FHWA that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to a proposed highway project, Colton Crossing Rail-to-Rail Grade Separation Project, City of Colton, in the County of San Bernardino, State of California. Those actions grant licenses, permits, and approvals for the project.

**DATES:** By this notice, FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before December 27, 2011. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

**FOR FURTHER INFORMATION CONTACT:** Jake Waclaw, Senior Transportation Engineer, (202) 409–2441, or David Tedrick, Local Agency Programs Team Leader, South, (916) 498–5024, 650 Capitol Mall, Ste.4–100, Sacramento, California 95814–4708; or *jacob.waclaw@dot.gov; david.tedrick@dot.gov.*

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the FHWA has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by approving the following highway project in the State of California: The project proposes to grade-separate two existing mainline tracks, which run perpendicular to one another. The project involves two Burlington Northern Santa Fe Railway (BNSF) San Bernardino Subdivision mainline tracks running in a north-south direction crossing at-grade two Union Pacific Railroad (UPRR) Alhambra/Yuma Subdivision mainline tracks running in an east-west direction. The crossing of these sets of tracks is known as the ''Colton Crossing''. The project would raise the east-west UPRR mainline by placing it on an elevated structure to span over the BNSF mainline tracks from Rancho Avenue on the west to Mount Vernon Avenue on the east. The grade-separated structure would contain two UPRR mainline tracks and a maintenance road. The actions by FHWA, and the laws under which such actions were taken, are described in the Final Environmental Assessment (FEA) and Finding of No Significant Impact (FONSI) for the project, both approved on May 26, 2011. The FEA can be viewed and downloaded from the project Web site at: *http://www.coltoncrossing.com/signed_documents.htm.*

This notice applies to all agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. The National Environmental Policy Act
2. Clean Water Act
3. Federal Endangered Species Act
4. Clean Air Act
5. The National Historic Preservation Act

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**Authority:** 23 U.S.C. 139(*l*)(1)

Issued on: June 21, 2011.

**Gary Sweeten,**

*Acting Director, Local Agency Programs, Federal Highway Administration, Sacramento, California.*

[FR Doc. 2011–15977 Filed 6–24–11; 8:45 am]

**BILLING CODE 4910–RY–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

### Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**TIME AND DATE:** July 14, 2011, 12 to 3 p.m., Eastern Daylight Time.

**PLACE:** This meeting will take place telephonically. Any interested person may call 877–820–783, passcode, 908048# to participate in this meeting.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** The Unified Carrier Registration Plan Board of

Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

**FOR FURTHER INFORMATION CONTACT:** Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827–4565.

Issued on: June 21, 2011.

**Larry W. Minor,**

*Associate Administrator for Policy and Program Development.*

[FR Doc. 2011–16147 Filed 6–23–11; 4:15 pm]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

### FY 2011 Discretionary Livability Funding Opportunity; Section 5309 Bus and Bus Facilities Livability Initiative Program Grants and Section 5339 Alternatives Analysis Program

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of Availability of FTA Livability Funding Opportunity Program Funds: Solicitation of Project Proposals.

**SUMMARY:** The Federal Transit Administration (FTA) announces the availability of discretionary funds in Fiscal Year (FY) 2011 for two programs in support of the Department of Transportation's (DOT) Livability Initiative: the Bus and Bus Facilities grant funds (49 U.S.C. 5309(b)) (''Bus Livability Program'') and the Alternatives Analysis Program (49 U.S.C. 5339), both authorized by the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A legacy for Users (SAFETEA–LU), Pub. L. 109–59, August 10, 2005. The Bus Livability Program will be funded using at least $150 million in available FY 2011 Discretionary Bus and Bus Facilities Program funds. The Alternatives Analysis program will be funded using up to $25 million in FY 2010 and FY2011 discretionary funds. These discretionary program funds will be distributed in accordance with the mission of each program and in support of the U.S. DOT's Livability Initiative and the Partnership for Sustainable Communities between the U.S. DOT, the U.S. Department of Housing and Urban Development (HUD), and the U.S. Environmental Protection Agency (EPA). Please note that this notice is one of several discretionary funding opportunities that FTA intends to issue by early Fall 2011. This notice includes priorities established by FTA for these discretionary funds, the criteria FTA will use to identify meritorious projects for funding, and describes how to apply for funding under each discretionary program. This announcement is available on the FTA Web site at: *http://www.fta.dot.gov.* FTA will announce final selections for each program on the Web site and in the **Federal Register**. Additionally, a synopsis of each funding opportunity will be posted in the FIND module of the government-wide electronic grants Web site at *http://www.grants.gov.*

**DATES:** Complete proposals for both the Bus Livability Program and the Alternatives Analysis Program must be submitted by July 29, 2011. All proposals must be submitted electronically through the GRANTS.GOV APPLY function. Agencies should initiate the process of registering on the GRANTS.GOV site immediately to ensure completion of registration before the submission deadline. Registration is a multi-step process, which may take several weeks to complete before an application can be submitted.

**FOR FURTHER INFORMATION CONTACT:**

**Bus Livability Program**

Contact the appropriate FTA Regional Administrator (Appendix A) for proposal-specific information and issues. For general program information, contact Bryce McNitt, Office of Budget and Policy, (202) 366–2618, e-mail *bryce.mcnitt@dot.gov.* A TDD is available at 1–800–877–8339 (TDD/FIRS).

**Alternatives Analysis Program**

For general program information, contact Kenneth Cervenka, Office of Planning and Environment, (202) 493–0512, e-mail *Kenneth.Cervenka@dot.gov.* A TDD is available at 1–800–877–8339 (TDD/FIRS).

**SUPPLEMENTARY INFORMATION:**

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## I. DOT Livability Initiative Overview

*A. Authority:*

Bus Livability

The program is authorized under 49 U.S.C. 5309(b) as amended by Section 3011 of SAFETEA–LU.

''The Secretary may make grants under this section to assist State and local governmental authorities in financing— * * *

(3) capital projects to replace, rehabilitate, and purchase buses and related equipment and to construct bus-related facilities, including programs of bus and bus-related projects for assistance to subrecipients that are public agencies, private companies engaged in public transportation, or private non-profit organizations.''

Alternatives Analysis

The program is authorized under the Alternatives Analysis Program (49 U.S.C. 5339) of SAFETEA–LU, Public Law 109–59, August 10, 2005.

''* * * The Secretary may award grants to States, authorities of the States, metropolitan planning organizations, and local governmental authorities to develop alternatives analyses as defined by section 5309(a)(1). 5309(a)(1) ''* * * a study conducted as part of the transportation planning process required under sections 5303 and 5304 * * *''

*B. Policy Priority*

FTA has long fostered livable communities and sustainable development through its various transit programs and activities. Public transportation supports the development of communities, providing effective and reliable transportation options that increase access to jobs, recreation, health and social services, entertainment, educational opportunities, and other activities of daily life, while also improving mobility within and among these communities. Through various initiatives and legislative changes over the last fifteen years, FTA has allowed and encouraged projects that help integrate transit into a community through neighborhood improvements and enhancements to transportation facilities or services; make improvements to areas adjacent to public transit facilities that may facilitate mobility needs of transit users; or support other infrastructure

investments that enhance the use of transit and other transportation options for the community.

On June 16, 2009, U.S. Department of Transportation (DOT) Secretary Ray LaHood, U.S. Department of Housing and Urban Development (HUD) Secretary Shaun Donovan, and U.S. Environmental Protection Agency (EPA) Administrator Lisa Jackson announced a new partnership to help American families in all communities—rural, suburban and urban—gain better access to affordable housing, more transportation options, and lower transportation costs. DOT, HUD, and EPA created this high-level interagency partnership to better coordinate federal transportation, environmental protection, and housing investments.

At least $150 million in unallocated Section 5309 Bus and Bus Facilities Program funds are available under this notice. In addition, FTA will use up to $25 million in Alternatives Analysis Program funds to further support the Livability Initiative. By using these available funds, FTA and DOT can support tangible livability improvements within existing programs while demonstrating the feasibility and value of such improvements. These demonstrations can provide a sound basis for advancing greater investments in the future. In addition, the program builds on the momentum generated by the investments made through the FY 2010 Partnership for Sustainable Communities, including FTA's FY 2010 Bus Livability and Alternatives Analysis grant programs, and funding provided through the American Recovery and Reinvestment Act of 2009.

This notice represents one of the several discretionary grant funding opportunities to be announced by FTA this fiscal year. This notice identifies opportunities for funding under the Department of Transportation's livable communities strategic goal. It is expected that FTA will announce other discretionary funding opportunities no later than early Fall 2011 to support efforts related to transit state of good repair, clean fuels and greenhouse gas/energy reduction, transit in parks and public lands, tribal transit, and over-the-road bus efforts. (See Appendix B).

*C. Principles*

Both the Bus Livability and the Alternatives Analysis programs will invest in projects that fulfill the following six livability principles that serve as the foundation for the DOT–HUD–EPA Partnership for Sustainable Communities:

1. *Provide more transportation choices:* Develop safe, reliable, and economical transportation choices to decrease household transportation costs, reduce our nation's dependence on foreign oil, improve air quality, reduce greenhouse gas emissions and promote public health.

2. *Promote equitable, affordable housing:* Expand location- and energy-efficient housing choices for people of all ages, incomes, races and ethnicities to increase mobility and lower the combined cost of housing and transportation.

3. *Enhance economic competitiveness:* Improve economic competitiveness through reliable and timely access to employment centers, educational opportunities, services and other basic needs by workers as well as expanded business access to markets.

4. *Support existing communities:* Target federal funding toward existing communities—through such strategies as transit-oriented, mixed-use development and land recycling—to increase community revitalization, improve the efficiency of public works investments, and safeguard rural landscapes.

5. *Coordinate policies and leverage investment:* Align policies and funding to remove barriers to collaboration, leverage funding and increase the accountability and effectiveness of all levels of government to plan for future growth, including making smart energy choices such as locally generated renewable energy.

6. *Value communities and neighborhoods:* Enhance the unique characteristics of all communities by investing in healthy, safe and walkable neighborhoods—rural, urban or suburban.

FTA will also consider geographic distribution in project selection.

## II. Livability Program Information

*Bus Livability Program*

1. Description

The Bus Livability Program will be funded using at least $150 million in available discretionary Bus and Bus Facilities Program funds, authorized by 49 U.S.C. 5309(b) of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Pub. L. 109–59, August 10, 2005. FTA may use additional Bus and Bus Facilities funding that becomes available to further support this initiative.

The Bus Livability Program makes funds available to public transportation providers to finance capital projects to replace, rehabilitate, and purchase buses and related equipment and to construct bus-related facilities, including programs of bus and bus-related projects for assistance to subrecipients that are public agencies, private companies engaged in public transportation, or private non-profit organizations. This notice includes priorities established by FTA for these discretionary funds, the criteria FTA will use to identify meritorious projects for funding, and describes how to apply.

Improving mobility and shaping America's future by ensuring that the transportation system is accessible, integrated, and efficient, while offering flexibility of choices is a key strategic goal of the DOT. FTA is committed to creating livable communities that improve the quality of life for all Americans. Public transportation provides transportation options that connect communities and fosters sustainability and the development of urban and rural land use. Through Bus Livability Program grants, FTA will invest in projects that fulfill the six livability principles that serve as the foundation for the DOT–HUD–EPA Partnership for Sustainable Communities listed in section I, Part C of this NOFA (above).

FTA will evaluate proposals and assess a project's ability to advance local economic development goals, improve mobility for all citizens, create partnerships that result in the integration of transportation and land-use decision making and result in environmental benefits. Additionally, many rural areas are fighting to preserve their way of life by limiting urban sprawl and protecting valuable agricultural lands. Often these communities have seen jobs and businesses leave for larger communities and need assistance preserving and reinvigorating the traditional rural town center where locals can visit the grocery store, doctor, hardware store, family restaurant and town hall in easy walking distance of one another. FTA is committed to funding a mix of projects that include projects that demonstrate livability principles in rural areas including projects that provide access to jobs, medical services and other necessities in rural areas and that support the independence of elderly citizens and individuals with disabilities.

2. Award Information

Federal transit funds are available to State or Local governmental authorities as recipients and other public transportation providers as subrecipients at up to 80 percent of the project cost requires a 20% local match. There is no floor or ceiling for any single grant under this program;

however, FTA intends to fund as many meritorious projects as possible.

Consistent with 49 U.S.C. 5309(m)(8), the Secretary shall consider the age and condition of buses, bus fleets, related equipment, and bus-related facilities of applicants in its award of Bus Livability grants. And, in addition, FTA will consider geographical diversity in making final funding decisions.

3. Eligibility Information

A. Eligible Applicants

Eligible applicants under this program are direct recipients of funds provided under the Section 5307 Urbanized Area Formula program (''Direct Recipients''), as well as States and Indian tribes. Proposals for funding eligible projects in rural (nonurbanized) areas must be submitted as part of a consolidated State application with the exception of nonurbanized projects to Indian tribes. Tribes, States, and Direct Recipients may also submit consolidated proposals for projects in urbanized areas.

Proposals may include projects to be implemented by the applicant as a ''Recipient'' or as one or more partners (''subrecipients''). Eligible subrecipients include public agencies, private non-profit organizations, and private providers engaged in public transportation.

B. Eligible Expenses

SAFETEA–LU grants authority to the Secretary to make grants to assist State and local governmental authorities in financing capital projects to replace, rehabilitate, and purchase buses and related equipment and to construct bus-related facilities, including programs of bus and bus-related projects for assistance to subrecipients that are public agencies, private companies engaged in public transportation, or private non-profit organizations.

Projects eligible for funding under the Bus Livability program are capital projects such as:

Purchase and rehabilitation of buses and vans, bus-related equipment (including ITS, fare equipment, communication devices), construction and rehabilitation of bus-related facilities (including administrative, maintenance, transfer, and intermodal facilities, including facilities consistent with FTA's Joint Development and Bike/Pedestrian policies which are available at *http://www.fta.dot.gov/livability*). As part of the program, FTA will prioritize the replacement and rehabilitation of intermodal facilities that support the connection of bus service with multiple modes of transportation such as: Rail, ferry, intercity bus and private transportation providers. In order to be eligible for funding, intermodal facilities must have adjacent connectivity with bus service.

Funds made available under this program may not be used to fund operating expenses, preventive maintenance, or any other expanded capital eligibility items (for example, security drills, debt service reserve, mobility management). Funds also may not be used to reimburse projects that have incurred previous expenses absent evidence that FTA issued a Letter of No Prejudice (LONP) for the project before the costs were incurred. There is no blanket pre-award authority for projects to be funded under this announcement before their identification in the **Federal Register** of selected projects.

C. Cost Sharing

Costs will be shared at the following ratio: 80 percent FTA/20 percent local contribution, unless the grantee requests a lower Federal share. FTA will not approve deferred local share under this program.

The Federal share may exceed 80 percent for certain projects related to the Americans with Disabilities Act (ADA), the Clean Air Act (CAA) and bicycle facilities (sec. 5319) as follows: ADA—The Federal share is 90 percent for the cost of vehicle-related equipment or facilities attributable to compliance with the ADA of 1990 (42 U.S.C. 12101 *et seq.*); CAA—The Federal share is 90 percent for the cost of vehicle-related equipment or facilities (including clean fuel or alternative-fuel vehicle-related equipment or facilities) attributable to compliance with the CAA (42 U.S.C. 7401 *et seq.*). For administrative simplicity, FTA allows recipients to compute the Federal share at 83 percent for eligible ADA and CAA vehicle purchases.

The FY 2011 Appropriations Act allows a 90 percent Federal share for the total cost of a biodiesel bus. The Act also allows a 90 percent Federal share for the net capital cost of factory installed or retrofitted hybrid electric propulsion systems and any equipment related to such a system. For administrative simplicity, FTA allows recipients to compute the Federal share at 83 percent for eligible vehicle purchases.

4. Application and Submission Information

A. Proposal Submission Process

Project proposal must be submitted electronically through *http://www.grants.gov.* In addition to the mandatory SF 424 Form that must be downloaded from GRANTS.GOV, FTA requires applicants to complete the Supplemental FTA Form to enter descriptive and data elements of individual program proposals for these discretionary programs. These supplemental forms provide guidance and a consistent format for applicants to respond to the criteria outlined in this Notice of Funding Availability (NOFA). The Supplemental Form can be found on the program Web site at *http://www.fta.dot.gov/bus.* Applicants *must* use this Supplemental Form and attach it to their submission in GRANTS.GOV to successfully complete the application process. Within 24–48 hours after submitting an electronic application, the applicant should receive an e-mail validation message from GRANTS.GOV. The validation will state whether GRANTS.GOV found any issues with the submitted application. As an additional notification, FTA's system will notify the applicant if there are any problems with the submitted Supplemental FTA Form. If making a resubmission for any reason, include all original attachments regardless of which attachments were updated. Complete instructions on the application process can be found at *http://www.fta.dot.gov/bus* and will also be available in the ''FIND'' module of GRANTS.GOV. *Important:* FTA urges applicants to submit their applications at least 72 hours prior to the due date to allow time to receive the validation message and to correct any problems that may have caused the application to be rejected.

An applicant may propose a project that would take more than one year to complete, which includes expending a single year of Bus Livability program grant funds over multiple years. The project would, however, need to be ready to begin upon receiving a grant and need to be completed in a reasonable period of time, as evaluated on a case-by-case basis depending on the project type. In sum, the period of performance of the award is separate from the year of funds of the award.

B. Application Content

1. Applicant Information

This provides basic sponsor identifying information, including: (a) Applicant name, and FTA recipient ID number, (b) contact information for notification of project selection (including contact name, title, address, e-mail, fax and phone number, (c) description of services provided by the agency including areas served, (d) existing fleet and employee information, and (e) a description of the agency's technical, legal, and financial capacity

to implement the proposed project. For applicants applying through *http://www.grants.gov,* some of this information is included in Standard Form 424.

2. Project Information

Every proposal must:

a. Describe concisely, but completely, the project scope to be funded. As FTA may elect to only partially fund some project proposals (see below), the scope should be ''scalable,'' with specific components of independent utility clearly identified.

b. Address each of the evaluation criteria separately, demonstrating how the project responds to each criterion.

c. Provide a line-item budget for the total project, with enough detail to describe the various key components of the project. As FTA may elect to only partially fund some project proposals, the budget should provide for the minimum amount necessary to fund specific project components of independent utility.

d. Provide the Federal amount requested.

e. Document the matching funds, including amount and source of the match, demonstrating strong local or private sector financial participation in the project.

f. Provide support documentation, including audited financial statements, bond-ratings, and documents supporting the commitment of non-federal funding to the project, or a timeframe upon which those commitments would be made.

g. Provide a project time-line, including significant milestones such as the date anticipated to issue a request for proposals for vehicles, or contract for purchase of vehicle(s), and actual or expected delivery date of vehicles, or notice of request for proposal and notice to proceed for capital construction/rehabilitation projects.

C. Submission Dates and Times

Complete proposals for the Bus Livability program must be submitted electronically through the GRANTS.GOV Web site by July 29, 2011. Applicants are encouraged to begin the process of registration on the GRANTS.GOV site well in advance of the submission deadline. Registration is a multi-step process, which may take several weeks to complete before an application can be submitted. In addition to the mandatory SF–424 Form that will be downloaded from GRANTS.GOV, FTA requires applicants to complete the Supplemental FTA Form to enter descriptive and data elements of individual program proposals for the Bus Livability program. This supplemental form provides guidance and a consistent format for applicants to respond to the criteria outlined in this NOFA and can be located on the FTA Web site at *http://www.fta.dot.gov/bus.* Applicants must use this Supplemental Form and attach it to their submission in GRANTS.GOV to successfully complete the application process. Within 24–48 hours after submitting an electronic application, the applicant should receive an e-mail validation message from GRANTS.GOV. The validation will state whether GRANTS.GOV found any issues with the submitted application. As an additional notification, FTA's system will notify the applicant if there are any problems with the submitted Supplemental FTA Form. If making a resubmission for any reason, include all original attachments regardless of which attachments were updated. Complete instructions on the application process can be found at *http://www.fta.dot.gov/bus.* Important: FTA urges applicants to submit their applications at least 72 hours prior to the due date to allow time to receive the validation message and to correct any problems that may have caused a rejection notification.

D. Funding Restrictions

Only proposals from eligible recipients for eligible activities will be considered for funding. Due to funding limitations, applicants that are selected for funding may receive less than the amount originally requested.

E. Other Submission Requirements

Applicants should submit three copies of any supplemental information that cannot be submitted electronically to the appropriate regional office. Supplemental information submitted in hardcopy must be postmarked by July 29, 2011.

5. Application Review, Selection, and Notification

A. Project Evaluation Criteria

Projects will be evaluated according to the following criteria. Each applicant is encouraged to demonstrate the responsiveness of a project to any and all of the selection criteria with the most relevant information that the applicant can provide, regardless of whether such information has been specifically requested, or identified, in this notice. FTA will assess the extent to which a project addresses the criteria below and produces a livability or sustainability outcome.

a. Demonstrated Need for Resources: FTA will evaluate each project to determine its need for resources. This determination will be made by examining the proposal to determine if:

i. The project represents a one-time or periodic need that cannot reasonably be funded from FTA program formula allocations or State and/or local revenues.

ii. The project or applicant did not receive sufficient Federal funding in previous years.

iii. The project will have a significant impact on service delivery.

b. Planning and Prioritization at Local/Regional Level: FTA will examine each Bus Livability project proposal for consistency with the areas planning documents and local priorities. This examination will involve assessing whether:

a. The project is consistent with the transit priorities identified in the long-range plan and/or contingency/illustrative projects.

b. The MPO endorses the project, if in a UZA, and the State, if for a rural area.

c. Local support is demonstrated by availability of local match for this and/or related projects and letters of support.

d. Capital projects are consistent with service needs of the area.

i. Example: Vehicle expansion proposal shows evidence of the need for additional capacity.

e. If the project is multimodal in nature, the proposal demonstrates coordination with and support of other transportation modes and partners.

c. Linkage to Livability Principles: Livability investments are projects that deliver not only transportation benefits, but also are designed and planned in such a way that they have a positive impact on qualitative measures of community life. This element delivers benefits that are inherently difficult to measure. However, it is implicit to livability that its benefits are shared and therefore magnified by the number of potential users in the affected community. Therefore, descriptions of how projects enhance livability should include a description of the affected community and the scale of the project's impact. To determine whether a project improves the quality of the living and working environment of a community, FTA will qualitatively assess whether the project:

i. Will significantly enhance user mobility through the creation of more convenient transportation options for travelers;

ii. The degree to which the proposed project contributes significantly to broader traveler mobility through intermodal connections, or improved connections between residential and commercial areas.

iii. Will improve existing transportation choices by enhancing points of modal connectivity or, in urban areas, by reducing congestion on existing transit systems or roadways.

iv. Will improve accessibility and transport services for economically disadvantaged populations, non-drivers, senior citizens, and persons with disabilities.

v. Is the result of a planning process which coordinated transportation and land-use planning decisions and encouraged community participation in the process.

**Note:** Special consideration may be given to those applicants who serve a community that holds FY 2010 HUD Preferred Sustainability Status. A list of these communities can be found via *http://www.hud.gov/sustainability.*

d. Linkage to Environmental Sustainability: In order to determine whether a project promotes a more environmentally sustainable transportation system, i.e., reducing reliance on automobile travel, improving the pedestrian and walk environment of a community, use of environmental design techniques in the planning, construction, and operation of the project, FTA will assess the project's ability to:

i. Improve energy efficiency or reduce energy consumption/green house gas emissions; applicants are encouraged to provide information regarding the expected use of clean or alternative sources of energy; projects that demonstrate a projected decrease in the movement of people by less energy-efficient vehicles or systems will be given priority under this factor; and

ii. Maintain, protect or enhance the environment, as evidenced by environmentally friendly policies and practices utilized in the project design, construction, and operation that exceed the requirements of the National Environmental Policy Act including items such as whether the project uses a Leadership in Energy and Environmental Design (LEED)-certified design, the vehicles or facilities are rated with the energy-star, the project re-uses a brownfield, construction equipment is retrofitted with catalytic converters, the project utilizes recycled materials, the project includes elements to conserve energy, such as passive solar heating, solar panels, wind turbines, reflective roofing or paving materials, or other advanced environmental design elements such as a green roof, etc.

e. Leveraging of public and private investments.

i. Jurisdictional and Stakeholder Collaboration: To measure a project's alignment with this criterion, FTA will assess the project's involvement of non-Federal entities and the use of non-Federal funds, including the scope of involvement and share of total funding. FTA will give priority to projects that receive financial commitments from, or otherwise involve, State and local governments, other public entities, or private or nonprofit entities, including projects that engage parties that are not traditionally involved in transportation projects, such as nonprofit community groups or the private owners of real property abutting the project. FTA will assess the amount of co-investment from State, local or other non-profit sources.

ii. Disciplinary Integration: To demonstrate the value of partnerships across government agencies that serve the various public service missions and to promote collaboration of the objectives outlined in this notice, FTA will give priority to projects that are supported, financially or otherwise, by non-transportation public agencies that are pursuing similar objectives. Special consideration will be given to those projects that leverage or provide services that support projects funded under the DOT–HUD–EPA Partnership for Sustainable Communities. For example, FTA will give priority to transportation projects that are supported by relevant public housing or human service agencies, or transportation projects that encourage energy efficiency or improve the environment and are supported by relevant public agencies with energy or environmental missions.

f. The project is ready to implement.

i. Any required environmental work has been initiated for construction projects requiring an Environmental Assessment (EA), Environmental Impact Statement (EIS), or documented Categorical Exclusion (CE).

ii. Implementation plans are ready, including initial design of facilities projects.

iii. TIP/STIP can be amended (evidenced by MPO/State endorsement).

iv. Local share of funding is in place.

v. Project can be obligated and implemented quickly if selected.

vi. The applicant demonstrates the ability to carry out the proposed project successfully.

**Note:** Applicants must have basic technical, legal, and financial capacity as a precondition of grant award. Since proposals are limited to existing FTA grantees, applicants are assumed to have that basic capacity. This criterion refers to implementation of the particular project proposed.

a. For larger capital projects, the applicant has the technical capacity to administer the project.

b. For fleet replacement and/or expansion, the acquisition is consistent with the bus fleet management plan.

c. For fleet expansion, the applicant has the operating funds to support the expanded service.

d. There are no outstanding legal, technical or financial issues with the grantee that would bring the feasibility of successful project completion into question.

e. Source of 20% local match is identified and is available for prompt project implementation if selected (no deferred local share will be allowed)

f. The grantee is in fundable status for grant-making purposes.

B. Review and Selection Process

Proposals will first be screened and ranked by appropriate FTA staff, in consultation with representatives from HUD and EPA. The FTA Administrator will determine the final selection and amount of funding for each project. Selected projects will be announced in late 2011. FTA will publish the list of all selected projects and funding levels in the **Federal Register**. Regional offices will also notify successful applicants of their success and the amount of funding awarded to the project.

6. Award Administration

A. Award Notices

FTA will announce project selections in a **Federal Register** notice and will post the **Federal Register** Notices on its Web site. FTA regional offices will contact successful applicants. FTA will award grants for the selected projects to the applicant through the FTA electronic grants management and award system, TEAM, after receipt of a complete application in TEAM. These grants will be administered and managed by the FTA regional offices in accordance with the Federal requirements of the Section 5309 bus program. At the time the project selections are announced, FTA will extend pre-award authority for the selected projects. There is no pre-award authority for these projects prior to announcement.

B. Administrative and National Policy Requirements

1. Grant Requirements

If selected, applicants will apply for a grant through TEAM and adhere to the customary FTA grant requirements of the Section 5309 Bus and Bus Facilities program, including those of FTA C 9300.1A Circular and C 5010.1C and S. 5333(b) labor protections. Technical assistance regarding these requirements is available from each FTA regional office.

2. Planning

Applicants are encouraged to notify the appropriate State Departments of Transportation and MPO in areas likely to be served by the project funds made available under this program. Incorporation of funded projects in the long-range plans and transportation improvement programs of States and metropolitan areas is required of all funded projects.

3. Standard Assurances

The Applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal administrative requirements in carrying out any project supported by the FTA grant. The Applicant acknowledges that it is under a continuing obligation to comply with the terms and conditions of the grant agreement issued for its project with FTA. The Applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and affect the implementation of the project. The Applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise. The Applicant must submit the Certifications and Assurances before receiving a grant if it does not have current certifications on file.

C. Reporting

Post-award reporting requirements include timely submission of Financial Status Reports and Milestone reports in TEAM on a quarterly basis for all projects. Documentation is required for payment. In addition, grants that include innovative technologies may be required to report on the performance of these technologies.

7. Agency Contacts

Contact the appropriate FTA Regional Administrator (see Appendix A) for proposal-specific information and issues. For general program information, contact Bryce McNitt, (202) 366–2618, e-mail *bryce.mcnitt@dot.gov.* A TDD is available at 1–800–877–8339 (TDD/FIRS).

*B. Alternatives Analysis Program*

1. Description

The purpose of the Alternatives Analysis Program (49 U.S.C. 5339) is to assist potential sponsors of New Starts and Small Starts projects in the evaluation of all reasonable modal and multimodal alternatives and general alignment options to address transportation needs in a defined travel corridor. FTA has the authority to implement this program under SAFETEA–LU amendments to 49 U.S.C. 5339. The authorizing legislation allows for the Secretary of Transportation to make awards under this program at his discretion. FTA may allocate up to $25.0 million from FY 2010 and 2011 funds. These funds will be allocated for alternatives analysis activities selected from applications submitted in response to this notice.

As defined in 49 U.S.C. 5309(1)(a), an alternatives analysis is a study conducted as part of the transportation planning process which includes: (1) An assessment of a wide range of public transportation alternatives designed to address a transportation problem in a corridor or subarea; (2) [the development of] sufficient information to enable the Secretary to make the findings of project justification and local financial commitment required under Section 5309; (3) the selection of a locally preferred alternative; and (4) the adoption of the locally preferred alternative as part of the long-range transportation plan required under section 5303. Further information on conducting an alternatives analysis, including descriptions of the documents produced, can be found on FTA's Web site at *http://www.fta.dot.gov/planning/newstarts/planning_environment_2396.html.*

FTA will award discretionary funding available under Section 5339 to support a limited number of alternatives analyses, or technical work conducted as part of an on-going alternatives analyses, to develop information for local decision-makers and for the Secretary regarding potential New Starts and Small Starts projects. These funds will be awarded for alternatives analysis activities selected from proposals submitted in response to this notice. These funds are not available for systems planning work that leads to the selection of a particular corridor for alternatives analysis, or for work performed after an application is made to enter Preliminary Engineering (New Starts) or Project Development (Small Starts).

2. Award Information

Studies or technical tasks selected for funding will receive up to 80 percent of the study cost. Awards remain available for three fiscal years, including the fiscal year in which the award is made. FTA will not approve requests for deferred local share under this program.

To promote collaboration on the development of major transit capital improvements and to demonstrate the value of partnerships across government agencies that serve various public service missions, FTA will give priority to proposals that are supported, financially or otherwise, by non-transportation public agencies that are pursuing similar objectives and are aligning their community development activities to increase the efficiency of Federal investments.

3. Eligibility Information

A. Eligible Applicants

Section 5339 allows FTA to make grants and agreements, under criteria established by the Secretary, to States, authorities of the States, metropolitan planning organizations, and local governmental authorities to conduct alternatives analyses as defined by section 5309(a)(1).

B. Eligible Projects

Alternatives analyses must be documented in the Unified Planning Work Program (UPWP) of the metropolitan planning organization for the area. Applicants must commit to begin the alternatives analysis within 12 months of grant approval. FTA will award available discretionary funding to eligible applicants to conduct an alternatives analysis or to support additional technical tasks in an alternatives analysis that will improve and expand the information available to decision-makers considering major transit improvements. FTA will consider proposals for all areas of technical work that can better develop information about the costs and benefits of potential major transit improvements, including those that might seek New Starts or Small Starts funding. FTA will give priority to technical work that would advance the study of alternatives that foster the six livability principles that serve as the foundation for the DOT–HUD–EPA Partnership for Sustainable Communities.

4. Application and Submission Information

A. Proposal Submission Process

Complete proposals for the Alternatives Analysis Program must be submitted electronically through the GRANTS.GOV Web site by July 29, 2011. Applicants are encouraged to begin the process of registration on the GRANTS.GOV site well in advance of the submission deadline. Registration is a multi-step process, which may take several weeks to complete before an application can be submitted. In addition to the Mandatory SF 424 Form that will be downloaded from GRANTS.GOV, FTA requires applicants to complete the Supplemental FTA

Form to enter descriptive and data elements of individual program proposals for the Alternatives Analysis Program. This supplemental form provides guidance and a consistent format for applicants to respond to the criteria outlined in this NOFA and is described in detail on the FTA Web site at *http://www.fta.dot.gov/alternativesanalysis.* Applicants must use this Supplemental Form and attach it to their submission in GRANTS.GOV to successfully complete the application process. Within 24–48 hours after submitting an electronic application, the applicant should receive an e-mail validation message from GRANTS.GOV. The validation will state whether GRANTS.GOV found any issues with the submitted application. As an additional notification, FTA's system will notify the applicant if there are any problems with the submitted Supplemental FTA Form. If making a resubmission for any reason, include all original attachments regardless of which attachments were updated. Important: FTA urges applicants to submit their applications at least 72 hours prior to the due date to allow time to receive the validation message and to correct any problems that may have caused a rejection notification. Proposals will not be accepted after the relevant due date; delayed registration is not an acceptable reason for extensions.

B. Application Content

FTA will only evaluate applications that include the following components:

- A completed Standard Form 424 (SF 424), available through GRANTS.GOV;
- A completed Alternatives Analysis Applicant and Proposal Profile, available for download via *http://www.fta.dot.gov/alternativesanalysis;*
- A detailed work plan by major task that details the nature of and technical approaches to the proposed alternatives analysis; and
- A detailed budget that includes total cost, cost by major task, and indication of which items would be funded with Section 5339 funds and which items would be funded by other sources.

The Applicant and Proposal Profile, work plan and budget must be submitted via GRANTS.GOV as attachments to the SF 424. Applicants may also attach letters of support, corridor maps and other supporting materials, but should not submit further narrative. Applicants must adhere to the Applicant and Proposal Profile's character limits.

Instructions for completing certain fields in Section I of the Applicant and Proposal Profile are provided below:

- *Description of Existing Rail Transit Service:* If the proposed alternatives analysis would be for an extension of an existing rail transit line, provide a brief description of the service provided and markets along the existing line.
- *Brief Description of the Alternatives Analysis:* Provide a paragraph about the study stating its goals and providing a brief description of the work plan. This section should also list all the partners involved in the study.
- *Contact Information for Other Parties Involved:* If another organization will be responsible for completing any component of the work plan, provide a name and contact information for the primary contact with the partner organization.

C. Technical Assistance

If applicants experience unforeseen GRANTS.GOV technical issues beyond their control that prevent the submission of their application by the deadline, the applicant must contact FTA staff at *Kenneth.Cervenka@dot.gov* within 24 hours after the deadline and request approval to submit the application. At that time, FTA staff will require the applicant to e-mail the complete grant application, their DUNS number, and provide a GRANTS.GOV Help Desk tracking number(s). After FTA staff reviews all of the information submitted as well as contacts the GRANTS.GOV Help Desk to validate the technical issues reported, FTA staff will contact the applicant to either approve or deny its request to submit a late application. If the reported technical issues cannot be validated, the application will be rejected as untimely. To ensure a fair competition for limited discretionary funds, the following conditions are not valid reasons to permit late submissions: (1) Failure to complete the registration process before the deadline date; (2) failure to follow GRANTS.GOV instructions on how to register and apply as posted on its Web site; (3) failure to follow all of the instructions in the funding availability notice; and (4) technical issues experienced with the applicant's computer or information technology (IT) environment.

5. Application, Selection and Notification

A. Project Evaluation Criteria

Awards under this notice could range from $50,000 to up to $2 million in Section 5339 funding. Eligible applicants must be able to begin the alternatives analysis within 12 months of the study being selected for funding if it is not already underway; the proposed alternatives analysis must also be documented in the Unified Planning Work Program of the applicant's MPO. Proposals will be evaluated based on responses to the following criteria in Section II of the Applicant and Proposal Profile:

1. Demonstrated Need for Resources. Applicants must demonstrate need for these funds by identifying a substantial transportation problem in the study corridor and the degree to which the Alternatives Analysis technical work will develop information on the full range of costs and benefits of the major transit capital improvements being studied, including alternatives that may seek New Starts or Small Starts funding. To demonstrate need, applicants should provide the following information:

a. Description of Study Area, Transportation Problems, and Needs. Applicants should provide a description of the study corridor, a statement of the transportation problem for which alternative solutions are to be analyzed and a statement of the need for a public transportation improvement in the corridor. This information provides the context for performing the analysis and for identifying the measures against which alternatives strategies will be evaluated.

b. Description of Conceptual Alternatives. Applicants should provide a conceptual definition of a broad range of strategies for improving conditions in the corridor. For each alternative, the conceptual definition includes the preliminary identification of candidate general alignments and operating strategies, including general ideas of overall bus service levels, service standards, and guideway service options.

c. Preliminary Evaluation Criteria. Applicants should identify the preliminary evaluation criteria that specify, in part, the desired outcomes of an improvement, and provide the basis for comparing the performance of the various alternatives. This should include criteria which would inform decision-makers how an improvement would advance each of the six livability outcomes: provide more transportation choices; promote equitable, affordable housing; enhance economic competitiveness; support existing communities; coordinate policies and leverage investment; and value communities and neighborhoods. Applicants should also outline proposed measures for the livability outcomes.

2. Technical Capacity. Applicants must demonstrate the technical capacity to successfully undertake an analysis of alternatives. Technical capacity may include previous experience on the applicant's or partner organizations' part in completing an alternatives analysis or corridor study. The applicant should also discuss staffing levels, staff skill sets and other resources that will enable it to carry out the proposed work successfully.

3. Potential Impact on Decision-Making. Applicants must demonstrate the potential impact of the proposed tasks on decision-making. FTA will give priority to project sponsors that are coordinating the development of transit projects with relevant public housing agencies, or relevant public agencies with energy or environmental missions.

B. Review and Selection Process

FTA's Office of Planning and Environment staff is available to discuss and clarify expectations regarding these efforts before applicants submit proposals. Proposals will be reviewed and ranked based on the criteria in this notice by FTA headquarters staff in consultation with the appropriate FTA regional office (see Appendix A). Highly qualified proposals will be considered for inclusion in a national list that represents the highest and best use of the available funding. The FTA Administrator will determine the final selection and amount of funding for each study. Selected studies will be announced in Fall 2011. FTA will publish the list of all selected studies and funding levels in the **Federal Register**.

6. Award Administration

A. Award Notices

FTA will announce project selections in a **Federal Register** Notice and will post the **Federal Register** Notices on the web. FTA regional offices will contact successful applicants. FTA will award grants for the selected projects to the applicant through the FTA electronic grants management and award system, TEAM, after receipt of a complete application in TEAM. These grants will be administered and managed by the FTA regional offices in accordance with the federal requirements of the Section 5339 Alternatives Analysis Proram. At the time the project selections are announced, FTA will extend pre-award authority for the selected projects. There is no pre-award authority for these projects prior to announcement.

B. Administrative and National Policy Requirements

1. Grant Requirements

If selected, applicants will apply for a grant through TEAM and adhere to the customary FTA grant requirements of the Section 5339 Alternatives Analysis Program, including those of FTA C 9300.1A Circular and C 5010.1C and S. 5333(b) labor protections. Technical assistance regarding these requirements is available from each FTA regional office.

2. Planning

Applicants are encouraged to notify the appropriate State Departments of Transportation and MPO in areas likely to be served by the project funds made available under this program. Incorporation of funded projects in the long range plans and transportation improvement programs of States and metropolitan areas is required of all funded projects.

3. Standard Assurances

The Applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal administrative requirements in carrying out any project supported by the FTA grant. The Applicant acknowledges that it is under a continuing obligation to comply with the terms and conditions of the grant agreement issued for its project with FTA. The Applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and affect the implementation of the project. The Applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise. The Applicant must submit the Certifications and Assurances before receiving a grant if it does not have current certifications on file.

C. Reporting

Post-award reporting requirements include submission of Financial Status Reports and Milestone reports in TEAM on a quarterly basis for all projects. Documentation is required for payment. In addition, grants which include innovative technologies may be required to report on the performance of these technologies.

7. Agency Contacts

For general program information, contact Kenneth Cervenka, Office of Planning and Environment, (202) 493–0512, e-mail *Kenneth.Cervenka@dot.gov.* A TDD is available at 1–800–877–8339 (TDD/FIRS).

Issued in Washington, DC, this 21st day of June, 2011.

**Peter M. Rogoff,**

*Administrator.*

**Appendix A**

FTA Regional and Metropolitan Offices

| | |
|---|---|
| Mary Beth Mello<br>Regional Administrator<br>Region 1—Boston<br>Kendall Square<br>55 Broadway, Suite 920<br>Cambridge, MA 02142–1093<br>Tel. 617–494–2055<br>States served: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. | Robert C. Patrick<br>Regional Administrator<br>Region 6—Ft. Worth<br>819 Taylor Street, Room 8A36<br>Ft. Worth, TX 76102<br>Tel. 817–978–0550<br>States served: Arkansas, Louisiana, Oklahoma, New Mexico and Texas. |
| Brigid Hynes-Cherin<br>Regional Administrator<br>Region 2—New York<br>One Bowling Green, Room 429<br>New York, NY 10004–1415<br>Tel. 212–668–2170<br>States served: New Jersey, New York. | Mokhtee Ahmad<br>Regional Administrator<br>Region 7—Kansas City, MO<br>901 Locust Street, Room 404<br>Kansas City, MO 64106<br>Tel. 816–329–3920<br>States served: Iowa, Kansas, Missouri, and Nebraska. |

FTA REGIONAL AND METROPOLITAN OFFICES—Continued

| | |
|---|---|
| New York Metropolitan Office<br>Region 2–New York<br>One Bowling Green, Room 428<br>New York, NY 10004–1415<br>Tel. 212–668–2202 | |
| Letitia Thompson<br>Regional Administrator<br>Region 3—Philadelphia<br>1760 Market Street, Suite 500<br>Philadelphia, PA 19103–4124<br>Tel. 215–656–7100<br>States served: Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and District of Columbia.<br>Philadelphia Metropolitan Office<br>Region 3—Philadelphia<br>1760 Market Street, Suite 500<br>Philadelphia, PA 19103–4124<br>Tel. 215–656–7070<br>Washington, D.C. Metropolitan Office<br>1990 K Street, NW<br>Room 510<br>Washington, DC 20006<br>Tel. 202–219–3562 | Terry Rosapep<br>Regional Administrator<br>Region 8—Denver<br>12300 West Dakota Ave., Suite 310<br>Lakewood, CO 80228–2583<br>Tel. 720–963–3300<br>States served: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming. |
| Yvette Taylor<br>Regional Administrator<br>Region 4—Atlanta<br>230 Peachtree Street, NW Suite 800<br>Atlanta, GA 30303<br>Tel. 404–865–5600<br>States served: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and Virgin Islands. | Leslie T. Rogers<br>Regional Administrator<br>Region 9—San Francisco<br>201 Mission Street, Room 1650<br>San Francisco, CA 94105–1926<br>Tel. 415–744–3133<br>States served: American Samoa, Arizona, California, Guam, Hawaii, Nevada, and the Northern Mariana Islands.<br><br>Los Angeles Metropolitan Office<br>Region 9—Los Angeles<br>888 S. Figueroa Street, Suite 1850<br>Los Angeles, CA 90017–1850<br>Tel. 213–202–3952 |
| Marisol Simon<br>Regional Administrator<br>Region 5—Chicago<br>200 West Adams Street, Suite 320<br>Chicago, IL 60606<br>Tel. 312–353–2789<br><br>States served: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.<br>Chicago Metropolitan Office<br>Region 5–Chicago<br>200 West Adams Street, Suite 320<br>Chicago, IL 60606<br>Tel. 312–353–2789 | Rick Krochalis<br>Regional Administrator<br>Region 10—Seattle<br>Jackson Federal Building<br>915 Second Avenue, Suite 3142<br>Seattle, WA 98174–1002<br>Tel. 206–220–7954<br>States served: Alaska, Idaho, Oregon, and Washington. |

APPENDIX B

FY 2011 Discretionary Programs Schedule

| Initiative | Funding Availability | NOFA Publication Target | Application Deadline |
|---|---|---|---|
| **SGR Initiative (Bus)** | **$750,000,000** | **6/24/2011** | **7/29/2011** |
| **Livability Expansion Initiative** | **$175,000,000** | **6/24/2011** | **7/29/2011** |
| Alternatives Analysis | $25,000,000 | | |
| Bus & Bus Facilities | $150,000,000 | | |
| **Sustainability Initiative** | **$101,400,000** | **6/24/2011** | **8/23/2011** |
| Clean Fuels Bus Program | $51,500,000 | | |
| TIGGER III | $49,900,000 | | |
| **Other Programs** | **$50,640,500** | | |
| Paul S. Sarbanes Transit in Parks | $26,765,500 | 3/10/2011 | 5/9/2011 |
| Tribal Transit | $15,075,000 | 7/25/2011 | 9/26/2011 |
| Over-the-Road-Bus | $8,800,000 | 7/11/2011 | 9/12/2011 |

[FR Doc. 2011–16015 Filed 6–22–11; 4:15 pm]

BILLING CODE 4910–57–P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD 2011–0082]**

### Application of Cargo Preference Requirements To Maritime Loan Guarantee Program

**AGENCY:** Maritime Administration (MARAD), Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** This notice clarifies MARAD's position on the application of cargo preference requirements under 46 U.S.C. 55305 to its shipyard and vessel financing guarantees.

**DATES:** Comments may be submitted on or before July 27, 2011.

**ADDRESSES:** Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or submit electronically at *http://www.regulations.gov* or fax comments to (202) 493–2251. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays. Those desiring notification or receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Page 19477–78), or you may visit *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Murray A. Bloom, Office of Chief Counsel, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. *Telephone:* 202–366–5164; or e-mail *Murray.Bloom@dot.gov.* Copies of this notice may also be obtained from that office. An electronic copy of this document may be downloaded from the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

**SUPPLEMENTARY INFORMATION:** MARAD is clarifying its application of cargo preference requirements under 46 U.S.C. 55305 to the shipyard and vessel financing guarantees it issues pursuant to the Maritime Loan Guarantee Program under 46 U.S.C. Chapter 537. MARAD's existing regulations, at 46 CFR 381.7, apply cargo preference requirements to Federal grant, guarantee, loan and advance of funds agreements generally. This notice provides advice on regulatory compliance applicable solely to the Maritime Loan Guarantee Program. As part of MARAD's review of the Actual Cost of a project, it requests the applicant or shipyard to provide copies of the original, freighted, stamped-''onboard'' bills of lading for the shipment of any foreign component items submitted for inclusion as part of the Actual Cost. MARAD intends to review all such bills of lading to verify that at least 50 percent of all foreign component items were shipped via U.S.-flagged vessels. In the event that an impermissible amount of cargo was shipped on foreign-flagged vessels, MARAD interprets 46 U.S.C. 55305(d)(2)(B) to authorize it to require the applicant or its contractors to move whatever amount of gross tons of cargo, not otherwise subject to cargo preference requirements, that are necessary to generate an equivalent amount of ocean freight tonnage on U.S.-flag vessels within a specified time period.

By Order of the Maritime Administrator.

Dated: June 16, 2011.

**Christine Gurland,**

*Secretary, Maritime Administration.*

[FR Doc. 2011–15743 Filed 6–24–11; 8:45 am]

BILLING CODE 4910–81–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 July 12, 2011.

**ADDRESSES:** 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:** 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 June 20, 2011.

**Donald Burger,**

*Chief, General Approvals and Permits.*

MODIFICATION SPECIAL PERMITS

| Application Docket No. | Applicant No. | Regulation(s) affected | Nature of special permit thereof |
|---|---|---|---|
| 10704–M ..... | Spray Products Corporation Plymouth Meeting, PA. | 49 CFR 173.302(a); Part 172, Subpart C, E and F; Part 172; Part 174; Part 177. | To modify the special permit to authorize additional end uses of the product. |
| 11281–M ..... | E.I. du Pont de Nemours & Company Wilmington,DE. | 49 CFR 172.101, Column 7, Special Provisions B14, T38. | To modify the special permit to authorize the use of an additional UN portable tank specification. |
| 12247–M ..... | Weldship Corporation Bethlehem, PA. | 49 CFR 172.301, 173.302a(b)(2), (b)(3) and (b)(4); 180.205(c) and (g) and 180.209(a). | To modify the special permit to authorize ultrasonic testing of DOT–SP 9001, 9370, 9421, 9706, 9791, 9909, 10047, 10869, and 11692 cylinders. |
| 14574–M ..... | KMG Electronic Chemicals Houston, TX. | 49 CFR 180.407(c), (e) and (f) | To modify the special permit to authorize the addition of additional Class 8 hazardous materials and to add 16 new cargo tanks. |
| 15092–M ..... | Tatonduk Outfitters Limited dba Everts Air Alaska Fairbanks, AK. | 49 CFR § 173.302(f)(3)(4), and (5), § 173.304 (f)(3), (4), (5), and § 172.301(c). | To modify the special permit to bring it in line with all the other Alaska air carrier special permits. |
| 15132–M ..... | National Aeronautics and Space Administration (NASA) Washington, DC. | 49 CFR 173.301 and 178.53 .. | To modify the special permit to authorize the transportation in commerce of certain Division 2.1 and 2.2 gases in alterative packaging when transported by motor vehicle. |
| 15250–M ..... | DOE/National Nuclear Security Administration Albuquerque, NM. | 49 CFR 173.56(b)(3)(i) ..... | To reissue the special permit originally issued on an emergency basis for the transportation in commerce of certain explosives that are tested to a revision of the Department of Defense Ammunition and Explosive Hazard Classification Procedures TB 700–2 that has not been incorporated by reference. |

[FR Doc. 2011–15786 Filed 6–24–11; 8:45 am]

BILLING CODE 4910–60–M

## DEPARTMENT OF THE TREASURY

### Treasury International Capital Form SLT: Report of Aggregate Holdings of Long-Term Securities by U.S. and Foreign Residents

**AGENCY:** Departmental Offices, Department of the Treasury.

**ACTION:** Notice of reporting requirements.

**SUMMARY:** By this Notice, the Department of the Treasury is informing the public that it is conducting a mandatory monthly collection of information on cross-border ownership by U.S. and foreign residents of long-term securities for portfolio investment purposes. This mandatory collection is conducted under the authority of 22 U.S.C. 286f; 22 U.S.C. 3103; E.O. 11961; E.O. 10033; and 31 CFR part 128. This Notice constitutes legal notification to all United States persons (defined below) who are in the reporting panel set forth in this Notice that they must respond to, and comply with, this collection of information. Copies of the Form SLT report and instructions may be printed from the Internet at: *http://www.treasury.gov/resource-center/data-chart-center/tic/Pages/forms.aspx.*

*Definition:* A U.S. person is any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government

(including a foreign government, the United States Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency), who resides in the United States or is subject to the jurisdiction of the United States.

*Who Must Report:* The reporting panel for the Form SLT consists of all U.S. persons who are U.S.-resident custodians (including U.S.-resident central securities depositories), U.S.-resident issuers of U.S. securities, or U.S.-resident end-investors in foreign securities, where for each reporting entity, the consolidated total of all reportable long-term U.S. and foreign securities on the last business day of the reporting month has a total fair value equal to or more than the exemption level. The exemption level is $1 billion. This consolidated total includes amounts held for a reporting entity's own account and for customers. The reporting entity should include reportable securities for all U.S.-resident parts of the reporting entity, including all U.S. subsidiaries and affiliates of the reporting entity and investment companies, trusts, and other legal entities created by the reporting entity. U.S.-resident entities include the affiliates in the United States of foreign entities. A custodian is a bank or other entity that manages or administers the custody or safekeeping of securities or other assets for institutional or private investors. End-investors include funds and investment managers.

*What to Report:* Reportable long-term securities (including equities) include: (1) U.S. securities held by U.S.-resident custodians on behalf of foreign residents; (2) foreign securities held by U.S.-resident custodians on behalf of U.S. residents; (3) U.S. securities issued by U.S.-resident issuers in foreign markets and held directly by foreign residents, *i.e.,* where no U.S.-resident custodian or U.S.-resident central securities depository is used by the U.S.-resident issuer; and (4) foreign securities held directly by U.S.-resident end-investors, *i.e.,* where no U.S.-resident custodian is used by the U.S.-resident end-investor. Securities held as part of a direct investment relationship should not be reported.

*How to Report:* Form SLT consists of Parts A and B. Part A is required to be completed by U.S.-resident custodians. Part B is required to be completed by U.S.-resident issuers and U.S.-resident end-investors, including funds and investment managers. If a reporting entity is both a U.S.-resident custodian and a U.S.-resident issuer and/or a U.S.-resident end-investor, then both Parts A and B must be completed. Copies of the Form SLT report and instructions, which contain complete information on reporting procedures and definitions, may be obtained at the Web site address given above in the Summary, or by contacting the SLT staff of the Federal Reserve Bank of New York at (212) 720–6300 or (646) 720–6300, or by contacting the District Federal Reserve Bank. Reporting entities that are banks, depository institutions, bank holding companies or financial holding companies (BHCs/FHCs) should file their reports with the Federal Reserve Bank of the District in which the reporting entity is located, unless instructed otherwise by their District Federal Reserve Bank. All other reporting entities should file their reports with the Federal Reserve Bank of New York (FRBNY), regardless of where they are located. The mailing address is: Federal Reserve Bank of New York, Statistics Function, 4th Floor, 33 Liberty Street, New York, NY 10045–0001. Inquiries also may be made to Dwight Wolkow by telephone (202) 622–1276, or by *e-mail: dwight.wolkow@treasury.gov.*

*When to Report:* In any month in which the consolidated total of all reportable long-term U.S. and foreign securities for a reporting entity has a total fair value equal to or more than the exemption level on the last business day of that month (the ''as-of date''), that reporting entity must submit the Form SLT report for that month. In addition, the reporting entity also must report on Form SLT for each remaining month in that calendar year, regardless of the consolidated total of reportable long-term U.S. and foreign securities held in any subsequent month. The Form SLT report must be submitted to the Federal Reserve Bank no later than the 23rd calendar day of the month following the report as-of date. If the due date of the report falls on a weekend or holiday, the Form SLT report should be submitted the following business day. These mandatory reporting requirements will be phased in during 2011. In 2011, the Form SLT will be required to be submitted quarterly as of September 30 and December 30, with the mandatory monthly reporting on Form SLT beginning with the report as of January 31, 2012.

*Paperwork Reduction Act Notice:* This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 1505–0235. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. The estimated average burden associated with this collection of information, when fully implemented, is 11.4 hours per respondent per filing. The estimated average burden per respondent varies widely from about 17 hours for a U.S.-resident custodian filing Part A and Part B to about six and one half hours for a U.S.-resident issuer or U.S.-resident end-investor filing Part B. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Department of the Treasury, Attn: Administrator, International Portfolio Investment Data Reporting Systems, Room 5422, Washington, DC 20220, and to OMB, *Attn:* Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

**Dwight Wolkow,**

*Administrator, International Portfolio Investment Data Reporting Systems.*

[FR Doc. 2011–15924 Filed 6–24–11; 8:45 am]

**BILLING CODE 4810–25–P**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Identification of Nine Entities Pursuant to Executive Order 13566 and Amendment of General License No. 1A

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of nine entities identified on June 21, 2011, as persons whose property and interests in property are blocked pursuant to Section 2 of Executive Order 13566 of February 25, 2011, ''Blocking Property and Prohibiting Certain Transactions Related to Libya.'' OFAC also is amending General License No. 1A to exclude Arab Turkish Bank, North Africa International Bank, and North Africa Commercial Bank from the authorization set forth therein.

**DATES:** The identification by the Director of OFAC of the nine entities identified in this notice, pursuant to Executive Order 13566 of February 25, 2011, and the exclusion of Arab Turkish Bank, North Africa International Bank, and North Africa Commercial Bank from General License No. 1A, are effective June 21, 2011.

**FOR FURTHER INFORMATION CONTACT:** Assistant Director for Sanctions

Compliance and Evaluation, *tel.:* 202–622–2490, Assistant Director for Licensing, tel: 202–622–2480, Assistant Director for Policy, *tel:* 202/622–4855, or Chief Counsel (Foreign Assets Control), *tel:* 202–622–2410 (not toll free numbers).

**SUPPLEMENTARY INFORMATION:**

## Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treasury.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, *Tel.:* 202/622–0077.

## Background

On February 25, 2011, the President issued Executive Order 13566, ''Blocking Property and Prohibiting Certain Transactions Related to Libya'' (the ''Order''), pursuant to, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–06).

Section 2 of the Order blocks all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, including any overseas branch, of the Government of Libya, its agencies, instrumentalities, and controlled entities, and the Central Bank of Libya.

On March 4, 2011, OFAC published General License No. 1A on its Web site, which authorized all transactions involving banks that are owned or controlled by the Government of Libya and organized under the laws of a country other than Libya, provided that the transactions do not otherwise involve the Government of Libya or any person whose property and interests in property are blocked. On June 21, 2011, OFAC revoked General License No. 1A and replaced it with General License No. 1B. The authorization in General License No. 1B is identical to the authorization that was contained in General License No. 1A, except that it specifically excludes Arab Turkish Bank, North Africa International Bank, and North Africa Commercial Bank from its scope.

Also on June 21, 2011, the Director of OFAC identified, pursuant to Section 2 of the Order, nine entities whose property and interests in property are blocked. The listing for these entities is as follows:

## Entities

1. ARAB TURKISH BANK (a.k.a. A AND T BANK; a.k.a. ARAB–TURKISH BANK; a.k.a. ARAP TURK BANKASI), Valikonagi Cad. No: 10, Nisantasi 34367, Istanbul, Turkey; P.O. Box: 150, Sisli 34360, Istanbul, Turkey; Havuzlu Sok. No: 3, 06540 Asagi Ayranci, Ankara, Turkey; P.O. Box 38–06552, Canakaya, Ankara, Turkey; Derya Sol., Sisilkler Plaza, D Blok No: 14/1, Sahrayi Credit, Kadikoy, Istanbul, Turkey; Musalla Baglari Mah., Ahmet Milmi Nalcaci Cad., 1–Evkur Ishani No: 112/B–C, 42060 Selecuklu, Konya, Turkey; Cumhuriyet Mah., Vatan Cad. No: 22, 38040 Melikgazi, Kayseri, Turkey; Incilipinar Mah., Kibris Cad., Zeugma Is Merkezi, No: 13–14, 27090 Sehitkamil, Gaziantep, Turkey; Registration ID 146103 (Turkey); SWIFT/BIC ATUBTRIS (Turkey); Telephone No. (90) 2122250500; Telephone No. (90) 3124195101; Telephone No. (90) 3124195102; Telephone No. (90) 3124195103; Telephone No. (90) 3124195104; Telephone No. (90) 3124190883; Telephone No. (90) 3124190884; Telephone No. (90) 2163580800; Telephone No. (90) 2163580801; Telephone No. (90) 2163580802; Telephone No. (90) 2163580803; Telephone No. (90) 2163580805; Telephone No. (90) 2163580806; Telephone No. (90) 3322360716; Telephone No. (90) 3322360718; Telephone No. (90) 3322360719; Telephone No. (90) 3322360791; Telephone No. (90) 3322360792; Telephone No. (90) 3322360793; Telephone No. (90) 3522213933; Telephone No. (90) 3522213934; Telephone No. (90) 3522213935; Telephone No. (90) 3522213936; Telephone No. (90) 3522213980; Telephone No. (90) 3522213981; Telephone No. (90) 3422326200; Telephone No. (90) 3422326201; Telephone No. (90) 3422326202; Telephone No. (90) 3422326203; Telephone No. (90) 3422326204; Telephone No. (90) 3422326205; Fax No. (90) 2122255299; Fax No. (90) 2 [LIBYA2]

2. GENERAL COMPANY FOR CHEMICAL INDUSTRIES (a.k.a. ABU KAMMASH; a.k.a. GCCI), Abu Kammash Chemical Complex, Hadba Al Khadra, P.O. Box 100/411 and 100/071, Zuara, Libya; General Company for Chemical Industries Building, Abu Kammash Area, P.O. Box 411, Al Nuqat Al Khams, Zuwarah 100, Libya; Telephone No. (218) 213615181–5; Telephone No. (218) 213609426; Telephone No. (218) 213609427; Telephone No. (218) 212136081; Telephone No. (218) 213615186; Telephone No. (218) 213615181; Fax No. (218) 213609433; Fax No. (218) 213601712; Fax No. (218) 213615184; Fax No. (218) 213615014; Fax No. (218)213609433; *E-mail* Address *gcci-abukamash@gcci.ly*; Website *www.gcci.ly* [LIBYA2]

3. GENERAL NATIONAL MARITIME TRANSPORT COMPANY (a.k.a. GNMTC), El Shaab Port, next to Passenger Terminal, P.O. Box 80173, Tripoli, Libya; Al Wahda Al Arabiya Building, Gargarish Road, Abou Nawas, P.O. Box 80173, Tripoli, Libya; Telephone No. (218) 214843304; Telephone No. (218) 214843273; Telephone No. (218) 214843310; Telephone No. (218) 214808094; Fax No. (218) 2134843288; Fax No. (218) 214843272; Fax No. (218) 4843305; Fax No. (218) 214808094; *E-mail* Address *info@gnmtc.com*; Website *www.gnmtc.com* [LIBYA2]

4. GHANA LIBYA ARAB HOLDING COMPANY (a.k.a. GHANA LIBYAN ARAB HOLDING COMPANY LIMITED; a.k.a. GLAHCO), 1st Circular Road, Opposite Midini Hotel, Cantonments, Kumasi, Ghana; Plot F32 and 33, 5th Circular Road, East Cantonments, P.O. Box AN7281, Accra, Ghana; Telephone No. (233) 21774962; Telephone No. (233) 21762481; Telephone No. (233) 302774962; Telephone No. (233) 302762454; Telephone No. (233) 244322261; Fax No. (233) 21774839; *E-mail* Address *karmus@glahco.com; E-mail* Address *glahco@glahco.com* [LIBYA2]

5. GLAHCO HOTELS AND TOURISM DEVELOPMENT COMPANY LIMITED (a.k.a. GOLDEN TULIP HOTEL ACCRA), Liberation Road, Opposite Police Church, P.O. Box 16033, Accra, Ghana; Telephone No. (233) 21775360; Telephone No. (233) 21775362; Telephone No. (233) 21775366; Telephone No. (233) 21213161; Telephone No. (233) 202013326; Telephone No. (233) 21775361; *E-mail* Address *Herbert.friese@goldentulipaccra.com;* Website *www.goldentulipaccra.com* [LIBYA2]

6. LIBYAN NORWEGIAN FERTILISER COMPANY (a.k.a. LIFECO), Airport Highway, Sidi Sleem Area, Tripoli, Libya; Plant Libyan Norwegian Fertiliser Company, Marsa el Brega, Libya; Website *www.lifeco.ly* [LIBYA2]

7. NORTH AFRICA COMMERCIAL BANK S.A.L. (a.k.a. NACB; a.k.a. NORTH AFRICA COMMERCIAL BANK; a.k.a. NORTH AFRICA COMMERCIAL BANK SAL), P. O. Box: 11–9575, Beirut, Lebanon; Justinian St., Aresco Centre, Beirut, Lebanon; Aresco Center, Justinien Street, Kantari Sector, Beirut, Lebanon; Sin El Fil, Mkalles Round About, SAR Bldg, Beirut, Lebanon; Registration ID 30199 (Lebanon) issued 13 Oct 1973; SWIFT/BIC NACBLBBE (Lebanon); Telephone No. (961 1)

759000; Telephone No. (961 1) 485670; Telephone No. (961 1) 485671; Telephone No. (961 1) 485681; Telephone No. (961 1) 485682; Telephone No. (961 1) 485683; Telephone No. (961 1) 742900; Telephone No. (961 1) 495404; Fax No. (961 1) 346322; Fax No. (961 1) 759099; Fax No. (961 1) 751687; Fax No. (961 1) 485681; E-mail Address *info@nacb.com.lb*; *E-mail* Address *nacb@sodetel.net.lb*; Website *www.nacb.com.lb* [LIBYA2]

8. NORTH AFRICA INTERNATIONAL BANK (a.k.a. NAIB; a.k.a. NAIB BANK; a.k.a. NORTH AFRICA INTERNATIONAL BANK SA), Avenue Kheireddine Pacha, Lotissement Ennasim Montplaisir (Bourjel), 1002, Tunis, Tunisia; Avenue Kheireddine Pacha, Cite Ennasim Montplaisir, 1002, Tunis, Tunisia; PO Box 485, 1080, Tunis Cedex, Tunisia; Bizerte Centre, 7000, Bizerte, Tunisia; Ennasim Mont Plaisir Building, Kheireddine Pacha Street, Taksim Al Nassim, 1002, Tunis, Tunisia; Boulevard 7 Novembre, Route El Kantaoui, 4011, Hammam Sousse, Tunisia; Immeuble Mirage II, Avenue Magida Boulila, Near the Medicine Institute, 3027, Sfax El Jadida, Tunisia; Registration ID B 1101511997 (Tunisia) issued 1 Nov 1984; SWIFT/BIC NOAFTNTT (Tunisia); Telephone No. (216) 71950800; Telephone No. (216) 72422100; Telephone No. (216) 73370370; Fax No. (216) 71950840; Fax No. (216) 71950254; Fax No. (216) 72422533; Fax No. (216) 73370371; *E-mail* Address *naib@naibank.com*; Website *www.naib.com* [LIBYA2]

9. PAK–LIBYA HOLDING COMPANY, Finance and Trade Centre, 5th Floor, Block C, Shahrah-E–Faisal, Karachi 74400, Pakistan; Telephone No. 9221565155662; Telephone No. 92215651648; Telephone No. 92215651556; Telephone No. 92215651557; Telephone No. 92215651558; Telephone No. 92215651559; *E-mail* Address *info@paklibya.com.pk*; Website *www.paklibya.com.pk* [LIBYA2]

Dated: June 21, 2011.

**Adam J. Szubin,**

*Director, Office of Foreign Assets Control.*

[FR Doc. 2011–15979 Filed 6–24–11; 8:45 am]

BILLING CODE 4811–AL–P

# FEDERAL REGISTER

Vol. 76 Monday,

No. 123 June 27, 2011


Part II

## Department of Energy

10 CFR Part 430

Energy Conservation Program: Energy Conservation Standards for Residential Furnaces and Residential Central Air Conditioners and Heat Pumps; Final Rule and Proposed Rule

**DEPARTMENT OF ENERGY**

**10 CFR Part 430**

**[Docket Number EERE–2011–BT–STD–0011]**

**RIN 1904–AC06**

## Energy Conservation Program: Energy Conservation Standards for Residential Furnaces and Residential Central Air Conditioners and Heat Pumps

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

**ACTION:** Direct final rule.

**SUMMARY:** The Energy Policy and Conservation Act of 1975 (EPCA), as amended, prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including residential furnaces and residential central air conditioners and heat pumps. EPCA also requires the U.S. Department of Energy (DOE) to determine whether more-stringent, amended standards for these products would be 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 furnaces and for residential central air conditioners and heat pumps. A notice of proposed rulemaking that proposes identical energy efficiency standards is published elsewhere in this issue of the **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 direct final rule is effective on October 25, 2011 unless adverse comment is received by October 17, 2011. If adverse comments are received that DOE determines may provide a reasonable basis for withdrawal of the direct 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 May 1, 2013 for non-weatherized gas furnaces, mobile home gas furnaces, and non-weatherized oil furnaces; and January 1, 2015 for weatherized gas furnaces and all central air conditioner and heat pump product classes.

**ADDRESSES:** Any comments submitted must identify the direct final rule for Energy Conservation Standards for Residential Furnaces, Central Air Conditioners, and Heat Pumps, and provide the docket number EERE–2011–BT–STD–0011 and/or regulatory information number (RIN) 1904–AC06. 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: ResFurnaceAC-2011-Std-0011@ee.doe.gov*. Include Docket Numbers EERE–2011–BT–STD–0011 and/or RIN number 1904–AC06 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, in which case 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, in which case it is not necessary to include printed copies.

No telefacsimilies will be accepted. 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 *http://www.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 *http://www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket Web page can be found at: *http://www.regulations.gov/#!docketDetail;dct=FR +PR+++SR+PS;rpp=50;so=DESC;sb=postedDate;po=0;D=EERE-2011-BT-STD-0011*.

The *http://www.regulations.gov* Web page contains simple instructions on how to access all documents, including public comments, in the docket. See section VII for further information on how to submit comments through *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 by e-mail: *Brenda.Edwards@ee.doe.gov*.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Mohammed Khan (furnaces) or Mr. Wesley Anderson (central air conditioners and heat pumps), 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. Telephone: (202) 586–7892 or (202) 586–7335. E-mail: *Mohammed.Khan@ee.doe.gov* or *Wes.Anderson@ee.doe.gov*.

Mr. Eric Stas or Ms. Jennifer Tiedeman, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9507 or (202) 287–6111. E-mail: *Eric.Stas@hq.doe.gov* or *Jennifer.Tiedeman@hq.doe.gov*.

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## I. Summary of the Direct Final Rule

### *A. The Energy Conservation Standard Levels*

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles. Pursuant to EPCA, any new or amended energy conservation standard that DOE prescribes for certain products, such as the residential furnaces (furnaces) and residential central air conditioners and central air conditioning heat pumps (air conditioners and heat pumps) [2] that are the subject of this rulemaking, shall be designed to ''achieve the maximum improvement in energy efficiency * * * which the Secretary determines is technologically feasible and economically justified.'' (42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must ''result in 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 furnaces and central air conditioners and heat pumps. The standards for energy efficiency are shown in Table I.1, and the standards for standby mode and off mode [3] are shown in Table I.2. These standards apply to all products listed in Table I.1 and manufactured in, or imported into, the United States on or after May 1, 2013, for non-weatherized gas and oil-fired furnaces and mobile home gas furnaces, and on or after January 1, 2015, for weatherized furnaces and central air conditioners and heat pumps.

TABLE I.1—AMENDED ENERGY CONSERVATION STANDARDS FOR FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP ENERGY EFFICIENCY

| Product class | National standards | Northern Region ** standards |
|---|---|---|
| **Residential Furnaces *** | | |
| Non-weatherized gas | AFUE = 80% | AFUE = 90%. |
| Mobile home gas | AFUE = 80% | AFUE = 90%. |
| Non-weatherized oil-fired | AFUE = 83% | AFUE = 83%. |
| Weatherized gas | AFUE = 81% | AFUE = 81%. |
| Mobile home oil-fired ‡‡ | AFUE = 75% | AFUE = 75%. |
| Weatherized oil-fired ‡‡ | AFUE = 78% | AFUE = 78%. |
| Electric ‡‡ | AFUE = 78% | AFUE = 78%. |

| Product class | National standards | Southeastern Region †† standards | Southwestern Region ‡ standards |
|---|---|---|---|
| **Central Air Conditioners and Heat Pumps †** | | | |
| Split-system air conditioners | SEER = 13 | SEER = 14 | SEER = 14.<br>EER = 12.2 (for units with a rated cooling capacity less than 45,000 Btu/h).<br>EER = 11.7 (for units with a rated cooling capacity equal to or greater than 45,000 Btu/h). |
| Split-system heat pumps | SEER = 14<br>HSPF = 8.2 | SEER = 14<br>HSPF = 8.2 | SEER = 14.<br>HSPF = 8.2. |
| Single-package air conditioners ‡‡ | SEER = 14 | SEER = 14 | SEER = 14.<br>EER = 11.0. |
| Single-package heat pumps | SEER = 14<br>HSPF = 8.0 | SEER = 14<br>HSPF = 8.0 | SEER = 14.<br>HSPF = 8.0. |
| Small-duct, high-velocity systems | SEER = 13<br>HSPF = 7.7 | SEER = 13<br>HSPF = 7.7 | SEER = 13.<br>HSPF = 7.7. |
| Space-constrained products—air conditioners ‡‡ | SEER = 12 | SEER = 12 | SEER = 12. |
| Space-constrained products—heat pumps ‡‡ | SEER = 12<br>HSPF = 7.4 | SEER = 12<br>HSPF = 7.4 | SEER = 12.<br>HSPF = 7.4. |

* AFUE is annual fuel utilization efficiency.
** The Northern region for furnaces contains the following States: Alaska, Colorado, Connecticut, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.

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

[2] ''Residential central air conditioner'' is a product that provides cooling only. It is often paired with a separate electric or gas furnace. ''Residential central air conditioning heat pump'' is a product that provides both cooling and heating, with the cooling provided in the same manner as a residential central air conditioner and the heating provided by a heat pump mechanism. In this document, ''residential central air conditioners and central air conditioning heat pumps'' are referred to collectively as ''central air conditioners and heat pumps,'' and separately as ''air conditioners'' (cooling only) and ''heat pumps'' (both cooling and heating), respectively.

[3] In this rule, DOE is changing the nomenclature for the standby mode and off mode power consumption metrics for furnaces from those in the furnace and boiler test procedure final rule published on October 20, 2010. 75 FR 64621. DOE is renaming the $P_{SB}$ and $P_{OFF}$ metrics as $P_{W,SB}$ and $P_{W,OFF}$, respectively. However, the substance of these metrics remains unchanged.

† SEER is Seasonal Energy Efficiency Ratio; EER is Energy Efficiency Ratio; HSPF is Heating Seasonal Performance Factor; and Btu/h is British thermal units per hour.

†† The Southeastern region for central air conditioners and heat pumps contains the following States: Alabama,, Arkansas, Delaware, Florida, Georgia, Hawaii, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia, and the District of Columbia.

‡ The Southwestern region for central air conditioners and heat pumps contains the States of Arizona, California, Nevada, and New Mexico.

‡‡ DOE is not amending energy conservation standards for these product classes in this rule.

TABLE I.2—AMENDED ENERGY CONSERVATION STANDARDS FOR FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP STANDBY MODE AND OFF MODE*

| Product class | Standby mode and off mode standard levels |
|---|---|
| **Residential Furnaces*** | |
| Non-weatherized gas | $P_{W,SB}$ = 10 watts.<br>$P_{W,OFF}$ = 10 watts. |
| Mobile home gas | $P_{W,SB}$ = 10 watts.<br>$P_{W,OFF}$ = 10 watts. |
| Non-weatherized oil-fired | $P_{W,SB}$ = 11 watts.<br>$P_{W,OFF}$ = 11 watts. |
| Mobile home oil-fired | $P_{W,SB}$ = 11 watts.<br>$P_{W,OFF}$ = 11 watts. |
| Electric | $P_{W,SB}$ = 10 watts.<br>$P_{W,OFF}$ = 10 watts. |
| Central Air Conditioners and Heat Pumps †† | |
| Product class | Off mode standard levels †† |
| Split-system air conditioners | $P_{W,OFF}$ = 30 watts. |
| Split-system heat pumps | $P_{W,OFF}$ = 33 watts. |
| Single-package air conditioners | $P_{W,OFF}$ = 30 watts. |
| Single-package heat pumps | $P_{W,OFF}$ = 33 watts. |
| Small-duct, high-velocity systems | $P_{W,OFF}$ = 30 watts. |
| Space-constrained air conditioners | $P_{W,OFF}$ = 30 watts. |
| Space-constrained heat pumps | $P_{W,OFF}$ = 33 watts. |

* $P_{W,SB}$ is standby mode electrical power consumption, and $P_{W,OFF}$ is off mode electrical power consumption. For furnaces, DOE is proposing to change the nomenclature for the standby mode and off mode power consumption metrics for furnaces from those in the furnace and boiler test procedure final rule published on October 20, 2010. 75 FR 64621. DOE is renaming the $P_{SB}$ and $P_{OFF}$ metrics as $P_{W,SB}$ and $P_{W,OFF}$, respectively. However, the substance of these metrics remains unchanged.

** Standby mode and off mode energy consumption for weatherized gas and oil-fired furnaces is regulated as a part of single-package air conditioners and heat pumps, as discussed in section III.E.1.

† $P_{W,OFF}$ is off mode electrical power consumption for central air conditioners and heat pumps.

†† DOE is not adopting a separate standby mode standard level for central air conditioners and heat pumps, because standby mode power consumption for these products is already regulated by SEER and HSPF.

*B. Benefits and Costs to Consumers*

The projected economic impacts of the standards in this rule on individual consumers are generally positive. For the standards on energy efficiency, the estimated average life-cycle cost (LCC) [4] savings for consumers are $155 for non-weatherized gas furnaces in the northern region, $419 for mobile home gas furnaces in the northern region, and $15 for non-weatherized oil-fired furnaces at a national level. (The standards in this rule on energy efficiency would have no impact for consumers of non-weatherized gas furnaces and mobile home gas furnaces in the southern region.) The estimated LCC savings for consumers are $93 and $107 for split system air conditioners (coil only) in the hot-humid and hot-dry regions,[5] respectively; $89 and $101 for split system air conditioners (blower coil) in the hot-humid and hot-dry regions, respectively; $102 and $175 for split system heat pumps in the hot-humid and hot-dry regions, respectively, and $4 for the rest of the country; $37 for single package air conditioners in the entire country; and $104 for single package heat pumps in the entire country.[6] For small-duct, high-velocity systems, no consumers would be impacted by the standards in this rule.

For the national standards in this rule on standby mode and off mode power, the estimated average LCC savings for consumers are $2 for non-weatherized gas furnaces, $0 for mobile home gas furnaces and electric furnaces, $1 for non-weatherized oil-fired furnaces, $84 for split system air conditioners (coil only), $40 for split system air conditioners (blower coil), $9 for split system heat pumps, $41 for single package air conditioners, $9 for single package heat pumps and $37 for small-duct, high-velocity (SDHV) systems.

*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 (2010 through 2045). Using a real discount rate of 8.0 percent, DOE

[4] 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.

[5] Throughout this notice, the terms ''hot-humid'' and ''hot-dry'' are used interchangeably with the terms ''southeastern'' and ''southwestern,'' respectively, when referring to the two southern regions for central air conditioners and heat pumps.

[6] For single-package air conditioners and single-package heat pumps, DOE has analyzed the regional standards on a national basis because the standard would be identical in each region. Additionally, given the low level of shipments of these products, DOE determined that an analysis of regional standards would not produce significant differences in comparison to a single national standard.

estimates that the INPV for manufacturers of furnaces, central air conditioners, and heat pumps in the base case (without amended standards) is $8.50 billion in 2009$. For the standards in this rule on energy efficiency, DOE expects that manufacturers may lose 5.6 to 10.6 percent of their INPV, or approximately $0.48 billion to $0.90 billion. For the standards in this rule on standby mode and off mode power, DOE expects that manufacturers may lose up to 2.9 percent of their INPV, or approximately $0.25 billion.

*D. National Benefits*

DOE's analyses indicate that the standards in this rule for energy efficiency and standby mode and off mode power would save a significant amount of energy—an estimated 3.36 to 4.38 quads of cumulative energy in 2013–2045 for furnaces and in 2015–2045 for central air conditioners and heat pumps.[7] This amount is comprised of savings of 3.20 to 4.22 quads for the standards in this rule on energy efficiency and 0.16 quads for the standards in this rule on standby mode and off mode power. The total amount is approximately one-fifth of the amount of total energy used annually by the U.S. residential sector. In addition, DOE expects the energy savings from the standards in this rule to eliminate the need for approximately 3.80 to 3.92 gigawatts (GW) of generating capacity by 2045.

The cumulative national net present value (NPV) of total consumer costs and savings of the standards in this rule for products shipped in 2013–2045 for furnaces and in 2015–2045 for central air conditioners and heat pumps, in 2009$, ranges from $4.30 billion to $4.58 billion (at a 7-percent discount rate) to $15.9 billion to $18.7 billion (at a 3-percent discount rate).[8] This NPV is the estimated total value of future operating-cost savings during the analysis period, minus the estimated increased product costs (including installation), discounted to 2011.

In addition, the standards in this rule would have significant environmental benefits. The energy savings would result in cumulative greenhouse gas emission reductions of 113 million to 143 million metric tons (Mt)[9] of carbon dioxide ($CO_2$) in 2013–2045 for furnaces and in 2015–2045 for central air conditioners and heat pumps. During this period, the standards in this rule would also result in emissions reductions of 97 to 124 thousand tons of nitrogen oxides ($NO_X$) and 0.143 to 0.169 ton of mercury (Hg).[10] DOE estimates the present monetary value of the total $CO_2$ emissions reductions is between $0.574 billion and $11.8 billion, expressed in 2009$ and discounted to 2011 using a range of discount rates (see notes to Table I.3). DOE also estimates the present monetary value of the $NO_X$ emissions reductions, expressed in 2009$ and discounted to 2011, is between $12.7 million and $169 million at a 7-percent discount rate, and between $30.7 million and $403 million at a 3-percent discount rate.[11]

The benefits and costs of the standards in this rule 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 standards in this rule (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.[12] 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. The derivation of the SCC values is discussed in further detail in section IV.M.

Although combining the values of operating savings and $CO_2$ emission 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, whereas 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 2013–2045 for furnaces and 2015–2045 for central air conditioners and heat pumps. 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.

Estimates of annualized benefits and costs of the standards in this rule for furnace, central air conditioner, and heat pump energy efficiency are shown in Table I.3. The results under the primary estimate are as follows. Using a 7-percent discount rate for consumer impacts and the SCC series that has a value of $22.1/ton in 2010 (in 2009$), the cost of the standards in this rule is $527 million to $773 million per year in increased equipment costs, while the annualized benefits are $837 million to $1106 million per year in reduced equipment operating costs, $140 million to $178 million in $CO_2$ reductions, and $5.3 million to $6.9 million in reduced $NO_X$ emissions. In this case, the net benefit amounts to $456 million to $517 million per year. DOE also calculated annualized net benefits using a range of potential electricity and equipment price trend forecasts. Given the range of

[7] DOE has calculated the energy savings over a period that begins in the year in which compliance with the proposed standards would be required (as described in the text preceding Table I.1) and continues through 2045. DOE used the same end year (2045) for both types of products to be consistent with the end year that it used in analyzing other standard levels that it considered. See section IV.G of this notice for further discussion.

[8] DOE uses discount rates of 7 and 3 percent based on guidance from the Office of Management and Budget (OMB Circular A–4, section E (Sept. 17, 2003)). See section IV.G of this notice for further information.

[9] A metric ton is equivalent to 1.1 short tons. Results for $NO_X$ and Hg are presented in short tons.

[10] 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.

[11] 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.

[12] 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 32-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.

modeled price trends, the range of net benefits in this case is from $295 million to $623 million per year. The low estimate in Table I.3 corresponds to a scenario with a low electricity price trend and a constant real price trend for equipment, while the high estimate reflects a high electricity price trend and a strong declining real price trend for equipment.

Using a 3-percent discount rate for consumer impacts and the SCC series that has a value of $22.1/ton in 2010 (in 2009$), the cost of the standards in this rule is $566 million to $825 million per year in increased equipment costs, while the benefits are $1289 million to $1686 million per year in reduced operating costs, $140 million to $178 million in $CO_2$ reductions, and $7.9 million to $10.2 million in reduced $NO_X$ emissions. In this case, the net benefit amounts to $871 million to $1049 million per year. DOE also calculated annualized net benefits using a range of potential electricity and equipment price trend forecasts. Given the range of modeled price trends, the range of net benefits in this case is from $601 million to $1,260 million per year. The low estimate corresponds to a scenario with a low electricity price trend and a constant real price trend for equipment, while the high estimate reflects a high electricity price trend and a strong declining real price trend for equipment.

TABLE I.3—ANNUALIZED BENEFITS AND COSTS OF STANDARDS FOR FURNACE AND CENTRAL AIR CONDITIONER AND HEAT PUMP ENERGY EFFICIENCY (TSL 4) *

| | Discount rate | Monetized (million 2009$/year) | | |
|---|---|---|---|---|
| | | Primary estimate ** | Low estimate ** | High estimate ** |
| **Benefits** | | | | |
| Operating Cost Savings | 7% | 837 to 1,106 | 723 to 959 | 955 to 1,258. |
| | 3% | 1,289 to 1,686 | 1,083 to 1,422 | 1,493 to 1,948. |
| $CO_2$ Reduction at $4.9/t † | 5% | 34 to 43 | 34 to 43 | 34 to 43. |
| $CO_2$ Reduction at $22.1/t † | 3% | 140 to 178 | 141 to 178 | 140 to 178. |
| $CO_2$ Reduction at $36.3/t † | 2.5% | 224 to 284 | 225 to 285 | 224 to 284. |
| $CO_2$ Reduction at $67.1/t † | 3% | 427 to 541 | 428 to 543 | 427 to 541. |
| $NO_X$ Reduction at $2,519/ton † | 7% | 5.3 to 6.9 | 5.3 to 7.0 | 5.3 to 6.9. |
| | 3% | 7.9 to 10.2 | 7.9 to 10.3 | 7.9 to 10.2. |
| Total †† | 7% plus $CO_2$ range | 876 to 1,653 | 762 to 1,509 | 994 to 1,805. |
| | 7% | 983 to 1,290 | 869 to 1,144 | 1,100 to 1,442. |
| | 3% | 1,437 to 1,874 | 1,232 to 1,611 | 1,641 to 2,136. |
| | 3% plus $CO_2$ range | 1,330 to 2,237 | 1,125 to 1,975 | 1,535 to 2,499. |
| **Costs** | | | | |
| Incremental Product Costs | 7% | 527 to 773 | 574 to 840 | 555 to 819. |
| | 3% | 566 to 825 | 630 to 916 | 599 to 876. |
| **Net Benefits/Costs** | | | | |
| Total †† | 7% plus $CO_2$ range | 349 to 880 | 188 to 669 | 438 to 986. |
| | 7% | 456 to 517 | 295 to 305 | 545 to 623. |
| | 3% | 871 to 1,049 | 601 to 695 | 1,042 to 1,260. |
| | 3% plus $CO_2$ range | 764 to 1,412 | 494 to 1,059 | 935 to 1,623. |

* The benefits and costs are calculated for products shipped in 2013–2045 for the furnace standards and in 2015–2045 for the central air conditioner and heat pump standards.

** 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. In addition, the Low estimate uses incremental product costs that reflects constant prices (no learning rate) for product prices, and the High estimate uses incremental product costs that reflects a declining trend (high learning rate) for product prices. The derivation and application of learning rates for product prices is explained in section IV.F.1.

† The $CO_2$ values represent global monetized 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.

Estimates of annualized benefits and costs of the standards in this rule for furnace, central air conditioner, and heat pump standby mode and off mode power are shown in Table I.4. The results under the primary estimate are as follows. Using a 7-percent discount rate and the SCC value of $22.1/ton in 2010 (in 2009$), the cost of the standards in this rule is $16.4 million per year in increased equipment costs, while the annualized benefits are $46.5 million per year in reduced equipment operating costs, $12.4 million in $CO_2$ reductions, and $0.4 million in reduced $NO_X$ emissions. In this case, the net benefit amounts to $42.8 million per year. Using a 3-percent discount rate and the SCC value of $22.10/ton in 2010 (in 2009$), the cost of the standards in this rule is $19.1 million per year in increased equipment costs, while the benefits are $79.3 million per year in reduced operating costs, $12.4 million in $CO_2$ reductions, and $0.6 million in reduced $NO_X$ emissions. In this case, the net benefit amounts to $73.2 million per year.

TABLE I.4—ANNUALIZED BENEFITS AND COSTS OF STANDARDS FOR FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP STANDBY MODE AND OFF MODE (TSL 2) *

| | Discount rate | Monetized (million 2009$/year) | | |
|---|---|---|---|---|
| | | Primary estimate ** | Low estimate ** | High estimate ** |
| **Benefits** | | | | |
| Operating Cost Savings | 7% | 46.5 | 40.4 | 52.8. |
| | 3% | 79.3 | 67.9 | 90.8. |
| $CO_2$ Reduction at $4.9/t † | 5% | 2.9 | 2.9 | 2.9. |
| $CO_2$ Reduction at $22.1/t † | 3% | 12.4 | 12.4 | 12.4. |
| $CO_2$ Reduction at $36.3/t † | 2.5% | 19.9 | 19.9 | 19.9. |
| $CO_2$ Reduction at $67.1/t † | 3% | 37.6 | 37.6 | 37.6. |
| $NO_X$ Reduction at $2,519/ton † | 7% | 0.4 | 0.4 | 0.4. |
| | 3% | 0.6 | 0.6 | 0.6. |
| Total †† | 7% plus $CO_2$ range | 49.7 to 84.5 | 43.6 to 78.4 | 56.1 to 90.8. |
| | 7% | 59.2 | 53.1 | 65.5. |
| | 3% | 92.3 | 80.9 | 103.8. |
| | 3% plus $CO_2$ range | 82.8 to 117.5 | 71.4 to 106.2 | 94.3 to 129.1. |
| **Costs** | | | | |
| Incremental Product Costs | 7% | 16.4 | 15.2 | 17.7. |
| | 3% | 19.1 | 17.6 | 20.6. |
| **Net Benefits/Costs** | | | | |
| Total †† | 7% plus $CO_2$ range | 33.3 to 68.1 | 28.5 to 63.2 | 38.4 to 73.1. |
| | 7% | 42.8 | 38.0 | 47.9. |
| | 3% | 73.2 | 63.3 | 83.2. |
| | 3% plus $CO_2$ range | 63.7 to 98.4 | 53.8 to 88.5 | 73.7 to 108.5. |

* The benefits and costs are calculated for products shipped in 2013–2045 for the furnace standards and in 2015–2045 for the central air conditioner and heat pump standards.

** 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. In addition, the low estimate uses incremental product costs that reflects constant prices (no learning rate) for product prices, and the high estimate uses incremental product costs that reflects a declining trend (high learning rate) for product prices. The derivation and application of learning rates for product prices is explained in section IV.F.1.

† The $CO_2$ values represent global monetized 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 rule, DOE has concluded that the benefits of the standards in this rule (energy savings, positive NPV of consumer benefits, consumer LCC savings, and emission reductions) would outweigh the burdens (loss of INPV for manufacturers and LCC increases for some consumers). DOE has concluded that the standards in this rule represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy. DOE further notes that products achieving these standard levels are already commercially available for all of the product classes covered by today's proposal.

## II. Introduction

The following sections briefly discuss the statutory authority underlying today's direct final rule, as well as some of the relevant historical background related to the establishment of standards for residential furnaces and residential central air conditioners and heat pumps.

*A. Authority*

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles,[13] a program covering most major household appliances (collectively referred to as ''covered products''), which includes the types of residential central air conditioners and heat pumps and furnaces that are the subject of this rulemaking. (42 U.S.C. 6292(a)(3) and (5)) EPCA prescribed energy conservation standards for central air conditioners and heat pumps and directed DOE to conduct two cycles of rulemakings to determine whether to amend these standards. (42 U.S.C. 6295(d)(1)–(3)) The statute also prescribed standards for furnaces, except for ''small'' furnaces (*i.e.,* those units with an input capacity less than 45,000 British thermal units per hour (Btu/h)), for which EPCA directed DOE to prescribe standards. (42 U.S.C. 6295(f)(1)-(2)) Finally, EPCA directed DOE to conduct rulemakings to determine whether to amend the standards for furnaces. (42 U.S.C. 6295(f)(4)(A)-(C)) As explained in further detail in section II.B, ''Background,'' this rulemaking represents the second round of amendments to both the central air conditioner/heat pump and the furnaces standards, under the authority of 42 U.S.C. 6295(d)(3)(B) and (f)(4)(C), respectively.

DOE notes that this rulemaking is one of the required agency actions in two court orders. First, pursuant to the

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

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 residential central air conditioners and heat pumps that must be sent to the **Federal Register** by June 30, 2011. Second, pursuant to the Voluntary Remand in *State of New York, et al.* v. *Department of Energy, et al.,* 08–0311–ag(L); 08–0312–ag(con), DOE agreed to complete a final rule to consider amendments to the energy conservation standards for residential furnaces which it anticipated would be sent to the **Federal Register** by May 1, 2011.

DOE further notes that under 42 U.S.C. 6295(m), the agency must periodically review its already established energy conservation standards for a covered product. Under this requirement, the next review that DOE would need to conduct must occur no later than six years from the issuance of a final rule establishing or amending a standard for a covered product.

Pursuant to EPCA, DOE's energy conservation program for covered products consists essentially of four parts: (1) Testing; (2) labeling; (3) the establishment of Federal energy conservation standards; and (4) certification and enforcement procedures. The Federal Trade Commission (FTC) is primarily responsible for labeling, and DOE implements the remainder of the program. Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product. (42 U.S.C. 6293) Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or 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 pursuant to EPCA. *Id.* The DOE test procedures for central air conditioners and heat pumps, and for furnaces, appear at title 10 of the Code of Federal Regulations (CFR) part 430, subpart B, appendices M and N, respectively.

DOE must follow specific statutory 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, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3)) Moreover, DOE may not prescribe a standard: (1) For certain products, including both furnaces and central air conditioners and heat pumps, if no test procedure has been established for the product, or (2) if DOE determines by rule that the proposed standard is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3)(A)–(B)) In deciding 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 make this determination 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 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, or as applicable, water, savings likely to result directly from the imposition of the standard;
4. Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;
5. The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;
6. The need for national energy and water conservation; and
7. Other factors the Secretary of Energy (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; 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 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 or water 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 NOPR. 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.*

EPCA, as codified, also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing 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 an amended or 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) of performance characteristics (including reliability), 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))

Further, EPCA, as codified, 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))

Additionally, 42 U.S.C. 6295(q)(1) specifies requirements when promulgating a standard for a type or class of covered product that has two or more subcategories. DOE must specify a different standard level than that which applies generally to such type or class of products ''for any group of covered products which have the same function or intended use, if * * * 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'' than applies or will apply to the other products within that type or class. *Id.* In determining whether a performance-related feature justifies a different standard for a group of products, DOE must ''consider such factors as the utility to the consumer of such a 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))

Under 42 U.S.C. 6295(o)(6), which was added by section 306(a) of the Energy Independence and Security Act of 2007 (EISA 2007; Pub. L. 110–140), DOE may consider the establishment of regional standards for furnaces (except boilers) and for central air conditioners and heat pumps. Specifically, in addition to a base national standard for a product, DOE may establish for furnaces a single more-restrictive regional standard, and for central air conditioners and heat pumps, DOE may establish one or two more-restrictive regional standards. (42 U.S.C. 6295(o)(6)(B)) The regions must include only contiguous States (with the exception of Alaska and Hawaii, which may be included in regions with which they are not contiguous), and each State may be placed in only one region (*i.e.,* an entire State cannot simultaneously be placed in two regions, nor can it be divided between two regions). (42 U.S.C. 6295(o)(6)(C)) Further, DOE can establish the additional regional standards only: (1) Where doing so would produce significant energy savings in comparison to a single national standard, (2) if the regional standards are economically justified, and (3) after considering the impact of these standards on consumers, manufacturers, and other market participants, including product distributors, dealers, contractors, and installers. (42 U.S.C. 6295(o)(6)(D))

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

Finally, pursuant to the amendments contained in section 310(3) of EISA 2007, any final rule for new or amended energy conservation standards promulgated after July 1, 2010 are required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under 42 U.S.C. 6295(o), incorporate standby mode and off mode energy use into the standard, if feasible, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) DOE's current energy conservation standards for furnaces are expressed in terms of minimum annual fuel utilization efficiencies (AFUE), and, for central air conditioners and heat pumps, they are expressed in terms of minimum seasonal energy efficiency ratios (SEER) for the cooling mode and heating seasonal performance factors (HSPF) for the heating mode.

DOE's current test procedures for furnaces have been updated to address standby mode and off mode energy use. 75 FR 64621 (Oct. 20, 2010). DOE is in the process of amending its test procedures for central air conditioners and heat pumps to address standby mode and off mode energy use. 75 FR 31224 (June 2, 2010). In this rulemaking, DOE is adopting provisions to comprehensively address such energy use. In addition, DOE is amending the test procedure for furnaces and boilers to specify that furnaces manufactured on or after May 1, 2013 (*i.e.,* the compliance date of the standard) will be required to be tested for standby mode and off mode energy consumption for purposes of certifying compliance with the standard. As noted above, for central air conditioners and heat pumps, DOE is currently in the process of amending the test procedures. Accordingly, DOE is including language to specify that off mode testing does not need to be performed until the compliance date for the applicable off mode energy conservation standards resulting from this 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

a. Furnaces

EPCA established the energy conservation standards that apply to most residential furnaces currently being manufactured, consisting of a minimum AFUE of 75 percent for mobile home furnaces and a minimum AFUE of 78 percent for all other furnaces, except ''small'' gas furnaces (those having an input rate of less than 45,000 Btu per hour), for which DOE was directed to prescribe a separate standard. (42 U.S.C. 6295(f)(1)–(2); 10 CFR 430.32(e)(1)(i)) The standard for mobile home furnaces has applied to products manufactured for sale in the United States, or imported into the United States, since September 1, 1990, and the standard for most other furnaces has applied to products manufactured or imported since January 1, 1992. *Id.* On November 17, 1989, DOE published a final rule in the **Federal Register** adopting the current standard for ''small'' gas furnaces, which consists of a minimum AFUE of 78 percent that has applied to products manufactured or imported since January 1, 1992. 54 FR 47916.

Pursuant to EPCA, DOE was required to conduct further rulemaking to consider amended energy conservation standards for furnaces. (42 U.S.C. 6295(f)(4)) For furnaces manufactured or imported on or after November 19, 2015, DOE published a final rule in the **Federal Register** on November 19, 2007 (the November 2007 Rule) that revised these standards for most furnaces, but left them in place for two product classes (*i.e.,* mobile home oil-fired furnaces and weatherized oil-fired furnaces). 72 FR 65136. This rule completed the first of the two rulemakings required under 42 U.S.C. 6295(f)(4)(B)–(C) to consider amending the standards for furnaces. The energy conservation standards in the November 2007 Rule consist of a minimum AFUE level for each of the six classes of furnaces (10 CFR 430.32(e)(1)(ii)) and are set forth in Table II.1 below.

TABLE II.1—ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL FURNACES MANUFACTURED ON OR AFTER NOVEMBER 19, 2015

| Product class | AFUE (percent) |
|---|---|
| Non-weatherized Gas Furnaces | 80 |
| Weatherized Gas Furnaces | 81 |
| Mobile Home Oil-Fired Furnaces | 75 |
| Non-weatherized Oil-Fired Furnaces | 82 |
| Weatherized Oil-Fired Furnaces | 78 |

b. Central Air Conditioners and Heat Pumps

Congress initially prescribed statutory standard levels for residential central air conditioners and heat pumps. (42 U.S.C. 6295(d)(1)–(2)) DOE was required to subsequently conduct two rounds of rulemaking to consider amended standards for these products. (42 U.S.C. 6295(d)(3)) In a final rule published in the **Federal Register** on August 17, 2004 (the August 2004 Rule), DOE prescribed the current Federal energy conservation standards for central air conditioners and heat pumps manufactured or imported on or after January 23, 2006. 69 FR 50997. This rule completed the first of the two rulemakings required under 42 U.S.C. 6295(d)(3)(A) to consider amending the standards for these products. The standards consist of a minimum SEER for each class of air conditioner and a minimum SEER and HSPF for each class of heat pump (10 CFR 430.32(c)(2)). These standards are set forth in Table II.2 below.

TABLE II.2—ENERGY CONSERVATION STANDARDS FOR CENTRAL AIR CONDITIONERS AND HEAT PUMPS MANUFACTURED ON OR AFTER JANUARY 23, 2006

| Product class | SEER | HSPF |
|---|---|---|
| Split-System Air Conditioners | 13 | ..... |
| Split-System Heat Pumps | 13 | 7.7 |
| Single-Package Air Conditioners | 13 | ..... |
| Single-Package Heat Pumps | 13 | 7.7 |
| Through-the-wall Air Conditioners and Heat Pumps—Split System* | 10.9 | 7.1 |
| Though-the-wall Air Conditioners and Heat Pumps—Single Package* | 10.6 | 7.0 |
| Small-Duct, High-Velocity Systems [14] | 13 | 7.7 |
| Space-Constrained Products—Air Conditioners | 12 | ..... |
| Space-Constrained Products—Heat Pumps | 12 | 7.4 |

* As defined in 10 CFR 430.2, this product class applies to products manufactured prior to January 23, 2010.

2. History of Standards Rulemaking for Residential Furnaces, Central Air Conditioners, and Heat Pumps

a. Furnaces

Amendments to EPCA in the National Appliance Energy Conservation Act of 1987 (NAECA; Pub. L. 100–12) established EPCA's original energy conservation standards for furnaces, which are still in force, consisting of the minimum AFUE levels described above for mobile home furnaces and for all other furnaces except ''small'' gas furnaces. (42 U.S.C. 6295(f)(1)–(2)) Pursuant to 42 U.S.C. 6295(f)(1)(B), in November 1989, DOE adopted a mandatory minimum AFUE level for ''small'' furnaces. 54 FR 47916 (Nov. 17, 1989). DOE was required to conduct two more cycles of rulemakings to determine whether to amend all of the standards for furnaces. (42 U.S.C. 6295(f)(4)(B)–(C)) As discussed above, the November 2007 Rule completed the first cycle of required rulemaking to consider amendment of the standards for furnaces under 42 U.S.C. 6295(f)(4)(B).

Following DOE's adoption of the November 2007 Rule, however, several

[14] In 2004 and 2005, DOE's Office of Hearings and Appeals (OHA) granted exception relief from the standards for this class of products, under section 504 of the DOE Organization Act (42 U.S.C. 7194), to allow three manufacturers to sell such products so long as they had a SEER no less than 11 and an HSPF no less than 6.8. See Office of Hearings and Appeals case numbers TEE–0010 and TEE–0011, which were filed on May 24, 2004.

parties jointly sued DOE in the United States Court of Appeals for the Second Circuit to invalidate the rule. Petition for Review, *State of New York, et al.* v. *Department of Energy, et al.,* Nos. 08–0311–ag(L); 08–0312–ag(con) (2d Cir. filed Jan. 17, 2008). The petitioners asserted that the standards for residential furnaces promulgated in the November 2007 Rule did not reflect the ''maximum improvement in energy efficiency'' that ''is technologically feasible and economically justified,'' as required under 42 U.S.C. 6295(o)(2)(A). On April 16, 2009, DOE filed with the Court a motion for voluntary remand that the petitioners did not oppose. The motion did not state that the November 2007 Rule would be vacated, but indicated that DOE would revisit its initial conclusions outlined in the November 2007 Rule in a subsequent rulemaking action. *Motion for Voluntary Remand, State of New York, et al.* v. *Department of Energy, et al.,* supra. The Court granted the voluntary remand on April 21, 2009. *State of New York, et al.* v. *Department of Energy, et al.,* supra, (order granting motion). Under the remand agreement, DOE anticipated that it would issue a revised final rule amending the energy conservation standards for furnaces by May 1, 2011.[15] DOE also agreed that the final rule would address both regional standards for furnaces, as well as the effects of alternate standards on natural gas prices. Subsequently, the furnaces rulemaking was combined with the central air conditioners and heat pumps rulemaking because of the functional and analytical interplay of these types of products (see section III.A for more details). The petitioners and DOE agreed that the final rule for furnaces should be issued on June 30, 2011, to coincide with the date by which the central air conditioner and heat pump rulemaking is required to be issued.

DOE initiated the portion of this rulemaking that concerns furnaces on March 11, 2010, by publishing on the DOE Web site its ''Energy Conservation Standards for Residential Furnaces Rulemaking Analysis Plan'' (furnaces RAP). (The furnaces RAP is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/furnaces_nopm_rulemaking_analysis.html.*) The furnaces RAP set forth the product classes DOE planned to analyze for purposes of amending the energy conservation standards for furnaces, and, as set forth below, the approach DOE would use to evaluate such amended standards. DOE also published a notice of public meeting (NOPM) announcing the availability of the RAP and a public meeting to discuss and receive comments on the subjects in that document, and requesting written comment on these subjects. 75 FR 12144 (March 15, 2010) (the March 2010 NOPM). In this notice, DOE stated its interest in receiving views concerning other relevant issues that participants believe would affect energy conservation standards for furnaces or that DOE should address. *Id.* at 12147–48.

The RAP provided an overview of the activities DOE planned to undertake in developing amended energy conservation standards for furnaces. It included discussion of: (1) A consensus agreement[16] that recommended particular standards for DOE adoption for furnaces and central air conditioners/heat pumps; (2) DOE's consideration of whether to conduct a single rulemaking to address standards either for these two products or for these products and furnace fans, and (3) DOE's intention to develop regional standards for furnaces. In addition, the RAP described the analytical framework that DOE planned to use in any rulemaking that considered amended standards for furnaces, including a detailed description of the methodology, the analytical tools, the analyses DOE would perform, and the relationships among these analyses. DOE also summarized in detail all of these points in the March 2010 NOPM, including the nature and function of the analyses DOE would perform. *Id.* at 12146–47. These analyses are as follows:

- A *market and technology assessment* to address the scope of this rulemaking, identify the potential classes for furnaces, characterize the market for this product, and review techniques and approaches for improving its efficiency;
- A *screening analysis* to review technology options to improve the efficiency of furnaces, and weigh these options against DOE's four prescribed screening criteria;
- An *engineering analysis* to estimate the manufacturer selling prices (MSPs) associated with more energy-efficient furnaces;
- An *energy use analysis* to estimate the annual energy use of furnaces;
- A *markups analysis* to convert estimated MSPs derived from the engineering analysis to consumer prices;
- A *life-cycle cost analysis* to calculate, for individual consumers, the discounted savings in operating costs throughout the estimated average life of the product, compared to any increase in installed costs likely to result directly from the imposition of a given standard;
- A *payback period (PBP) analysis* to estimate the amount of time it takes individual consumers to recover the higher purchase price expense of more energy-efficient products through lower operating costs;
- A *shipments analysis* to estimate shipments of furnaces over the time period examined in the analysis, for use in performing the national impact analysis (NIA);
- A *national impact analysis* to assess the national and regional energy savings, and the national and regional net present value of total consumer costs and savings, expected to result from specific, potential energy conservation standards for furnaces;
- A *manufacturer impact analysis* to evaluate the effects on manufacturers of new efficiency standards.
- A *utility impact analysis* to estimate specific effects of standards for furnaces on the utility industry;
- An *employment impacts analysis* to assess the indirect impacts of standards on employment in the national economy;
- An *environmental impact analysis* to quantify and consider the environmental effects of amended standards for furnaces; and
- A *regulatory impact analysis* to address the potential for non-regulatory approaches to supplant or augment standards to improve the efficiency of furnaces.

The public meeting announced in the March 2010 NOPM took place on March 31, 2010 at DOE headquarters in Washington, DC. At this meeting, DOE presented the methodologies it intends to use and the analyses it intends to perform to consider amended energy conservation standards for furnaces. Interested parties that participated in the public meeting discussed a variety of topics, but focused on the following

[15] The current rulemaking for furnaces is being conducted pursuant to authority under 42 U.S.C. 6295(f)(4)(C) and (o)(6). DOE notes that the second round of amended standards rulemaking called for under 42 U.S.C. 6295(f)(4)(C) applies to both furnaces and boilers. However, given the relatively recently prescribed boiler standards under 42 U.S.C. 6295(f)(3), with compliance required for products manufactured or imported on or after September 1, 2012, DOE has decided to consider amended standards for boilers under 42 U.S.C. 6295(f)(4)(C) in a future rulemaking.

[16] On January 15, 2010, several interested parties submitted a joint comment to DOE recommending adoption of minimum energy conservation standards for residential central air conditioners, heat pumps, and furnaces, as well as associated compliance dates for such standards, which represents a negotiated agreement among a variety of interested stakeholders including manufacturers and environmental and efficiency advocates. The original agreement (referred to as the ''consensus agreement'') was completed on October 13, 2009, and had 15 signatories. For more information, see section III.B of this direct final rule.

issues: (1) The consensus agreement; (2) the scope of coverage for the rulemaking; (3) a combined rulemaking; (4) regional standards and their enforcement; (5) test procedure and rating metrics; (6) product classes; (7) efficiency levels and representative products analyzed in the engineering analysis; (8) installation, repair, and maintenance costs; and (9) product and fuel switching. The comments received since publication of the March 2010 NOPM, including those received at the March 2010 public meeting, have contributed to DOE's resolution of the issues in this rulemaking. This direct final rule quotes and/or summarizes these comments, and responds to all the issues they raised. (A parenthetical reference at the end of a quotation or paraphrase provides the location of the item in the public record.)

b. Central Air Conditioners and Heat Pumps

As with furnaces, NAECA included amendments to EPCA that established EPCA's original energy conservation standards for central air conditioners and heat pumps, consisting of two minimum SEER levels for air conditioners and for heat pumps when operating in the cooling mode and two minimum HSPF levels for heat pumps when operating in the heating mode. (42 U.S.C. 6295(d)(1)–(2)) One of the SEER levels and one of the HSPF levels applied to split systems, and the other SEER and HSPF levels applied to single package systems. Each ''split system'' consists of an outdoor unit and an indoor unit which are ''split'' from each other and connected via refrigerant tubing. The outdoor unit has a compressor, heat exchanger coil, fan, and fan motor. The indoor unit has a heat exchanger coil and a blower fan unless it resides within a furnace, in which case the furnace contains the blower fan for air circulation. In ''single package systems,'' all the components that comprise a split system, including the air circulation components, are in a single cabinet that resides outdoors. In both types of systems, conditioned air is conveyed to the home via ducts.

EPCA, as amended, also requires DOE to conduct two cycles of rulemakings to determine whether to amend the energy conservation standards for central air conditioners and heat pumps. (42 U.S.C. 6295(d)(3)) Pursuant to 42 U.S.C. 6295(d)(3)(A), on January 22, 2001, DOE published a final rule in the **Federal Register** that adopted amended standards for split system air conditioners and heat pumps and single package air conditioners and heat pumps. 66 FR 7170 (the January 2001 Rule). However, shortly after publication of the January 2001 Rule, DOE postponed the effective date of the rule from February 21, 2001 to April 23, 2001 in response to President Bush's Regulatory Review Plan, and in order to reconsider the amended standards it contained. 66 FR 8745 (Feb. 2, 2001). While reviewing the amended standards, DOE further postponed the effective date pending the outcome of a petition submitted by the Air Conditioning and Refrigeration Institute. 66 FR 20191 (April 20, 2001). DOE subsequently withdrew the 2001 final rule and published another final rule which adopted revisions of these amended standards, as well as new amended standards for the product classes for which the January 2001 Rule had not prescribed standards. 67 FR 36368 (May 23, 2002) (the May 2002 Rule). The Natural Resources Defense Council (NRDC), along with other public interest groups and several State Attorneys General filed suit in the U.S. Court of Appeals for the Second Circuit, challenging DOE's withdrawal of the January 2001 final rule and promulgation of the May 2002 final rule. On January 13, 2004, the U.S. Court of Appeals for the Second Circuit invalidated the May 2002 Rule's revisions of the standards adopted in the January 2001 Rule, because the May 2002 final rule had lower amended standards than the January 2001 Rule and, thus, violated 42 U.S.C. 6295(o)(1) (*i.e.,* the ''anti-backsliding clause''). *Natural Resources Defense Council* v. *Abraham,* 355 F.3d 179 (2d Cir. 2004). However, the Court's decision did not affect the standards DOE adopted in the May 2002 Rule for products not covered by the standards in the January 2001 Rule. To be consistent with the court's ruling, DOE published the August 2004 Rule, which established the standards currently applicable to central air conditioners and heat pumps. 69 FR 50997 (August 17, 2004). As stated above, this rule completed the first cycle of rulemaking for revised standards for central air conditioners and heat pumps under 42 U.S.C. 6295(d)(3)(A), and these standards took effect on January 23, 2006. *Id.*

DOE initiated the current rulemaking on June 2, 2008, by publishing on its Web site its ''Rulemaking Framework for Residential Central Air Conditioners and Heat Pumps.'' (A PDF of the framework document is available at *http://www1.eere.energy.gov/buildings/appliance_standards/residential/cac_heatpumps_new_rulemaking.html.*) DOE also published a notice announcing the availability of the framework document and a public meeting on the document, and requesting public comment on the matters raised in the document. 73 FR 32243 (June 6, 2008). The framework document described the procedural and analytical approaches that DOE anticipated using to evaluate energy conservation standards for central air conditioners and heat pumps and identified various issues to be resolved in conducting this rulemaking.

DOE held the public meeting on June 12, 2008, in which it: (1) Presented the contents of the framework document; (2) described the analyses it planned to conduct during the rulemaking; (3) sought comments from interested parties on these subjects; and (4) in general, sought to inform interested parties about, and facilitate their involvement in, the rulemaking. Interested parties discussed the following major issues at the public meeting: (1) The scope of coverage for the rulemaking; (2) product classes; (3) test procedure modifications; (4) effects on cost and system efficiency of phasing out certain refrigerants due to climate and energy legislation such as the Waxman-Markey bill (H.R. 2454); (5) regulation of standby mode and off mode energy consumption; and (6) regional standards. At the meeting and during the comment period on the framework document, DOE received many comments that helped it identify and resolve issues pertaining to central air conditioners and heat pumps relevant to this rulemaking.

DOE then gathered additional information and performed preliminary analyses to help develop potential energy conservation standards for these products. This process culminated in DOE's announcement of another public meeting to discuss and receive comments on the following matters: (1) The product classes DOE planned to analyze; (2) the analytical framework, models, and tools that DOE was using to evaluate standards; (3) the results of the preliminary analyses performed by DOE; and (4) potential standard levels that DOE could consider. 75 FR 14368 (March 25, 2010) (the March 2010 Notice). DOE also invited written comments on these subjects and announced the availability on its Web site of a preliminary technical support document (preliminary TSD) it had prepared to inform interested parties and enable them to provide comments. *Id.* (The preliminary TSD is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/cac_heatpumps_new_rulemaking.html*) Finally, DOE stated its interest in receiving views concerning other

relevant issues that participants believed would affect energy conservation standards for central air conditioners and heat pumps, or that DOE should address in this direct final rule. *Id.* at 14372.

The preliminary TSD provided an overview of the activities DOE undertook to develop standards for central air conditioners and heat pumps and discussed the comments DOE received in response to the framework document. Similar to the RAP for furnaces, it also addressed the consensus agreement that recommended particular standards for DOE adoption for furnaces and central air conditioners/heat pumps, and it addressed DOE's consideration of whether to conduct a single rulemaking to address standards either for these two products or for these products and furnace fans. The preliminary TSD also described the analytical framework that DOE used (and continues to use) in considering standards for central air conditioners and heat pumps, including a description of the methodology, the analytical tools, and the relationships between the various analyses that are part of this rulemaking. The preliminary TSD presented and described in detail each analysis that DOE had performed for these products up to that point, including descriptions of inputs, sources, methodologies, and results, and it included DOE's evaluation of potential regional standards for central air conditioners and heat pumps. These analyses were as follows:

- A *market and technology assessment* addressed the scope of this rulemaking, identified the potential classes for central air conditioners and heat pumps, 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 central air conditioners and heat pumps, 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 central air conditioners and heat pumps;
- An *energy use analysis* estimated the annual energy use of central air conditioners and heat pumps;
- 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 central air conditioners and heat pumps, compared to any increase in installed costs likely to result directly from the imposition of a given standard;
- A *payback period analysis* estimated the amount of time it takes individual consumers to recover the higher purchase price expense of more energy-efficient products through lower operating costs;
- A *shipments analysis* estimated shipments of central air conditioners and heat pumps over the time period examined in the analysis, and was used in performing the national impact analysis;
- A *national impact analysis* assessed the national and regional energy savings, and the national and regional net present value of total consumer costs and savings, expected to result from specific, potential energy conservation standards for central air conditioners and heat pumps; and
- A *preliminary manufacturer impact analysis* took the initial steps in evaluating the effects on manufacturers of amended efficiency standards.

In the March 2010 Notice, DOE addressed the consensus agreement, regional standards, and the possibility of a combined rulemaking. DOE also summarized in detail in the notice the nature and function of the following analyses: (1) Engineering analysis; (2) energy use analysis; (3) markups to determine installed prices; (4) LCC and PBP analyses; and (5) national impact analysis. 75 FR 14368, 14370–71 (March 25, 2010).

The public meeting announced in the March 2010 Notice took place on May 5, 2010 at DOE headquarters in Washington, DC. At this meeting, DOE presented the methodologies and results of the analyses set forth in the preliminary TSD. Interested parties that participated in the public meeting discussed a variety of topics, but centered on the following issues: (1) The consensus agreement; (2) a combined rulemaking with furnaces and furnace fans; (3) efficiency metrics; (4) technology options; (5) product classes; (6) installation, maintenance, and repair costs; (7) markups and distributions chains; (8) central air conditioner and heat pumps shipments; and (9) electricity prices. The comments received since publication of the March 2010 Notice, including those received at the May 2010 public meeting, have contributed to DOE's resolution of the issues in this rulemaking as they pertain to central air conditioners and heat pumps. This direct final rule responds to the issues raised by the commenters. (A parenthetical reference at the end of a quotation or paraphrase provides the location of the item in the public record.)

## III. General Discussion

### *A. Combined Rulemaking*

As discussed in section II.B.2, DOE had been conducting or planning separate standards rulemakings for three interrelated products: (1) Central air conditioners and heat pumps; (2) gas furnaces; and (3) furnace fans. Rather than analyze each set of products separately, DOE considered combining the analyses to examine how the interaction between the three products impacts the cost to consumers and the energy savings resulting from potential amended standards. In both its RAP regarding energy conservation standards for residential furnaces and preliminary analysis for residential central air conditioners and heat pumps, DOE specifically invited comment from interested parties related to the potential for combining the rulemakings regarding energy conservation standards for residential central air conditioners and heat pumps, residential furnaces, and furnace fans.

NRDC commented that it supports accelerating the furnace fan rulemaking to coincide with the rulemakings for furnaces and central air conditioners, because a combined rulemaking would potentially provide analytical simplification and is consistent with the President's request that DOE meet all statutory deadlines and accelerate those with large potential energy savings. (FUR: NRDC, No. 1.3.020 at pp. 9–10) [17] The California investor-owned utilities (CA IOUs, *i.e.,* Pacific Gas & Electric, Southern California Gas Company, San Diego Gas and Electric, and Southern California Edison) also supported a combined rulemaking, arguing that this approach would allow DOE to more accurately analyze the energy-efficiency impacts of various standards options. The CA IOUs also stated that a combined rulemaking would reduce redundant workload for DOE and minimize the number of public meetings. (FUR: CA IOUs, No. 1.3.017 at p. 2) Proctor Engineering Group (Proctor) stated support for combining the furnace, furnace fan, and central air conditioner and heat pump rulemakings because the three products work

[17] In this direct final rule, DOE discusses comments received in response to both the furnaces rulemaking analysis plan and the central air conditioners and heat pumps preliminary analysis. Comments received in response to the furnace rulemaking analysis plan are identified by ''FUR'' preceding the comment citation. Comments received in response to the central air conditioners and heat pump preliminary analysis are identified by ''CAC'' preceding the comment citation.

together. Proctor asserted that the standards need to be integrated together and that the analysis should be integrated as well. (FUR: Proctor, Public Meeting Transcript, No. 1.2.006 at p. 29) In written comments, Proctor elaborated that DOE could improve current standards by promulgating standards that recognize the interdependence of furnaces, air conditioners, heat pumps, and air handler fans within the average U.S. household and that are consistent such that they can be properly integrated within a system to produce results that are representative of a system typically found in a home in the United States of America. (FUR, Proctor, FDMS No. 0002 at p. 2)

The American Council for an Energy Efficient Economy (ACEEE), Heating Air-conditioning & Refrigeration Distributors International (HARDI), Ingersoll Rand, Southern Company (Southern), Edison Electric Institute (EEI), and Lennox supported a combined rulemaking of furnaces and central air conditioners and heat pumps, but did not support a combined rulemaking that also covers furnace fans. (FUR: ACEEE, No. 1.3.009 at p. 4; HARDI, No. 1.3.016 at pp. 2, 5–6; Ingersoll Rand, No. 1.3.006 at p. 1; Lennox, No. 1.3.018 at p. 2) (CAC: ACEEE, No. 72 at p. 2; HARDI, No. 56 at p. 2; Lennox No. 65 at p. 2; Ingersoll Rand, No. 66 at p. 8; Southern, No. 73 at p.2; EEI, No. 75 at p. 4) HARDI commented that there would not be time for a thorough analysis of furnace fans if that rulemaking is accelerated to include it with furnaces and central air conditioners and heat pumps. (FUR: HARDI, No. 1.3.016 at pp. 2, 5–6) Ingersoll Rand concurred, further stating that furnace fan efficiency is a complex topic that needs to be handled separately. (FUR: Ingersoll Rand, No. 1.3.006 at p. 1) (CAC: Ingersoll Rand, No. 66 at p. 8) Lennox stated that the furnace fan rulemaking will be more complicated than typical DOE proceedings, and valuable information can be obtained by conducting the furnace and central air conditioner and heat pump rulemakings in advance of the fan rulemaking. Additionally, Lennox stated that the furnace fan rulemaking should not be rushed by accelerating the schedule by a year and a half. (FUR: Lennox, No. 1.3.018 at p. 2) (CAC: Lennox, No. 65 at p. 2)

The Appliance Standards Awareness Project (ASAP) submitted a joint comment on behalf of ACEEE, the Air-conditioning, Heating and Refrigeration Institute (AHRI), Alliance to Save Energy (ASE), ASAP, California Energy Commission (CEC), National Consumer Law Center (NCLC) (on behalf of low-income clients), NRDC, Northeast Energy Efficiency Partnerships (NEEP), and Northwest Power and Conservation Council (NPCC). Collectively, these organizations are referred to as ''Joint Stakeholders,'' when referencing this comment. The Joint Stakeholders stated that rules for furnaces and air conditioners can be completed much earlier than a final rule for furnace fans, especially if the furnace and air conditioner rules are based on the consensus agreement. (FUR: Joint Stakeholders, No. 1.3.012 at p. 3) Similarly, AHRI supported a separate rulemaking for furnace fans, but it stated that it would agree to a combined central air conditioners and heat pumps and furnaces rulemaking, if the consensus agreement is adopted by DOE in a direct final rule or through an expedited normal rulemaking. In the event that DOE decides not to adopt the consensus agreement, AHRI recommended separate rulemakings for all three products, and explicitly stated that the furnace fan rulemaking should not be combined with either of the other two products under any circumstances because AHRI believes that shortening the furnace fan rulemaking is unreasonable given that DOE has no prior experience with furnace fans. AHRI stated that more time is needed to fully analyze the electrical energy consumed by furnace fans in order to establish appropriate energy conservation standards for those products. (FUR: AHRI, No. 1.3.008 at p. 3) (CAC: AHRI, No. 67 at p. 3) Rheem recommended that DOE should conduct a separate rulemaking for furnace fans and should only combine the rulemakings for furnaces and central air conditioners and heat pumps if DOE adopts the consensus agreement. Rheem stated that much study and analysis is needed to determine the appropriate energy conservation standards for furnace fans, and that shortening the timeframe is unreasonable and not imperative. (FUR: Rheem, No. 1.3.022 at pp. 2–3) The American Public Power Association (APPA) commented that it supports an ''across the board'' rulemaking that creates an ''even playing field'' for residential space heating technologies (*e.g.,* heat pumps and furnaces) so as to avoid a less competitive market that would cause market distortions and non-rational purchasing behavior. (FUR: APPA, No. 1.3.011 at p. 4)

The Air Conditioning Contractors of America (ACCA) stated there is no added benefit in combining the rulemakings for furnaces, residential central air conditioners and heat pumps, and furnaces fans. (FUR: ACCA, No. 1.3.007 at p. 3) The American Public Gas Association (APGA) commented that it does not support combining the furnace, central air conditioner, and furnace fan rulemakings. (FUR: APGA, No. 1.3.004 at p. 2)

DOE agrees with the comments supporting a combined rulemaking for central air conditioners, heat pumps, and furnaces because these products are linked as part of the complete heating, ventilation, and air-conditioning (HVAC) system for a home. A residential HVAC system often includes a central air conditioner, a furnace, and a furnace fan, or in some instances a heat pump, a furnace, and a furnace fan. Further, all of the major manufacturers of these products produce central air conditioners, heat pumps, and furnaces and use the same distribution network for these products. Combining the analyses for these products simplified the analyses and allowed for the analyses to accurately account for the relations between the different systems.

However, DOE also believes there are merits to the comments suggesting that DOE should not attempt to combine furnace fans with the furnace and central air conditioner and heat pump rulemaking. While previous rulemakings have been conducted to regulate central air conditioners and heat pumps and furnaces, furnace fans are not currently regulated. DOE recognizes that the analyses required to develop a test procedure and to determine appropriate energy conservation standards for furnaces fans are complex and will be extensive. Therefore, DOE has determined that the furnace fan analysis cannot be accelerated such that it could be completed in the shortened timeframe that would be necessary for a combined rule that would also include furnace fans, while still generating valid and reliable results. Additionally, DOE believes that the furnace fan rulemaking would benefit from insights gained during the combined rulemaking of central air conditioners and heat pumps and furnaces. Therefore, DOE has decided to combine only the central air conditioner and heat pump and furnace rulemakings into a single combined rulemaking. The furnace fan rulemaking will continue as a separate rulemaking, and DOE will publish a final rule to establish energy conservation standards for furnace fans by December 31, 2013, as required by 42 U.S.C. 6295(f)(4)(D).

*B. Consensus Agreement*

1. Background

On January 15, 2010, AHRI, ACEEE, ASE, ASAP, NRDC, and NEEP submitted a joint comment to DOE's residential furnaces and central air conditioners and heat pumps rulemakings recommending adoption of a package of minimum energy conservation standards for residential central air conditioners, heat pumps, and furnaces, as well as associated compliance dates for such standards, which represents a negotiated agreement among a variety of interested stakeholders including manufacturers and environmental and efficiency advocates. (FUR: Joint Comment, No. 1.3.001; CAC: Joint Comment, No. 47) More specifically, the original agreement was completed on October 13, 2009, and had 15 signatories, including AHRI, ACEEE, ASE, NRDC, ASAP, NEEP, NPCC, CEC, Bard Manufacturing Company Inc., Carrier Residential and Light Commercial Systems, Goodman Global Inc., Lennox Residential, Mitsubishi Electric & Electronics USA, National Comfort Products, and Trane Residential. Numerous interested parties, including signatories of the consensus agreement as well as other parties, expressed support for DOE adoption of the consensus agreement in both oral and written comments on the furnaces and central air conditioners rulemakings, which are described in further detail in section III.B.3. In both the furnace RAP and the central air conditioner and heat pump preliminary analysis, DOE requested comment on all aspects of the consensus agreement, including the regional divisions, recommended standard levels, and the suggested compliance dates.

After careful consideration of the joint comment containing a consensus recommendation for amended energy conservation standards for residential central air conditioners, heat pumps, and furnaces, 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 and energy-efficiency 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 this rule, 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 residential central air conditioners, heat pumps, and furnaces 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. (While DOE typically provides a comment period of 60 days on proposed standards, in this case DOE provides a comment period of the same length as the comment period on the direct final rule.) 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.

2. Recommendations

a. Regions

The consensus agreement divides the nation into three regions for residential central air conditioners and heat pumps, and two regions for residential furnaces based on the population-weighted number of heating degree days (HDD) of each State and recommends a different minimum standard level for products installed in each region. For these products generally, States with 5,000 HDD or more are considered as part of the northern region, while States with less than 5,000 HDD are considered part of the southern region, and these regions (and the States that compose them) are discussed further in section III.D. For residential central air conditioners and heat pumps, the consensus agreement establishes a third region—the ''southwest'' region—comprised of California, Arizona, New Mexico, and Nevada. For furnaces, the southwest region States are included in the southern region. For residential central air conditioners and heat pumps, the States in the northern region would be subject to the ''National standard'' under 42 U.S.C. 6295(o)(6)(B)(i), while regional standards would apply for States in the two southern regions (*i.e.,* the hot-dry region and hot-humid region). For furnaces, the States in the southern region would be subject to the ''National standard'' under 42 U.S.C. 6295(o)(6)(B)(i), while the States in the northern region would be required to meet a more-stringent regional standard. DOE received numerous comments from interested parties regarding the regional definitions for the analysis, some of

which were related to the regions recommended in the consensus agreement. These comments are discussed in detail in section III.D, ''Regional Standards.''

b. Standard Levels

The minimum energy conservation standards for furnaces and central air conditioners and heat pumps recommended by the consensus agreement are contained in Table III.1 and Table III.2. (CAC: Joint Comment, No. 47 at p. 2) The consensus agreement recommends amended AFUE standards for all furnace product classes that are being considered in this rulemaking for amended minimum AFUE energy conservation standards. However, the agreement does not contain recommendations for amended SEER and HSPF standards for the space-constrained or small-duct, high-velocity (SDHV) product classes of central air conditioners and heat pumps, which are also included in this rulemaking. Additionally, the consensus agreement does not contain recommendations for energy conservation standards for standby mode and off mode energy consumption, which DOE is required to consider in this rulemaking pursuant to 42 U.S.C. 6295(gg)(3).

For central air conditioners, the consensus agreement recommends that DOE adopt dual metrics (*i.e.,* SEER and EER) for the hot-dry region. Generally, DOE notes that EPCA's definition of ''efficiency descriptor'' at 42 U.S.C 6291(22) specifies that the efficiency descriptor for both central air conditioners and heat pumps shall be SEER. Accordingly, DOE used SEER as the sole metric for analyzing most of the TSLs considered for today's direct final rule. However, DOE believes that the language at 42 U.S.C 6295(p)(4) provides DOE some measure of discretion when considering recommended standards in a consensus agreement, if the Secretary determines that the recommended standards are in accordance with 42 U.S.C. 6295(o).

TABLE III.1—CONSENSUS AGREEMENT RECOMMENDED MINIMUM ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL FURNACES

| System type | Recommended AFUE requirement for States with ≥ 5,000 HDD* % | Recommended AFUE requirement for States with < 5,000 HDD** % |
|---|---|---|
| Non-weatherized Gas Furnaces† | 90 | 80 |
| Non-weatherized Oil Furnaces | 83 | 83 |
| Gas-Packs (weatherized furnace) | 81 | 81 |

* These States include: Alaska, Colorado, Connecticut, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.

** These States include: Alabama, Arizona, Arkansas, California, Delaware, District of Columbia, Florida, Georgia, Hawaii, Kentucky, Louisiana, Maryland, Mississippi, New Mexico, Nevada, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia.

†Non-weatherized gas furnaces also include mobile home furnaces.

TABLE III.2—CONSENSUS AGREEMENT RECOMMENDED MINIMUM ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL CENTRAL AIR CONDITIONERS AND HEAT PUMPS

| System Type | Recommended SEER/HSPF requirements for northern ''rest of country'' region* | Recommended SEER/HSPF requirements for southeast ''hot-humid'' region** | Recommended SEER/HSPF requirements for southwest ''hot-dry'' region† |
|---|---|---|---|
| Split AC | 13 SEER | 14 SEER | 14 SEER/12.2 EER <45,000 Btu/h. 14 SEER/11.7EER >45,000 Btu/h. |
| Split HP | 14 SEER/8.2HSPF | 14 SEER/8.2 HSPF | 14 SEER/8.2 HSPF. |
| Packaged AC | 14 SEER | 14 SEER | 14 SEER/11.0 EER. |
| Packaged HP | 14 SEER/8.0 HSPF | 14 SEER/8.0 HSPF | 14 SEER/8.0 HSPF. |
| Space Constrained AC and HP and SDHV. | No standard recommended | No standard recommended | No standard recommended. |

* These States include: Alaska, Colorado, Connecticut, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.

** These States include: Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Hawaii, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia.

† These States include: Arizona, California, New Mexico, and Nevada.

c. Compliance Dates

The compliance dates specified in the consensus agreement are May 1, 2013, for non-weatherized furnaces and January 1, 2015, for weatherized furnaces (*i.e.,* ''gas-packs'') and central air conditioners and heat pumps. These dates are at least eighteen months earlier than the compliance dates for these products as determined under 42 U.S.C. 6295(d)(3)(B) and (f)(4)(C). DOE received several comments from interested parties regarding its consideration of the compliance dates specified by the consensus agreement, as well as comments about the compliance dates under EPCA. A full discussion of comments related to the compliance dates for energy conservation standards for furnaces and central air conditioners and heat pumps is contained in section III.C.

3. Comments on Consensus Agreement

In its RAP for residential furnaces and the preliminary analysis for residential central air conditioners and heat pumps, DOE specifically invited comment from interested parties on the consensus agreement. In particular, DOE was interested in comments relating to the recommended AFUE, SEER, and HSPF requirements, the recommended regional divisions, and the

recommended compliance dates for amended standards. As noted above, comments on the regional divisions are discussed in section III.D. Additionally, DOE discusses compliance dates and the related comments in section III.C. DOE received numerous other comments regarding whether interested parties support or do not support the consensus agreement, whether DOE should adopt the consensus agreement as a direct final rule, and additional concerns interested parties have about the agreement. These comments are discussed in the paragraphs below.

Many commenters expressed support for the adoption of the consensus agreement. ACEEE stated it is the best available route to the maximum savings that are technologically feasible and economically justified. (FUR: ACEEE, No.1.3.009 at p. 1) (CAC: ACEEE, No. 72 at p. 1) NRDC requested that DOE move expeditiously to adopt the levels and dates presented by the agreement. (FUR: NRDC, No.1.3.020 at pp. 1–2) NEEP expressed support for the standard levels and procedural improvements in the consensus agreement and urged DOE to implement the recommendations through a direct final rule. (FUR: NEEP, No.1.3.021 at p. 1) ASAP stated its strong support for adoption of the consensus agreement, and encouraged DOE to adopt the consensus agreement as a direct final rule. (FUR: ASAP, Public Meeting Transcript, No. 1.2.006 at pp. 38–39)

AHRI stated that the agreement has several benefits including: (1) An accelerated compliance date of May 2013; (2) acceleration of the next rulemaking iteration; (3) a significant amount of energy savings; (4) economic savings to consumers; and (5) the fact that it would allow DOE to focus its resources on completing other rulemakings involving new or amended energy conservation standards. In the event that DOE cannot promulgate a direct final rule, AHRI recommended that DOE adopt the agreement in an expedited rulemaking process. (FUR: AHRI, No.1.3.008 at pp. 1–3) (CAC: AHRI, No. 67 at pp. 1–2) Carrier stated that DOE should adopt the consensus agreement, because it includes a comprehensive, harmonized approach for new regional efficiency standards that could be implemented in an accelerated fashion. (FUR: Carrier, No.1.3.013 at p. 2) (CAC: Carrier, No. 60 at p. 1) Ingersoll Rand and EEI echoed these comments. (FUR: Ingersoll Rand, No.1.3.006 at p. 1) (CAC: Ingersoll Rand, No. 66 at p. 1; EEI, No. 75 at p. 2) Southern initially stated at the furnaces public meeting that DOE should issue a NOPR and have a comment period rather than go directly to a final rule because many stakeholder groups were left out of the consensus agreement process. (FUR: Southern, Public Meeting Transcript, No. 1.2.006 at pp. 258–59) However, in its later comments on the central air conditioners and heat pumps rulemaking, Southern clarified its position, recommending that DOE accept the consensus agreement and, proceed with a direct final rule on central air conditioners, heat pumps, and furnace standards, if the necessary minor statutory revisions (*e.g.,* changes to building codes) are approved by Congress. (CAC: Southern, No. 73 at p. 1)

Lennox and NPCC supported the adoption of the consensus agreement in full, including the AFUE standards, recommended regional divisions, and recommended compliance dates. Lennox supported DOE's use of a direct final rule to adopt the agreement or, as an alternative, use of the standard rulemaking process in an expedited fashion. (FUR: Lennox, No.1.3.018 at p. 1) (CAC: Lennox, No. 65 at pp.1–2) (CAC: NPCC, No. 74 at p.1) Ingersoll Rand commented that DOE should adopt the consensus agreement because it would allow DOE to focus its resources on the furnace fan rule and on development of regional standards. (CAC: Ingersoll Rand, No. 66 at p. 1) Rheem asserted that Congress authorized DOE to issue direct final rules upon receipt of joint stakeholder proposals and that the agreement satisfies the criteria of the law and the Process Improvement Rule.[18] However, Rheem stated that if DOE cannot issue a direct final rule, Rheem would recommend that DOE adopt the agreement in an expedited rulemaking process. (FUR: Rheem, No.1.3.022 at pp. 1–2) (CAC: Rheem, No. 71 at p. 2) Daikin expressed support for the consensus agreement, provided that the SEER level for new construction is raised to 15 SEER on January 1, 2013 and to 18 SEER on January 1, 2016. (CAC: Daikin, No. 63 at p. 2)

The Joint Stakeholders expressed support for the agreement and encouraged DOE to expedite the adoption of the agreement through either a direct final rule or through the standard rulemaking process. The Joint Stakeholders cited many of the previously mentioned benefits and added that the consensus agreement would enable States to incorporate more-stringent appliance efficiency standards into their building codes, which are limited by Federal appliance efficiency standards. The Joint Stakeholders stated that DOE should address the issues of standby mode and off mode energy consumption for residential furnaces and standards for furnace fans in separate rulemakings without impeding the adoption of the consensus agreement in a final rule in the current rulemaking. (FUR: Joint Stakeholders, No. 1.3.012 at pp. 1–4)

APPA stated that it is in favor of the consensus agreement because it provides a high degree of regulatory certainty for manufacturers and utilities, and increases the minimum efficiency of gas and oil furnaces, products for which energy conservation standards have not been updated since 1992. APPA argued that DOE has the authority to adopt the consensus agreement in a direct final rule. (FUR: APPA, No. 1.3.011 at pp. 2–3) EEI expressed support for the consensus agreement for many of the reasons outlined above, adding that the consensus agreement would have the added benefit of increasing standards for furnaces at nearly the same time as the efficiency standards for residential boilers are increasing. (FUR: EEI, No. 1.3.015 at p. 2) CA IOUs supported the consensus agreement as a balanced package that would achieve significant energy, economic, and environmental benefits, while providing regulatory certainty. They urged DOE to adopt as efficiently as possible the regulatory aspects of the agreement, either through a direct final rule or the normal rulemaking process. However, the CA IOUs recognized that not all stakeholders supported the consensus agreement, and encouraged DOE to choose a rulemaking path that will produce a robust, defensible, and enforceable final standard. (FUR: CA IOUs, No. 1.3.017 at p. 1)

On behalf of Texas Client Services Center, Massachusetts Union of Public Housing Tenants, Texas Ratepayers Organization to Save Energy (collectively referred to hereafter as Low Income Groups), the National Consumer Law Center encouraged DOE to accept and implement the recommendations contained in the Joint Comment as soon as possible. The Low Income Groups are particularly interested in having DOE adopt the standards for furnaces, heat pumps, and central air conditioners included in the consensus agreement, along with the associated effective dates and regional boundaries. (FUR: Low Income Groups, No. 1.3.019 at pp. 5–6)

[18] The Process Improvement Rule was published in the **Federal Register** by DOE on July 15, 1996, and codified in Appendix A to 10 CFR part 430, subpart C. 61 FR 36974. The Process Improvement Rule elaborated on the procedures, interpretations, and policies that guide DOE in establishing new or amended energy conservation standards for consumer products.

In contrast to the above viewpoints, some commenters expressed opposition to, or reservations about, adoption of the consensus agreement. The American Gas Association (AGA) stated that DOE should not adopt the consensus agreement and should continue refining the November 2007 Rule. AGA strongly recommended that DOE should not issue a direct final rule requiring a 90-percent AFUE minimum efficiency for furnaces in the northern States and should, instead, proceed with an analysis of the technological feasibility and economic justification of the proposal, consistent with governing statutory requirements. It added that the signatories of the agreement do not represent consumer interests in the affected States, and that DOE needs to more fully account for potential consumer impacts. (FUR: AGA, No. 1.3.010 at p. 2) In the public meeting, AGA expressed concerns about replacing a non-condensing furnace with a condensing furnace due to potential problems with venting systems. (FUR: AGA, Public Meeting Transcript, No. 1.2.006 at pp. 40–41) APGA expressed similar comments, further stating that DOE should consider non-regulatory mechanisms to encourage market transformation to condensing non-weatherized furnaces, including through building codes. (FUR: APGA, No. 1.3.004 at pp. 3–4) The National Propane Gas Association (NPGA) also opposed requiring 90-percent AFUE furnaces in northern States, because of concerns related to venting issues in replacement installations (particularly when a furnace that has a common vent with a water heater is being replaced). (FUR: NPGA, No. 1.3.005 at p. 4)

HARDI stated that it supports the consensus agreement only to the extent that DOE is confident it can justify increases to residential HVAC minimum efficiency standards and regionalization of standards. HARDI is not convinced such justification is possible given its experiences since the last amendments to the central air conditioners and heat pumps standards in 2006. (FUR: HARDI, No. 1.3.016 at p. 4) (CAC: HARDI, No. 56 at p. 4) HARDI believes DOE will have difficulty justifying a higher heating standard in a northern region that includes both North Dakota and Kentucky, which have vastly different heating demands. HARDI also stated that a southeastern regional standard that applies to both Florida and Maryland, or a southwestern regional standard that includes cities with significantly different climates appears to significantly threaten consumer choice and product availability. (FUR: HARDI, No. 1.3.016 at p. 5) HARDI is also concerned that: (1) The standards in the consensus agreement will encourage utilities to exit the energy-efficiency business as it pertains to HVAC systems, because they might no longer see value in providing an incentive for 95-percent AFUE premium furnaces if a standard is set at 90-percent AFUE; and (2) the loss of such incentives would make purchases of higher-than-minimum-efficiency furnaces highly unlikely. (FUR: HARDI, No. 1.3.016 at p. 8)

ACCA expressed concern over the requirement for condensing furnaces in the northern region, noting that the cost of replacing a non-condensing furnace with a condensing furnace (which might require venting retrofit measures) could be prohibitive in some cases. (FUR: ACCA, No. 1.3.007 at pp. 2–3)

DOE also received comments that, while not specifically addressing the consensus agreement, concern the standard-level recommendations for central air conditioners and heat pumps. Specifically, Southern remarked that standards should have equal cooling efficiency requirements for central air conditioners and heat pumps, and Ingersoll Rand, Rheem, and EEI provided similar statements. (CAC: Southern, No. 73 at p. 3) (CAC: Ingersoll Rand, No. 66 at p. 1) (CAC: EEI, No. 75 at p. 5) (CAC: Rheem, No. 76 at p. 2)

In considering the proposed standard levels in the consensus agreement, DOE reviewed 42 U.S.C. 6295(p)(4)(C), which states that if DOE issues a direct final rule (as suggested by the signatories to the consensus agreement) and receives any adverse public comments within 120 days of publication of the rule, then DOE would be forced to withdraw the final rule. Interested parties have already submitted comments expressing opposition to the consensus agreement, which indicates there is a possibility that DOE may receive adverse comments to the adoption of the consensus agreement as part of this direct final rule.

DOE recognizes the substantial effort and analysis that resulted in the consensus agreement and analyzed it as a separate TSL, in conjunction with other TSLs for this direct final rule. As described above, the interested parties opposing the consensus agreement were primarily concerned with the requirement that non-weatherized gas furnaces and mobile home furnaces in the northern region achieve a minimum of 90-percent AFUE. In its analysis for today's direct final rule, DOE addressed the issues raised by the parties with respect to replacement installations of 90-percent AFUE non-weatherized gas furnaces or mobile home furnaces. DOE believes that, although in some instances it may be costly, consumers can replace non-condensing furnace with condensing furnaces in virtually all installations.

As suggested by AGA, DOE performed an analysis of the technological feasibility and economic justification of the consensus agreement recommendations, consistent with statutory requirements in EPCA. DOE fully considered all costs of replacing non-condensing furnaces with condensing furnaces in the northern region. DOE's results indicate that some consumers would be negatively impacted by a northern region standard at 90-percent AFUE for non-weatherized gas furnaces or mobile home furnaces, but that on balance, the benefits of such a standard would outweigh the costs. Section V.C of this notice discusses the results of DOE's analyses and the weighting of benefits and burdens when considering the consensus agreement standard levels and compliance dates (*i.e.,* TSL 4).

*C. Compliance Dates*

EPCA establishes a lead time between the publication of amended energy conservation standards and the date by which manufacturers must comply with the amended standards for both furnaces and central air conditioners and heat pumps. For furnaces, EPCA dictates an eight-year period between the rulemaking publication date and compliance date for the first round of amended residential furnace standards, and a five-year period for the second round of amended residential furnace standards. (42 U.S.C. 6295(f)(4)(B)–(C)) DOE has concluded that the remand agreement for furnaces does not vacate the November 2007 Rule for furnaces and boilers. Therefore, the November 2007 Rule completed the first round of rulemaking for amended energy conservation standards for furnaces, thereby satisfying the requirements of 42 U.S.C. 6295(f)(4)(B). As a result, the current rulemaking constitutes the second round of rulemaking for amended energy conservation standards for furnaces, as required under 42 U.S.C. 6295(f)(4)(C), a provision which prescribes a five-year period between the standard's publication date and compliance date. For central air conditioners and heat pumps, the statutory provision at 42 U.S.C. 6295(d)(3)(B) establishes a similar five-year time period between the standard's publication date and compliance date.

Therefore, in its analysis of amended energy conservation standards for

furnaces and central air conditioners and heat pumps, DOE used a five-year lead time between the publication of the standard and the compliance date for all TSLs, except for the TSL which analyzed the consensus agreement. Because the accelerated compliance dates were a negotiated aspect of the consensus agreement which amounts to an important benefit, DOE used the accelerated compliance dates when analyzing the consensus agreement TSL. (See section V.A for a description of the TSLs considered for this direct final rule.)

In response to the RAP for furnaces and the preliminary analysis for central air conditioners and heat pumps, DOE received comments from interested parties regarding the required lead time between the publication of amended energy conservation standards and the date by which manufacturers must comply with the amended standards. These comments are discussed in the section immediately below.

a. Consensus Agreement Compliance Dates

Several interested parties commented on the issue of the compliance dates for amended energy conservation standards for furnaces and central air conditioners and heat pumps in the context of the dates specified in the consensus agreement. AHRI argued that DOE has the authority to adopt the accelerated standards compliance dates in the consensus agreement whether DOE proceeds via a conventional rulemaking process or via direct final rule. AHRI asserted that 42 U.S.C. 6295(p)(4), ''Direct final rules,'' which delineates procedures for when DOE receives a joint recommendation for amended standards by interested parties that are fairly representative of relevant points of view (including manufacturers, States, and efficiency advocates), trumps 42 U.S.C. 6295(m), ''Amendment of standards,'' which contains specific provisions pertaining to compliance dates and lead time. Further, AHRI commented that DOE has itself previously recognized that in circumstances where the manufacturers who must comply with a standard support acceleration of the compliance date of the standard, DOE has the flexibility to adopt the earlier compliance date (*see* 67 FR 36368, 36394 (May 23, 2002) and 69 FR 50997, 50998 (August 17, 2004)). (FUR: AHRI, No. 1.3.008 at pp. 3–4) (CAC: AHRI, No. 67 at pp. 3–4) NRDC and Rheem expressed similar views. (FUR: NRDC, No. 1.3.020 at p. 2; Rheem, No. 1.3.022 at p. 3) (CAC: Rheem, No. 71 at p. 3) However, AHRI further clarified its position that if DOE decides in a final rule to adopt levels that are different from those in the consensus agreement, then AHRI would maintain that the compliance date (for furnaces) specified by the law would be eight years after publication of the final rule. (FUR: AHRI, Public Meeting Transcript, No. 1.2.006 at p. 126)

EarthJustice asserted that DOE must either adopt the compliance dates specified in the consensus agreement, or adopt an expedited compliance deadline of its own design. EarthJustice asserted that the provisions of EPCA relevant here do not require an eight-year lead time for furnaces, but instead require a hard-date deadline, which has passed. Therefore, EarthJustice believes DOE has discretion in setting a compliance date. EarthJustice added that there is no basis to the argument that maintaining an eight-year lead time is necessary to ease manufacturers' compliance burdens since manufacturers have indicated via the consensus agreement that they can meet the levels in the consensus agreement in a much shorter timeframe than eight years. (FUR: EarthJustice, No. 1.3.014 at pp. 2–4)

Similarly, ACEEE stated that DOE should seriously consider adopting the compliance dates in the consensus agreement because the compliance dates in the statute are intended to provide manufacturers time to reengineer their products and production facilities, but in this case, manufacturers have agreed to the compliance dates specified in the consensus agreement. (FUR: ACEEE, Public Meeting Transcript, No. 1.2.006 at pp. 112–113) ACEEE acknowledged that while having the same compliance dates for all products is desirable for implementation and enforcement purposes, limited engineering resources led to different compliance dates for non-weatherized gas and weatherized gas furnaces in the consensus agreement (of 2013 and 2015, respectively). (FUR: ACEEE, Public Meeting Transcript, No. 1.2.006 at pp. 109–110)

EEI suggested that if DOE rejects the consensus agreement, DOE should establish a compliance date for all covered furnaces that is no later than November 19, 2015 (*i.e.,* the compliance date for the standards promulgated in the November 2007 Rule). This date is shortly before the compliance date for the new efficiency standards for heat pumps in June 2016, and according to EEI, it would avoid potential market distortions for space heating equipment that might result from increasing efficiency standards for one product type but not for a competing product. (FUR: EEI, No. 1.3.015 at p. 4) (CAC: EEI, No. 75 at p. 4) APPA reiterated EEI's comments on these points. (FUR: APPA, No. 1.3.011 at pp. 3–4)

After careful consideration of these comments, DOE has concluded that it is bound by EPCA in terms of setting the lead time between the publication of amended energy conservation standards and the date by which manufacturers must comply with those amended standards. DOE has consistently interpreted the statutory time period between publication of a final rule and the compliance date for amended standards to reflect Congress's determination as to adequate lead time for manufacturers to retool their operations to ensure that the product in question meets the new or amended standards, even in those instances where the statutory deadline has passed. However, DOE agrees with AHRI, Rheem, and NRDC that in circumstances where the manufacturers who must comply with the standard support acceleration of the compliance date of the standard (such as in the case of the consensus agreement where compliance dates were an integral part of the agreement), DOE has some flexibility in establishing the compliance dates for amended energy conservation standards. For the other levels, DOE believes the statutory provisions pertaining to lead time should continue to govern, particularly for levels more stringent than the consensus agreement (*i.e.,* levels to which manufacturers never agreed, particularly on an accelerated basis). Therefore, as noted in the preceding section, DOE has determined that for all TSLs analyzed—except for the consensus agreement TSL—DOE is bound by the lead time requirements in EPCA when determining compliance dates. For those other TSLs, the analysis accounts for a five-year lead time between the publication of the final rule for furnaces and central air conditioners and heat pumps and the date by which manufacturers would have to comply with the amended standard. However, for the consensus agreement TSL, DOE's analyses utilized the compliance dates specified in the consensus agreement.

b. Shift From Peak Season

Several interested parties noted that if DOE follows a typical rulemaking schedule and publishes a final rule on June 30, 2011, then the compliance date (June 2016) would fall during the peak of the air conditioner shipment season in 2016. Interested parties expressed concern that a compliance date during peak season could potentially lead to costly disruptions in the distribution chain, as well as consumer confusion.

HARDI, Southern, ACEEE, and Ingersoll Rand stated that the compliance date should not be set during the peak cooling season. (CAC: HARDI, No. 70 at p. 2; ACEEE, No. 72 at p. 3; SCS, No. 73 at p. 2; Ingersoll Rand, No. 66 at p. 3). HARDI, ACEEE, and Southern went further and recommended that January 1 be used as the compliance date instead for central air conditioners and heat pumps. (CAC: HARDI, No. 70 at p. 2; ACEEE, No. 72 at p. 3; SCS, No. 73 at p. 2) EEI also noted that if compliance dates are moved for central air conditioners and heat pumps, then the compliance dates for furnaces should be moved as well to avoid the same issue for the heating season. (CAC: EEI, No. 75 at p. 3)

As discussed above in this section, DOE believes that the applicable statutory provisions (*i.e.,* 42 U.S.C. 6295(f)(4)(C) for furnaces and 42 U.S.C. 6295(d)(3)(B) for central air conditioners and heat pumps) necessitate a five-year time period between the final rule publication date and the compliance date. The only exception would be in the case of the adoption of the consensus agreement, because of the importance of accelerated compliance dates to the energy savings provided by this agreement. If DOE adopts any standards besides those in the consensus agreement, DOE believes that it is constrained by EPCA and does not have the authority to shift the compliance dates away from the peak cooling season (either earlier or later). However, this constraint does not prevent manufacturers from voluntarily complying at an earlier non-peak season date to ease the transition to amended energy conservation standards.

c. Standby Mode and Off Mode Compliance Dates

EPCA, as amended, does direct DOE to incorporate standby mode and off mode energy consumption into a single amended or new standard, if feasible. (42 U.S.C. 6295(gg)(3)(A)) Under such a circumstance where standby mode and off mode energy consumption is integrated into the existing regulatory metric, the standby mode and off mode standards would have the same compliance dates as the amended or new active mode standards. Therefore, DOE believes that, when feasible, the compliance dates for standby mode and off mode should be the same as the compliance dates for amended active mode energy conservation standards. Although DOE has determined that it is technically infeasible to integrate the standby mode and off mode energy consumption into a single standard for furnaces and central air conditioners/heat pumps, DOE believes it is still sensible to keep the timeline for compliance with standby mode and off mode standards the same so that manufacturers of furnaces, central air conditioners, and heat pumps can bring all of their compliance-related modifications forward at the same time. DOE further believes that this approach would provide adequate lead time for manufacturers to make the changes necessary to comply with the standby mode and off mode standards. As a result, DOE is adopting standby mode and off mode standards with compliance dates that match the compliance dates for amended AFUE, SEER, and HSPF minimum energy conservation standards.

*D. Regional Standards*

As described in section II.A, EISA 2007 amended EPCA to allow for the establishment of a single more-restrictive regional standard in addition to the base national standard for furnaces, and up to two more-restrictive regional standards in addition to the base national standard for residential central air conditioners and heat pumps. (42 U.S.C. 6295(o)(6)(B)) The regions must include only contiguous States (with the exception of Alaska and Hawaii, which can be included in regions with which they are not contiguous), and each State may be placed in only one region (*i.e.,* a State cannot be divided among or otherwise included in two regions). (42 U.S.C. 6295(o)(6)(C))

Further, EPCA mandates that a regional standard must produce significant energy savings in comparison to a single national standard, and provides that DOE must determine that the additional standards are economically justified and consider the impact of the additional regional standards on consumers, manufacturers, and other market participants, including product distributors, dealers, contractors, and installers. (42 U.S.C. 6295(o)(6)(D)) For this rulemaking, DOE has considered the above-delineated impacts of regional standards in addition to national standards for both furnaces and central air conditioners and heat pumps.

For single-package air conditioners and single-package heat pumps, DOE has analyzed the standards on a national basis where the standard would be effectively the same in each region. For consistency with the consensus agreement and ease of presentation, DOE specifies the requirements of the standard by region, but for all practical purposes the standard is a national one. DOE evaluated whether regional standards with different requirements in certain regions satisfied the statutory criteria for regional standards. Given the low level of shipments of these products, DOE determined that enforcement of regionally distinct standards would be difficult for these product categories. DOE believes that it is likely that given a less stringent requirement in some regions there would be leakage effects (*i.e.* installers purchasing product in less stringent regions and shipping them to regions with more stringent requirements). Such leakage effects would decrease the energy savings of regionally distinct standards requirements relative to a national standard with the same stringency in each region. DOE has therefore determined that regional standards would not produce significant energy savings in comparison to a single national standard for these products. DOE made a similar determination for oil-fired furnaces.

Where appropriate, DOE has addressed the potential impacts from regional standards in the relevant direct final rule analyses, including the mark-ups to determine product price, the LCC and payback period analysis, the national impact analysis (NIA), and the manufacturer impact analysis (MIA). DOE's approach for addressing regional standards is included in the methodology section corresponding to each individual analysis, in section IV of this notice. For certain phases of the analysis, additional regional analysis is not required. For example, technologies for improving product efficiency generally do not vary by region, and thus, DOE did not perform any additional regional analysis for the technology assessment and screening analysis. Similarly, DOE did not examine the impacts of having two regions in the engineering analysis, since the technologies and manufacturer processes are the same under both a national and regional standard.

1. Furnace Regions for Analysis

To evaluate regional standards for residential furnaces, in the RAP, DOE stated its intention to use the regions shown in Table III.3 and Figure III.1. The allocation of individual States to the regions is similar to the evaluation methodology DOE used in exploring regional standards in the November 2007 Rule, although DOE ultimately decided that it could not adopt such an approach because it lacked statutory authority, a situation which changed with enactment of EISA 2007. The allocation considered in the November 2007 Rule was largely based on whether a State's annual heating HDD average is

above or below 5,000. 72 FR 65136, 65146–47 (Nov. 19, 2007). This level offers a rough threshold point at which space heating demands are significant enough to require longer operation of heating systems, which provides a basis for utilization of higher-efficiency systems. In the RAP, DOE proposed two changes from the November 2007 Rule methodology to establish regions for furnaces. The first was moving Nevada from the Northern region to the Southern region, and the second was moving West Virginia from the Southern region to the Northern region. These changes better reflect the climate characteristics of these two States—West Virginia has on average more than 5,000 HDD, and Nevada's major population areas have fewer than 5,000 HDD. DOE notes that the changes resulted in a regional allocation of States that is the same as the regions defined in the consensus agreement.

TABLE III.3—REGIONS FOR ANALYSIS OF FURNACE STANDARDS

| Northern region states (rest of country) | Southern region States |
|---|---|
| Alaska | Alabama |
| Colorado | Arizona |
| Connecticut | Arkansas |
| Idaho | California |
| Illinois | Delaware |
| Indiana | District of Columbia |
| Iowa | Florida |
| Kansas | Georgia |
| Maine | Hawaii |
| Massachusetts | Kentucky |
| Michigan | Louisiana |
| Minnesota | Maryland |
| Missouri | Mississippi |

TABLE III.3—REGIONS FOR ANALYSIS OF FURNACE STANDARDS—Continued

| Northern region states (rest of country) | Southern region States |
|---|---|
| Montana | Nevada |
| Nebraska | New Mexico |
| New Hampshire | North Carolina |
| New Jersey | Oklahoma |
| New York | South Carolina |
| North Dakota | Tennessee |
| Ohio | Texas |
| Oregon | Virginia |
| Pennsylvania | |
| Rhode Island | |
| South Dakota | |
| Utah | |
| Vermont | |
| Washington | |
| West Virginia | |
| Wisconsin | |
| Wyoming | |

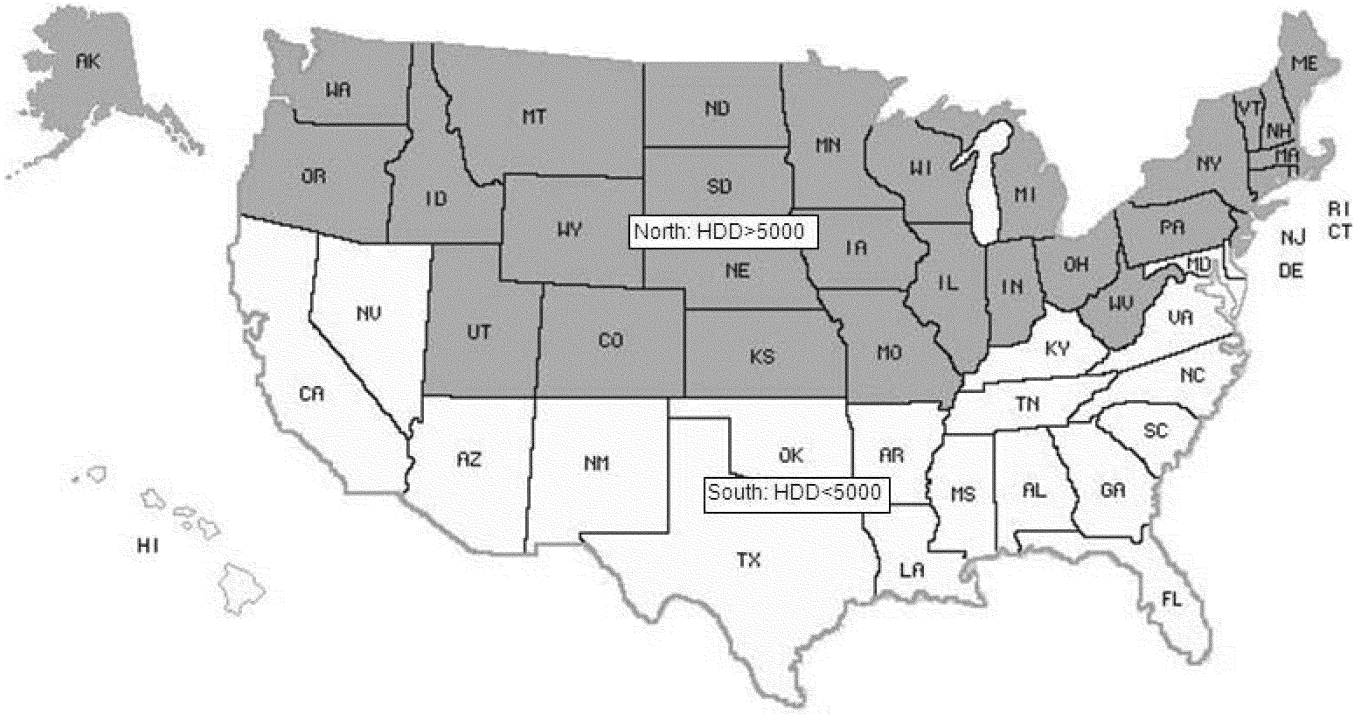


**Figure III.1 Map of the Regions for the Analysis of Furnace Standards**

Commenting on the furnaces RAP, Ingersoll Rand stated that the regions proposed for the regional analysis are appropriate. (FUR: Ingersoll Rand, No. 1.3.006 at p. 1) Lennox expressed a similar view, noting that the regional definitions outlined in the furnaces RAP are consistent with the consensus agreement. (FUR: Lennox, No. 1.3.018 at p. 2) NCLC commented that the Low Income Groups support the regions defined as north and south in the agreement. (FUR: NCLC, No. 1.3.019 at p. 6) HARDI stated that the 5,000 HDD demarcation makes the most sense. (FUR: HARDI, No. 1.3.016 at p. 5) ACEEE expressed a similar view, but added that if the consensus agreement is not adopted, DOE needs to examine the economics and other impacts of high-efficiency furnaces at other possible regional boundaries, such as 4,500 and 4,000 HDD. (FUR: ACEEE, No. 1.3.009 at p. 4) ASAP expressed support for the regions proposed for the furnaces regional analysis and stated that having consistent regional borders for furnaces and central air conditioners is important to help reduce issues associated with implementing and enforcing regional standards. (FUR: ASAP, Public Meeting Transcript, No. 1.2.006 at pp. 64–65) APPA stated that if DOE rejects the climate zones specified in the consensus agreement, DOE should modify its definition of the northern region in such a way that, in effect, it would include ''southwestern'' States, such as Arizona, Nevada, and New Mexico, in the

northern region, because the majority of these States have a climate that is similar to some other States that DOE has classified in the northern region. (FUR: APPA, No. 1.3.011 at p. 3) EEI stated that DOE should consider establishing California, Nevada, Arizona, and New Mexico as northern States for purposes of regional standards, in order to be more consistent with DOE's classification of northern States, and to avoid leaving energy savings on the table when establishing new heating efficiency standards. (FUR: EEI, No. 1.3.015 at pp. 3–4)

After evaluating these comments, DOE has concluded that using a 5,000 HDD threshold as the basis for assigning States to northern or southern regions, as proposed in the furnaces RAP, is appropriate. DOE does not believe that the States mentioned by APPA and EEI should be classified as northern States for the analysis of furnaces. On average, these States have significantly lower heating loads than the other States that DOE has classified as northern States. Therefore, for the direct final rule analysis of furnaces, DOE used the regions as defined in Table III.3 and Figure III.1. Regarding ACEEE's suggestion that DOE consider additional analysis using other possible regional boundaries if the consensus agreement is not adopted, because DOE is adopting standards consistent with the consensus agreement in this rule, DOE does not see a compelling reason to conduct such analyses. DOE notes that the 5,000 HDD threshold is supported by most of the interested parties, including ACEEE. DOE further notes that the 5,000 HDD threshold would provide benefits in terms of minimizing the difference between the regional boundaries for central air conditioners/heat pumps and furnaces. Harmonizing boundaries, to the extent possible, may also facilitate subsequent compliance and enforcement efforts.

2. Central Air Conditioner and Heat Pump Regions for Analysis

To evaluate regional standards for residential central air conditioners and heat pumps in the preliminary analysis, DOE used the regions listed in Table III.4 and Figure III.2. For cooling equipment performance, the annual number of operating hours and relative humidity during those operating hours are the most important regional variations. DOE established two regions (*i.e.,* a ''hot-dry'' region and a ''hot-humid'' region) in the south based upon these factors, in addition to a ''rest of country'' region (*i.e.,* northern region), composed of the remaining States. The southern limit of the northern region was approximately based on whether a State's annual HDD average was above or below 4,500 HDD, and the division between the hot-humid and hot-dry regions was determined from analysis of typical meteorological year (TMY3) weather data.[19] TMY3 weather data are sets of typical hourly values of solar radiation and meteorological elements developed for a one-year span for selected locations based on long-term historical data. The selection of regions for the preliminary analysis was discussed in detail in Appendix 7C of the preliminary TSD.

TABLE III.4—PRELIMINARY ANALYSIS PROPOSED REGIONS FOR CENTRAL AIR CONDITIONER AND HEAT PUMP STANDARDS

| Northern region states (rest of country) | Southern region states (hot-humid) | Southwestern region states (hot-dry) |
|---|---|---|
| Alaska | Alabama | Arizona |
| Colorado | Arkansas | California |
| Connecticut | Florida | Nevada |
| Delaware | Georgia | New Mexico |
| District of Columbia | Hawaii | |
| Idaho | Louisiana | |
| Illinois | Mississippi | |
| Indiana | North Carolina | |
| Iowa | Oklahoma | |
| Kansas | South Carolina | |
| Kentucky | Tennessee | |
| Maine | Texas | |
| Maryland | | |
| Massachusetts | | |
| Michigan | | |
| Minnesota | | |
| Missouri | | |
| Montana | | |
| Nebraska | | |
| New Hampshire | | |
| New Jersey | | |
| New York | | |
| North Dakota | | |
| Ohio | | |
| Oregon | | |
| Pennsylvania | | |
| Rhode Island | | |
| South Dakota | | |
| Utah | | |
| Vermont | | |
| Virginia | | |
| Washington | | |
| West Virginia | | |
| Wisconsin | | |
| Wyoming | | |

[19] S. Wilcox and W. Marion, *Users Manual for TMY3 Data Sets,* NREL/TP–581–43156 (May 2008).

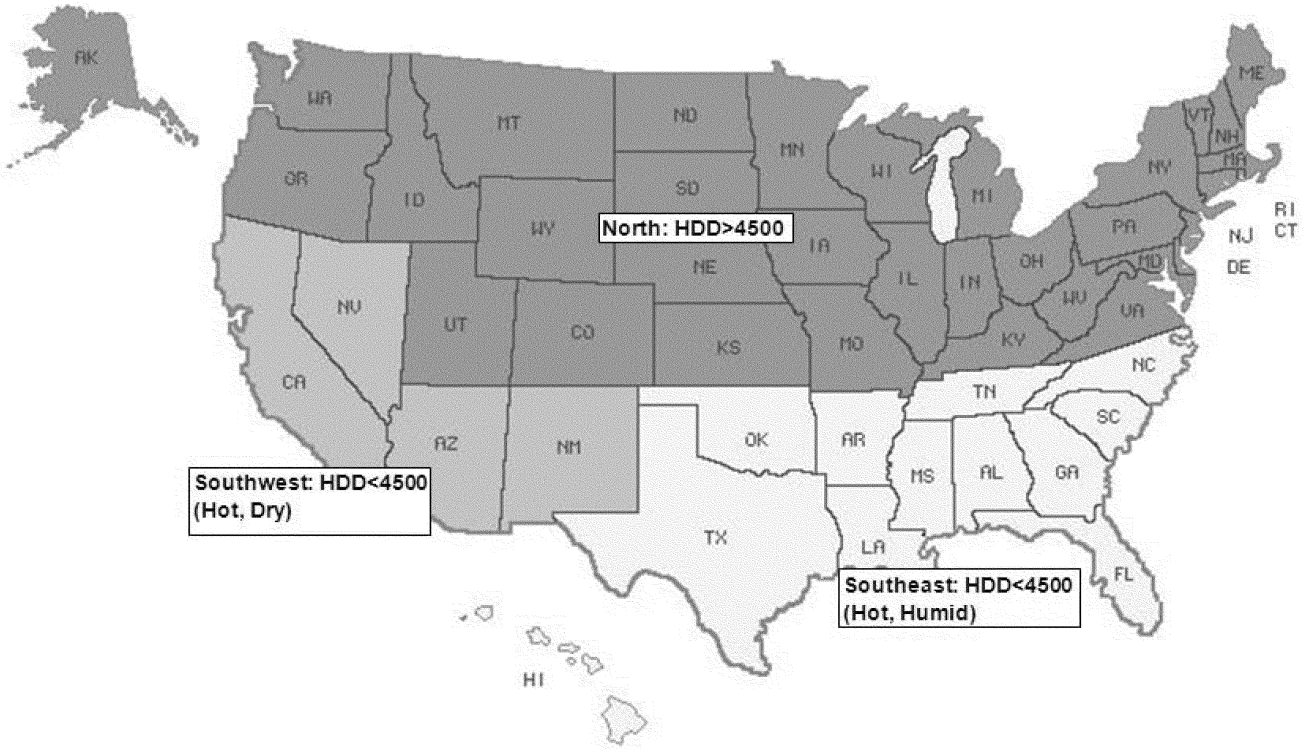


**Figure III.2 Map of Preliminary Analysis Proposed Regions for Central Air Conditioner and Heat Pump Standards**

In response to DOE's request for comment on the regions used in the preliminary analysis for central air conditioners and heat pumps, several stakeholders submitted comments. HARDI, Southern, and Ingersoll Rand stated that the regions defined in the consensus agreement should be used instead of those in Table III.4. This suggested change would necessitate moving Delaware, the District of Columbia, Maryland, Kentucky, and Virginia into the southern hot-humid region. (CAC: HARDI, No. 56 at p. 4; Ingersoll Rand, No. 66 at p.4; Southern, Public Meeting Transcript at p. 33; HARDI, No. 56 at p. 4) Southern also remarked that the regional boundaries for central air conditioners and heat pumps and furnaces should be the same to avoid unnecessary complexity for manufacturers and public confusion. (CAC: Southern, No. 73 at p. 2) ACEEE expressed views similar to those of HARDI, Southern, and Ingersoll Rand and further warned that the confusion and complexity associated with differing regional boundaries could lead to inadvertent non-compliance. (CAC: ACEEE, No. 72 at p. 3) Conversely, EEI commented that Nevada should be moved to the ''rest of country'' region for heating efficiency requirements and the hot-dry region for cooling efficiency requirements because 90 percent of the State is located in climate zone 5, as specified in Figure 2 of 10 CFR 430, subpart B, appendix M . (CAC: EEI, No. 75 at p. 3)

In response to these comments, DOE agrees that a unified regional allocation of States for both central air conditioners and heat pumps and furnaces would provide key benefits. As mentioned in section III.A, similar manufacturers produce these products and use the same distribution network. Using the same regional allocation of States, as compared to the ''rest of country'' national standard, would be easier for manufacturers and distributors to implement and would also help to minimize consumer confusion. Additionally, regional standards may shift enforcement from the manufacturer to the point of sale or place of installation, and a single boundary between regions would reduce the motivation for non-compliance as well as simplify the overall enforcement of regional standards. Of course, there would be some differentiation, given that there is only one regional standard for furnaces, but two regional standards for central air conditioners and heat pumps. Nevertheless, DOE believes that there would still be benefits with harmonizing the States included in the northern region across these products.

To this end, DOE agrees with the comments recommending use of the regions in the consensus agreement for central air conditioners and heat pumps and furnaces. Doing so would also align the boundary of the northern region for the central air conditioners and furnaces. The regions selected for the direct final rule analyses for central air conditioners and heat pumps are shown in Table III.5 and Figure III.3.

TABLE III.5—REGIONS FOR ANALYSIS OF CENTRAL AIR CONDITIONER AND HEAT PUMP STANDARDS

| Northern region states (rest of country) | Southeastern region states (hot-humid)* | Southwestern region states (hot-dry)* |
|---|---|---|
| Alaska | Alabama | Arizona |

TABLE III.5—REGIONS FOR ANALYSIS OF CENTRAL AIR CONDITIONER AND HEAT PUMP STANDARDS—Continued

| Northern region states (rest of country) | Southeastern region states (hot-humid)* | Southwestern region states (hot-dry)* |
|---|---|---|
| Colorado | Arkansas | California |
| Connecticut | Delaware | Nevada |
| Idaho | District of Columbia | New Mexico |
| Illinois | Florida | |
| Indiana | Georgia | |
| Iowa | Hawaii | |
| Kansas | Kentucky | |
| Maine | Louisiana | |
| Massachusetts | Maryland | |
| Michigan | Mississippi | |
| Minnesota | North Carolina | |
| Missouri | Oklahoma | |
| Montana | South Carolina | |
| Nebraska | Tennessee | |
| New Hampshire | Texas | |
| New Jersey | Virginia | |
| New York | | |
| North Dakota | | |
| Ohio | | |
| Oregon | | |
| Pennsylvania | | |
| Rhode Island | | |
| South Dakota | | |
| Utah | | |
| Vermont | | |
| Washington | | |
| West Virginia | | |
| Wisconsin | | |
| Wyoming | | |

*The combined southeastern and southwestern regions for central air conditioners and heat pumps correspond to the southern region for furnaces.

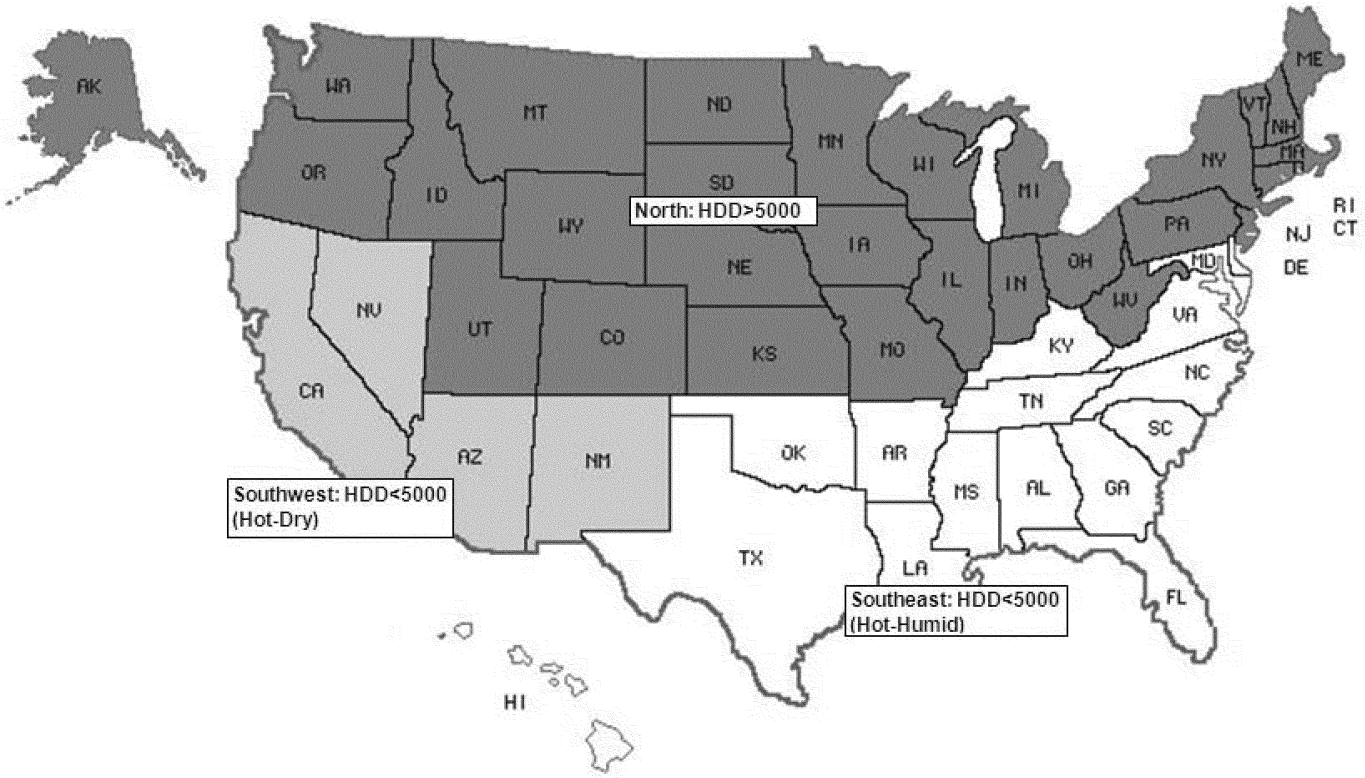


**Figure III.3 Map of the Regions for the Analysis of Central Air Conditioners and Heat Pumps**

3. Impacts on Market Participants and Enforcement Issues

As described in section II.A of this notice, DOE is required to evaluate the impact of introducing regional standards on consumers, manufacturers, and other market participants, including product distributors, dealers, contractors, and installers. (42 U.S.C. 6295(o)(6)(D)) Chapter 17 of the preliminary TSD for central air conditioners and heat pumps details DOE's preliminary analysis on the potential impacts of regional standards on market participants other than manufacturers and consumers for residential central air conditioners and heat pumps and residential furnaces. (However, impacts on manufacturers and consumers were fully addressed in a manner consistent with any other energy conservation standards rulemaking.) The analysis focuses on the unique burdens associated with introducing differentiated energy conservation standards based on geography. The analysis does not incorporate the impact of more-stringent energy conservation standards on market participants, only the impact of multiple geographic standards, because the impacts of more-stringent standards would occur regardless of whether differentiated regional standards are promulgated.

a. Impacts on Additional Market Participants

Chapter 17 of the preliminary TSD began by identifying the primary market participants, identified as distributors, contractors, and general contractors. It described their basic business models and assesses how additional regional standards may impact those models. The chapter then investigated potential non-enforcement impacts on distributors, contractors, and general contractors. Finally, the chapter provided two quantitative analyses looking at the key changes that distributors may face as a result of regional standards: (1) A distributor inventory impact analysis, and (2) a distributor markup impact analysis.

HARDI voiced concern about DOE's preliminary distributor inventory impact analysis, citing its belief that distributors located within border regions would have to carry two lines of stock. As a result, HARDI predicts at least a 5-percent stock increase for these distributors. (CAC: HARDI, No. 56 at p. 7) In response, DOE's inventory analysis does assume that distributors located along border regions will need to carry two lines of stock, as indicated by HARDI, and, thus, requires some additional safety stock. In the absence of additional data supporting more or less severe inventory impacts, for the direct final rule, DOE has not revised its estimate of a 2-percent inventory impact for the reference case. However, the impacts of inventory changes ranging from 0 percent to 10 percent are considered in Chapter 17 of the direct final rule TSD as a sensitivity analysis.

Regarding the inventory change analysis, ACEEE stated that distributors located along a border region may find it more cost-effective to stock fewer product models and meet customer demand by shipping the next higher-efficiency model at the same price as the lower-efficiency model under regional standards. (FUR: ACEEE, No. 1.2.006 at p. 103) ACEEE suggested that this hypothetical substitution effect would reduce the additional inventory necessary for distributors to meet customer demand under regional standards. Based on interviews with distributors and DOE's understanding of the HVAC industry, DOE considers such a scenario unlikely. Such a substitution would remove upsell opportunities for distributors and potentially commoditize higher-margin products. Furthermore, not having the units desired by some contractors may jeopardize relationships with at least some customers. DOE does not expect such a strategy to be the lowest-cost option for distributors along the border region.

HARDI contested the four shipment scenarios detailed in the distribution inventory impact analysis discussed in chapter 17 of the preliminary TSD. Citing the experience following the change in central air conditioner energy conservation standards from 10 SEER to 13 SEER in 2006, HARDI asserted that an impact of increasing standards is a decrease in shipments due to substitution effects. (FUR: HARDI, No. 1.3.016 at p. 7) In chapter 17 of the TSD, DOE analyzed the impact of differentiated regional standards rather than the impacts of higher standards. The analysis is intended to model changes in distributor inventory resulting from bimodal product demand, and not the impacts resulting from higher standards. However, DOE notes that the impacts of higher standards on replacement rates and product orders for the industry are accounted for and modeled in DOE's shipments analysis conducted for this direct final rule. A reduction in product replacement is reflected in the NIA and in the industry net present value analysis presented in the MIA.

Additional comments were received regarding the analysis of distributor markup impact analysis. These comments are addressed in markups portion of this document in section IV.D.

b. Enforcement Issues

Although the preliminary TSD for central air conditioners and heat pumps did not analyze enforcement issues, it did discuss potential enforcement impacts on market participants in chapter 17, section 17.4, of the preliminary TSD. In addition, in section II.A of the RAP for furnaces, DOE described a number of enforcement options and requested data on how, if at all, the enforcement options would increase compliance or other costs.

Multiple manufacturers and trade associations commented on enforcement issues discussed in either the preliminary TSD for central air conditioners and heat pumps or the RAP for furnaces. ACCA, AHRI, and HARDI all emphasized the need for strong enforcement to ensure fair competition in the marketplace and to mitigate risk of diluting intended energy savings. (FUR: ACCA, No. 1.3.007 at p. 2) (CAC: AHRI, No. 67 at p. 4; HARDI, No. 70 at p. 2) HARDI emphasized the complexity of enforcing regional standards and explained that their members (*i.e.,* the industry's distributors) are not equipped to bear the burden of ensuring that product installations are occurring within the boundaries of regional standards. (FUR: HARDI, No. 1.3.016 at pp. 4–7) Manufacturers, including Lennox, Rheem, and Ingersoll Rand; trade groups, including ACCA, AGA, ARI, EEI, and HARDI; advocacy groups, including ACEEE, NCLC, and NRDC; and utilities, including Pacific Gas and Electric, Southern California Gas Company, San Diego Gas and Electric, and Southern California Edison, all commented on the effectiveness, viability, and complexity of various enforcement mechanisms. (FUR: Lennox, No. 1.3.018 at pp. 2–4; Rheem, Public Meeting Transcript No. 1.2.006 at p. 80; AGA, No. 1.3.010 at pp. 2–3; EEI, No. 1.3.015 at p. 4; ACEEE, No. 1.3.009 at pp. 4–5; NCLC, 1.3.019 at p. 9; NRDC, No. 1.3.020 at pp. 7–8) (CAC: Ingersoll Rand, No. 66 at pp. 7–8; ACCA, No. 7 at p. 3; HARDI, No. 56 at p. 6; PG&E, No. 17 at pp. 3–4)

DOE recognizes the challenges of regional standards enforcement and continues to investigate the most effective means of meeting those challenges. DOE will incorporate all feedback into the enforcement rulemaking it will conduct within 90 days of the issuance of this direct final

rule establishing regional standards, as required by 42 U.S.C. 6295(o)(6)(G)(ii).

*E. Standby Mode and Off Mode*

As noted in section II.A of this direct final rule, any final rule for amended or new energy conservation standards that is published on or after July 1, 2010 must address standby mode and off mode energy use. (42 U.S.C. 6295(gg)) As a result, DOE has analyzed and is regulating the standby mode and off mode electrical energy consumption for furnaces and off mode energy consumption for central air conditioners and heat pumps. These provisions are addressed in further detail immediately below.

1. Furnaces

AFUE, the statutory metric for furnaces, does not incorporate standby mode or off mode use of electricity, although it already fully addresses use in these modes of fossil fuels by gas and oil-fired furnaces. In the October 2010 test procedure final rule for furnaces, DOE determined that incorporating standby mode and off mode electricity consumption into a single standard for residential furnaces is not feasible. 75 FR 64621, 64626–27 (Oct. 20, 2010). DOE concluded that a metric that integrates standby mode and off mode electricity consumption into AFUE is not technically feasible, because the standby mode and off mode energy usage, when measured, is essentially lost in practical terms due to rounding conventions for certifying furnace compliance with Federal energy conservation standards. *Id.* Therefore, in this notice, DOE is adopting amended furnace standards that are AFUE levels, which exclude standby mode and off mode electricity use, and DOE is also adopting separate standards that are maximum wattage (W) levels to address the standby mode and off mode electrical energy use of furnaces. DOE also presents corresponding TSLs for energy consumption in standby mode and off mode. DOE has decided to use a maximum wattage requirement to regulate standby mode and off mode for furnaces. DOE believes using an annualized metric could add unnecessary complexities, such as trying to estimate an assumed number of hours that a furnace typically spends in standby mode. Instead, DOE believes that a maximum wattage standard is the most straightforward metric for regulating standby mode and off mode energy consumption of furnaces and will result in the least amount of industry and consumer confusion.

DOE is using the metrics just described—AFUE and W—in the amended energy conservation standards it adopts in this rulemaking for furnaces. This approach satisfies the mandate of 42 U.S.C. 6295(gg) that amended standards address standby mode and off mode energy use. The various analyses performed by DOE to evaluate minimum standards for standby mode and off mode electrical energy consumption for furnaces are discussed further in section IV.E of this direct final rule.

a. Standby Mode and Off Mode for Weatherized Gas and Weatherized Oil-Fired Furnaces

DOE did not find any weatherized furnaces (both gas and oil-fired) available on the market that are not sold as part of a single package air conditioner or a ''dual fuel'' single package heat pump and furnace system. In this direct final rule, DOE is adopting new energy conservation standards for the maximum allowable average off mode power consumption ($P_{W,OFF}$) for single package air conditioners and single package heat pumps to account for the power consumed in off mode, and DOE has already determined that the existing test procedures for central air conditioners and heat pumps account for standby mode power consumption within the SEER rating. DOE notes that the proposed test procedure provisions for measuring off mode power consumption of central air conditioners and heat pumps and the existing test procedure provisions for calculating SEER do not provide instructions for disconnecting certain components (*e.g.,* igniter, gas valve) that are only used for furnace operation in single package units. As a result, DOE believes that because weatherized furnaces on the market are manufactured and sold as part of single package air conditioners and heat pumps, and because all standby mode and off mode energy consumption for single package air conditioners and heat pumps is accounted for by $P_{W,OFF}$ and SEER, there is no need to adopt separate standby mode and off mode standards for weatherized gas or weatherized oil-fired furnaces.

b. Standby Mode and Off Mode for Electric Furnaces

As discussed in detail in section IV.A.2.a of this direct final rule, DOE believes that any improvements to electric furnaces to improve the AFUE of these products would have a *de minimis* energy-savings potential because the efficiency of electric furnaces already approaches 100-percent AFUE. However, DOE notes that the AFUE rating for electric furnaces does not include the electrical power used in standby mode and off mode. As a result, DOE performed an analysis of potential standby mode and off mode energy conservation standards for electric furnaces, and is adopting standards for these products in this direct final rule. The approach for analyzing standby mode and off mode energy conservation standards for electric furnaces is described throughout section IV of this direct final rule.

c. Standby Mode and Off Mode for Mobile Home Oil-Fired Furnaces

DOE is not considering amended AFUE standards for mobile home oil-fired furnaces due to a *de minimis* potential for energy savings, as discussed in detail in section IV.A.2.a of this notice. However, in order to satisfy the statutory provision in EPCA for establishing standby mode and off mode standards, and to keep a level playing field for all products, DOE examined potential standby mode and off mode standards for mobile home oil-fired furnaces.

To analyze potential standby mode and off mode standards for mobile home oil-fired furnaces, DOE examined specification sheets and manufacturer literature to identify components that are present and would consume standby power (*e.g.,* transformer, burner). DOE determined that these components in mobile home oil-fired furnaces are largely the same as the standby mode and off mode energy-consuming components found in non-weatherized oil-fired furnaces. Therefore, DOE estimated that a mobile home oil-fired furnace would have the same standby mode and off mode energy consumption as a non-weatherized oil-fired furnace, and it did not conduct separate analysis for this product. Accordingly, DOE is adopting standards for non-weatherized oil-fired furnaces and mobile home oil-fired furnaces at the same level in today's direct final rule. The standby mode and off mode analysis for non-weatherized oil-fired furnaces (which is also applicable to mobile home oil-fired furnaces) is discussed throughout section IV of this direct final rule.

2. Central Air Conditioners and Heat Pumps

For central air conditioners and heat pumps, the standby mode is in effect when the system is on but the compressor is not running (*i.e.,* when the system is not actively heating or cooling but the compressor is primed to be activated by the thermostat). Thus, the standby mode for central air conditioners functions during the

cooling season and for heat pumps during both the cooling and heating seasons. Correspondingly, the off mode generally occurs for air conditioners during all non-cooling seasons and for heat pumps during the ''shoulder seasons'' (*i.e.,* fall and spring) when consumers neither heat nor cool their homes. The SEER and HSPF metrics already account for standby mode but not off mode energy use, because off mode energy use occurs outside of the seasons to which these descriptors apply. However, incorporation of off mode into these descriptors would mean that they would no longer be seasonal descriptors. Thus, because EPCA requires use of these descriptors for central air conditioners and heat pumps (*see* 42 U.S.C. 6291(22) and 6295(d)), it would not be feasible for DOE to incorporate off mode energy use into a single set of standards for both central air conditioners and heat pumps. Additionally, DOE has concluded that a metric that integrates off mode electricity consumption into SEER is not technically feasible because the off mode energy usage is significantly lower than active mode operation and, when measured, it is essentially lost in practical terms due to the fact that manufacturers' ratings of SEER are typically presented to consumers with one or zero decimal places. Therefore, in this notice, DOE is adopting for central air conditioners and heat pumps standards that are SEER and HSPF levels (which exclude off mode energy use), and DOE is also adopting separate standards that are maximum wattage (W) levels to address the off mode energy use of central air conditioners and heat pumps. DOE also presents corresponding TSLs for energy consumption in off mode. DOE has determined that a wattage requirement is appropriate, because it avoids unnecessary complexities and assumptions that may be created by using an annualized metric. The use of a wattage requirement is consistent with the approach used to regulate standby mode and off mode energy consumption in furnaces.

DOE is using the metrics just described—SEER, HSPF, and W—in the amended energy conservation standards it adopts in this rulemaking for central air conditioners and heat pumps. This approach satisfies the mandate of 42 U.S.C. 6295(gg) that amended standards address standby mode and off mode energy use. The various analyses performed by DOE to evaluate minimum standards for off mode electrical energy consumption for central air conditioners and heat pumps are discussed further throughout section IV of this direct final rule.

a. Off Mode for Space-Constrained Air Conditioners and Heat Pumps

As discussed in section III.G.2.b, DOE decided not to amend the existing SEER or HSPF standards for the space-constrained product classes of central air conditioners and heat pumps, because the existing standard is both the baseline and max-tech efficiency level. However, DOE analyzed these products to determine appropriate off mode energy conservation standards. Based on teardowns and manufacturer literature, DOE determined that the space-constrained product classes have the same components contributing to off mode power consumption as split-system air conditioners and heat pumps. Consequently, DOE assumed that the off mode power consumption for the space-constrained products classes is the same as for the split-system product classes, and DOE believes that the off mode analysis for the split-system product classes is representative of the space-constrained products. Therefore, DOE adopted its engineering analysis of off mode energy consumption for split-system air conditioners and heat pumps for use in its engineering analysis of the off mode electrical energy consumption of space-constrained air conditioners and heat pumps. As with all other product classes, the off mode analysis for space-constrained products is described in further detail throughout section IV of this direct final rule.

*F. Test Procedures*

As noted above, DOE's current test procedures for central air conditioners and heat pumps, and for furnaces, appear at 10 CFR part 430, subpart B, appendices M and N, respectively. Moreover, EPCA, as amended by EISA 2007, requires DOE to amend its test procedures for all covered products, including those for furnaces and central air conditioners and heat pumps, to include measurement of standby mode and off mode energy consumption, except where current test procedures already fully address such energy consumption. (42 U.S.C. 6295(gg)(2)) Because test procedure rulemakings were ongoing to address this statutory mandate regarding standby mode and off mode energy consumption during the course of the current standards rulemaking, a number of test procedure issues were raised in this rulemaking, particularly in terms of how test procedure amendments could impact standard levels. The following discussion addresses these comments and explains developments related to amended test procedures for residential furnaces, central air conditioners, and heat pumps.

1. Furnaces

DOE's existing test procedure for gas and oil-fired furnaces accounted for fossil fuel consumption in the active, standby, and off modes, and for electrical consumption in the active mode (although active mode electrical consumption is not included in the AFUE rating for gas and oil-fired products). For electric furnaces, DOE's existing test procedure accounted for active mode electrical energy consumption. However, the test procedures for gas, oil-fired, and electric furnaces did not address standby mode and off mode electrical energy consumption. Therefore, DOE issued a NOPR in which it proposed modifications to its existing furnace test procedures to include the measurement of standby mode and off mode electricity use. 74 FR 36959 (July 27, 2009) (hereafter referred to as the ''July 2009 test procedure NOPR''). DOE held a public meeting at DOE headquarters in Washington, DC on August 18, 2009, to receive oral comments on the July 2009 test procedure NOPR. DOE also sought and received written comments from interested parties.

Subsequent to the July 2009 test procedure NOPR, DOE issued a supplemental notice of proposed rulemaking (SNOPR) for the purpose of adding an integrated metric that incorporates standby mode and off mode energy consumption into the statutorily-identified efficiency descriptor, AFUE. The SNOPR was published in the **Federal Register** on April 5, 2010. 75 FR 17075. In response to the April 2010 test procedure SNOPR, DOE received a number of comments that opposed both the need for an integrated metric and the possibility of regulating by such a metric. In sum, these comments suggested that DOE misinterpreted the statute in terms of requiring the integration of standby mode and off mode energy consumption into the AFUE metric. Commenters further suggested that regulating by an integrated metric would be counter to the intent of EISA 2007; instead, these commenters urged DOE to regulate standby mode and off mode for these products by using a separate standard, as contemplated by EISA 2007, in situations where an integrated metric would not be technically feasible. DOE also received similar comments regarding incorporating standby mode and off mode electrical consumption into AFUE in response to the RAP for residential furnaces, which are

summarized below. In addition, DOE received comments relating to the AFUE test procedure in general (*i.e.,* not specifically about the incorporation of standby mode and off mode electrical energy consumption into AFUE), which are also discussed in the sections that follow.

After considering the comments in response the April 2010 test procedure SNOPR and RAP (discussed below), DOE published a final rule in the **Federal Register** on October 20, 2010 that amended the test procedures for furnaces and boilers to address standby mode and off mode energy use of these products. 75 FR 64621. In light of the comments on the April 2010 test procedure SNOPR and RAP, DOE reconsidered the feasibility of an integrated AFUE metric in the final rule and abandoned its proposal in the April 2010 test procedure SNOPR that would have integrated the standby mode and off mode electrical energy consumption into the existing AFUE test metric. Accordingly, the final rule amended the test procedure for residential furnaces and boilers to include provisions for separately measuring standby mode and off mode. *Id.* at 64626–27.

a. AFUE Test Method Comment Discussion

In response to the RAP for residential furnaces, DOE received several comments related to DOE's test procedure for determining the AFUE of residential furnaces. ACEEE commented that AFUE is an imperfect metric, because for weatherized furnaces,[20] a unit operating at part load (*i.e.,* at a reduced input capacity less than the full capacity) might deliver the same comfort as it would at full load, but using less energy (*i.e.,* more efficiently). However, since weatherized furnaces must be kept non-condensing during peak load operation, ACEEE stated that the AFUE metric may not reflect the efficiency benefit from part load operation. (FUR: ACEEE, Public Meeting Transcript, No. 1.2.006 at p. 159) Ingersoll Rand stated that weatherized furnaces have to be non-condensing regardless of whether the furnace is running at a lower input or at the peak input [because these units are not designed to handle corrosive condensate]. (FUR: Ingersoll Rand, Public Meeting Transcript, No. 1.2.006 at pp. 159–160) In response, DOE believes that two-stage and modulating furnaces meet heating load requirements more precisely by operating at a reduced input rate for an extended period of burner on-time, which might deliver the same comfort using less energy as ACEEE asserts. However, DOE also notes that due to issues with condensate freezing in weatherized gas furnaces, products that are currently on the market are typically designed so that they will not condense during part-load or full-load operation, as Ingersoll Rand states. Even if a weatherized furnace were designed with materials and components to handle the corrosive condensate, if that condensate freezes while being drained, it will have a significant adverse impact the performance and reliability of the unit. DOE notes that DOE's existing AFUE test procedure contains provisions for two-stage and modulating operation in furnaces, and DOE believes these provisions are adequate for rating the performance of weatherized furnaces. It may be possible for DOE to consider revisiting the provisions for testing the AFUE of two-stage and modulating weatherized furnaces in a future test procedures rulemaking.

Proctor stated that in California, non-weatherized furnaces are installed in attics, which get hot in the summer and cold in the winter. As a result, AFUE may not properly represent what happens in the field, because jacket losses (*i.e.,* heat losses through the outer covering of the furnace) may not be accounted for in the AFUE test procedure for non-weatherized furnaces. (FUR: Proctor, Public Meeting Transcript, No. 1.2.006 at pp. 163–64) In contrast, Ingersoll Rand commented that the AFUE test for non-weatherized furnaces does measure jacket losses, because these furnaces are tested as isolated combustion systems (meaning they are assumed to be installed indoors, but outside of the conditioned space, such as in a garage or unheated basement) with an assumed 45 degree ambient temperature. Ingersoll Rand noted that jacket losses in non-weatherized furnaces are accounted for and multiplied by 1.7 in the AFUE calculation. Ingersoll Rand further stated that weatherized furnaces have a 3.3 multiplier for jacket losses, which accounts for the effects of wind, rain, and other factors affecting the performance of an outdoor furnace. (FUR: Ingersoll Rand, Public Meeting Transcript, No. 1.2.006 at p. 164) In response, DOE agrees with Ingersoll Rand, and notes that the DOE test procedure requires jacket losses to be adjusted by a 1.7 multiplier and a 3.3 multiplier for all non-weatherized furnaces and weatherized furnaces, respectively, in order to account for jacket losses that may occur in the field.

Proctor also remarked that the current standards (which are set in terms of AFUE) are unrepresentative of actual system performance in the home and produce contrary results, by assigning efficiency ratings which are not representative of ratings achieved in the field. Proctor stated that in certain rare situations, the current rating system is such that products' tested efficiency ratings may be reversed in comparison to their actual field performance (*i.e.,* a product with a higher AFUE rating may actually perform less efficiently than a product with a lower AFUE rating in certain situations). (FUR: Proctor, FDMS No. 0002 at p. 2) The energy efficiency ratings for furnaces are developed using DOE's test procedure and sampling plans at the point of manufacture. For residential furnaces, DOE believes that requiring certification at the point of manufacture is the best way to capture the energy use information and variability of the installations that can be experienced in the field. Given the expense of performing tests on the products and the breadth of the installation network for these products, testing and certification based on field installations could be significantly more difficult. DOE believes that its test methods represent product performance in the field; however, DOE agrees with Proctor in that many factors experienced in the field can alter the performance of the furnace (*e.g.,* installation location, external static pressure). Consequently, DOE's analysis takes into account many of the variations experienced in the field on the energy use of the product in the life-cycle cost analysis.

Proctor argued that heating performance and heating fan performance are rated at external static pressures that are a function of furnace heating capacity and are significantly lower than those found in typical residential duct systems, resulting in the furnace blower moving less air or having higher watt draw, or both, when installed. Proctor claimed that these effects reduce the field efficiency of the furnace and that the type of fan motor believed by consumers and HVAC contractors to be the highest efficiency model performs significantly worse at typical field static pressures than at the rating condition. (FUR: Proctor, FDMS No. 0002 at p. 3) The current DOE test procedure assumes a given value for the external static pressure. While DOE acknowledges that the external static pressure of an HVAC system is, in part, a function of the ductwork, DOE believes variations in external static pressures experienced in the field that

[20] Weatherized furnaces, unlike non-weatherized furnaces, are designed to be installed outdoors. As such, weatherized furnaces are often subjected to harsh weather, including below freezing temperatures, rain, snow, etc.

impact the efficiency of the furnace fan are outside the scope of coverage of this rulemaking. This issue will be considered in DOE's separate rulemaking for furnace fans. Additionally, DOE acknowledges that the blower motor responds to the differences in external static pressure between the ductwork in the field and the pressure specified by the DOE test procedure by increasing or decreasing power draw as needed to maintain consistent airflow. However, the DOE test procedure to calculate AFUE does not account for the type or performance of the blower, and therefore, the rated AFUE is not impacted by the blower power draw. As noted above, there is a separate rulemaking under way to address the efficiency of furnace fans. DOE is also developing a test procedure for furnace fans in a separate rulemaking, in which DOE will examine the appropriate external static pressure at which to rate the air handling performance of the furnace.

Proctor also commented that the furnace heating performance and air handling performance should be rated separately because some furnace components are related to heating, while others are related to moving household air. Further, Proctor stated that the furnace rating standard should include the energy use of heating-related components, such as the igniter, while components that are not directly related to heating should be included in the air handling rating. (FUR: Proctor, FDMS No. 0002 at p. 4) In response, DOE first notes that this rulemaking to examine amending the minimum AFUE standards addresses the heating performance of furnaces, and the air handling performance will be addressed separately in a furnace fans rulemaking, as Proctor recommends. In response to Proctor's assertion that the furnace heating performance standard should include the use of heating-related components such as the igniter, DOE notes that it is required under 42 U.S.C. 6291(22) to use AFUE as the rating metric for the fuel performance of furnaces. DOE incorporates by reference the definition in section 3 of ANSI/ASHRAE 103–1993 of ''annual fuel utilization efficiency'' as ''the ratio of annual output energy to annual input energy, which includes any non-heating-season pilot input loss and, for gas or oil-fired furnaces or boilers, does not include electric energy.'' 10 CFR 430 subpart B, appendix N, section 2.0. Under this definition, which captures how efficiently the fuel is converted to useful heat, electrical components such as electronic ignition and the blower motor are outside of the AFUE rating metric coverage. Components in the blower assembly will be covered in DOE's current energy conservation standards rulemaking for residential furnace fans.

b. Standby Mode and Off Mode

As noted above, DOE received numerous comments from interested parties regarding the approach to regulating standby mode and off mode energy consumption proposed in the furnaces RAP. In particular, the comments received pertained to the metric that would be adopted for such regulation.

ACEEE, the CA IOUs, EEI, HARDI, Lennox, AHRI, NRDC, APPA, Ingersoll Rand, and the Joint Stakeholders opposed the proposal to integrate standby mode and off mode electrical power into a new metric and instead supported a separate metric for regulating standby mode and off mode electrical energy consumption in furnaces. (FUR: ACEEE, Public Meeting Transcript, No. 1.2.006 at pp. 130–131; ACEEE, No. 1.3.009 at pp. 1–2; CA IOUs, No. 1.3.017 at p. 3; EEI, No. 1.3.015 at pp. 4–5; HARDI, No. 1.3.016 at p. 8; Lennox, No. 1.3.018 at p. 3; NRDC, No. 1.3.020 at p. 7; APPA, No. 1.3.011 at p. 4; AHRI, Public Meeting Transcript, No. 1.2.006 at pp. 132–133; Ingersoll Rand, No. 1.3.006 at p. 2; Joint Stakeholders, No. 1.3.012 at pp. 3–4) EEI qualified its support for a separate descriptor for standby mode and off mode electrical energy consumption, stating that it supports a separate descriptor for standby mode and off mode efficiency as long as furnaces would be required to provide information about standby mode and off mode fossil fuel consumption as well. EEI asserted that if DOE looks at electric energy attributable to standby mode, it should also look at fossil fuel energy consumption attributable to standby mode just as rigorously. (FUR: EEI, No. 1.3.015 at pp. 4–5) In response, DOE notes that in the final rule for residential furnaces and boilers test procedures, published in the **Federal Register** on October 20, 2010, DOE concluded that the AFUE metric comprehensively accounts for fossil fuel energy consumption over a full-year cycle, thereby satisfying the fossil fuel portion of the EISA 2007 requirement to regulate standby mode and off mode energy consumption. 75 FR 64621. Lennox supported the use of the $E_{SO}$ value that DOE proposed in the July 27, 2009 test procedures NOPR (74 FR 36959) as the metric for setting standby mode and off mode standards. (FUR: Lennox, No. 1.3.018 at p. 3) In today's direct final rule, DOE is using the standby mode and off mode power consumption metrics ($P_{W,SB}$ and $P_{W,OFF}$, respectively), as defined in the October 2010 test procedure final rule [21] (74 FR 64621, 64632 (Oct. 20, 2010)), as the test metric for regulating standby mode and off mode power consumption. As noted in section III.E of today's notice, DOE believes this metric will provide a more straightforward approach for comparing the standby mode and off mode energy consumption of furnaces, because it does not include assumptions related to the amount of time spent in standby mode or off mode, as an annual metric, such as $E_{SO}$, would require.

ACEEE, EEI, HARDI, and Lennox stated that DOE should not use an integrated AFUE metric (one which includes standby mode and off mode electrical energy consumption, along with active mode energy consumption) to regulate standby mode and off mode electrical energy consumption because doing so would require rerating existing furnaces, which could cause existing ratings to decrease and could lead to confusion in the marketplace. (FUR: ACEEE, No. 1.3.009 at pp. 1–2; EEI, Public Meeting Transcript, No. 1.2.006 at pp. 134–135; EEI, No. 1.3.015 at pp. 4–5; HARDI, Public Meeting Transcript, No. 1.2.006 at p. 138; HARDI, No. 1.3.016 at p. 8; Lennox, No. 1.3.018 at p. 3) Further, AHRI noted that every program that provides incentives for people to buy more-efficient furnaces would have to change its descriptor to avoid widespread confusion in the marketplace, and therefore, AHRI argued that combining metrics is not feasible. (FUR: AHRI, Public Meeting Transcript, No. 1.2.006 at pp. 136–137) Ingersoll Rand added that adoption of an integrated metric would lead to confusion in the marketplace by making higher-capacity furnaces appear more efficient, because standby power is not a function of heating capacity. (FUR: Ingersoll Rand, No. 1.3.006 at p. 2) DOE believes these points are valid. Ultimately, in the test procedure rulemaking, DOE concluded in the final rule that it would not be technically feasible to integrate standby mode and off mode electrical energy consumption into AFUE, because ''the standby mode and off mode energy usage, when measured, is essentially lost in practical terms due to the fact that manufacturers'

[21] In this direct final rule, DOE is changing the nomenclature for the standby mode and off mode power consumption metrics for furnaces from those in the furnace and boiler test procedure final rule published on October 20, 2010. 75 FR 64621. DOE is renaming the $P_{SB}$ and $P_{OFF}$ metrics as $P_{W,SB}$ and $P_{W,OFF}$, respectively. However, the substance of these metrics remains unchanged.

ratings of AFUE are presented to the nearest whole number.'' 75 FR 64621, 64627 (Oct. 20, 2010). For further details on DOE's reasoning for not integrating standby mode and off mode electrical energy consumption into AFUE, please consult the October 2010 test procedure final rule. *Id.* at 64626–27.

ACEEE, NRDC, APPA, and the Joint Stakeholders observed that, due to the rounding provisions specified for the AFUE descriptor, standby mode and off mode electrical energy consumption would effectively be lost in an integrated metric. More specifically, these parties reasoned that the magnitude of active mode fuel consumption would obscure the standby mode and off mode electrical energy consumption, thereby providing manufacturers with little or no incentive to reduce standby energy consumption. (FUR: ACEEE, Public Meeting Transcript, No. 1.2.006 at pp. 130–131; ACEEE, No. 1.3.009 at pp. 1–2; NRDC, No. 1.3.020 at p. 7; APPA, No. 1.3.011 at p. 4; Joint Stakeholders, No. 1.3.012 at pp. 3–4) The CA IOUs further asserted that it is not feasible from a testing and enforcement perspective to regulate standby mode and off mode electrical energy consumption when it may be less than the rounding error of the regulated metric, and suggested that DOE would need to regulate an integrated AFUE metric to a hundredth of a percent in order to accurately capture differences in standby mode and off mode energy use. (FUR: CA IOUs, No. 1.3.017 at p. 3) Additionally, according to Ingersoll Rand, the homeowner would not be able to determine how much power is used in standby mode, and an integrated metric would be unlikely to focus furnace redesigns on providing actual reduction in electrical power usage, because the standby power usage could be masked with small improvements in heating efficiency. (FUR: Ingersoll Rand, No. 1.3.006 at p. 2) DOE considered these observations to be valid points, and they played a role in the Department's decision to abandon an integrated AFUE metric in favor of a separate descriptor for standby mode and off mode electrical energy consumption. Again, for further details on DOE test procedures for measuring standby mode and off mode energy consumption, please consult the October 2010 test procedure final rule. 75 FR 64621 (Oct. 20, 2010).

2. Central Air Conditioners and Heat Pumps

DOE has determined that its existing test procedures for central air conditioners and heat pumps address energy use in standby mode, but not in off mode. As explained above in section II.B, off mode occurs for air conditioners during the non-cooling seasons and for heat pumps during the ''shoulder seasons'' (*i.e.,* fall and spring). Therefore, in a test procedure NOPR published in the **Federal Register** on June 2, 2010, DOE proposed to modify to its existing test procedures for central air conditioners and heat pumps by adding provisions to determine off mode energy use. 75 FR 31224 (hereafter referred to as ''the June 2010 test procedure NOPR''). In the June 2010 test procedure NOPR, DOE also proposed to alter its existing test procedures by adopting: (1) New testing and calculation methods relevant to regional standards for these products, specifically SEER Hot-Dry; (2) a limited number of other new testing methods; (3) a new calculation for the determination of sensible heat ratio,[22] which could be used to assess the dehumidification performance of an air conditioner or heat pump; and (4) modifications and clarifications of certain calculations, testing methods, test conditions and other provisions currently in the test procedure. *Id.* Similar to off mode for furnaces, DOE concluded that it would not be technically feasible to integrate off mode electrical energy consumption into SEER or HSPF, because SEER and HSPF are seasonal descriptors, not annualized descriptors, and the off mode energy usage, when measured, is essentially lost in practical terms due to the fact that it is a very small portion of overall electrical energy consumption. DOE held a public meeting on June 11, 2010 at DOE headquarters in Washington, DC, to receive oral comments on its proposal, and it also sought and received numerous written comments.

Given the interrelated and tandem nature of these two rulemaking proceedings, during the public meeting for the preliminary TSD and in subsequent written comments, interested parties also commented on the revision of the central air conditioner and heat pump test procedure. Several comments were related to standby mode and off mode energy consumption. ACEEE commented that DOE must determine whether any products use crankcase heaters and whether such use is standby mode or off mode. (CAC: ACEEE, No. 72 at p. 3) In response, DOE believes that off mode power exists for central air conditioners and heat pumps in the form of controls, certain types of fan motors, and refrigerant crankcase heaters, so DOE worked to develop appropriate standards for off mode power for each class of equipment based on how the components that contribute to a unit's off mode power consumption are treated in the test procedure. Ingersoll Rand and EEI commented that a standard for off mode energy consumption is not needed, because the existing ratings (SEER and HSPF) already account for off mode power. (CAC: Ingersoll Rand, No. 66 at p. 8; CAC: EEI, No. 75 at p. 3) DOE agrees that SEER and HSPF already account for off mode and standby mode energy consumption of an air conditioning system during the cooling season and, for heat pumps, during the heating season. However, the energy consumed by an air conditioner during the heating and shoulder seasons, while the unit sits idle but powered, is not currently accounted for within the DOE test procedure. Similarly, the energy consumed by a heat pump during the shoulder season, while the unit sits idle but powered, is not currently accounted for within the DOE test procedure.

A number of interested parties commented during the public meeting that DOE should use the combination of SEER and energy efficiency ratio (EER) rather than SEER Hot-Dry as a metric for hot-dry climates because EER is more indicative of performance than SEER Hot-Dry and also more straightforward to calculate and understand. (CAC: ACEEE, Public Meeting Transcript at pp. 93, 95, 103; CAC: AHRI, Public Meeting Transcript at p. 94; CAC: PGE, Public Meeting Transcript at p. 97; CAC: Southern, Public Meeting Transcript at p. 100; CAC: Rheem, No. 76 at p. 6) EEI expressed concern that incorporating a SEER Hot-Dry metric would significantly change the results of the preliminary TSD because a new efficiency metric would result in different energy and cost savings to the consumer. (CAC: EEI, No. 75 at p. 5) DOE agrees that using a SEER Hot-Dry metric is unnecessary because the combination of SEER and EER is more representative of system performance. As discussed in section III.B.2, DOE has determined that it can consider dual metrics (*i.e.,* SEER and EER) when considering recommendations arising out of a consensus agreement. For its analysis of potential standards apart from those recommended in the consensus agreement, DOE chose not to use the SEER Hot-Dry metric, which it had been considering, to characterize

[22] ''Sensible heat ratio'' is the relative contribution of an air conditioner or heat pump which reduces the dry bulb temperature of the ambient air to the cooling output which reduces the moisture content of the ambient air.

equipment performance in the hot-dry region, because DOE did not have sufficient information on how product costs and overall system performance might change if a SEER Hot-Dry metric were used. Therefore, DOE continued to use the current SEER rating metric for analysis of those potential amended standards.

a. Proposed Test Procedure Amendments

As mentioned above, DOE proposed amendments to its test procedure for central air conditioners and heat pumps to measure off mode power consumption during the heating and shoulder seasons for central air conditioners and the shoulder season for heat pumps. 75 FR 31224, 31238–39 (June 2, 2010). For central air conditioners and heat pumps, these changes included a measurement of the off mode power consumption during the shoulder season, $P_1$, in watts. For central air conditioners only, the test procedure also provides a method to measure the off mode power consumption during the heating season, $P_2$, also in watts. *Id.* at 31269. $P_2$ does not apply to heat pumps, because heat pumps are used during both the heating and cooling seasons, and, therefore, off mode power consumption only occurs during the shoulder seasons.

However, the June 2010 test procedure NOPR did not contain an off mode metric which combined $P_1$ and $P_2$. In general, issues concerning test procedure provisions for standby mode and off mode power consumption are being addressed in a separate SNOPR for the Residential CAC test procedure. However, in that SNOPR, DOE is proposing the following off mode metric, $P_{W,OFF}$, to regulate off mode power consumption for central air conditioners and heat pumps. $P_{W,OFF}$ is calculated for air conditioners using an equation involving $P_1$ and $P_2$ based on the national average relative lengths of each season (739 hours for $P_1$ and 5,216 hours for $P_2$). For heat pumps, $P_{W,OFF}$ equals $P_1$ because the heat pump is in active mode during the heating season. The equations used to calculate $P_{W,OFF}$ are as follows:

For air conditioners: $P_{W,OFF} = 0.124 * P_1 + 0.876 * P_2$

For heat pumps: $P_{W,OFF} = P_1$

As noted above, these equations were not included in the June 2010 test procedure NOPR, but are being addressed in an SNOPR.

*G. Technological Feasibility*

1. General

In each standards rulemaking, DOE conducts a screening analysis, which it bases 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 design 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 design option to be technologically feasible if it is in use by the relevant industry or if research has progressed to the development of a working prototype. ''Technologies incorporated in commercial products or in working prototypes will be considered technologically feasible.'' 10 CFR 430, subpart C, appendix A, section 4(a)(4)(i). Further, although DOE does consider technologies that are proprietary, it will not consider efficiency levels that can only be reached through the use of proprietary technologies (*i.e.,* a unique pathway), which could allow a single manufacturer to monopolize the market.

Once DOE has determined that particular design options are technologically feasible, it further evaluates each of these design 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. 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(ii)–(iv). Section IV.B of this notice discusses the results of the screening analyses for furnaces and central air conditioners and heat pumps. Specifically, it presents the designs DOE considered, those it screened out, and those that are the basis for the TSLs in this rulemaking. For further details on the screening analysis for this rulemaking, see chapter 4 of the direct final rule TSD.

2. Maximum Technologically Feasible Levels

When DOE proposes to adopt (or not adopt) an amended or new energy conservation 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 furnaces and central air conditioners and heat pumps in the engineering analysis using the design parameters that passed the screening analysis and that lead to the creation of the most efficient products available. (See chapter 5 of the direct final rule TSD.)

The max-tech efficiency levels are set forth in TSL 7 for residential furnaces and again in TSL 7 for central air conditioners and heat pumps and represent the most efficient products available on the market in the given product class. Products at the max-tech efficiency levels for both furnaces and central air conditioners and heat pumps are either currently offered for sale or have previously been offered for sale. However, no products at higher efficiencies are available or have been in the past, and DOE is not aware of any working prototype designs that would allow manufacturers to achieve higher efficiencies. For central air conditioners and heat pumps, the max-tech levels are listed at various cooling capacities within the each product class, because they vary depending on the cooling capacity of the product. Table III.6 and Table III.7 list the max-tech levels that DOE determined for the products that are the subjects of this rulemaking.

TABLE III.6—MAX-TECH AFUE LEVELS CONSIDERED IN THE FURNACES ANALYSES

| Product class | Max-Tech AFUE Level % |
|---|---|
| Non-weatherized Gas | 98 |
| Mobile Home Gas | 96 |
| Non-weatherized Oil-Fired | 97 |
| Weatherized Gas | 81 |

TABLE III.7—MAX-TECH SEER AND HSPF LEVELS CONSIDERED IN THE CENTRAL AIR CONDITIONER AND HEAT PUMP ANALYSES

| Product class | | Cooling capacity | Max-Tech efficiency level |
|---|---|---|---|
| Split Systems | Air Conditioners Blower-Coil* | 2 Ton | 24.5 SEER |
| | | 3 Ton | 22 SEER |
| | | 5 Ton | 18 SEER |
| | Air Conditioners Coil-Only* | 2 Ton | 18 SEER |
| | | 3 Ton | 17 SEER |
| | | 5 Ton | 16 SEER |
| | Heat Pumps | 2 Ton | 22 SEER |
| | | 3 Ton | 21 SEER |
| | | 5 Ton | 18 SEER |
| Single-Package Systems | Air Conditioners | 3 Ton | 16.6 SEER |
| | Heat Pumps | 3 Ton | 16.4 SEER |
| Niche Products | SDHV | 3 Ton | 14.3 SEER |
| | Space-Constrained Air Conditioners. | 2.5 Ton | 12 SEER |
| | Space-Constrained Heat Pumps | 2.5 Ton | 12 SEER |

*Although analyzed separately, DOE is setting the same standard level for split-system blower-coil air conditioners and split-system coil-only air conditioners. DOE analyzed these products separately for greater accuracy in its analyses, but is adopting the same standard level. The difference between the two types of split-system air conditioners is that a blower-coil unit is matched with an indoor fan, while a coil-only unit is not. The rating method for a coil-only unit uses a default fan power consumption (limiting the SEER that can be achieved), while a blower-coil unit uses the measured fan power consumption of its matched indoor fan. For additional discussion of DOE's treatment of blower-coil and coil-only products, see section IV.A.3.b of this direct final rule.

For the weatherized gas furnace product class and the space-constrained central air conditioner and heat pumps product classes, the max-tech levels identified are the same level as the existing minimum standards for each respective product. The max-tech levels for these products are further discussed in the subsections immediately below.

a. Weatherized Gas Furnace Max-Tech Efficiency Level

For the RAP, DOE examined the efficiencies of weatherized gas furnaces available on the market and determined that 81-percent AFUE is the highest efficiency available for weatherized gas furnaces. In the RAP, DOE proposed to analyze several efficiency levels for weatherized gas furnaces, including an 81-percent max-tech level, and received feedback from several interested parties, described below.

ACEEE suggested that DOE should use a condensing furnace at 90-percent AFUE for the max-tech level for weatherized gas furnaces, because limited numbers of commercial packaged units are available with condensing gas sections, and this technology may be feasible for use with condensate drains to the house interior. (FUR: ACEEE, No. 1.3.009 at p. 6) In contrast, Lennox stated that it supports the 81-percent AFUE max-tech efficiency levels shown for weatherized gas furnaces only for the purposes of undertaking required analysis; Lennox does not support DOE's setting max-tech as the minimum required efficiency level in a standard, and stated that DOE should avoid doing so. (FUR: Lennox, No. 1.3.018 at p. 3)

During the screening analysis (see section IV.B of this direct final rule), DOE considered technologies to improve the AFUE of weatherized gas furnaces, but determined that no weatherized gas furnace technologies satisfied all four screening criteria. As a result, 81-percent AFUE is the maximum technologically feasible efficiency level for these products. At efficiencies above 81-percent AFUE, the potential for the formation of condensate increases, causing concerns about condensate freezing in weatherized furnaces, which are installed outdoors. When condensate freezes, the performance of the unit is impacted, and failure rates increase, while reliability decreases. As suggested by ACEEE, DOE examined a condensing design for weatherized gas furnaces. In researching weatherized gas furnace designs currently on the market as well as prototype designs, DOE did not discover any designs that have been or are currently being used in commercially-available designs or working prototypes for residential condensing weatherized gas furnaces. Therefore, DOE is not aware of any designs that have reliably overcome issues associated with condensate freezing in weatherized gas furnaces, and this direct final rule does not include efficiency levels where condensate formation is possible for this product class. However, DOE recognizes that if the issues associated with condensate freezing in weatherized gas furnaces can be reliably overcome, there may be potential for developing products at condensing efficiency levels in the future.

The minimum energy conservation standard for weatherized gas furnaces that was promulgated by the November 2007 Rule is 81-percent AFUE. 72 FR 65136, 65169 (Nov. 19, 2007); 10 CFR 430.32(e)(1)(ii). Because DOE has concluded that the November 2007 Rule was not vacated by the remand agreement, 81-perecent AFUE was used as the baseline for this rulemaking. As a result, DOE has determined that 81-percent AFUE is both the baseline and max-tech level for weatherized gas furnaces. DOE concluded that there is no need to perform additional analyses for these products, since the *de facto* minimum standard will be 81-percent AFUE.

b. Space-Constrained Central Air Conditioner and Heat Pump Max-Tech Efficiency Levels

In conducting its analyses, DOE determined that the max-tech levels for both the space-constrained air conditioner and heat pump product classes are 12 SEER, which is equivalent to the baseline level. DOE has concluded that unique factors may prevent through-the-wall products from realizing the full potential of energy saving design options available to other product classes. Typically, increased condenser coil surface area is the most cost-effective energy saving measure available for air conditioners and heat pumps. However, manufacturers of

space-constrained products are limited in their ability to implement this option by the apparent constraints upon coil size inherently present in this product class, and some manufacturers have expressed concern that the available condenser coil surface area may have already been maximized in order to reach the 10.9 SEER standard, which was set forth in the previous rulemaking for through-the-wall products. 69 FR 50997, 51001 (August 17, 2004). Similarly, manufacturers have claimed that the number of coil rows has also been maximized to the point at which the addition of further rows would not provide a noticeable improvement in performance. Other coil improvements, such as micro-channel tubing [23], were proven technologically infeasible during research and development testing because manufacturers have been unable to solve defrosting issues, calling into question the technological feasibility of this technology option for all types of heat pumps. If coil improvements are insufficient to increase product efficiency, through-the-wall manufacturers must explore more-costly design options, such as high-efficiency compressors and fan motors and controls. According to certain manufacturers, higher-efficiency compressors were incorporated into products on the market to meet the 10.9 SEER standard, and variable speed fan motors and advanced controls were incorporated into product designs when the through-the-wall product class expired and those products were required to meet the 12 SEER standard as part of the space-constrained product classes. The expiration of this product class and inclusion of the through-the-wall units in the space-constrained product class is discussed in greater detail in section IV.A.3.b. The implementation of these technologies to meet the 12 SEER requirement of the space-constrained product class suggests that manufacturers have few, if any, technology options left to improve efficiency level beyond 12 SEER.

DOE conducted teardowns and further market research to confirm this hypothesis and found the space-constrained max-tech efficiency level to be 12 SEER for both the space-constrained air conditioner and heat pump product classes. This level matches the baseline, and therefore, DOE would be unable to raise the energy conservation standards. Therefore, DOE concluded that there is no need to perform additional analyses for these products, since the *de facto* minimum standard will be 12 SEER. However, during its investigation, DOE found that space-constrained products have the potential to achieve higher offmode efficiency levels, and, therefore, considered these products in the off mode analysis, which is discussed in section III.E.2.a.

*H. Energy Savings*

1. Determination of Savings

DOE used its NIA spreadsheet to estimate energy savings from amended standards for residential furnaces and central air conditioners and heat pumps. (The NIA spreadsheet model is described in section IV.G of this notice and chapter 10 of the direct final rule TSD.) For most of the considered TSLs, DOE forecasted cumulative energy savings beginning in the year in which compliance with amended standards would be required, and ending 30 years afterward. For TSL 4, which matches the recommendations in the consensus agreement, DOE forecasted the energy savings from 2015 through 2045 for central air conditioners and heat pumps, and from 2013 through 2045 for furnaces.[24] 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 new or amended mandatory efficiency standards, and considers market demand for more-efficient products.

The NIA spreadsheet model calculates the energy savings in ''site energy,'' which is the energy directly consumed by products at the locations where they are used. DOE reports national energy savings on an annual basis in terms of the source (primary) energy savings, which is the savings in the energy that is used to generate and transmit energy to the site. To convert site energy to source energy, DOE derived annual conversion factors from the model used to prepare the Energy Information Administration's (EIA) *Annual Energy Outlook 2010* (*AEO2010*), which presents long-term projections of energy supply, demand, and prices.[25]

2. Significance of Savings

As noted above, under 42 U.S.C. 6295(o)(3)(B), EPCA prohibits DOE from adopting a standard for a covered product if such standard would not result in ''significant'' energy savings. While the term ''significant'' is not defined in the Act, the U.S. Court of Appeals for the D.C. Circuit, in *Natural Resources Defense Council* v. *Herrington,* 768 F.2d 1355, 1373 (D.C. 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).

*I. Economic Justification*

1. Specific Criteria

As discussed 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 generally discuss how DOE is addressing each of those seven factors in this rulemaking. For further details and the results of DOE's analyses pertaining to economic justification, see sections IV and V of today's notice.

a. Economic Impact on Manufacturers and Consumers

In determining the impacts of a new or amended standard on manufacturers, DOE first determines the quantitative impacts using an annual cash-flow approach. This includes both a short-term assessment (based on the cost and capital requirements associated with new or amended standards during the period between the announcement of a regulation and when the regulation comes into effect) and a long-term assessment (based on the costs and margin impacts over the 30-year analysis period). The 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, paying particular attention to 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

[23] Microchannel heat exchangers have a rectangular cross-section containing several small channels through which refrigerant passes. Fins pass between the tubes and are brazed to the tubes. These heat exchangers are capable of transferring more heat per unit of face area than a round-tube plate-fin coil of comparable capacity.

[24] TSL 4 incorporates the recommendations of the consensus agreement, which include compliance dates in 2015 for central air conditioners and heat pumps and in 2013 for furnaces.

[25] For more information on *AEO2010,* see: *http://www.eia.doe.gov/oiaf/aeo/.*

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, which is also separately specified 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 net present value from a national perspective 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 the cost of 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 assumes in its analysis that consumers purchase the product in the year in which compliance with the amended standard is required.

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 achieve LCC savings or experiencing 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 an amended national standard.

c. Energy Savings

While significant conservation of energy is a separate statutory requirement for imposing an energy conservation standard, the Act requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are 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 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 seeks to develop standards that would not lessen the utility or performance of the products under consideration. None of the TSLs presented in today's direct final rule would reduce the utility or performance of the products considered in the rulemaking. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) During the screening analysis, DOE eliminated from consideration any technology that would adversely impact consumer utility. For the results of DOE's analyses related to the potential impact of amended standards on product utility and performance, see section IV.B of this notice and chapter 4 of the direct final rule TSD.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider any lessening of competition that is likely to result from standards. Specifically, it directs the U.S. Attorney General (Attorney General) to determine in writing the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit such determination to the Secretary, not later than 60 days after the publication of a proposed rule, together with an analysis of the nature and extent of such impact. (42 U.S.C. 6295(o)(2)(B)(i)(V) and (ii)) DOE is simultaneously publishing a NOPR containing energy conservation standards identical to those set forth in today's direct final rule and has transmitted a copy of today's direct final rule and the accompanying TSD to the Attorney General, requesting that the U.S. 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 the DOJ's comments in the **Federal Register** in a separate notice.

f. Need of the Nation To Conserve Energy

Another factor which DOE must consider in determining whether a new or amended standard is economically justified is the need for national energy and water conservation. (42 U.S.C. 6295(o)(2)(B)(i)(VI)) The energy savings from new or amended standards are likely to provide improvements to the security and reliability of the Nation's energy system. Reductions in the 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 new or amended standards may affect the Nation's needed power generation capacity.

Energy savings from the standards in this rule are also likely to result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with energy production (*i.e.,* from power plants), and through reduced use of fossil fuels at the homes where gas and oil furnaces are used. DOE reports the environmental effects from the standards in this rule, as well as from each TSL it considered for furnaces and central air conditioners and heat pumps, 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

The Act allows the Secretary, 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 standards set forth in this notice, DOE has also considered the comments submitted by interested parties, including the recommendations in the consensus agreement, which DOE believes provides a reasoned 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 energy conservation standards that are in accordance with 42 U.S.C. 6295(o). 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. In the present case, one outcome of the consensus agreement was a recommendation to accelerate the compliance dates for these products, which would have the effect of producing additional energy savings at an earlier date. 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 provides for 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 level is less than three times the value of the first-year energy (and, as applicable, water) savings resulting from the standard, as calculated under the applicable DOE test procedure. DOE's LCC and PBP analyses generate values that calculate the payback period for consumers of potential new and amended energy conservation standards. These analyses include, but are not limited to, the three-year payback period contemplated under the rebuttable presumption test. However, DOE routinely conducts a full 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 evaluate the economic justification for a potential standard level definitively (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, which are available online,[26] to estimate the impact of all the considered standard levels, including the standards in this rule. The first spreadsheet calculates LCCs and payback periods of potential amended 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 Department also assessed manufacturer impacts, largely through use of the Government Regulatory Impact Model (GRIM), which is an industry cash-flow model that is described in detail in section IV.I.

Additionally, DOE estimated the impacts on utilities and the environment of potential amended energy efficiency standards for furnaces and central air conditioners and heat pumps. 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.* 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, which is based on the *AEO* version but with minor modifications.[27] 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 primarily on publicly-available information (*e.g.,* manufacturer specification sheets, industry publications, and data from trade organization Web sites, such as AHRI at *http://www.ahrinet.org/*). The subjects addressed in the market and technology assessment for this rulemaking include: (1) Quantities and types of products sold and offered for sale; (2) retail market trends; (3) products covered by the rulemaking; (4) product classes; (5) manufacturers; (6) regulatory requirements and non-regulatory programs (such as rebate programs and tax credits); and (7) technologies that could improve the energy efficiency of the products 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 this energy conservation standards rulemaking for furnaces, central air conditioners, and heat pumps. It will also address whether EPCA covers certain other products and authorizes DOE to adopt standards for them.

a. Furnaces

EPCA defines a residential ''furnace'' as a product that: (1) Either uses only single-phase electric current, or uses single-phase electric current or direct current (DC) in conjunction with natural gas, propane, or home heating oil; (2) is designed to be the principal heating source for the living space of a residence; (3) is not contained within the same cabinet with a central air conditioner whose rated cooling capacity is above 65,000 Btu per hour; (4) is an electric central furnace, electric boiler, forced-air central furnace, gravity central furnace, or low pressure steam or hot water boiler; and (5) has a heat input rate of less than 300,000 Btu per hour for electric boilers and low pressure steam or hot water boilers and less than 225,000 Btu per hour for forced-air central furnaces, gravity central furnaces, and electric central furnaces. (42 U.S.C. 6291(23)) This definition covers the following types of products: (1) Gas furnaces (non-weatherized and weatherized); (2) oil-fired furnaces (non-weatherized and weatherized); (3) mobile home furnaces (gas and oil-fired); (4) electric resistance furnaces; (5) hot water boilers (gas and oil-fired); (6) steam boilers (gas and oil-fired); and (7) combination space/water heating appliances (water-heater/fancoil combination units and boiler/tankless coil combination units).

Residential boilers are outside the scope of this rulemaking. EISA 2007 included amendments to EPCA that established amended standards for these boilers (42 U.S.C. 6295(f)(3)), and DOE subsequently incorporated these standards into its regulations at 10 CFR 430.32(e)(2)(ii). 73 FR 43611 (July 28, 2008). Compliance with the new statutory boilers standards is required for covered products manufactured or imported on or after September 1, 2012. As discussed in section II.B.2.a above, under the voluntary remand, DOE agreed to undertake analyses to determine whether it should establish regional energy conservation standards for residential furnaces. As part of this analysis, DOE agreed to consider the effect of alternate standards on natural gas prices. The current rulemaking for furnaces is the second amended energy conservation standards rulemaking which is being conducted pursuant to authority under 42 U.S.C. 6295(f)(4)(C) and (o)(6). Given the relatively recent enactment of statutorily-prescribed

[26] *http://www1.eere.energy.gov/buildings/appliance_standards/residential/furnaces_boilers.html* and *http://www1.eere.energy.gov/buildings/appliance_standards/residential/central_ac_hp.html.*

[27] 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 (to allow modeling of the impact of energy conservation standards on the appropriate energy end uses) and uses the model under various policy scenarios that deviate from *AEO* assumptions, the name ''NEMS–BT'' refers to the model as used here. (''BT'' stands for DOE's Building Technologies Program.)

boiler standards in EISA 2007, DOE has decided to consider amended energy conservation standards for boilers under 42 U.S.C. 6295(f)(4)(C) in a future rulemaking.

For furnaces, this rulemaking covers the same products as those covered by the November 2007 Rule, consisting of the following types of furnaces: (1) Non-weatherized gas; (2) weatherized gas; (3) mobile home gas; and (4) non-weatherized oil-fired. However, DOE did not perform an AFUE analysis for weatherized gas furnaces because the November 2007 Rule promulgated standards at the max-tech AFUE level. As described in section III.G, DOE has concluded that 81-percent AFUE is still the max-tech efficiency achievable for weatherized gas furnaces. Therefore, because EPCA's anti-backsliding clause would not allow DOE to consider adoption of a minimum standard below 81-percent AFUE, and because there are no viable efficiency levels above 81-percent AFUE, DOE did not perform an AFUE analysis for weatherized gas furnaces.

Although DOE did not consider amended AFUE standards for electric furnaces, mobile home oil-fired furnaces, and weatherized oil-fired furnaces in this rulemaking for the reasons discussed in the following sections, DOE did consider standby mode and off mode standards for these products. Additionally, DOE did not analyze energy conservation standards for combination space/water heating appliances for reasons discussed below.

(i) Mobile Home Oil-Fired and Weatherized Oil-Fired Furnaces

DOE is not proposing amended AFUE standards for mobile home oil-fired furnaces and weatherized oil-fired furnaces because DOE understands that only a very small number of these products are shipped (as these products combine to make up less than one percent of all furnace models in the AHRI directory) and that the few models that are shipped exceed the currently applicable standards (*i.e.,* 75-percent AFUE for mobile home oil-fired furnaces and 78-percent AFUE for weatherized oil-fired furnaces). As a result, DOE believes that promulgating higher standards for these products would result in *de minimis* energy savings. DOE initially made these determinations in the proposed rule leading to the development of the November 2007 Rule (71 FR 59204, 59214 (Oct. 6, 2006)), and based on a more recent review of products on the market and feedback from manufacturers, DOE believes the market for all of these furnaces has not changed. DOE initially made this proposal in the RAP and did not receive any related comments.

(ii) Electric Furnaces

EPCA initially prescribed standards at 78-percent AFUE for ''furnaces,'' which did not exclude electric furnaces. (42 U.S.C. 6295(f)(1)) The definition of a ''furnace'' in EPCA (42 U.S.C. 6291(23)) explicitly includes ''electric furnaces,'' and, therefore, the 78-percent AFUE standard set by EPCA applies to electric furnaces. In the November 2007 final rule, DOE stated that it was not adopting amended standards for electric furnaces. 72 FR 65136, 65154 (Nov. 19, 2007). However, when outlining the minimum AFUE requirements for the other furnace product classes, DOE did not restate the requirement for electric furnaces that was originally established by EPCA. To clarify the existing standards for electric furnaces, DOE is reaffirming the 78-percent minimum AFUE level for electric furnaces that was originally established by EPCA in today's direct final rule. As noted previously, DOE is not adopting amended AFUE standards for electric furnaces because it understands that their efficiency already approaches 100-percent AFUE. The AFUE ratings for electric furnace products currently on the market range from 96-percent (for outdoor units due to jacket losses) to 100-percent, and as discussed below, the test procedures for these products effectively limit them from having AFUE ratings any lower than this. Therefore, for the reasons explained below, DOE believes that any improvements to electric furnaces would have a *de minimis* energy-savings potential and did not consider amending the AFUE standards for these products. (However, as noted in section III.E.1.b of this direct final rule, DOE analyzed new energy conservation standards for standby mode and off mode energy consumption of these products.)

The test procedure for residential furnaces specifies that AFUE for electric furnaces is calculated as 100 percent minus jacket losses, and gives the option of assigning jacket losses equal to 1 percent.[28] The AFUE is calculated in this manner because the electric heating elements convert all of the electrical input energy into heat energy, and the only losses at the point of operation are through the jacket. The jacket losses are then multiplied by a factor of 1.7 for indoor furnaces (which must be tested as isolated combustion systems) and 3.3 for outdoor furnaces, and subtracted from 100 percent to get the AFUE rating. Therefore, the lowest possible AFUE rating for an electric furnace, according to DOE's test procedure and assuming a default value of 1 percent jacket losses, is 98.3 percent AFUE for non-weatherized (indoor) electric furnaces and 96.7 percent AFUE for weatherized (outdoor) electric furnaces. Further, a significant portion of electric furnaces are installed in the conditioned space, and any heat lost through the jacket in such installations would contribute to the heated space, effectively making the electric furnace completely efficient at the point of use.

The jacket losses of furnaces currently on the market are low, as jacket losses are already assumed by the test procedure to be a default of 1 percent, and it is unlikely that further improvements will have much impact on efficiency. Because reducing jacket losses are the only means for improving the efficiency of these products as rated by DOE's test procedure, they have an extremely limited potential for additional energy savings. Any efficiency levels analyzed would be very unlikely to result in significant energy savings.

In response to DOE's planned approach for considering amended AFUE standards for electric furnaces, which was outlined in the RAP, DOE received several comments.

NRDC stated that DOE should include electric furnaces in the scope of this rulemaking because these products represent a low-cost option that could grow in market penetration as the efficiency (and as a result, cost) of competing products that provide the exact same consumer utility (*i.e.,* heat pumps, which in most cases have electric furnaces as back up and would use the same duct system) may potentially increase with upcoming standards. Further, NRDC stated that unless the energy savings potential of amended standards for electric furnaces is less than 0.032 quads (an amount deemed significant by DOE in the packaged terminal air conditioners (PTACs) rulemaking[29]), DOE should include them in the scope of this rulemaking. (FUR: NRDC, No. 1.3.020 at pp. 8) ACEEE recommended including

[28] For the rulemaking analysis in support of the 2007 Final Rule for residential furnaces and boilers, DOE gathered test data on the jacket losses for furnaces. This data is summarized in a presentation available at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/support_material.pdf.* The actual jacket loss values based on testing ranged from 0.11 percent to 0.75 percent. Thus, DOE believes one percent jacket losses to be representative of a conservative estimate of the actual jacket losses of furnaces.

[29] DOE published the final rule for PTACs on October 7, 2008. 73 FR 58772.

electric furnaces and requiring a minimum AFUE of greater than 100-percent for all ducted electric furnaces, given the substantial energy losses in transmission from source to site. (FUR: ACEEE, No. 1.3.009 at p. 3–4) AGA stated that excluding electric furnaces from consideration in the rulemaking is counterproductive to reducing energy consumption, so the commenter urged DOE to look at the number of electric furnaces on the market and to use that number in a comparative analysis to determine the potential impact of inclusion of such products in this rulemaking. (FUR: AGA, Public Meeting Transcript, No. 1.2.006 at p. 42)

Conversely, EEI stated that it supports the scope of the current rulemaking and agreed with DOE's conclusions in the RAP regarding electric resistance furnaces and boilers. (FUR: EEI, No. 1.3.015 at p. 3) The American Public Power Association (APPA) commented that if DOE decides to reject the use of the consensus agreement and proceed with a rulemaking, APPA would support the scope as outlined by DOE. More specifically, APPA supported the finding that the rulemaking should not cover electric resistance furnaces because their efficiency is already very high. (FUR: APPA, No. 1.3.011 at p. 3)

In response, DOE notes that it cannot promulgate a standard that would lead to the elimination of any product class. (42 U.S.C. 6295(o)(4)) Because it is currently impossible for manufacturers to achieve an AFUE standard of greater than 100 percent for electric furnaces, and because such a standard would effectively eliminate electric furnaces from the market, DOE does not believe ACEEE's suggestion is a valid opportunity for energy savings under EPCA. Additionally, as noted above, DOE reviewed the market for electric furnaces and determined that because the efficiency of these products approaches 100-percent AFUE, the energy-savings potential is *de minimis*. As a result, DOE does not believe there is reason to consider amended standards for electric furnaces in this rulemaking.

EarthJustice stated that DOE has the statutory authority to consider heat pump technology as a design option to improve the efficiency of electric furnaces. EarthJustice asserted that because heat pumps use the same kind of energy and provide the same functionality as electric resistance furnaces, there is no basis for treating the products differently, and separate standards for these products are inconsistent with EPCA's mandate to save energy. Further, EarthJustice stated that the definition of a ''furnace'' is broad enough to cover heat pumps even though they are already defined under 42 U.S.C. 6291(24) and argued that a heat pump meets all of the requirements of the furnace definition. (FUR: EarthJustice, No. 1.3.014 at pp. 3–6) Similarly, NRDC stated that electric furnaces should be added to the heat pump product class and be required to achieve the same performance. NRDC suggested rating both types of products using the same metric—testing the furnaces for HSPF if possible, or exploring an AFUE rating for a heat pump. (FUR: NRDC, No. 1.3.020 at pp. 8–9)

DOE notes that EPCA defines a ''furnace'' as ''an electric central furnace, electric boiler, forced-air central furnace, gravity central furnace, or low pressure steam or hot water boiler.'' (42 U.S.C. 6291(23)(C)) Further, DOE's definitions in the Code of Federal Regulations define an ''electric central furnace'' as ''a furnace designed to supply heat through a system of ducts with air as the heating medium, in which heat is generated by one or more electric resistance heating elements and the heated air is circulated by means of a fan or blower.'' 10 CFR 430.2. Separately, EPCA defines a ''heat pump'' as a product that (1) consists of one or more assemblies; (2) is powered by single phase electric current; (3) is rated below 65,000 Btu per hour; (4) utilizes an indoor conditioning coil, compressors, and refrigerant-to-outdoor-air heat exchanger to provide air heating; and (5) may also provide air cooling, dehumidifying, humidifying circulating, and air cleaning. (42 U.S.C. 6291(24)) DOE believes that the definition of ''heat pump'' in EPCA does not include electric furnaces, because electric furnaces do not meet all of the criteria of the ''heat pump'' definition (such as utilizing a compressor and refrigerant). (42 U.S.C. 6291(24)(D)) Further, DOE believes that because ''heat pumps'' are defined separately by EPCA, they are not included under the definition of a ''furnace'' under 42 U.S.C. 6291(23)(C), which states that a furnace is an electric central furnace, electric boiler, forced-air central furnace, gravity central furnace, or low pressure steam or hot water boiler. Because an electric central furnace utilizes heat ''generated by one or more electric resistance elements,'' a heat pump would not be covered under the definition of an ''electric central furnace.'' Once heat pump technology is added to an electric furnace, the product would no longer generate heat using an electric resistance element, but instead would use a refrigerant-to-outdoor-air heat exchanger to provide air heating. Such a change in the mechanism for generating heat would exclude the product from being covered as a furnace (as it would no longer be an ''electric furnace'' under the definition of a ''furnace'' in 42 U.S.C. 6291(23)(C)), and would instead cause it to be classified it as a heat pump, under EPCA's definitions. Therefore, DOE has concluded that it will not consider heat pump technology as a design option for electric furnaces in the analysis.

(iii) Combination Space/Water Heating Appliances

DOE excluded combination space/water heating appliances from consideration in this rulemaking, as was done in the NOPR leading to the November 2007 Rule for furnaces and boilers. 69 FR 45420, 45429 (July 29, 2004). An adequate test procedure does not exist that would allow DOE to set standards for these products.

ACEEE urged DOE to develop a test method and energy conservation standard for combination hot water/space heating units. (FUR: ACEEE, No. 1.3.009 at p. 3) EEI stated that if combination space/water heating appliances obtain greater market share, then DOE should create a test procedure and efficiency standards in a future rulemaking because they are a competitive product. (FUR: EEI, No. 1.3.015 at p.3)

DOE has not yet initiated a test procedure rulemaking to establish a test procedure for combination space/water heating appliances. DOE believes that doing so as a part of this rulemaking would cause delays that could prevent DOE from issuing amended standards for residential furnaces and central air conditioners and heat pumps in a timely manner, and thus, may reduce energy savings to the Nation from amended standards (if the compliance date must be delayed). Therefore, DOE may consider a test procedure and energy conservation standards for combination space/water heating appliances in future rulemakings, but will not do so as a part of this rulemaking for residential furnaces and central air conditioners and heat pumps.

b. Central Air Conditioners and Heat Pumps

EPCA defines a residential ''central air conditioner'' as a product, other than a packaged terminal air conditioner, which is: (1) Powered by single-phase electric current, (2) air cooled, (3) rated below 65,000 Btu per hour, (4) not contained within the same cabinet as a furnace the rated capacity of which is above 225,000 Btu per hour, and (5) a heat pump or a cooling only unit. (42

U.S.C. 6291(21)) Furthermore, EPCA defines a ''heat pump'' as a product, other than a packaged terminal heat pump, which: (1) Consists of one or more assemblies, (2) is powered by single-phase electric current, (3) is rated below 65,000 Btu per hour, (4) uses an indoor conditioning coil, compressors, and refrigerant-to-outdoor air heat exchanger to provide air heating, and (5) may also provide air cooling, dehumidifying, humidifying circulating, and air cleaning. (42 U.S.C. 6291 (24))

For this rulemaking, DOE is evaluating amended energy conservation standards for the products covered by DOE's current standards for central air conditioners and heat pumps, specified at 10 CFR 430.32(c)(2), which DOE adopted in the August 2004 Rule. These products consist of: (1) Split-system air conditioners; (2) split-system heat pumps; (3) single package air conditioners; (4) single package heat pumps; (5) small-duct high-velocity (SDHV) air conditioners and heat pumps; (6) space-constrained air conditioners; and (7) space-constrained heat pumps. The August 2004 Rule also prescribed standards for through-the-wall air conditioners and heat pumps, but those products are now considered space-constrained products because the through-the-wall product class expired on January 23, 2010. 69 FR 51001.

(i) Evaporative Coolers

In response to the preliminary analysis, ACEEE indicated that DOE should consider evaporative pre-cooled air conditioner condensers (*i.e.,* the evaporative pre-cooler is an add-on to a conventional condenser) as a technology that could improve the efficiency of air conditioners. (CAC: ACEEE, No. 72 at p. 4) As a result of this input, DOE reexamined its treatment of evaporative coolers both as stand-alone products and as add-ons to air conditioners. Evaporative coolers, also sometimes referred to as swamp coolers, can be used as stand-alone residential cooling systems. This type of system is generally found in hot, dry regions such as the southwestern United States. Evaporative coolers operate by passing dry outdoor air over a water-saturated medium, which cools the air as the water evaporates. The cooled air is then directed into the home by a circulating fan. As mentioned above, EPCA defines a residential ''central air conditioner,'' in part, as ''air-cooled.'' (42 U.S.C. 6291(21)) Because residential evaporative coolers are ''evaporatively-cooled'' (instead of ''air-cooled''), DOE has determined that they do not meet this definition and are, therefore, outside the scope of this rulemaking.

In some instances, however, evaporative coolers can be added on to air conditioners, and the combined system is referred to as an evaporative pre-cooled air conditioner. In this application, the add-on evaporative cooler functions in the same manner as the stand-alone system, except that its output air is blown over the air conditioner condenser coils, instead of directly into the conditioned space. The increased temperature gradient between the condenser coil and the air improves heat transfer and increases the efficiency of the condenser coil. DOE is unaware of either any evaporative pre-cooled central air conditioning systems offered as a complete package by any air conditioner manufacturer, or of any prototype of such a system. Consequently, without cost or performance data, DOE cannot give this combined system full consideration in the analysis. Therefore, the assumed cost of meeting each TSL is based on other technologies, which may be more or less costly than evaporative pre-cooling.

3. Product Classes

In evaluating and establishing energy conservation standards, DOE generally 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. (42 U.S.C. 6295(q)) In deciding whether a feature justifies a different standard, DOE must consider factors such as the utility of the feature to users. *Id.* DOE normally establishes different energy conservation standards for different product classes based on these criteria.

a. Furnaces

The existing Federal energy conservation standards for residential furnaces are codified at 10 CFR 430.32(e)(1)(i). The November 2007 Rule amended energy conservation standards for residential furnaces and established six residential furnace product classes. 72 FR 65136, 65169 (Nov. 19, 2007). In the furnaces RAP, DOE stated that it intends to maintain these product classes. Ingersoll Rand commented that the planned product classes seem appropriate. (FUR: Ingersoll Rand, No. 1.3.006 at p. 2) Lennox stated that it supports DOE's planned product classes to the extent they mirror those in the consensus agreement. (FUR: Lennox, No. 1.3.018 at p. 3)

For today's direct final rule, DOE reviewed the market for residential furnaces, and determined that it is appropriate to consider the same six product classes established for the November 2007 Rule for this analysis. In addition, DOE also considered electric furnaces for standby mode and off mode standards only. Therefore, the furnace product classes are:

- Non-weatherized gas;
- Weatherized gas;
- Mobile home gas;
- Mobile home oil-fired;
- Non-weatherized oil-fired;
- Weatherized oil-fired; and
- Electric.

As stated in section IV.A.2.a above, DOE only performed an AFUE analysis for non-weatherized gas, mobile home gas, and non-weatherized oil-fired furnaces. Additionally, DOE conducted a standby mode and off mode analysis for non-weatherized gas, mobile home gas, non-weatherized oil-fired (including mobile home oil-fired), and electric furnaces. DOE did not perform a standby mode and off mode analysis for weatherized gas and weatherized oil-fired furnaces, as discussed in section III.E.1.a.

In response to the RAP for furnaces, DOE received several comments related to setting different standards for new construction and replacement installations for furnaces. AGA recommended that DOE should adopt a condensing standard at 90-percent AFUE for new construction, but allow non-condensing 80-percent furnaces to be installed in replacement applications. (FUR: AGA, Public Meeting Transcript, No. 1.2.006 at p. 41) NEEP stated that it does not support limiting a revised standard to new construction, because approximately 70 percent of furnace sales are into the replacement market, and such a limitation would undermine too much of the amended standard's projected energy savings. (FUR: NEEP, No. 1.3.021 at p. 3) ACEEE stated that the expected life of a house is roughly 100 years, and that exempting existing houses from a standard sets a precedent for the following rounds of rulemakings. Further, ACEEE stated that at some point, DOE would have to set standards that force consumers to retrofit their homes to accommodate more-efficient products, and the cost to do this will not go down with time. Therefore, ACEEE reasoned that the sooner this is done, the longer the benefits will be recognized in an existing house. (FUR: ACEEE, Public Meeting Transcript, No. 1.2.006 at pp. 51–52)

EEI stated strong opposition to setting new efficiency standards for new construction for only gas heating products (and not other types of heating products). EEI asserted that if new efficiency standards for gas furnaces are to only apply to new construction, then

new efficiency standards for all other competitive products covered by DOE should also apply only to new construction. EEI stated that otherwise, standards in each product class should apply to both new construction and retrofit situations to maximize energy savings and economies of scale (as has been done in the past). (FUR: EEI, No. 1.3.015 at p. 3)

In response, DOE notes that setting different standards for products intended for replacement installations and products intended for new construction would effectively create separate product classes for each of these types of products. As stated above, EPCA directs DOE to divide covered products into classes based on the type of energy used, capacity, or other performance-related feature that justifies a different standard for products having such feature. (42 U.S.C. 6295(q)) DOE does not believe that the intended installation type (*i.e.,* new construction or replacement) falls under any of the qualifications listed above. As a result, DOE has determined that it does not have the authority to establish differentiated standards for product installed in new construction and products installed in replacement of an existing unit. Therefore, DOE did not consider such standards for this direct final rule.

b. Central Air Conditioners and Heat Pumps

The existing Federal energy conservation standards for residential central air conditioners and heat pumps went into effect on January 23, 2006. 69 FR 50997 (Aug. 17, 2004). At 10 CFR 430.32(c)(2), there is a list of the nine product classes of residential central air conditioners and heat pumps and their corresponding energy conservation standards. However, because the through-the-wall air conditioner and heat pump product classes expired on January 23, 2010, DOE examined only seven product classes for this residential central air conditioner and heat pump rulemaking. 69 FR 50997, 51001 (Aug. 17, 2004). The seven product classes DOE examined are:

- Split-system air conditioners;
- Split-system heat pumps;
- Single-package air conditioners;
- Single-package heat pumps;
- Small-duct, high-velocity systems;
- Space-constrained air conditioners; and
- Space-constrained heat pumps.

The subsections below provide additional detail and discussion of stakeholder comments relating to these seven product classes.

(i) Expiration of Through-the-Wall Product Class

Through-the-wall systems were established as a separate product class, and were required by the August 2004 Rule to meet a 10.9 SEER standard. As previously mentioned, when the through-the-wall product class was created, DOE included a provision that the product class would expire on January 23, 2010, after which time units in the through-the-wall product class could be considered part of the space-constrained product class. 69 FR 50997, 50998 (August 17, 2004). In the August 2004 Rule, DOE also established a separate product class for space-constrained systems, requiring them to meet a 12 SEER standard. For this direct final rule, because the through-the-wall product class has expired, DOE reclassified through-the-wall products. The product class assignment of any product depends on that product's characteristics, but DOE believes that most (if not all) of the historically-characterized ''through-the-wall'' products would now be assigned to one of the space-constrained product classes. As a result, DOE considered through-the-wall products to be part of the space-constrained product class for its analyses. In addition, DOE is updating the footnote to the table in 10 CFR 430.32(c)(2) to clarify the classification of through-the-wall products.

In the preliminary analysis, DOE sought feedback on this classification and potential market shifts which may result from considering the former through-the-wall products to be space-constrained products. Ingersoll Rand commented that replacement units of all types have to contend with the space constraints of the existing installation, and the intended benefit of minimum efficiency standards would be severely diminished if special treatment of the space-constrained products is continued. (CAC: Ingersoll Rand, No. 66 at p. 2)

Federal law does not allow DOE to promulgate efficiency standards that would result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those currently on the market. (42 U.S.C. 6295(o)(4)) The space-constrained product class acts as a safe harbor for product types available before 2001 whose efficiency is limited by physical dimensions that are rigidly constrained by the intended application. DOE believes that through-the-wall equipment intended for replacement applications can meet the definition of space-constrained products because they must fit into a pre-existing hole in the wall, and a larger through-the-wall unit would trigger a considerable increase in the installation cost to accommodate the larger unit. On the other hand, while split system and single package air conditioners and heat pumps have certain size limitations mainly associated with installation and consumer preferences, these units typically have a component installed outdoors. Because part of the unit is outdoors, there is more flexibility to allow for increases in the overall unit size. This greater flexibility with regard to product size provides these products with an advantage in achieving an increased efficiency because a larger coil can be used. Because physical size constraints for through-the-wall products continue to exist, DOE determined that continuation of the space-constrained product class is warranted.

(ii) Large-Tonnage Products

For the preliminary analysis of conventional central air conditioner and heat pump product classes, DOE selected 36,000 Btu/hour (*i.e.,* three-tons) as the representative capacity for analysis because units at this capacity are ubiquitous across manufacturers, have high sales volumes, and span a relatively large range of efficiencies. However, large-tonnage products (*i.e.,* products with cooling capacities of approximately five tons) have additional constraints that three-ton products do not have, such as added installation costs and space requirements, which could potentially lead to different incremental costs between efficiency levels for three-ton units as compared to larger-capacity units. In its preliminary analysis, DOE determined that these incremental cost differences between three-ton units and large-tonnage units were not large enough to necessitate a large-tonnage product class, but sought comment on the treatment of larger-tonnage products in the analysis.

Ingersoll Rand stated that in the past there have not been sufficient differences to justify a separate large-tonnage product class. However, when considering the EER metric, Ingersoll Rand asserted that the marketability, serviceability, and installation cost differences are substantial enough to warrant a separate product class. (CAC: Ingersoll Rand, No. 66 at p. 2) Rheem noted that achieving higher efficiency in large-tonnage products is more difficult because of size limitations in the coils and the air handler, and that there are

other issues such as additional refrigerant charge and handling issues associated with the larger size. (CAC: Rheem, No. 76 at p. 3)

For this direct final rule, DOE only considered an EER minimum conservation standard for the consensus agreement TSL (see section V.A for more details about the TSLs analyzed). The consensus agreement TSL has separate EER levels for large-tonnage products to account for the unique characteristics of those products that lead to increased costs. DOE believes that the impacts of unit size on EER are enough to justify a separate product class for large tonnage units, but does not believe these impacts on SEER are enough to justify a separate product class. Therefore, DOE believes a large tonnage product class is applicable for the consensus agreement TSL due to the EER standard. Because DOE is not considering minimum EER standards for the other TSLs, DOE did not establish a separate product class for large-tonnage products for other TSLs. However, DOE has determined that the differences among products with different cooling capacities are substantial enough to justify an expansion of the engineering analysis to two, three, and five tons for split systems. See section IV.C.5.b of today's direct final rule for further information on DOE's approach to scaling the analysis at the representative cooling capacity to additional cooling capacities.

(iii) Blower-Coil and Coil-Only Designation for Split System Air Conditioners

In replacement applications for split-system air conditioners, consumers are presented with two options: (1) Replace a portion of their system, or (2) replace the entire system. For the first option, if a consumer has a furnace installed, and a portion of the air conditioning system (*i.e.,* condensing unit or evaporator coil) fails, the consumer may choose to only replace the air conditioning portion of the system. This scenario involves the replacement of a condensing unit and an evaporator coil used with the existing blower fan in the furnace. In these applications, manufacturers are constrained by the efficiency of the fan in the installed furnace, and they only have the ability to modify the condensing unit or evaporator coil to achieve the desired efficiency. These systems are referred to as ''coil-only'' systems and are tested and rated using the combination of a specific condensing unit and evaporator coil with a default indoor fan energy consumption specified in the DOE test procedure. Because the default indoor fan energy consumption value specified in the test procedure is not for a high-efficiency furnace fan, these types of units are limited in the SEER levels that they can achieve.

For the second option, if a consumer's entire system is replaced or installed as one complete system (as in new construction), the consumer has the ability to select a combination of indoor and outdoor units that can achieve any efficiency within the commercially-available range of efficiencies for split-system air conditioners because the indoor fan efficiency no longer limits the achievable SEER. Because the systems are sold as specific combinations of indoor and outdoor units, manufacturers have the ability to modify all portions of the system (*i.e.,* condensing unit, evaporator coil, and indoor fan blower) to achieve the desired efficiency. These systems are referred to as ''blower-coil'' systems and are tested and rated using the combination of a specific condensing unit, evaporator coil, and indoor fan blower. Because manufacturers have the option to improve the efficiency of the indoor blower fan in blower-coil systems, the cost-efficiency relationship is inherently different than for coil-only systems. Both types of systems are prevalent in the marketplace, and for the preliminary analysis, DOE characterized split-system air conditioners with separate cost-efficiency curves for blower-coil and coil-only systems within a single product class.

In response to DOE's request for comment on establishing a single product class for blower-coil and coil-only systems, Ingersoll Rand noted that the distinction between coil-only and blower-coil systems is artificial because all systems have some means for moving indoor air, even when rated coil-only. (CAC: Ingersoll Rand, No. 66 at p. 5) In this direct final rule, DOE is not establishing separate product classes for coil-only and blower-coil split system air conditioners, and, therefore, DOE continued to analyze them separately within the split system air conditioner product class for the direct final rule analysis.

(iv) ''Dual-Fuel'' Systems

In the preliminary analysis, DOE found that the majority of split-system heat pumps are sold as a matched set of indoor and outdoor units for both the new construction and replacement markets. However, DOE recognized that in some instances heat pumps are used in conjunction with gas or oil-fired furnaces, providing a ''dual-fuel'' heating capability. Consequently, DOE sought input on the characterization of the heat pump replacement market and whether installations of matched sets of indoor and outdoor products should be the basis for DOE's analysis for all heat pumps.

Ingersoll Rand commented that DOE should consider installations of matched sets of indoor and outdoor products for all heat pumps, and that the few heat pumps in ''dual-fuel'' systems are found primarily in the northern region of the United States. (CAC: Ingersoll Rand, No. 66 at 6) Rheem supported this statement and stated that heat pump installations should be considered as matched sets. (CAC: Rheem, No. 76 at p. 8) In response, DOE believes the large majority of heat pump shipments consists of matched sets (*i.e.,* pairing an outdoor and indoor unit) and has assumed that all heat pumps are installed with matched indoor air handlers for purposes of the direct final rule analyses.

4. Technologies That Do Not Impact Rated Efficiency

As part of the market and technology assessment performed for the direct final rule analysis, DOE developed a comprehensive list of technologies that would be expected to improve the energy efficiency of furnaces and central air conditioners and heat pumps, including those that do not impact the efficiency as rated by AFUE (for furnaces), SEER (for central air conditioners and heat pumps), and HSPF (for heat pumps). For example, certain technologies have the potential to reduce the electrical energy consumption of furnaces, but the AFUE metric does not capture the electrical energy use, and, therefore, such technologies would not be used to improve AFUE. Chapter 3 of the direct final rule TSD contains a detailed description of each technology that DOE identified. Although DOE identified a complete list of technologies that improve efficiency, DOE only considered in its analysis technologies that would impact the efficiency rating of the appliance as tested under the applicable DOE test procedure. Therefore, DOE excluded several technologies from the analysis during the technology assessment because they do not improve the rated efficiency of furnaces or central air conditioners and heat pumps. Technologies that DOE determined have an impact on the rated efficiency were carried through to the screening analysis and are discussed in section IV.B, which also contains the technologies that were considered as

part of the standby mode and off mode analyses.

In response to DOE's preliminary analysis for central air conditioners and heat pumps, ACEEE remarked that DOE eliminated technologies that save energy in real-world conditions or would require an additional performance metric, but do not improve the SEER or HSPF rating according to the current DOE test procedure. ACEEE stated that as a result, DOE screened out many important technologies in the central air conditioners and heat pumps preliminary analysis. (CAC: ACEEE, No. 72 at p. 4) Similarly, during the public meeting to discuss the furnaces RAP, ACEEE commented that the initial screening-out of technologies based on their impact on AFUE, as opposed to end-use efficiency, is unnecessarily restrictive to DOE's consideration of options. (FUR: ACEEE, Public Meeting Transcript, No. 1.2.006 at p. 149)

A product's efficiency rating under the applicable Federal test procedure determines whether it meets a particular minimum efficiency standard. An individual technology is relevant in the rulemaking process only to the extent that the technology has the potential to raise the efficiency rating of a product as measured under the test procedure. Therefore, DOE removes from consideration technologies that have no impact on a product's rating. Major changes to the DOE test procedures would be required to update the test procedures to include provisions that account for the impact of certain technologies on product efficiency, which would significantly delay the standards rulemaking such that DOE would not be able to meet its deadline of June 30, 2011, for publishing the final rule for these products. However, potential changes in the test procedures could be considered during the next round of test procedure rulemakings for these products. DOE believes that such delays may reduce energy savings to the Nation from amended standards (if the compliance date must be delayed). Therefore, in this rulemaking, DOE will continue to exclude technologies that do not improve the energy efficiency ratings of residential furnaces and central air conditioners and heat pumps, as tested by the applicable DOE test procedures.

For residential furnaces, DOE has determined that the following technologies would not impact AFUE as it is rated using the DOE test procedure: (1) Infrared burners; (2) positive shut-off valves for oil burner nozzles; (3) improved blower efficiency; and (4) micro combined heat and power. DOE did not analyze these technologies further because the technology either does not improve AFUE or there are insufficient data available to demonstrate an AFUE benefit of the technology.

For central air conditioners and heat pumps, DOE has determined that the following technologies would not impact the SEER and HSPF as calculated using the DOE test procedure: (1) Condenser fan motor controllers; (2) liquid-suction heat exchangers; and (3) heat pump defrost mechanisms. DOE did not analyze these technologies further because the technology either does not increase the SEER or HSPF ratings, or there are insufficient data available to demonstrate a SEER or HSPF benefit of the technology.

In response to the technology assessment performed for the preliminary analysis, DOE received feedback from several interested parties. ACEEE noted that in the preliminary analysis, DOE excluded advanced defrost controls for heat pumps that can save significant amounts of energy at low relative humidity outdoors. (CAC: ACEEE, No. 72 at p. 4) Regarding solar-assist products, EEI stated that this technology has no influence on units in terms of cooling efficiency as measured by SEER or EER. (CAC: EEI, No. 75 at p. 5) Ingersoll Rand commented that solar-assist technology should be excluded because it does not improve the operating efficiency of the refrigeration cycle. (CAC: Ingersoll Rand, No. 66 at p. 9) Southern remarked that there would need to be significant changes made to the test procedure to measure the solar-assist contribution. Additionally, a solar-assist component could potentially be used to qualify a unit at a minimum SEER level and then removed later, resulting in unit operation at levels below the minimum standard. (CAC: Southern, No. 73 at p. 3) Rheem commented that technological feasibility of high-volume manufacture, installation, and servicing of both solar-assist and three-stage heat pumps has not been established (CAC: Rheem, No. 76 at p. 11) Regarding three-stage heat pumps, Ingersoll Rand stated that the HSPF values for these products are not higher than conventional single-stage systems, because compressor capacity is not the only limiting factor on low-temperature heating capacity. (CAC: Ingersoll Rand, No. 66 at p. 9)

In response to these comments, DOE reassessed its preliminary views on the technologies in question. DOE revisited its conclusion regarding advanced defrost controls in the preliminary analysis, and found that advanced defrost controls can increase the HSPF of heat pumps according to the DOE test procedure. Accordingly, DOE has considered advanced defrost controls in the analyses for the direct final rule.

Regarding solar-assist technology, DOE has determined that this technology has no impact on SEER or HSPF using the DOE test procedure, and, therefore, DOE did not consider it as a technology option for the screening and engineering analyses. Similarly, three-stage heat pumps appear to have no impact on SEER or HSPF using the DOE test procedure, and therefore, DOE decided not to consider it as a technology option for analysis.

*B. Screening Analysis*

DOE uses the following four screening criteria to determine which design 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.

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, sections (4)(a)(4) and (5)(b).

In response to the screening criteria outlined in the furnace RAP, ACEEE argued that, although it is inappropriate to preclude from initial consideration technologies that are not widely used in the U.S., it may be appropriate to eliminate them in the screening analysis after adequate consideration if DOE finds the labor force to be insufficient to

adequately manufacture, sell, and service products on the scale necessary to serve the relevant market by the compliance date of the amended standard. (FUR: ACEEE, Public Meeting Transcript, No. 1.2.006 at pp. 148–151) ACEEE also commented that DOE should screen in technology options that are not used in the United States, but that are used internationally. (FUR: ACEEE, No. 1.3.009 at p.2)

In response, DOE considers a complete list of technology options in the market and technology assessment, including those used on the international market, and then examines each technology that impacts the rated efficiency to determine if the four screening criteria are met. International technology options are treated no differently than those that are domestic and must meet all four screening criteria, including practicability to manufacture, install, and service on the scale necessary to serve the U.S. market by the compliance date. If DOE determines that a technology option does not meet all of the relevant criteria, it will eliminate that technology option from further consideration.

1. Furnaces

DOE identified the following technology options that could improve the AFUE rating of residential furnaces: (1) Condensing secondary heat exchanger for non-weatherized furnaces; (2) heat exchanger improvements for non-weatherized furnaces; (3) condensing and near-condensing technologies for weatherized gas furnaces; (4) two-stage or modulating combustion; (5) pulse combustion; (6) low $NO_X$ premix burners; (7) burner derating; (8) insulation improvements; (9) off-cycle dampers; (10) concentric venting; (11) low-pressure, air-atomized oil burner; (12) high-static oil burner; and (13) delayed-action oil pump solenoid valve.

In response to DOE's request for comments on technologies in the furnaces RAP, Ingersoll Rand commented that all of the technology options that are technologically feasible and economically justified for furnaces are already incorporated by manufacturers into their current products, and that there are no new efficiency-benefitting technologies on the horizon. (FUR: Ingersoll Rand, No. 1.3.006 at p. 2)

DOE notes that a large amount of research regarding technology options for improving the efficiency of furnaces has already been conducted by industry and others. However, DOE's initial list of technology options identified in the market and technology assessment includes all technology options that could improve rated efficiency, without regard to technological feasibility or economic justification (a matter considered in other downstream analyses). Each technology option is reviewed during the screening analysis according to the four screening criteria. If a prototype or other technology option is ''screened in,'' DOE further considers it in the engineering analysis regardless of whether it is already widely used in the market.

a. Screened-Out Technology Options

DOE excluded six of the technologies listed above from consideration in this rulemaking based on one or more of the four screening criteria. The technology options that DOE ''screened out'' include: (1) Condensing and near-condensing technologies for weatherized gas furnaces; (2) pulse combustion; (3) low $NO_X$ premix burners; (4) burner derating; (5) advanced forms of insulation; and (6) low-pressure, air-atomized oil burner. The following discussion explains DOE's rationale for screening out these technologies.

Due to lack of evidence of technological feasibility, DOE screened out: Condensing and near-condensing technologies for weatherized furnaces; low $NO_X$ premix burners; advanced forms of insulation (including foam insulation, vacuum insulation panels, gas-filled panels, aerogel insulation, and evacuated panels); and low-pressure, air-atomizing oil burners. To the best of DOE's knowledge, none of these technologies have been successfully demonstrated in the design of a commercially-available furnace model or a working prototype. Therefore, they were eliminated from further consideration.

Pulse combustion was screened out due to concerns about adverse impacts on safety. Although products with this technology are generally safe, discussions with manufacturers indicated that the same or similar efficiencies could be achieved using other technologies that do not operate with positive pressure in the heat exchanger. In pulse combustion systems, the positive pressure in the heat exchanger could cause hazardous combustion products (*e.g.,* carbon monoxide) to leak into the home if fatigue caused the heat exchanger to breach. DOE concluded that the efficiency-related benefits of these products in terms of AFUE do not outweigh the possible adverse impacts on health or safety, especially given that manufacturers already achieve high efficiencies without the use of pulse combustion.

Finally, burner derating (*i.e.,* reducing the burner firing rate) lessens heat output from the furnace. As such, burner derating was eliminated from further consideration due to its significant adverse impacts on product utility to the consumer.

For more detail regarding each technology option and the screening process, see chapters 3 and 4 of the TSD accompanying today's notice.

2. Central Air Conditioners and Heat Pumps

DOE identified the following technologies that could improve the SEER and/or HSPF efficiency ratings of central air conditioners and heat pumps: (1) Higher-efficiency compressors; (2) higher-efficiency fan motors; (3) higher-efficiency fan blades; (4) improvements to baseline coils; (5) micro-channel heat exchangers; (6) flat-tube heat exchangers; (7) heat pump defrost controls; (8) inverter technology; and (9) high-efficiency expansion valves.

After eliminating those technologies which did not increase the SEER or HSPF ratings (as described in section IV.A.4), DOE subjected the remaining technologies listed above to the four screening criteria. DOE determined that each of the technologies listed above passed all four of the screening criteria, and thus, DOE considered those technologies further in the downstream analyses.

In response to the central air conditioner and heat pump preliminary analysis, DOE received comments from interested parties suggesting the inclusion of inverter-driven components as a technology option in the analysis. Daikin noted that inverter technology can substantially increase the energy efficiency of central air conditioners and should be considered as a technology option. (CAC: Daikin, No. 63 at p. 2) Further, Daikin also commented that inverter technology is in widespread use outside of the United States, which demonstrates that it is not cost-prohibitive, and the technology is not proprietary. (CAC: Daikin, No. 63 at p. 4) Northwest Power and Conservation Council (NPCC) remarked that inverter technology is already used domestically in ductless mini-splits, and the technology is applicable to both conventional split system and packaged central air conditioners and heat pumps. (CAC: NPCC, No. 74 at 5)

After considering these comments, DOE believes that inverter technology is a non-proprietary method of improving the SEER and HSPF ratings of central air conditioners and heat pumps.

Accordingly, DOE included inverter technology as a technology option in its analysis.

In response to DOE's request for comment on the preliminary screening analysis, ACEEE questioned DOE's decision to screen out several important technologies, including modulating compressors and condenser fans. (CAC: ACEEE, No. 72 at p. 4) However, DOE believes that the higher-efficiency fan motors and higher-efficiency compressors technology options encompass the technologies that ACEEE identified. Therefore, DOE did not identify those technologies as separate technologies in the preliminary analysis, but both modulating compressors and modulating condenser fans were considered in the engineering analysis.

3. Standby Mode and Off Mode

As discussed above, DOE is required by EPCA, as amended by EISA 2007, to amend its test procedures for furnaces and central air conditioners and heat pumps in order to address standby mode and off mode energy consumption of these products. (42 U.S.C. 6295(gg)(2)) As explained in the October 20, 2010 test procedure final rule for furnaces and boilers, DOE determined that it was not technically feasible to set an integrated metric encompassing active mode, standby mode, and off mode, so the Department adopted a separate metric to address standby mode and off mode energy consumption. 75 FR 64621, 64626–27. Accordingly, DOE conducted a separate screening analysis for standby mode and off mode technologies. DOE identified the following technology options that could improve the standby mode and off mode efficiency rating of residential furnaces: (1) Switching mode power supplies; (2) toroidal transformers; and (3) a relay that disconnects power to the blower's electronically-commutated motor (ECM) while in standby mode.

DOE identified the following technology options that could improve the off mode efficiency rating of central air conditioners and heat pumps: (1) Thermostatically-controlled crankcase heaters; (2) toroidal transformers; (3) self-regulating (*i.e.,* variable resistance) crankcase heaters; (4) compressor covers; and (5) a relay that disconnects power to the ECM blower while in off mode.

After applying the four screening criteria to these technology options for furnaces and central air conditioners and heat pumps, DOE screened out the technology option of a control relay for disconnecting power to the ECM blower because of the potential for adverse impacts to product utility for all product classes. DOE believes that such a design would cause failure rates of blower motors to increase significantly, which would severely degrade reliability and consumer utility of the product. Furthermore, DOE is not aware of any commercially-available models or working prototypes of an ECM that completely depowers between uses, making the design option technologically infeasible in the context of this rulemaking. The remaining two design options for furnaces were screened in and carried forward in the analyses. For central air conditioners and heat pumps, the remaining four design options were screened in and were considered in the downstream analyses.

4. Technologies Considered

Based upon the totality of the available information, DOE has concluded that: (1) All of the efficiency levels discussed in today's notice are technologically feasible; (2) products at these efficiency levels could be manufactured, installed, and serviced on a scale needed to serve the relevant markets; (3) these efficiency levels would not force manufacturers to use technologies that would adversely affect product utility or availability; and (4) these efficiency levels would not adversely affect consumer health or safety. Thus, the efficiency levels that DOE analyzed and discusses in this notice are all achievable through technology options that were ''screened in'' during the screening analysis.

*C. Engineering Analysis*

The engineering analysis develops cost-efficiency relationships to determine 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.

The Department conducted the engineering analyses for this rulemaking using a combination of the efficiency level and cost-assessment approaches for analysis of the minimum AFUE standards for furnaces and minimum SEER and HSPF standards for central air conditioners and heat pumps. More specifically, DOE identified efficiency levels for analysis, and then used the cost-assessment approach to determine the manufacturing costs at those levels. For analyzing standby mode and off mode electrical energy consumption standards, DOE used the design-option approach to develop the cost-efficiency relationship, as explained in greater detail in section IV.C.7. Additional details of the engineering analysis are in chapter 5 in the direct final rule TSD.

1. Cost Assessment Methodology

At the start of the engineering analysis, DOE identified the energy efficiency levels associated with residential furnaces and central air conditioners and heat pumps on the market, as determined in the market assessment. DOE also identified the technologies and features that are typically incorporated into products at the baseline level and at the various energy efficiency levels analyzed above the baseline. Next, DOE selected products for the physical teardown analysis having characteristics of typical products on the market at the representative input capacity for furnaces and representative cooling capacity for central air conditioners and heat pumps. DOE gathered information from performing a physical teardown analysis (see section IV.C.1.a) to create detailed bills of materials that included all components and processes used to manufacture the products. DOE used the bills of materials (BOMs) from the teardowns as an input to a cost model, which was used to calculate the manufacturing production cost (MPC) for products at various efficiency levels spanning the full range of efficiencies from the baseline to the maximum technology available. For the central air conditioners and heat pumps, DOE reexamined and revised its cost assessment performed for the preliminary analysis based on additional teardowns and in response to comments received on the preliminary analysis. Additionally, DOE decided to expand the analyses for split system air conditioners to include capacities beyond the representative capacities, as described in section IV.C.5.

During the development of the engineering analysis for the direct final rule, DOE held interviews with manufacturers to gain insight into the

heating, ventilation, and air conditioning (HVAC) industry, and to request feedback on the engineering analysis and assumptions that DOE used. DOE used the information gathered from these interviews, along with the information obtained through the teardown analysis and public comments, to refine the assumptions and data in the cost model. Next, DOE derived manufacturer markups using publicly-available furnace and central air conditioner and heat pump industry financial data, in conjunction with manufacturers' feedback. The markups were used to convert the MPCs into manufacturer selling prices (MSPs). Further information on comments received and the analytical methodology is presented in the subsections below. For additional detail, see chapter 5 of the direct final rule TSD.

a. Teardown Analysis

To assemble BOMs and to calculate the manufacturing costs of the different components in residential furnaces and central air conditioners and heat pumps, DOE disassembled multiple units of each product into their base components and estimated the materials, processes, and labor required for the manufacture of each individual component, a process referred to as a ''physical teardown.'' Using the data gathered from the physical teardowns, DOE characterized each component according to its weight, dimensions, material, quantity, and the manufacturing processes used to fabricate and assemble it.

DOE also used a supplementary method, called a ''virtual teardown,'' which examines published manufacturer catalogs and supplementary component data to estimate the major physical differences between a product that was physically disassembled and a similar product that was not. For supplementary virtual teardowns, DOE gathered product data such as dimensions, weight, and design features from publicly-available information, such as manufacturer catalogs. DOE also obtained information and data not typically found in catalogs and brochures, such as fan motor details, gas manifold specifications, or assembly details, from the physical teardowns of a similar product or through estimates based on industry knowledge. The teardown analysis included over 40 physical and virtual teardowns of furnaces for the direct final rule analysis, 31 physical and virtual teardowns of central air conditioners and heat pumps during the preliminary analysis, and one additional central air conditioner and heat pump teardown for the direct final rule analysis. The additional teardowns performed for the direct final rule analysis allowed DOE to further refine the assumptions used to develop the MPCs.

The teardown analysis allowed DOE to identify the technologies that manufacturers typically incorporate into their products, along with the efficiency levels associated with each technology or combination of technologies. The end result of each teardown is a structured BOM, which DOE developed for each of the physical and virtual teardowns. The BOMs incorporate all materials, components, and fasteners, classified as either raw materials or purchased parts and assemblies, and characterize the materials and components by weight, manufacturing processes used, dimensions, material, and quantity. The BOMs from the teardown analysis were then used as inputs to the cost model to calculate the MPC for each product that was torn down. The MPCs resulting from the teardowns were then used to develop an industry average MPC for each product class analyzed. See chapter 5 of the direct final rule TSD for more details on the teardown analysis.

b. Cost Model

The cost model is a spreadsheet that converts the materials and components in the BOMs into dollar values based on the price of materials, average labor rates associated with manufacturing and assembling, and the cost of overhead and depreciation, as determined based on manufacturer interviews and DOE expertise. To convert the information in the BOMs to dollar values, DOE collected information on labor rates, tooling costs, raw material prices, and other factors. For purchased parts, the cost model estimates the purchase price based on volume-variable price quotations and detailed discussions with manufacturers and component suppliers. For fabricated parts, the prices of raw metal materials (*e.g.,* tube, sheet metal) are estimated on the basis of 5-year averages (from 2005 to 2010). The cost of transforming the intermediate materials into finished parts is estimated based on current industry pricing. For the central air conditioners and heat pumps analysis, DOE updated all of the labor rates, tooling costs, raw material prices, the costs of resins, and the purchased parts costs used in the preliminary analysis when developing costs for the direct final rule analysis. For furnaces, there was no preliminary analysis, and DOE used the updated rates and costs described in the preceding sentence when conducting the direct final rule analysis. Chapter 5 of the direct final rule TSD describes DOE's cost model and definitions, assumptions, data sources, and estimates.

Ingersoll Rand commented on the material prices collected for use in the cost model, noting that due to the volatility and overall increasing trend of material prices, 5-year average material prices will potentially be an underestimation of current material prices, which could lead to significant errors. (FUR: Ingersoll Rand, No. 1.3.006 at p. 5)

DOE acknowledges Ingersoll Rand's concerns about the material costs used in the engineering analysis because a large portion of the manufacturer production cost can typically be attributed to raw materials, the price of which can fluctuate greatly from year to year. However, DOE uses a 5-year span to attempt to normalize the fluctuating prices experienced in the metal commodities markets and screen out temporary dips or spikes. DOE believes a 5-year span is the longest span that would still provide appropriate weighting to current prices experienced in the market. DOE updates the 5-year span for metal prices based on a review of updated commodity pricing data, which point to continued increases. Consequently, DOE calculated a new 5-year average materials price using the U.S. Department of Labor's Bureau of Labor Statistics (BLS) Producer Price Indices (PPIs) [30] for various raw metal materials from 2005 to 2010 for use in this rulemaking. The updated material prices incorporate the changes within each material industry and account for inflation. DOE also used BLS PPI data to update current market pricing for other input materials such as plastic resins and purchased parts. Finally, DOE adjusted all averages to 2009$ using the gross domestic product (GDP) implicit price deflator.[31] See chapter 5 of the direct final rule TSD for additional details.

c. Manufacturing Production Cost

Once the cost estimates for all the components in each teardown unit were finalized, DOE totaled the cost of materials, labor, and direct overhead used to manufacture a product in order to calculate the manufacturer production cost. The total cost of the product was broken down into two

[30] For more information, visit the BLS Web site at *http://www.bls.gov/ppi/.*

[31] The GDP implicit price deflator is an economic metric that accounts for inflation by converting output measured at current prices into constant-dollar GDP. For more information, visit the Bureau of Economic Analysis Web site at *http://www.bea.gov.*

main costs: (1) The full manufacturer production cost, referred to as MPC; and (2) the non-production cost, which includes selling, general, and administration (SG&A) costs; the cost of research and development; and interest from borrowing for operations or capital expenditures. DOE estimated the MPC at each efficiency level considered for each product class, from the baseline through the max-tech. After incorporating all of the assumptions into the cost model, DOE calculated the percentages attributable to each element of total production cost (*i.e.,* materials, labor, depreciation, and overhead). These percentages are used to validate the assumptions by comparing them to manufacturers' actual financial data published in annual reports, along with feedback obtained from manufacturers during interviews. DOE uses these production cost percentages in the MIA (see section IV.I).

DOE revised the cost model assumptions used for the central air conditioner and heat pumps preliminary analysis based on additional teardown analysis, updated pricing, and additional manufacturer feedback, which resulted in refined MPCs and production cost percentages. For furnaces, DOE made cost model assumptions based on teardown analysis, publicly-available information, and manufacturer feedback. DOE calculated the average product cost percentages by product type (*i.e.,* furnace, central air conditioner, heat pump) as well as by product class (*e.g.,* non-weatherized gas furnace, split-system air conditioner) due to the large variations in production volumes, fabrication and assembly costs, and other assumptions that affect the calculation of the product's total MPC. Chapter 5 of the direct final rule TSD presents DOE's estimates of the MPCs for this rulemaking, along with the different percentages attributable to each element of the production costs that comprise the total product MPC.

d. Cost-Efficiency Relationship

The result of the engineering analysis is a cost-efficiency relationship. DOE created a separate relationship for each input capacity analyzed for each residential furnace product class examined for this direct final rule. DOE also created 12 cost-efficiency curves representing the cost-efficiency relationship for each central air conditioner and heat pump product class (except for the space-constrained product classes), as well as products having different capacities within the split air conditioner and split heat pump product classes. A cost-efficiency relationship was not developed for the space constrained product classes because the max-tech efficiency level is the same as the baseline efficiency level.

In order to develop the cost-efficiency relationships for furnaces and central air conditioners and heat pumps, DOE examined the cost differential to move from one efficiency level to the next for each manufacturer. DOE used the results of teardowns on a market share weighted-average basis to determine the industry average cost increase to move from one efficiency level to the next. Additional details on how DOE developed the cost-efficiency relationships and related results are available in the chapter 5 of the direct final rule TSD. Chapter 5 of the direct final rule TSD also presents these cost-efficiency curves in the form of energy efficiency versus MPC. Cost-efficiency curves relating HSPF to MPC can be created by using the relationship between SEER and HSPF that DOE derived (see section IV.C.6).

The results indicate that, for both furnaces and central air conditioners/heat pumps, cost-efficiency relationships are nonlinear. In other words, as efficiency increases, manufacturing becomes more difficult and more costly. For furnaces, a large cost increase is evident between non-condensing and condensing efficiency levels due to the requirement for a secondary heat exchanger, and another large increase is evident at the max-tech efficiency level which employs continuously-modulating operation. For central air conditioners and heat pumps, large increases in cost are evident at efficiency levels requiring high-efficiency compressors and fan motors.

In response to the furnace RAP, ACEEE stated at the public meeting that DOE's depiction of the cost-efficiency relationship is a static one that does not reflect the time-variability of the MPCs subsequent to adoption of amended energy conservation standards. The commenter argued that DOE's depiction does not reflect the consistent decline in the cost of manufactured products relative to the consumer price index (CPI). ACEEE requested that DOE complement the static cost-efficiency depiction with a more thorough retrospective analysis. (FUR: ACEEE, Public Meeting Transcript, No. 1.2.006 at p. 153) In response, HARDI cautioned that a time-variable analysis of the cost-efficiency relationship could neglect the effect on the marketplace of peak price points that result from adoption and implementation of amended AFUE standards. (FUR: HARDI, Public Meeting Transcript, No. 1.2.006 at p. 155) In other words, HARDI believes that such an analysis suggested by ACEEE would not account for the peak prices that occur shortly after a new standard is implemented.

In response, DOE notes that trends in the CPI reflect changes in consumer price that arise from a host of factors, including a change in market mix, market structure, profitability and manufacturing cost (including labor, capital, and energy costs), the cost of raw materials, and technological change. Historical averages of some of these factors are already used in DOE's analysis. A more sophisticated projection of consumer price depends on the availability of credible, publicly-vetted tools for making such projections, as well as an expectation that such tools will enhance the robustness, accuracy, or usefulness of the analysis. Such a tool does not currently exist, and DOE is not convinced that development of such a tool would significantly benefit energy conservation standard rulemakings, when it is already possible to conduct a straightforward calculation of the effect of different product cost assumptions on consumer payback. In the absence of a suitable tool, DOE believes that holding current manufacturing costs steady into the future provides the best balance between analytical transparency, credibility, and expected accuracy.

DOE's decision not to perform a historical analysis of the cost-efficiency relationship allays HARDI's concern that a retrospective analysis would ignore one-time peak price points that would create the most significant burden on the marketplace.

e. Manufacturer Markup

To account for manufacturers' non-production costs and profit margin, DOE applies a non-production cost multiplier (the manufacturer markup) to the full MPC. The resulting manufacturer selling price (MSP) is the price at which the manufacturer can recover all production and non-production costs and earn a profit. To meet new or amended energy conservation standards, manufacturers often introduce design changes to their product lines that result in increased manufacturer production costs. Depending on the competitive environment for these particular products, some or all of the increased production costs may be passed from manufacturers to retailers and eventually to customers in the form of higher purchase prices. As production costs increase, manufacturers typically incur additional overhead. The MSP should be high enough to recover the full cost of the product (*i.e.,* full production and non-production costs)

and yield a profit. The manufacturer markup has an important bearing on profitability. A high markup under a standards scenario suggests manufacturers can readily pass along the increased variable costs and some of the capital and product conversion costs (the one-time expenditures) to consumers. A low markup suggests that manufacturers will not be able to recover as much of the necessary investment in plant and equipment.

To calculate the manufacturer markups, DOE used 10–K reports submitted to the U.S. Securities and Exchange Commission (SEC) by the six publicly-owned HVAC companies. (SEC 10–K reports can be found using the search database available at: *http://www.sec.gov/edgar/searchedgar/webusers.htm*.) The financial figures necessary for calculating the manufacturer markup are net sales, costs of sales, and gross profit. For furnaces, DOE averaged the financial figures spanning the years 2004 to 2008 in order to calculate the markups. For central air conditioners and heat pumps, DOE updated the financial figures used in the preliminary analysis (which spanned 2003 to 2007) by using 10–K reports spanning from 2004 to 2008. To calculate the average gross profit margin for the periods analyzed for each firm, DOE summed the gross profit for all of the aforementioned years and then divided the result by the sum of the net sales for those years. DOE presented the calculated markups to manufacturers during the interviews for the direct final rule (see section IV.C.1.g). DOE considered the feedback from manufacturers in order to supplement the calculated markup and refined the markup to better reflect the residential furnace and central air conditioner and heat pump markets. DOE developed the manufacturer markup by weighting the feedback from manufacturers on a market share basis, since manufacturers with larger market shares more significantly affect the market average. DOE used a constant markup to reflect the MSPs of both the baseline products and higher-efficiency products. DOE used this approach because amended standards may transform high-efficiency products, which currently are considered premium products, into baselines. See chapter 5 of the direct final rule TSD for more details about the manufacturer markup calculation.

In response to the markup calculation methodology outlined in the furnaces RAP, and to the markup multiplier of 1.32 used in the central air conditioner and heat pump preliminary analysis, Ingersoll Rand argued that DOE has consistently underestimated manufacturer markup in past rulemakings. According to Ingersoll Rand, DOE has a tendency to underestimate unapplied labor that is involved in a wide range of support activities that are not associated with production, including research and development, engineering, field service, marketing, training, human resources, finance, legal, and business management. (FUR: Ingersoll Rand, No. 1.3.006 at p. 6; CAC: Ingersoll Rand, No. 66 at p. 5)

In response, DOE's manufacturer markups include all non-production costs (with the exception of shipping, which is calculated separately as described below) and profit. As noted above, as part of the process for developing manufacturer markups, DOE solicits manufacturer feedback during MIA interviews and incorporates that feedback on a market-share weighted average basis to refine the markups that are derived from financial data. Although DOE recognizes that the manufacturer markup will vary from one manufacturer to another, DOE believes this process allows for the development of a manufacturer markup that reflects the typical manufacturer markup in the industry. As a result, for the direct final rule analysis, DOE modified the markups for central air conditioners and heat pumps based upon additional manufacturer input. The markup used in the direct final rule analysis for split system air conditioners and heat pumps was 1.30, while the markup for packaged systems was 1.28. For SDHV systems, the markup remained 1.32. Because no additional data were provided to support a change, DOE developed a markup for furnaces for the direct final rule based on the methodology outlined in the furnaces RAP.

f. Shipping Costs

Manufacturers of HVAC products typically pay for freight to the first step in the distribution chain. Freight is not a manufacturing cost, but because it is a substantial cost incurred by the manufacturer, DOE is accounting for shipping costs of furnaces and central air conditioners and heat pumps separately from the other non-production costs that comprise the manufacturer markup. To calculate MSP for furnaces and central air conditioners and heat pumps, DOE multiplied the MPC determined from the cost model by the manufacturer markup and added shipping costs. More specifically, DOE calculated shipping costs based on use of a typical 53-foot straight frame trailer with a storage volume of 4,240 cubic feet.

In the central air conditioners and heat pumps preliminary analysis, shipping costs were preliminarily determined on a weight basis at $0.20 per pound, based on quotes from freight shipping services. However, ACEEE suggested that shipping costs would be more accurately estimated if calculations were based on product volume, rather than weight. (CAC: ACEEE, No. 72 at p.7)

DOE reexamined of the physical attributes of the products (*e.g.,* the outer shipping dimensions, the shipping weight) and consulted with manufacturers regarding their shipping practices, and as a result of this additional inquiry, DOE determined that manufacturers were likely to ''cube-out'' a truck (*i.e.,* run out of space inside the truck) before reaching the maximum weight capacity for the truckload. Therefore, the limiting factor for transporting these products would be the size of the products rather than their weight. Accordingly, as noted above, DOE revised its methodology for the direct final rule in terms of shipping costs by determining a product's shipping cost as a function of its volume for both central air conditioners and heat pumps and residential furnaces. To do so, DOE first calculated the cost per cubic foot of space on a trailer, based on a cost of $2,500 per shipping load and the standard dimensions of a 53-foot trailer. DOE examined the average sizes of products in each product class at each efficiency and capacity combination analyzed. DOE then estimated the shipping costs by multiplying the product volume by the cost per cubic foot of space on the trailer. For central air conditioners and heat pumps, where product size greatly depends on efficiency, DOE calculated a separate volumetric cost for each efficiency level. However, furnaces, which typically do not vary in size based on efficiency, had the same shipping cost across the range of efficiencies for a given capacity. In determining volumetric shipping costs, DOE also revised its estimates based on manufacturer feedback regarding product mix on each trailer, packing efficiency, and methods and equipment used to load the trailers. Chapter 5 of the direct final rule TSD contains additional details about DOE's shipping cost assumptions and DOE's shipping cost estimates.

g. Manufacturer Interviews

Throughout the rulemaking process, DOE has sought and continues to seek feedback and insight from interested parties that would improve the information used in its analyses. DOE

interviewed manufacturers as a part of the direct final rule manufacturer impact analysis (see section IV.I.4). During the interviews, DOE sought feedback on all aspects of its analyses for residential furnaces and central air conditioners and heat pumps. For the engineering analysis, DOE discussed the analytical assumptions and estimates, cost model, and cost-efficiency curves with HVAC manufacturers. DOE considered all the information manufacturers provided when refining the cost model and assumptions. However, DOE incorporated equipment and manufacturing process figures into the analysis as averages in order to avoid disclosing sensitive information about individual manufacturers' products or manufacturing processes. More details about the manufacturer interviews are contained in chapter 12 of the direct final rule TSD.

2. Representative Products

a. Furnaces

DOE based its engineering analysis on teardown analysis of a representative sample of products from the furnace market. DOE selected units for teardown that have characteristics that are representative of most furnaces available on today's market. In the rulemaking analysis plan, DOE identified several characteristics common to baseline furnaces in each product class, including a representative capacity for analysis, and focused the teardown selection for furnaces on products that exhibited those representative characteristics. (However, DOE also scaled its analysis to products outside the representative capacity, as described in section IV.C.5.)

DOE received several comments about the representative input capacity proposed in the furnaces RAP. AHRI remarked that each manufacturer offers their products in different input capacities, and, as such, DOE should not lock its analysis into discrete input capacities. (FUR: AHRI, Public Meeting Transcript, No. 1.2.006 at pp. 176–177) Likewise, Ingersoll Rand cautioned against comparing dissimilar products (with respect to number of burners and heat exchangers) chosen simply because their input capacities are close. Instead, the commenter suggested surveying the furnace market across efficiencies and capacities to characterize the number of heat exchangers and burners for each capacity and efficiency. Then, based on the results of this survey, DOE should select teardown units and determine the limits of interpolation. Ingersoll Rand further suggested that the sample selection should include products from a broad cross-section of manufacturers, concentrating on those with market shares greater than 10 percent, a representative spread of installation configurations, and a bias towards the most common heating and cooling air flow capacities. (FUR: Ingersoll Rand, Public Meeting Transcript, No. 1.2.006 at pp. 156–157; FUR: Ingersoll Rand, No. 1.3.006 at p. 4) ACEEE stated that many furnaces with the same input capacities are shipped with differing blower motor power and fan diameter, considerations to which DOE should be sensitive in its analysis. (FUR: ACEEE, Public Meeting Transcript, No. 1.2.006 at p. 178)

In response, for its direct final rule analysis, DOE attempted to compare similar furnace products made by a broad cross-section of manufacturers when choosing models for teardowns. DOE included factors such as blower characteristics and the number of burners and heat exchangers when choosing models for teardown. DOE modified the representative characteristics to include an airflow rate of 1,200 cubic feet per minute for a typical furnace (which corresponds to the three-ton representative capacity for central air conditioners and heat pumps). In addition, DOE recognizes that manufacturers may offer products at varying input capacities, and as a result, DOE did not restrict its analysis to discrete representative input capacities, but rather considered all models that were capable of satisfying a similar heating load. While DOE focused its analysis for furnaces around the representative 80,000 Btu/h input capacity, DOE also considered other units at input capacities near the representative capacity for manufacturers that do not manufacture products at the representative capacity.

DOE also received feedback from Ingersoll Rand that two of the input capacities identified in the RAP to represent the furnace market are not common in the market. The company suggested that input capacities of 80,000 Btu/h and 90,000 Btu/h are more appropriate than 75,000 Btu/h for non-weatherized gas furnaces and weatherized gas furnaces, respectively. (FUR: Ingersoll Rand, No. 1.3.006 at p. 2)

DOE reexamined the availability of input capacities on the furnace market and determined that 80,000 Btu/h is a very common and representative input capacity for non-weatherized gas furnaces. Thus, for the direct final rule analysis, DOE considered 80,000 Btu/h as the representative capacity for non-weatherized gas furnaces. As described in section III.G, DOE did not perform an analysis for weatherized gas furnaces.

In the furnaces RAP, DOE proposed retaining the representative characteristics identified in the 2007 rulemaking, including the baseline efficiency of 78-percent AFUE.[32] Ingersoll Rand commented that a baseline non-weatherized gas furnace would have the following characteristics: 80-percent AFUE; 80,000 Btu/h input capacity; induced draft; single-stage burner; permanent split capacitor (PSC) motor-driven, direct-drive, forward curved blower, sized for use with a three-ton air conditioner; multi-poise configuration; builder model; and hot surface igniter. (FUR: Ingersoll Rand, No. 1.3.006 at p. 3)

After reviewing the current furnaces market, DOE agrees that the baseline characteristics identified by Ingersoll Rand are representative of many furnaces on the market. Although it is true that the majority of furnaces are manufactured and shipped as multi-poise units, the specific configuration in which the unit operates is determined by the configuration in the field. Therefore, DOE based its analysis on furnaces that could be installed in the representative configuration, whether multi-poise or not, and used the AFUE rating associated with the representative configuration.

With respect to the standby mode energy use analysis, Lennox cautioned that DOE should not exclude ''premium'' controls and features that that do not improve AFUE from its analysis, as these features could increase the standby power consumption of the furnace. (FUR: Lennox, Public Meeting Transcript, No. 1.2.006 at pp. 164–165; FUR: Lennox, No. 1.3.018 at p.4)

For the direct final rule analysis, DOE performed a large number of furnace teardowns, including some teardowns on products with premium features that consume electricity in standby mode and off mode. Although the products with premium features were included for the standby mode and off mode analysis, DOE did not include these premium (non-AFUE efficiency related) features in its engineering analysis for analyzing amended AFUE standards, as

[32] In the furnaces RAP, DOE took the position that the baseline for non-weatherized gas furnaces was 78-percent AFUE, which is the current energy conservation standard for non-weatherized gas furnaces. However, DOE subsequently determined that because the November 2007 Rule was not vacated by the remand agreement, it will use 80-percent AFUE as the baseline for the direct final rule analyses in order to avoid violating the ''anti-backsliding provision'' in 42 U.S.C. 6295(o)(1).

they could distort DOE's estimates of MPC at each efficiency level.

Accordingly, the baseline furnace characteristics that DOE used in the direct final rule analysis are presented in Table IV.1.

TABLE IV.1—CHARACTERISTICS OF REPRESENTATIVE RESIDENTIAL FURNACES

| | Non-Weatherized gas furnaces | Mobile home gas furnaces | Non-Weatherized oil-fired furnaces |
|---|---|---|---|
| Input Capacity *Btu/h* | 80,000 | 80,000 | 105,000. |
| Configuration | Upflow | Downflow | Upflow. |
| Heat Exchanger Type | Clamshell or Tubular | Clamshell or Tubular | Drum. |
| Ignition Type | Hot Surface | Hot Surface | Intermittent Ignition. |
| Draft | Induced | Induced | Forced. |
| Blower Size | 1200 cfm | 1200 cfm | 1200 cfm. |
| Transformer | 40 VA Laminated Core | 40 VA Laminated Core | 40 VA Laminated Core. |
| Power Supply Type | Linear | Linear | Linear. |

b. Central Air Conditioners and Heat Pumps

DOE reviewed all of the product classes of residential central air conditioners and heat pumps and chose units for analysis that represent a cross-section of the residential central air conditioning and heat pump market within each product type. For the conventional split system and single package central air conditioner and heat pump product classes, as well as for the SDHV product classes, DOE selected 36,000 Btu/h (three tons of cooling capacity) as the representative capacity for analysis because units at this capacity are common across manufacturers, with high sales volumes spanning a relatively large range of efficiencies.

DOE acknowledges that manufacturers tend to optimize residential central air conditioner and heat pump split systems around the three-ton capacity. Therefore, DOE expanded the engineering analysis to include additional cooling capacities for split system central air conditioners and heat pumps based upon the analysis at the representative capacity. (See section IV.C.5.b for further information about the scaling of the engineering analysis to different cooling capacities.)

In the preliminary analysis, DOE was unaware of any suitable alternative refrigerant which could be used as a replacement for R410a, and therefore, considered R410a to be the only available refrigerant option. During manufacturer interviews, the viability of HFO–1234YF as an alternative was discussed. However, manufacturer feedback indicated that this refrigerant is still in the early phases of development and is a more likely replacement for R134a in automotive applications than R410a in central air conditioners and heat pumps. This conclusion leads to questions about the technological feasibility of HFO–1234YF as a replacement. Further, because it is still in development, the requirements for large scale production of this refrigerant and the ability to service units charged with it on a national scale are undetermined.

DOE received comments regarding the need for analysis on alternative refrigerants because of a possible hydrofluorocarbon (HFC) refrigerant cap and subsequent phase-out, which would force the industry to find a replacement refrigerant for R410a. Carrier did not mention specific climate policies but commented generally that there are climate policies which are going to restrict the use of HFC. However, higher SEER equipment requires more refrigerant charge, and, thus, it is critical to understand the impact on cost of refrigerant for this rulemaking. (CAC: Public Meeting Transcript at p. 152) Emerson noted that the cost of the additional refrigerant could be much higher than what is paid today due to a possible leverage effect from a potential ''cap-and-trade'' regime.[33] (CAC: Public Meeting Transcript at p. 153) DOE does not conduct analyses based on potential legislation because doing so would be highly speculative, and the lack of a suitable alternative refrigerant adds another speculative layer of uncertainty. Therefore, DOE decided not to alter its analyses and did not consider alternative refrigerants in the direct final rule analyses.

DOE did not receive any comments on the other representative characteristics chosen for the baseline unit for preliminary analysis and continued to use the same representative traits for the direct final rule. These characteristics of a typical baseline unit are:

- 36,000 Btu/h cooling capacity;
- Rifled copper tubes;
- Lanced aluminum fins;
- Single-speed, single-capacity compressor;
- Single-speed permanent split capacitor (PSC) fan and blower motor;
- Expansion orifice; and
- R410a refrigerant.

3. Efficiency Levels

For each of the representative products, DOE analyzed multiple efficiency levels and estimated manufacturer production costs at each efficiency level. The following subsections provide a description of the full range of efficiency levels DOE analyzed for each product class, from the baseline efficiency level to the maximum technologically feasible (max-tech) efficiency level.

For each product class, DOE selected baseline units as reference points, against which DOE measured changes resulting from potential amended energy conservation standards. Generally, the baseline unit in each product class: (1) Represents the basic characteristics of equipment in that class; (2) just meets current Federal energy conservation standards, if any; and (3) provides basic consumer utility.

DOE conducted a survey of the residential furnace and central air conditioner and heat pump markets to determine what types of products are available to consumers and to identify the efficiency levels corresponding to the greatest number of models. Then, DOE established intermediate energy efficiency levels for each of the product classes that are representative of efficiencies that are typically available on the market. DOE reviewed AHRI's product certification directory, manufacturer catalogs, and other publicly-available literature to determine which efficiency levels are the most prevalent for each representative product class.

DOE also determined the maximum improvement in energy efficiency that is technologically feasible (max-tech) for furnaces and central air conditioners

[33] ''Cap-and-trade'' is a market-based emissions trading program in which the government sets a limit on the amount of emissions and allocates permits to emit a specified amount. Companies with higher emissions are able to buy permits from companies which emit less.

and heat pumps, as required under 42 U.S.C. 6295(p)(1). For the representative product within a given product class, DOE could not identify any working products or prototypes at higher efficiency levels that were currently available beyond the identified max-tech level at the time the analysis was performed.

a. Furnaces

(i) Baseline Efficiency Level

As discussed above, the energy conservation standards for residential furnaces are codified at 10 CFR 430.32(e)(1)(i), which sets forth the existing standard levels for residential furnaces, as well as the amended minimum standards codified at 10 CFR 430.32(e)(1)(ii), which were set by the November 2007 Rule (72 FR 65136 (Nov. 19, 2007)), which will require compliance starting on November 19, 2015. At the time of publication of the furnaces RAP, DOE believed that its voluntary remand of the November 2007 Rule in response to a joint lawsuit voided the furnace standards set forth by that rule. Under this interpretation, DOE proposed setting the baseline for the current analysis at 78-percent AFUE for non-weatherized gas furnaces, weatherized gas furnaces, and oil-fired furnaces, and at 75-percent AFUE for mobile home gas furnaces.[34] However, since the publication of the furnaces RAP, DOE has reevaluated its interpretation of the effect of the voluntary remand and determined that because the November 2007 Rule was not vacated, the standards promulgated in that rule will still require compliance for products manufactured on or after November 19, 2015. Due to EPCA's anti-backsliding clause (42 U.S.C. 6295(o)(1)), DOE cannot set minimum standards below the levels promulgated in the November 2007 Rule. As a result, DOE considered the levels set in the November 2007 Rule to represent the baseline efficiency in each product class for the direct final rule analysis. Therefore, the baseline levels for the direct final rule analysis were set at 80-percent AFUE for non-weatherized gas furnaces and mobile home furnaces, 81-percent AFUE for weatherized gas furnaces, and 82-percent AFUE for non-weatherized oil furnaces. (Note that, as described in section III.G.2.a, DOE did not perform an analysis for weatherized gas furnaces, because the standards adopted for this product are already set at the max-tech level.)

(ii) Max-Tech Efficiency Level

The ''max-tech'' efficiency levels are the maximum technologically feasible efficiency levels possible for each product class. As required under 42 U.S.C. 6295(p)(1), DOE determined the max-tech efficiency level for each residential furnace product class. DOE has identified the max-tech efficiency levels as being the highest efficiencies on the market at the representative capacities. In the furnaces RAP, for purposes of its analyses, DOE proposed using max-tech efficiency levels of 97.7-percent AFUE for non-weatherized gas furnaces, 95.5-percent AFUE for mobile home furnaces, and 97-percent AFUE for oil-fired furnaces. In addition, DOE proposed to use 81-percent AFUE as the max-tech for weatherized gas furnaces in the furnaces RAP, which DOE used for the direct final rule analysis. Consequently, no analysis was needed for weatherized gas furnaces because the standard was already set at the max-tech level, as discussed further in section III.G.2.a.

DOE received several comments related to the max-tech levels proposed in the furnaces RAP. Ingersoll Rand stated that the max-tech level for non-weatherized gas furnaces should be 98-percent AFUE. (FUR: Ingersoll Rand, No. 1.3.006 at p. 3) Lennox stated support for DOE's proposed max-tech levels for the non-weatherized gas furnace and mobile home gas furnace product classes for the purpose of undertaking the required analysis, although Lennox noted that it does not believe that DOE should establish minimum efficiency standards at max-tech levels. (FUR: Lennox, No. 1.3.018 at p. 3)

In response, DOE notes that the AFUE requirements for furnaces established in EPCA are specified as whole number percentages. Additionally, in previous rulemakings to amend standards for furnaces, DOE has specified amended minimum standards in terms of the nearest whole percentage point. To remain consistent with the original standards in EPCA, DOE rounded the efficiency levels being analyzed in today's direct final rule (including max-tech AFUE) to the nearest whole percentages. For non-weatherized gas furnaces and mobile home furnaces, this results in max-tech levels of 98-percent and 96-percent AFUE, respectively. DOE also notes that the DOE residential furnaces test procedure currently provides instructions for rounding annual operating cost and estimated regional annual operating cost to the nearest dollar per year. 10 CFR 430.23(n)(1); 10 CFR 430.23(n)(3). However, the test procedure does not provide instructions for rounding AFUE. This lack of specificity for rounding may lead to uncertainty in terms of how to complete calculations using the reported metrics or to discrepancies among results generated by test laboratories for the same product. Overall, DOE is concerned that unless the applicable portion of DOE's furnace test procedures are modified, there may be difficulties associated with ascertaining, certifying, and reporting compliance with the existing standards. Therefore, to remedy this situation, DOE is adding instructions to 10 CFR 430.23(n)(2) requiring that AFUE be rounded to the nearest whole percentage point.

Additionally, EEI stated that DOE should analyze gas-fired air source heat pumps with coefficient of performance (COP) ratings above 1.2 as a maximum technology option for gas furnaces. (FUR: EEI, No. 1.3.015 at p. 5) In response, DOE reexamined the definition of a ''gas furnace.'' DOE notes that EPCA defines a ''furnace,'' in part, as ''an electric central furnace, electric boiler, forced-air central furnace, gravity central furnace, or low pressure steam or hot water boiler.'' (42 U.S.C. 6291(23)(C)) DOE's definitions in the CFR further clarify the definition of a ''forced-air central furnace,'' defining that term as a product in which ''[t]he heat generated by the combustion of gas or oil is transferred to the air within a casing by conduction through heat exchange surfaces. * * *'' 10 CFR 430.2. DOE notes that products using gas-fired air source heat pump technology do not use the heat generated by the combustion of gas or oil to heat the circulation air, as required under DOE's definitions. Therefore, DOE has concluded that products using this technology are outside the scope of this rulemaking because they do not meet the definition of a ''furnace,'' as defined by DOE.

Regarding oil-fired furnaces, Lennox stated that it does not agree with DOE's max-tech level, which it believes is unrealistic. Lennox asserted that although condensing oil-fired furnaces do exist in the market, they comprise a very small minority and are, therefore, not representative of the market and should not be considered in the rulemaking. Instead, Lennox urged DOE to consider oil-fired furnaces with AFUE values between 85-percent and 87-percent as the true max-tech level for oil-fired furnaces. (FUR: Lennox, No. 1.3.018 at p. 3)

[34] Energy Conservation Standards for Residential Furnaces Rulemaking Analysis Plan, March 11, 2010, p. 31. Available at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/furnaces_framework_rap.pdf.*

While DOE does not believe that condensing oil-fired furnaces are representative of the market, their existence and commercial availability are evidence of technological feasibility. DOE believes that this technology warrants consideration in the analysis, and, therefore, the condensing level was retained for the oil-fired furnace product class.

(iii) Efficiency Levels for Analysis

For each residential furnace product class, DOE analyzed both the baseline and max-tech efficiency levels, as well as several intermediate efficiency levels. In the furnaces RAP, DOE identified the intermediate efficiency levels that it proposed to include in the analysis, based on the most common efficiencies on the market. These levels are shown in Table IV.2.

TABLE IV.2—EFFICIENCY LEVELS CONSIDERED IN THE RAP FOR THE RESIDENTIAL FURNACES ANALYSIS

| Product class | Efficiency level (AFUE) (percent) |
|---|---|
| Non-weatherized Gas | 78 |
| | 80 |
| | 90 |
| | 92 |
| | 93 |
| | 95 |
| | 97.7 |
| Mobile Home | 75 |
| | 80 |
| | 90 |
| | 92 |
| | 93 |
| | 95.5 |
| Oil-Fired Non-weatherized | 78 |
| | 80 |
| | 83 |
| | 84 |
| | 85 |
| | 97 |

For non-weatherized gas furnaces, Ingersoll Rand suggested performing teardowns at 90-percent, 95-percent, and 98-percent AFUE with interpolation to span the range of intermediate values. (FUR: Ingersoll Rand, No. 1.3.006 at p. 4) ACEEE suggested adding a level at 81-percent AFUE, substituting 94-percent for 93-percent AFUE if there are more models available, and keeping an efficiency level at 95-percent, which is the current tax credit level. (FUR: ACEEE, No. 1.3.009 at p. 6)

In response to these comments, DOE reexamined the market and reduced the efficiency levels for analysis to the most common efficiencies on the furnace market. DOE determined that there are very few products currently on the market at 81-percent AFUE. Because shipments are so low, DOE determined that 81-percent AFUE did not warrant consideration in the analysis. DOE also examined the prevalence of 93-percent and 94-percent AFUE products on the market, and determined that 93-percent AFUE models are more common. However, upon further consideration, DOE believes 92-percent AFUE models are the most commonly shipped units in this range. Therefore, DOE analyzed only 92-percent AFUE instead of 93-percent or 94-percent AFUE. DOE kept the level at 95-percent AFUE for the direct final rule analysis, as was recommended by interested parties. Rather than performing teardowns at only 90-percent, 95-percent, and 98-percent AFUE, as Ingersoll Rand suggested, DOE performed teardowns at every efficiency level analyzed to provide greater accuracy in the analysis.

The baseline, max-tech, and intermediate efficiency levels for each furnace product class analyzed are presented in Table IV.3. As noted above and discussed in section III.G.2.a, weatherized gas furnaces were not analyzed, and as a result, the table shows efficiency levels for only non-weatherized gas, mobile home, and non-weatherized oil furnaces.

TABLE IV.3—EFFICIENCY LEVELS ANALYZED FOR RESIDENTIAL FURNACES

| Product class | Efficiency level (AFUE) (percent) |
|---|---|
| Non-weatherized Gas | 80 |
| | 90 |
| | 92 |
| | 95 |
| | 98 |
| Mobile Home | 80 |
| | 90 |
| | 92 |
| | 96 |
| Oil-Fired Non-weatherized | 82 |
| | 83 |
| | 84 |
| | 85 |
| | 97 |

b. Central Air Conditioners and Heat Pumps

DOE selected baseline efficiency levels as reference points for all of the product classes of central air conditioners and heat pumps and compared these baselines to projected changes resulting from potential amended energy conservation standards. Products at the baseline efficiency in each product class represent products with the common characteristics of equipment in that class that just meet current Federal energy conservation standards, while still providing basic consumer utility.

For each of the representative products, DOE analyzed multiple efficiency levels and estimated manufacturer production costs at each efficiency level. Table IV.4 and Table IV.5 provide the full efficiency level range that DOE analyzed from the baseline efficiency level to the max-tech efficiency level for each product class. The highest efficiency level in each of the seven product classes was identified through a review of products listed in AHRI-certified directories, manufacturer catalogs, and other publicly-available documents.

**Table IV.4 Split-System SEER Values by Efficiency Level***

| | Split AC | | | Split HP | | |
|---|---|---|---|---|---|---|
| | 2 Ton | 3 Ton | 5 Ton | 2 Ton | 3 Ton | 5 Ton |
| Efficiency Level 1 - Baseline | 13 | 13 | 13 | 13 | 13 | 13 |
| Efficiency Level 2 | 13.5 | 13.5 | 13.5 | 13.5 | 13.5 | 13.5 |
| Efficiency Level 3 | 14 | 14 | 14 | 14 | 14 | 14 |
| Efficiency Level 4 | 14.5 | 14.5 | 14.5 | 14.5 | 14.5 | 14.5 |
| Efficiency Level 5 | 15 | 15 | 15 | 15 | 15 | 15 |
| Efficiency Level 6 | 15.5 | 15.5 | 15.5 | 15.5 | 15.5 | 15.5 |
| Efficiency Level 7 | 16 | 16 | 16 | 16 | 16 | 16 |
| Efficiency Level 8 | 16.5 | 16.5 | 16.5 | 16.5 | 16.5 | 16.5 |
| Efficiency Level 9 | 17 | 17 | 17 | 17 | 17 | 17 |
| Efficiency Level 10 | 18 | 18 | 18 | 18 | 18 | 18 |
| Efficiency Level 11 | 19 | 19 | | 19 | 19 | |
| Efficiency Level 12 | 20 | 20 | | 20 | 20 | |
| Efficiency Level 13 | 21 | 21 | | 21 | 21 | |
| Efficiency Level 14 | 22 | 22 | | 22 | | |
| Efficiency Level 15 | 23 | | | | | |
| Efficiency Level 16 | 24.5 | | | | | |
| Max-Tech Efficiency Level** | 24.5 | 22 | 18 | 22 | 21 | 18 |

* The efficiency levels were analyzed independent of one another for each product class and are not linked as they are when considered in the downstream analyses as trial standard levels. The table depicts various levels for different product classes as part of the same efficiency level for convenience only, and not because the levels were analyzed together across product classes for the engineering analysis. Therefore, certain product classes have more or less efficiency levels depending on the number of levels analyzed for the given product class.

**This level is a summary of all of the max-tech efficiency levels for each product class and capacity, which corresponds to the highest efficiency level analyzed.

**Table IV.5 Single-Package and Niche Product SEER Values by Efficiency Level***

| | Single Pkg AC | Single Pkg HP | SDHV |
|---|---|---|---|
| Efficiency Level 1 - Baseline | 13 | 13 | 13 |
| Efficiency Level 2 | 13.5 | 13.5 | 13.5 |
| Efficiency Level 3 | 14 | 14 | 14 |
| Efficiency Level 4 | 14.5 | 14.5 | 14.3 |
| Efficiency Level 5 | 15 | 15 | |
| Efficiency Level 6 | 15.5 | 15.5 | |
| Efficiency Level 7 | 16 | 16 | |
| Efficiency Level 8 | 16.5 | 16.4 | |
| Efficiency Level 9 | 16.6 | | |
| Max-Tech Efficiency Level** | 16.6 | 16.4 | 14.3 |

* The efficiency levels were analyzed independent of one another for each product class and are not linked as they are when considered in the downstream analyses as trial standard levels. The table depicts various levels for different product classes as part of the same efficiency level for convenience only, and not because the levels were analyzed together across product classes for the engineering analysis. Therefore, certain product classes have more or less efficiency levels depending on the number of levels analyzed for the given product class.

**This level is a summary of all of the max-tech efficiency levels for each product class and capacity, which corresponds to the highest efficiency level analyzed.

In the preliminary analysis of split system air conditioners and heat pumps, DOE only examined products at the representative three-ton capacity. For the direct final rule, DOE performed additional analyses for two-ton and five-ton products. Therefore, the efficiency levels analyzed for split system products were expanded to include the relevant efficiency levels at the additional cooling capacities. For single package central air conditioners and heat pumps, as well as SDHV systems, the efficiency levels did not change from the preliminary analysis.

For space-constrained products, AHRI certification directory listings and manufacturer catalogs only contain units rated at a single efficiency level. DOE defined the baseline for space-constrained products as the efficiency specified by the current Federal energy conservation standards (*i.e.,* 12 SEER). This SEER value is the same as the max-tech SEER value identified in DOE's analysis. Therefore, DOE did not conduct further analysis on the space-constrained products because the energy conservation standards for these two product classes are already set at the max-tech level and cannot be amended to provide additional savings. For additional details, see section III.G of this direct final rule.

4. Results

Using the manufacturer markup and shipping costs, DOE calculated estimated manufacturer selling prices of the representative furnaces and central air conditioners and heat pumps from the manufacturer production costs developed using the cost model. Chapter 5 of the TSD accompanying today's notice provides a full list of manufacturer production costs and manufacturer selling prices at each efficiency level for each product class and capacity analyzed, for both furnaces and central air conditioners and heat pumps. Chapter 5 of the TSD also contains the estimated cost to implement each design option that DOE analyzed for reducing the standby mode and off mode energy consumption of furnaces and off mode energy consumption of central air conditioners and heat pumps.

5. Scaling to Additional Capacities

DOE developed MPCs for the analysis of additional input capacities for furnaces and cooling capacities for residential central air conditioners and heat pumps by performing virtual teardowns of products at input capacities and cooling capacities other than the representative capacities. DOE developed a cost model for each virtual teardown product based on physical teardowns of representative units with a range of nominal capacities and from multiple manufacturers. Whenever possible, DOE maintained the same product line that was used for the physical teardown of the representative products to allow for a direct comparison of models at representative capacities and models at higher and lower capacities. For furnaces, the cost model accounts for changes in the size of components that would scale with input capacity (*e.g.,* heat exchanger size), while components that typically do not change based on input capacity (*e.g.,* gas valves, thermostats, controls) were assumed to remain largely the same across the different input capacities. Similarly, for central air conditioners and heat pumps, the cost model accounts for changes in the size of components that would scale with input capacity (*e.g.,* coil size, compressor), while components that typically do not change based on input capacity (*e.g.,* expansion valves, electronic controls) were assumed to remain largely the same across the different input capacities. DOE estimated the changes in material and labor costs that occur at capacities higher and lower than the representative capacities based on observations made during teardowns and professional experience. Performing physical teardowns of models outside of the representative capacities allowed DOE

to accurately model certain characteristics that are not identifiable in manufacturer literature.

a. Furnaces

DOE recognizes that there is a large variation in the input capacity ratings of residential furnaces beyond the representative input capacity, which causes large discrepancies in manufacturer production costs. To account for this variation, DOE analyzed additional common input capacities (as determined during the market assessment) for the largest class of residential furnaces (*i.e.,* non-weatherized gas furnaces). DOE performed physical teardowns of several non-weatherized gas furnaces above and below the representative input capacity to gather the necessary data to accurately scale the results from the representative input capacity to other input capacities. Performing teardowns of models outside of the representative capacity allowed DOE to accurately model certain characteristics that are not identifiable in manufacturer literature. In the furnaces RAP, DOE set forth its plans to analyze models at input capacities of 50,000 Btu/h and 125,000 Btu/h in addition to the models at the representative input capacity.

In comments, Ingersoll Rand stated that the additional input capacities which DOE planned to analyze are not very common, and instead, the company suggested that DOE should analyze units at 40,000 Btu/h and 120,000 Btu/h, as the AHRI furnace directory lists a much greater number of models at these capacities. (FUR: Ingersoll Rand, No. 1.3.006 at p. 5) ACEEE, too, favored 40,000 Btu/h for analysis, because it argued that the smaller input capacity is more appropriate for the heating loads of modest-sized houses. (FUR: ACEEE, No. 1.3.009 at pp. 6–7) At the upper bounds of capacity, Ingersoll Rand also commented that there are not many condensing furnaces above 120,000 Btu/h input capacity. (FUR: Ingersoll Rand, Public Meeting Transcript, No. 1.2.006 at p. 178) AHRI again advised DOE not to lock into discrete capacities in its analysis of the low and high ends of the capacity range. (FUR: AHRI, Public Meeting Transcript, No. 1.2.006 at pp. 176–177)

In response to these comments, DOE reevaluated the distribution of capacities on the furnace market and determined that the majority of non-weatherized gas furnace models on the market are offered in 20,000 Btu/h increments between 40,000 Btu/h and 120,000 Btu/h, with the bulk of models at 60,000, 80,000, 100,000 and 120,000 Btu/h.

Therefore, DOE scaled its analysis for non-weatherized gas furnaces (using virtual teardowns in conjunction with physical teardowns) to 60,000 Btu/h, 100,000 Btu/h, and 120,000 Btu/h, in addition to the analysis that was performed for the representative input capacity of 80,000 Btu/h. DOE selected these three additional input capacities to align them with the number of additional cooling capacities being analyzed for the central air conditioners analysis. DOE believes that 60,000 Btu/h is more representative of the lower end of the capacity range than 40,000 Btu/h, which is the minimum specified input capacity that meets DOE's definition.

The results of DOE's analysis for the additional input capacities are presented in chapter 5 of the direct final rule TSD. Chapter 5 also contains additional details about the calculation of MPCs for input capacities outside of the representative capacity.

b. Central Air Conditioners and Heat Pumps

To account for the variation in the rated cooling capacities of split system residential central air conditioners and heat pumps, and differences in both usage patterns and first cost to consumers of split system air conditioners and heat pumps larger or smaller than the representative capacity, DOE developed MPCs for central air conditioners and heat pumps at two-ton and five-ton cooling capacities, in addition to MPCs for the representative three-ton units.

To develop the MPCs for the analysis of two-ton and five-ton units, DOE used its cost model based on teardowns of representative units from multiple manufacturers. DOE modified the cost model for the representative capacity (*i.e.,* three-tons) to account for changes in the size of central air conditioner and heat pump components that would scale with cooling capacity (*e.g.,* evaporator and condenser coils, outer cabinet, packaging). DOE accurately modeled certain other characteristics (*e.g.,* compressor, fan motor, fan blades) using information contained in manufacturer literature.

The results of DOE's analysis for the additional cooling capacities are presented in chapter 5 of the direct final rule TSD along with details about the calculation of central air conditioner and heat pump MPCs.

6. Heat Pump SEER/HSPF Relationships

For heat pumps, energy conservation standards must establish minimum values for HSPF in addition to SEER. In previous rulemakings (see section 4.8.1 of the 2001 final rule TSD available at *http://www1.eere.energy.gov/buildings/appliance_standards/residential/ac_central_1000_r.html*), analyses performed in terms of SEER were used as the basis for determining HSPF standards, and DOE has continued that approach for the current analysis. Consequently, DOE investigated the relationship between SEER and HSPF in the preliminary analysis, and reexamined that relationship for the direct final rule analysis. As a first step in examining the relationship, DOE plotted the median HSPF values for units that met or exceeded the existing standard of 7.7 HSPF for each product class and cooling capacity analyzed at half-SEER increments up to 16 SEER, and one-SEER increments from 16 SEER up to the max-tech level. For the preliminary analysis, DOE tentatively proposed using a SEER–HSPF relationship consisting of two separate linear sections, which roughly followed the median HSPF at each SEER. One trend line was developed for SEER values ranging from 13 to 16, and a separate second trend line was developed for SEER values above 16 SEER level. DOE proposed to use these two different trends because a substantial increase in the median HSPF was evident for units with cooling efficiencies greater than 16 SEER, which would be more accurately reflected through the use of two lines. DOE proposed to use the same relationship for single package units as well. Niche product relationships were not developed because these products were not fully analyzed in the preliminary analysis.

Based on updates to unit listings in the AHRI directory [35] as of June 2010, DOE has reexamined and updated the SEER–HSPF relationship for the direct final rule analysis. When DOE plotted the median HSPF values for the various SEER increments using 2010 version of the AHRI directory as opposed to a 2008 version which was used in the preliminary analysis, the more recent data exhibited a more gradual increase in the HSPF trend at SEER values over 16 SEER. As a result, DOE trended the data set of median values using a single linear relationship. DOE believes that this approach, which follows the median more closely than the relationship developed for the preliminary analysis, is more representative of the SEER–HSPF relationship illustrated by heat pumps currently available in the market. Additionally, while examining the

[35] Available at: *http://www.ahridirectory.org/ceedirectory/pages/hp/defaultSearch.aspx.*

relationship for different product classes and capacity sizes, DOE determined that the differences in HSPF values across product classes were substantial enough to warrant separate SEER–HSPF relationships for each product class and each cooling capacity analyzed. See chapter 5 of the TSD accompanying today's notice for the specific HSPF values considered at given SEER levels based on the SEER–HSPF relationship developed for this direct final rule.

7. Standby Mode and Off Mode Analysis

As mentioned in section III.C, DOE is required by EPCA, as amended, to address standby mode and off mode energy consumption when developing amended energy conservation standards for furnaces and central air conditioners and heat pumps. (42 U.S.C. 6295(gg)) DOE adopted a design-option approach for its standby mode and off mode engineering analysis for both furnaces and central air conditioners/heat pumps, which allowed DOE to calculate the incremental costs of adding specific design options to a baseline model. DOE decided on this approach because sufficient data do not exist to execute an efficiency-level analysis, and DOE is not aware of any manufacturers that currently rate or publish data on the standby mode energy consumption of their products. Unlike standby mode and off mode fossil-fuel consumption for furnaces which is accounted for by AFUE for gas and oil-fired furnaces, standby mode and off mode electricity consumption for furnaces (including for electric furnaces) is not currently regulated. Similarly, although SEER and HSPF account for the standby mode electricity consumption of central air conditioners and furnaces, off mode electricity consumption is currently unregulated. Because of this, DOE believes manufacturers generally do not invest in research and development (R&D) to design products with reduced standby mode and off mode electrical energy consumption. Therefore, DOE determined that there is no basis for comparison of efficiency levels among products in terms of standby mode and off mode energy consumption. The design-option approach, by contrast, allowed DOE to examine potential designs for reducing the standby mode and off mode power consumption of residential furnaces and the off mode energy consumption of central air conditioners and heat pumps. Standby mode energy consumption for central air conditioners and heat pumps is already accounted for in the SEER and HSPF metrics. As discussed in section III.E of this direct final rule, DOE analyzed new, separate standards for standby mode and off mode energy consumption using separate metrics, because it is not technologically feasible to integrate standby mode and off mode into the existing metrics for these products; standby mode and off mode power consumption is orders of magnitude less than active mode power consumption, so in most cases, any effects would likely be lost because AFUE is reported to the nearest whole number for these products.

a. Identification and Characterization of Standby Mode and Off Mode Components

Using the design-option approach, DOE identified components that contribute to standby mode and off mode energy consumption in the teardown-generated BOMs used for analyzing amended AFUE and SEER standards. For furnaces, DOE performed measurements of standby mode and off mode electrical energy consumption of each product before it was torn down in accordance with the test procedures specified in DOE's July 2009 furnaces test procedure NOPR (whose approach was subsequently adopted in a final rule published in the **Federal Register** on October 20, 2010 (75 FR 64621)). 74 FR 36959 (July 27, 2009). In addition, DOE performed testing on individual components that DOE believes consume most of the standby energy (*e.g.,* transformer, ECM blower motor). DOE aggregated these measurements to characterize and estimate the electrical energy use of each component operating in standby mode or off mode, as well as the standby mode and off mode consumption of the entire product. During manufacturer interviews, manufacturers provided feedback on these data, which DOE used to update its estimates. DOE also estimated the costs of individual components and designs capable of being used to reduce standby mode and off mode power consumption based on volume-variable price quotations and detailed discussions with manufacturers and component suppliers, and DOE received feedback from manufacturers which was used to refine the estimates.

For electric furnaces, DOE analyzed the expected standby mode and off mode power consumption of an electric furnace in comparison to the standby mode and off mode power consumption of a non-weatherized gas furnace. For non-weatherized gas furnaces, DOE found that for the baseline standby mode and off mode design, the components that primarily contribute to standby mode and off mode power consumption are the control transformer, an ECM fan motor (which was assumed present for the baseline standby mode and off mode design), and the control board power supply, which were estimated to use a total of nine watts on average. Additionally, furnaces with more complex controls and features (which are included in the baseline for the standby mode and off mode analysis since they are the highest-power consuming designs), DOE found that additional standby mode and off mode power requirements could be up to 2 watts, for a total of 11 watts of standby mode and off mode power consumption.

To estimate the likely standby mode and off mode power consumption of electric furnaces, DOE compared wiring diagrams, control schematics, and images of control boards of gas and electric furnaces. DOE found that electric furnaces commonly use a 40VA transformer that is very similar to those found in non-weatherized gas furnaces. Hence, DOE expects the power consumption associated with these transformers is the same. A DOE review of electric furnaces suggests that other components are also the same as (or very similar to) those used in non-weatherized gas furnaces, such as ECM blower motors, which suggests similar standby consumption for these components also. Finally, DOE examined the control boards, their power supplies, and the electrical systems of both electric and gas furnaces to examine potential differences in standby mode and off mode power consumption. DOE found that control boards for both electric and non-weatherized gas furnaces typically share many common features, such as linear and/or zener-style power supplies, relays, and microchip controllers. Additionally, both furnace types need a wiring harness and some sensors for safety and control. The two key differences are that electric furnace control boards tend to be simpler (no flame ignition/supervision, staging, and other combustion safety controls needed) and that electric furnace control boards use relays and/or sequencers that have higher capacity ratings than the relays typically found in gas furnaces. Sequencers are used to turn the electric furnace heating elements on incrementally to limit inrush currents and prevent nuisance trips of circuit breakers. DOE estimates that the additional standby power associated with the use of larger relays and/or sequencers of electric furnaces is balanced by the lack of need for controls/components for combustion initiation and control on gas furnaces.

As a result, DOE believes the evidence suggests that an electric furnace has a

standby mode and off mode electrical consumption that is similar that of non-weatherized gas furnaces in similar models. Further, DOE believes the design options that were identified for reducing the standby mode and off mode power consumption of gas furnaces (*i.e.,* a switching mode power supply and a toroidal transformer) will have the same impact on the standby mode and off mode power consumption of electric furnaces.

For central air conditioners and heat pumps, DOE measured off mode electrical energy consumption of units with and without crankcase heaters and with various crankcase heater control strategies in accordance with the test procedures specified in the DOE test procedure NOPR for central air conditioners and heat pumps. 75 FR 31224, 31260 (June 2, 2010). As was done for furnaces, DOE aggregated these measurements, in conjunction with nominal power ratings, to characterize the electrical energy use of each component operating in off mode. During manufacturer interviews, manufacturers provided feedback on these data, which DOE used to update its estimates. DOE also estimated the costs of individual components based on the same approach as furnaces and received feedback from manufacturers which was used to further refine these cost estimates.

b. Baseline Model

As noted above, the design-option approach that DOE is using for the standby mode and off mode energy conservation standards engineering analysis calculates the incremental costs for products with standby mode or off mode energy consumption levels above a baseline model in each standby mode and off mode product class covered in this rulemaking. Because standby mode and off mode electrical energy consumption of residential furnaces and central air conditioners and heat pumps is currently unregulated, DOE began by defining and identifying baseline components from the representative furnace teardowns that consumed the most electricity during standby mode and off mode operation. Baseline components were then ''assembled'' to model the electrical system of a furnace or central air conditioner or heat pump with the maximum system standby mode or off mode electrical energy consumption from DOE's representative test data. The baseline model defines the energy consumption and cost of the most energy-consumptive product on the market today (*i.e.,* units with the highest standby mode and off mode electricity consumption) operating in standby mode or off mode. See chapter 5 of the direct final rule TSD for baseline model specifications.

ACEEE stated that it expects the average furnace to have a standby power consumption of 8 watts or about 50 kilowatt-hours per year based on a 2003 study by the Wisconsin Energy Center.[36] (FUR: ACEEE, No. 1.3.009 at p. 11) As noted above, DOE tested furnaces in standby mode using the procedure proposed in the July 2009 furnaces test procedure NOPR and later adopted in the October 2010 test procedure final rule. None of the furnaces tested were equipped with a ''seasonal off switch,'' and as a result, DOE did not have any reason to expect a difference in standby mode and off mode power consumption, as the terms are defined in the test procedure.[37] As specified in the October 2010 test procedure final rule, DOE assumed that standby mode and off mode power consumption were equal, as the test procedure directs for units that do not have an expected difference between standby mode and off mode power consumption. 10 CFR Part 430, subpart B, appendix N, section 8.6.2. DOE's testing resulted in a range of values, both above and below 8 watts. Additional discussion of the results of DOE's furnace testing is in chapter 5 of the direct final rule TSD.

c. Cost-Power Consumption Results

The results of the engineering analysis are reported as cost-power consumption data (or ''curves'') in the form of power (in watts) versus MPC (in dollars). For furnaces, DOE developed two different data sets for standby mode and off mode: one to use for the non-weatherized gas, mobile home gas (DOE's testing showed that the standby mode and off mode power consuming components are the same in mobile home gas furnaces as non-weatherized gas furnaces), and electric furnace product classes, and one to use for non-weatherized and mobile home oil-fired furnace product classes. For central air conditioners and heat pumps, DOE developed six off mode data sets: four for air conditioners and two for heat pumps. The data sets were produced based on units with ECM fan motors, because they will have a slightly higher off mode power consumption due to the fact that ECM fan motors have some controls integrated into them.

The methodology for developing the cost-power consumption curves started with determining the energy use of baseline products and their full cost of production. For furnaces and central air conditioners and heat pumps, the baseline products contained the highest energy-consuming components, which included an ECM blower motor (rather than a PSC) when applicable. Above the baseline, DOE implemented design options based on cost-effectiveness. Design options were implemented until all available technologies were employed (*i.e.,* at a max-tech level). For furnaces and central air conditioners and heat pumps, the design options are not all mutually exclusive, and, therefore, systems could incorporate multiple design options simultaneously.

After considering several potential designs to improve standby mode efficiency for furnaces, DOE ultimately examined two designs in addition to the baseline that passed the screening analysis (see chapter 4 of the direct final rule TSD for details). DOE first considered the use of a switch mode power supply instead of a linear power supply. DOE also considered the use of a toroidal transformer in addition to a switch mode power supply to further reduce standby mode and off mode energy consumption of a furnace. The power consumption levels analyzed for furnaces are shown in Table IV.6 below.

[36] Pigg, S., ''Electricity Use by New Furnaces: A Wisconsin Field Study,'' Madison, WI: Energy Center of Wisconsin. (2003) (Available at: *http://www.doa.state.wi.us/docs_view2.asp?docid=1812*).

[37] The test procedure for furnaces and boilers defines ''standby mode'' as ''the condition during the heating season in which the furnace or boiler is connected to the power source, and neither the burner, electric resistance elements, nor any electrical auxiliaries such as blowers or pumps, are activated,'' and ''off mode'' as ''the condition during the non-heating season in which the furnace or boiler is connected to the power source, and neither the burner, electric resistance elements, nor any electrical auxiliaries such as blowers or pumps, are activated.'' 75 FR 64621, (Oct. 20, 2010); 10 CFR part 430, subpart B, appendix N, section 2.0.

TABLE IV.6—STANDBY MODE AND OFF MODE POWER CONSUMPTION LEVELS FOR FURNACES

| | Non-weatherized gas, electric, and mobile home gas furnace standby power consumption *(W)* | Non-weatherized oil-fired and mobile home oil-fired furnace standby power consumption *(W)* |
|---|---|---|
| Baseline | 11 | 12 |
| Efficiency Level 1 | 10 | 11 |
| Efficiency Level 2 | 9 | 10 |

Although DOE's test results for furnaces showed that the standby mode and off mode consumption could be reduced below efficiency level 2 by eliminating certain features (*e.g.,* replacing an ECM blower motor with a PSC motor), DOE did not consider these as potential design options, because the elimination of such features and components would result in a reduction of consumer utility. In its analysis, DOE only considered designs that could be implemented with no noticeable impacts on the performance and utility of the unit.

For central air conditioners, DOE examined three designs (*i.e.,* thermostatically-controlled fixed-resistance crankcase heaters, thermostatically-controlled variable-resistance crankcase heaters with compressor covers, and thermostatically-controlled variable-resistance crankcase heaters with compressor covers and a toroidal transformer) in addition to the baseline for split-system blower coil and packaged air conditioners equipped with crankcase heaters. DOE only examined two designs (*i.e.,* thermostatically-controlled fixed-resistance crankcase heaters and thermostatically-controlled variable-resistance crankcase heaters with compressor covers) in addition to the baseline for coil-only air conditioners, because the transformer is contained in the furnace or air handler and is not a component of a coil-only system. DOE believes that the crankcase heater is the only source of off mode power consumption for the coil-only systems, and consequently, a coil-only split-system air conditioner will have no off mode power consumption without a crankcase heater unless it has an ECM motor in the condensing unit.

For heat pumps, DOE found during testing that heat pumps achieved a lower power consumption during the off mode period through the use of crankcase heaters with a control strategy based on outdoor ambient temperature, as opposed to compressor shell temperature. However, using this control strategy prevents a heat pump from achieving any additional energy savings with a compressor cover, because while a cover helps the compressor shell retain heat, it has no effect on the outdoor ambient temperature sensor. Additionally, DOE found that the fixed-resistance and variable-resistance crankcase heaters had similar test results in terms of energy consumption and believes that manufacturers will choose the fixed-resistance heaters because they are more cost-effective. Therefore, DOE did not include compressor covers as a design option for heat pumps because there is no benefit from them without the variable-resistance crankcase heaters and only considered thermostatically-controlled crankcase heaters and toroidal transformers.

DOE also found during testing that the crankcase heater accounts for the vast majority of off mode power consumption for air conditioners and heat pumps. However, not every unit has a crankcase heater and, to accurately reflect this in the analyses, DOE determined separate efficiency levels within each product class for units with and without a crankcase heater. Because two of the design options are only relevant with crankcase heaters, the only possible improvement to units without crankcase heaters is the toroidal transformer. Table IV.7 through Table IV.9 contain the off mode efficiency levels for central air conditioners and heat pumps.

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**Table IV.7. Split-System (Blower Coil), Packaged, and Space-Constrained Air Conditioner Off Mode Power Consumption**

| | Power Consumption with an ECM Motor and Crankcase Heater (W) | Power Consumption with an ECM Motor and No Crankcase Heater (W) |
|---|---|---|
| Baseline | 48 | 11 |
| Efficiency Level 1 | 36 | 10 |
| Efficiency Level 2 | 30 | |
| Efficiency Level 3 | 29 | |

**Table IV.8. Split-System (Coil-Only) Air Conditioner Off Mode Power Consumption**

| | Power Consumption with an ECM Motor and Crankcase Heater (W) | Power Consumption with an ECM Motor and No Crankcase Heater (W) |
|---|---|---|
| Baseline | 37 | 3 |
| Efficiency Level 1 | 25 | |
| Efficiency Level 2 | 19 | |

**Table IV.9. Split-System, Packaged, and Space-Constrained Heat Pump Off Mode Power Consumption**

| | Power Consumption with an ECM Motor and Crankcase Heater (W) | Power Consumption with an ECM Motor and No Crankcase Heater (W) |
|---|---|---|
| Baseline | 51 | 14 |
| Efficiency Level 1 | 33 | 13 |
| Efficiency Level 2 | 32 | |

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For furnaces, the standby mode and off mode electrical energy consumption (in watts) of each design option was estimated based on test measurements performed on furnace electrical components, industry knowledge, and feedback from manufacturers during manufacturer interviews. For central air conditioners and heat pumps, the off mode energy consumption of each system design was calculated based on test measurements performed according to the off mode test procedure for central air conditioners and heat pumps that was proposed in the June 2010 test procedure NOPR (75 FR 31224 (June 2, 2010)), and information gathered during manufacturer interviews. See chapter 5 in the direct final rule TSD for additional detail on the engineering analyses and for complete cost-power consumption results for standby mode and off mode operation.

*D. Markup Analysis*

The markup analysis develops appropriate markups in the product distribution chain to convert the estimates of manufacturer selling price 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. After establishing appropriate distribution channels, DOE relied on economic data from the U.S. Census Bureau and industry sources to estimate how prices are marked up as the products pass from the manufacturer to the consumer.

In the central air conditioners and heat pumps preliminary TSD, DOE determined two typical distribution channels for central air conditioners and heat pumps—one for replacement products, and one for products installed in new homes. DOE then estimated the markups associated with the main parties in the distribution channels. For replacement products, these are distributors and mechanical contractors. For products installed in new homes, these are distributors, mechanical contractors, and general contractors (builders).

DOE based the distributor and mechanical contractor markups on company income statement data;[38] DOE based the general contractor markups on

[38] Heating, Air-conditioning & Refrigeration Distribution International (HARDI) 2010 Profit Report; Air Conditioning Contractors of America (ACCA) Financial Analysis (2005).

U.S. Census Bureau data [39] for the residential building construction industry. For distributors and contractors, DOE developed separate markups for baseline products (baseline markups) and for the incremental cost of more-efficient products (incremental markups). Thus, for these actors, the estimated total markup for more-efficient products is a blend of a baseline markup on the cost of a baseline product and an incremental markup on the incremental cost. No comments were received on the distribution markups contained in the preliminary TSD for central air conditioners and heat pumps, and DOE retained the approach used in the preliminary analysis for today's direct final rule.

In the furnaces RAP, DOE stated its intention to determine typical markups in the furnace distribution chain using publicly-available corporate and industry data, particularly Economic Census data from the U.S. Census Bureau [40] and input from industry trade associations such as HARDI. It described a similar approach for furnaces to estimate baseline and incremental markups as was used in the preliminary analysis for central air conditioners and heat pumps.

Commenting on the furnaces RAP, HARDI stated that distributors do not categorize costs into labor-scaling and non-labor-scaling costs, and it recommended that DOE should not use this approach when projecting distributor impacts. HARDI recommended that DOE should use the markups approach taken in chapter 17 of the TSD for central air conditioners and heat pumps. (FUR: HARDI, No. 1.3.016 at p. 9)

In response, DOE notes that the analysis described in chapter 17 of the TSD for central air conditioners and heat pumps only used baseline markups because its purpose was to estimate the impacts of regional standards and not to estimate the incremental costs of higher-efficiency products for the LCC and PBP analysis. To derive incremental markups for the LCC and PBP analysis, DOE distinguishes between costs that change when the distributor's cost for the appliances it sells changes due to standards and those that do not change. DOE agrees that the categorization of costs as non-labor-scaling and labor-scaling mentioned in the furnaces RAP may not be appropriate terminology. Accordingly, for the direct final rule, DOE refers to these two categories as variant and invariant costs.

Chapter 6 of the direct final rule TSD provides additional details on the markup analysis.

*E. Energy Use Analysis*

DOE's analysis of the energy use of furnaces and central air conditioners and heat pumps estimated the energy use of these products in the field (*i.e.,* as they are actually used by consumers). The energy use analysis provided the basis for other follow-on analyses that DOE performed, particularly assessments of the energy savings and the savings in consumer operating costs that could result from DOE's adoption of potential amended standard levels. In contrast to the DOE test procedure, which provides standardized results that can serve as the basis for comparing the performance of different appliances used under the same conditions, the energy use analysis seeks to capture the range of operating conditions for furnaces and central air conditioners and heat pumps in U.S. homes and buildings.

In the central air conditioners and heat pumps preliminary TSD, to determine the field energy use of products that would meet possible amended standard levels, DOE used data from the EIA's 2005 Residential Energy Consumption Survey (RECS), which was the most recent such survey 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. The sample is selected to be representative of the population of occupied housing units in the U.S. RECS provides sufficient information to establish the type (product class) of furnace, central air conditioner, or heat pump used in each housing unit. As a result, DOE was able to develop discrete samples for each of the considered product classes. DOE uses these samples not only to establish each product's annual energy use, but also as the basis for conducting the LCC and PBP analysis. DOE described a similar approach for furnaces in the RAP.

Commenting on the furnaces RAP, Lennox stated that DOE should use more recent data for the energy consumption of furnaces than those in the 2005 RECS. Lennox asserted that using the 2005 RECS will overstate the savings associated with higher efficiency levels, because the market share of high-efficiency furnaces has increased since the time of the survey. (FUR: Lennox, No. 1.3.018 at p. 4) Ingersoll Rand made a similar point. (FUR: Ingersoll Rand, No. 1.3.006 at pp. 7–8) In response, DOE notes that the increase in the market share of high-efficiency furnaces since 2005 does not result in overstated savings because, as described below, DOE uses information on the furnace in the RECS housing units only to estimate the heating load of each sample building (*i.e.,* the amount of heat needed to maintain comfort). Since the heating load is a characteristic of the dwelling and not the heating equipment, DOE's estimate of annual energy use of baseline and higher-efficiency furnaces (and the difference, which is the energy savings) is not affected if some households have acquired new, more-efficient furnaces since the time of the 2005 RECS.

Details on how DOE used RECS to determine the annual energy use of residential furnaces and central air conditioners and heat pumps are provided below. A more detailed description of DOE's energy use analysis is contained in chapter 7 of the direct final rule TSD.

1. Central Air Conditioners and Heat Pumps

In the central air conditioners and heat pumps preliminary TSD, DOE determined the annual energy use of central air conditioners and heat pumps at various efficiency levels using a nationally representative set of housing units that were selected from EIA's 2005 RECS. DOE began with the reported annual electric energy consumption for space cooling and space heating for each household in the sample. DOE then adjusted the RECS household energy use data, which reflect climate conditions in 2005, to reflect normal (30-year average) climate conditions.

DOE used the reported cooling equipment vintage (*i.e.,* the year in which it was manufactured) to establish the cooling efficiency (SEER) and corresponding heating efficiency (HSPF) of the household's air conditioner or heat pump. DOE estimated the energy consumption for each sample household at the baseline and higher efficiency levels using the 2005 RECS-reported cooling energy use multiplied by the ratio of the SEER of each efficiency level to the SEER of the household's equipment. Similarly, DOE calculated the heating energy use for each household in the sample using the 2005 RECS-reported heating energy use

[39] 2007 Economics Census; available at: *http://factfinder.census.gov/servlet/EconSectorServlet?caller=dataset&sv_name=*&_SectorId=23&ds_name=EC0700A1&_lang=en&_ts=309198552580.*

[40] U.S. Census Bureau, Plumbing, Heating, and Air-Conditioning Contractors: 2002 (Report EC02–231–238220).

[41] For information on RECS, see *http://www.eia.doe.gov/emeu/recs/.*

multiplied by the ratio of the HSPF of each efficiency level to the HSPF of the household's equipment.

DOE also estimated the energy consumption for central air conditioners and heat pumps shipped to commercial buildings, which DOE estimated at 7 percent of the market, using a model of a small office building, DOE's EnergyPlus building energy simulation software,[42] and weather data for 237 locations around the U.S. Four efficiency levels, starting with a baseline SEER 13 level, were modeled and the energy use at intermediate efficiency levels was estimated by interpolation between these four levels. Details of the energy analysis methodology are described in chapter 7 of the TSD.

Commenting on the preliminary TSD, several commenters suggested that DOE use computer simulation models for the residential energy use estimates as well. (CAC: CA IOUs, No. 69 at p. 3; SCS, Public Meeting Transcript at p. 74) Commenters stated that using simulations is likely to be more accurate. (CAC: ACEEE, No. 72 at p. 6; NPCC, No. 74 at p. 3) Commenters noted that that RECS 2005 does not distinguish between heating and cooling used in the same 24-hour period (CAC: CA IOUs, No. 69 at p. 3), and that heat pump usage estimated using RECS data may be less accurate due to the small sample size, particularly when examining RECS statistics at the Census division level. (CAC: SCS, No. 73 at p. 3; NPCC, No. 74 at p. 2; ACEEE, No. 72 at p. 6) A commenter also noted that using RECS does not allow DOE to control for external system effects such as duct anomalies. (CAC: ACEEE, No. 72 at p. 6) More specifically with respect to heat pumps, NPCC commented that the approach used in the preliminary analysis assumed that improvements in efficiency result in comparable percentage savings across differing regions. NPCC noted that because HSPF is climate dependent, a simulation or bin temperature approach should be used to get at the right answer. (CAC: NPCC, No. 74 at p. 2; NPCC, Public Meeting Transcript at p. 44) NPCC also stated that presuming DOE moves to a simulation of the heat pump for the residential analysis, it should use a heat pump performance curve that reflects inverter-driven compressors because they perform quite differently at lower temperatures relative to the standard rating points that are now available. (CAC: NPCC, Public Meeting Transcript. at p. 70) Rheem commented that the proportional changes in SEER will reflect proportional changes in cooling energy use across climates, assuming similar characteristics for the underlying equipment design, but noted that SEER alone may not portray an accurate difference in relative energy consumption for disparate climates if the underlying systems have different characteristics such as two-stage compressors or variable-speed fans. (CAC: Rheem, No 76 at p. 6)

In response to these comments, DOE is aware that RECS observations for heat pumps are limited when analyzing geographic subsets at the Census division levels identified by commenters, but points out that it relies on larger regions with more observations for its regional or national analysis of heat pumps. In response to the comment that DOE does not distinguish between heating and cooling in a 24-hour period, DOE believes that this comment may be relevant to the energy analysis for heat pumps, but that its importance is overshadowed by the much larger concern of achieving household energy consumption estimates that are reflective of the variability in residential homes of different vintages and building characteristics, which is difficult to capture in modeling. With regard to controlling for duct anomalies, DOE points out that a simulation may allow DOE to presume some duct performance or, through a sensitivity study, understand how the assumptions for a duct system can impact the energy results, but in fact would not necessarily yield more accurate estimates of energy consumption than an analysis that is based on more empirical energy use data.

In response to the concern regarding the climate sensitivity of HSPF and the overall heating performance of heat pumps, DOE agrees that its approach to estimating energy savings should take into account how the heating HSPF would vary as a function of climate. DOE examined several strategies for doing this and relied for the direct final rule on an approach that estimates the change in seasonal heating efficiency for heat pumps based on equations developed from building simulation analysis across the U.S.[43] DOE also examined other possible methods, including alternative simulation approaches, and discusses these in chapter 7 of the direct final rule TSD. For the direct final rule, however, DOE did not rely on separate simulations for residential buildings to estimate the underlying energy use at different efficiency levels, due to the concerns mentioned above, and, thus, did not include heating performance curves for inverter-driven heat pump systems. DOE acknowledges that certain inverter-driven heat pumps, primarily found in mini-split systems, have increased heating capacity at low temperature (relative to the nominal 47 °F heating capacity) compared with non-inverter systems. DOE also acknowledges that this difference has potential heating energy benefits over the course of the year that, while captured in the HSPF rating, may differ depending on climate.

DOE also received a number of comments on the commercial analysis, which relied on the use of energy simulations. ACEEE commented that in the commercial energy analysis, it appreciated that DOE used realistic values for the total static pressure in the building modeling, but it was not confident that the motor efficiencies or combined efficiencies are realistic for residential equipment at these higher static pressures. (CAC: ACEEE, Public Meeting Transcript at p. 69) In addition, ACEEE stated that it believes that there should be some empirical data to underlie the assumption that constant air circulation is the predominant mode of operation in small commercial buildings that utilize residential equipment. NPCC echoed this point, adding that it had not seen controls that provided switching between this mode and heating/cooling modes of operation. (CAC: NPCC, No. 74 at p. 5) NPCC also suggested that DOE use the most recent weather data in its analysis and provided an analysis of differences in TMY2 and TMY3 weather data for the northwest.[44] (CAC: NPCC, No. 74 at p. 4)

DOE was not able to identify a specific source of information regarding the use of continuous air circulation for residential (single-phase) heat pumps in commercial buildings, but notes that a California study of 215 small air conditioners in commercial buildings found intermittent (cycling) ventilation operation during the occupied period in

[42] For more information on EnergyPlus refer to DOE's EnergyPlus documentation, available at: *http://apps1.eere.energy.gov/buildings/energyplus/energyplus_documentation.cfm*. EnergyPlus software is freely available for public download at: *http://apps1.eere.energy.gov/buildings/energyplus/energyplus_about.cfm*.

[43] Fairey, P., D.S. Parker, B. Wilcox and M. Lombardi, ''Climate Impacts on Heating Seasonal Performance Factor (HSPF) and Seasonal Energy Efficiency Ratio (SEER) for Air Source Heat Pumps,'' ASHRAE Transactions, American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc. (June 2004).

[44] The TMY2 data are based on examination of weather data from 1961–1990 for 239 locations. See: National Renewable Energy Laboratory, User's manual for TMY2s (Typical meteorological years derived from the 1961–1990 national solar radiation database) (1995).

38 percent of cases examined.[45] DOE also notes that a programmable residential thermostat that is set in a continuous-circulation fan mode will still shift into a cooling or heating mode on a call for cooling or heat. However, in recognition that intermittent ventilation is common in small buildings, DOE modified its simulation model to have 40 percent (two out of five) of the HVAC zones operate in intermittent-circulation mode during the occupied period. DOE maintained the fan power assumptions from the preliminary TSD. DOE acknowledges that higher fan static pressure may result in motor efficiency deviating from the values used, but it may also result in the actual air flow differing in the field, depending on both the type and size of motor used and on installation practices. DOE also notes that there may be variation in cooling and heating efficiency when air flow rates deviate from nominal values. DOE has not attempted to systematically explore these variations in the commercial modeling. DOE has at this point not updated its commercial simulations to use TMY3 weather data but will consider doing so for the final rule. DOE believes that the impact of this change would be minimal with regard to the overall analysis. In the data provided by NPCC, the overall change for comparable TMY2 and TMY3 locations was on the order of a five percent reduction in heating degree days and no clear change in cooling degree days.

DOE received multiple comments on the SEER–EER relationship that was used in the commercial modeling. Commenters expressed concern that the relationship that was used in the preliminary analysis did not reflect the correct relationship between SEER and EER. Several commenters stated that the Wassmer-Brandemuehl[46] curve used in the preliminary analysis suggested a nearly linear relationship between SEER and EER, but that their review of the data in the AHRI directory suggested that this is not accurate. (CAC: CA IOUs, No. 69 at pp. 3–4; PG&E, Public Meeting Transcript at pp.63, 72; Ingersoll Rand, Public Meeting Transcript at p. 63; EEI, No. 75at p. 5) ACEEE suggested that the curve should include two lines, reflecting the slopes of this relationship for single-speed versus step-modulating compressors. (CAC: ACEEE, Public Meeting Transcript at p. 57; ACEEE, No. 72 at p. 4) ASAP noted that the relationship between SEER and EER may become clearer when set by a standard, and that the market migrates to the lowest-cost compliance path, although single-stage equipment will provide a different EER at a 16 SEER than will two-stage equipment. (CAC: ASAP, Public Meeting Transcript at p. 64)

EEI and NPCC reported concerns that the nearly linear relationship between EER and SEER would result in the analysis showing better apparent economic benefit than what might actually occur due to differences between estimated versus actual impacts on peak demand and calculated marginal price. EEI suggested that DOE should use AHRI's published EER values in the simulations. (CAC: EEI, Public Meeting Transcript at pp. 61, 104; EEI, No. 75 at p. 5; NPCC, Public Meeting Transcript at p. 130) Southern also agreed that a curve based on EER values representative of the current AHRI database should be used instead of the relationship used in the preliminary TSD, and further suggested that the SEER 16 and max-tech efficiency levels should be modeled as dual-speed or variable-speed equipment. (CAC: SCS, No. 73 at p. 4; SCS, Public Meeting Transcript at p. 60) PG&E commented that, based on their review of the equipment market, there is a decrease in EER at very high SEER. They emphasized that the impact of this relationship on peak performance is an important issue for utilities and is a reason why they are emphatic about not using SEER as the only efficiency metric in hot, dry regions. (CAC: PG&E, Public Meeting Transcript at p. 72)

In response to the above concerns, DOE modified its commercial simulations to use EER values that reflect the median values taken from the most recent AHRI database for the selected SEER levels that were simulated. In addition, 16 SEER and higher efficiency levels were modeled as two-stage equipment. Additional changes to the commercial modeling included the incorporation of new equipment performance curves from a 3-ton split system air conditioner that DOE believes to be more representative of residential central air conditioners and heat pumps.

DOE also received several comments suggesting that northern region heat pumps should not be sized based on cooling loads. (CAC: CA IOUs, No. 69 at p. 4; NPCC, No. 74 at p. 4) At the public meeting, ACEEE asked if sizing based on cooling loads for northern climates is a recommended practice that one would find in an ACCA manual. (CAC: ACEEE, Public Meeting Transcript at p. 55) Southern also questioned the sizing based on cooling loads for northern climates. (CAC: SCS, Public Meeting Transcript at p. 50)

DOE understands that, in the Northwest, utilities encourage sizing heat pumps based on the maximum of either the cooling load or the heating load at an ambient temperature between 30 °F and 35 °F, and that such sizing is one component of many Northwest heat pump rebate programs. DOE reviewed the current ACCA manual for sizing of equipment (*Manual S*),[47] which clearly states that sizing of heat pumps should be based on cooling loads. However, *Manual S* allows installers some additional flexibility by suggesting that they can consider sizing heat pumps up to 25 percent larger if the building balance point (*i.e.,* where sensible heating loads equal compressor heating capacity) is relatively high. The manual specifically caveats this by pointing out that the additional capacity may not translate into significant reduction in heating costs and may not justify the cost of a larger unit.

In a 2005 study of installation practices of heat pumps in the Northwest provided by NPCC,[48] the residential heat pump installations that were examined were undersized compared to the heating load in most of the locations examined except the sites in eastern Washington, which had higher cooling design temperatures and would be expected to have relatively comparable heating and cooling loads. (CAC: NPCC, No. 74, attachment 2 at p. 65) Sixty percent of the contractors consulted in the study reported that cooling sizing was the principle factor in equipment selection. The study also noted that, given the observed equipment sizes in the study, it would appear that a 30-percent increase in capacity would be required in order to be able to meet the design heating load at a 30 °F outside temperature, particularly given the drop in capacity of heat pumps at lower temperatures. Given the additional cost for larger equipment (estimated at $1,000 in the study) and Northwest utility rates, the study noted that consumers may be making an economic decision to not invest in the larger equipment (and

[45] Jacobs, P. *Small HVAC Problems and Potential Savings Reports.* 2003. California Energy Commission, Sacramento, California. Report No. CEC–500–03–082–A–25. Available at: *http://www.energy.ca.gov/pier/project_reports/500-03-082.html.*

[46] Wassmer, M. and M.J. Brandemuehl, ''Effect of Data Availability on Modeling of Residential Air Conditioners and Heat Pumps for Energy Calculations'' (2006) *ASHRAE Transactions* 111(1), pp. 214–225.

[47] Air Conditioning Contractors of America, *Manual S Residential Equipment Selection* (1995) (Available at: *http://www.acca.org*).

[48] Baylon, D., *et al.,* ''Analysis of Heat Pump Installation Practices and Performance, Final Report'' (2005) (Available at: *http://www.neea.org/research/reports/169.pdf*).

therefore to not meet the 30 °F heating load) at the expense of greater energy savings with the larger heat pump.

With respect to commercial buildings, DOE expects that for most new small commercial buildings in the northern U.S., cooling design loads used for sizing will typically be larger than heating design loads at 30–35 °F due to internal gain assumptions. However, DOE notes that variation in both ventilation and internal gain assumptions used in sizing in the small commercial building market will result in variation in relative design cooling and 30–35 °F heating loads among buildings. DOE also notes that to the extent that continuous circulation is used in commercial buildings, fan energy use and corresponding cooling impact for larger equipment will have an offsetting factor on heating energy savings from larger heat pump sizing. DOE has not passed judgment on the economic or energy value of sizing for heating loads in commercial buildings, but, for the reasons cited above, DOE did not modify the sizing methods for the commercial modeling for the direct final rule.

2. Furnaces

In the furnaces RAP, DOE stated its intention to use RECS data to estimate the annual energy consumption of residential furnaces used in existing homes, and further described its planned method for determining the range of annual energy use of residential furnaces at various efficiency levels.

For the direct final rule analysis, DOE followed the method described in the furnaces RAP. In addition to using the 2005 RECS data to estimate the annual energy consumption of residential furnaces used in existing homes, DOE estimated the furnace energy efficiencies in existing homes, again based primarily on data from the 2005 RECS. To estimate the annual energy consumption of furnaces meeting higher efficiency levels, DOE calculated the house heating load based on the RECS estimates of the annual energy consumption of the furnace for each household. For each household with a furnace, RECS estimated the equipment's annual energy consumption from the household's utility bills using conditional demand analysis. DOE estimated the house heating load by reference to the existing furnace's characteristics, specifically its capacity and efficiency (AFUE), as well as by the heat generated from the electrical components. The AFUE was determined using the furnace vintage from 2005 RECS and data on the market share of condensing furnaces published by AHRI.[49]

DOE then used the house heating load to calculate the burner operating hours, which is needed to calculate the fuel consumption and electricity consumption using section C of the current version of the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) test procedure SPC 103–2007, ''Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers.'' To calculate blower electricity consumption, DOE accounted for field data from several sources (as described in chapter 8 of the direct final rule TSD) on static pressures of duct systems, as well as airflow curves for furnace blowers from manufacturer literature.

To account for the effect of annual weather variations, the 2005 RECS household energy consumption values were adjusted based on 30-year average HDD data for the specific Census division or the large State location.[50] In addition, DOE made adjustments to the house heating load to reflect the expectation that housing units in the year in which compliance with the amended standards is required will have a somewhat different heating load than the housing units in the 2005 RECS. The adjustment considers projected improvements in building thermal efficiency (due to improvement in home insulation and other thermal efficiency practices) and projected increases in the square footages of houses between 2005 and the compliance date of the standards in this rule.

Commenting on the furnaces RAP, Ingersoll Rand stated that in using furnace capacity to estimate energy consumption, DOE needs to account for the fact that furnaces are often over-sized to maintain comfort under extreme conditions. (FUR: Ingersoll Rand, No. 1.3.006 at p. 10) In response, DOE's approach does account for the over-sizing of furnace capacity, since the furnace capacity assignment is a function of historical shipments by furnace capacity, which reflects actual practice, as well as heating square footage and the outdoor design temperature for heating (*i.e.,* the temperature that is exceeded by the 30-year minimum average temperature 2.5 percent of the time).

In the furnaces RAP, DOE described its plans to consider the potential for a ''rebound effect'' in its analysis of furnace 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. DOE stated that the rebound effect for residential space heating appears to be highly variable, ranging from 10 to 30 percent. A rebound effect of 10 percent implies that 90 percent of the expected energy savings from more efficient equipment will actually occur.

DOE received comments about applying a rebound effect associated with higher-efficiency furnaces. ACEEE referred to a 1993 study by Nadel that suggests the rebound effect should be about one percent.[51] (FUR: ACEEE, No. 1.3.009 at p. 7) Based upon its experience, Southern stated that the rebound effect should not exceed 5 percent. (FUR: Southern, No. 1.2.006 at p. 189) Lennox expressed concern with DOE's value for the rebound effect. (FUR: Lennox, No. 1.3.018 at p. 4) Ingersoll Rand stated that a significant rebound effect is unlikely, because it implies that consumers are currently tolerating discomfort with existing furnaces. (FUR: Ingersoll Rand, No. 1.3.006 at p. 10)

In response, DOE examined a recently-published review of empirical estimates of the rebound effect.[52] The authors evaluated 12 quasi-experimental studies of household heating that provide mean estimates of temperature take-back (*i.e.,* the increase in indoor temperature in the period after improvement in efficiency) in the range from 0.14 °C to 1.6 °C. They also reviewed nine econometric studies of household heating, each of which includes elasticity estimates that may be used as a proxy for the direct rebound effect. The authors conclude that ''the econometric evidence broadly supports the conclusions of the quasi-experimental studies, suggesting a mean value for the direct rebound effect for household heating of around 20 percent.''[53] Based on the above review, DOE incorporated a rebound effect of 20 percent for furnaces in the direct final rule analysis. The above-cited review

[49] Air Conditioning, Heating & Refrigeration Institute *Industry Statistics* is the reference source for the shipped efficiency data by vintage year. Available at: *http://www.ahrinet.org/Content/EquipmentStatistics_118.aspx*.

[50] Census divisions are groupings of States that are subdivisions of the four census regions. The large States considered separately are New York, Florida, Texas, and California.

[51] S. Nadel, ''The take-back effect: fact or fiction?'' Proceedings of the 1993 Energy Program Evaluation Conference, Chicago, IL, pp. 556–566.

[52] S. Sorrell, J. Dimitropoulos, and M. Sommerville, ''Empirical estimates of the direct rebound effect: a review,'' *Energy Policy* 37(2009) pp. 1356–71.

[53] *Id.* at p. 1363.

found far fewer studies that quantified a direct rebound effect for household air conditioning. Two studies of household cooling identified in the review provide estimates of the rebound effects that are roughly comparable to those for household heating (*i.e.,* 1–26 percent).[54] Therefore, to maintain consistency in its analysis, DOE also used a rebound effect of 20 percent for central air conditioners and heat pumps.

3. Standby Mode and Off Mode

a. Central Air Conditioners and Heat Pumps

DOE established annual off mode energy consumption estimates for each off mode technology option identified in the engineering analysis for air conditioners and for heat pumps. DOE estimated annual off mode energy consumption for air conditioners based on the shoulder season off mode power consumption and heating season off mode power consumption multiplied by the representative shoulder season rating hours (739 hours) and heating season rating hours (5,216 hours) established in the test procedure. DOE estimated annual energy consumption for heat pumps based only on the shoulder season off mode power consumption multiplied by the representative shoulder season rating hours (739 hours) established in the test procedure because heat pumps operate in active mode during the heating season. These seasonal hours are calculated to be consistent with the rating hours used in the SEER and HSPF ratings for air conditioners and heat pumps.

DOE is considering national standards for off mode energy consumption, but does not intend to set regional standards for off mode energy consumption. DOE recognizes that there will be some variation in off mode hours depending on location and individual household usage, but believes that the defined off mode hours in the test procedure will represent a reasonable basis for calculation of energy savings from off mode energy conservation standards. In the case of heat pumps, the off mode period includes the shoulder period between the heating and cooling season. It is fairly constant across most of the U.S. and, on average, is close to the test procedure rating value for the DOE climate zones. In the case of air conditioners, the off mode period includes all non-cooling-season hours, so there is more variation across the Nation. However, for the majority of the U.S. population, the off mode period is close to the test procedure rating value.

DOE does not include in the off mode period the time during the cooling season when a unit cycles off, because energy use during this period is captured in the seasonal SEER rating of the equipment. Similarly, DOE does not include in the off mode period the time during the heating season when a heat pump cycles off, because energy use during this period is captured in the seasonal HSPF rating of the equipment. To avoid double counting the benefits of design options which reduce energy consumption when equipment cycles off, DOE has defined the off mode time period for the energy analysis to be consistent with the operating periods used for the SEER and HSPF ratings

The component that uses the most power during off mode is the crankcase heater, but it is not found in all products. DOE established annual off mode energy use estimates for air conditioners and heat pumps using each considered off mode technology option for units with and without crankcase heaters.

DOE was not able to identify a data source establishing the fraction of central air conditioner or heat pump products in the U.S. market that would be tested with crankcase heaters or would be expected to have crankcase heaters installed in the field. However, a 2004 study of the Australian market estimated that one in six central air conditioners in that market utilized crankcase heaters.[55] Given that the need to provide for compressor protection for central air conditioners is driven by similar refrigerant migration concerns during cool weather, DOE estimated that the use of crankcase heaters in Australia was roughly similar to that in the U.S. at that time. DOE estimated that changes in compressor technology since 2004, in particular market growth in the use of scroll compressors, have likely reduced the fraction of the central air conditioner market with crankcase heaters. Based on the above considerations, for the direct final rule analysis, DOE assumed that 10 percent of central air conditioners within each air conditioner product class would utilize crankcase heaters. Discussion during manufacturer interviews and review of product literature suggest that crankcase heaters are most commonly used in heat pumps, which must be able to cycle on in cold weather. DOE assumed that two-thirds of heat pumps would utilize crankcase heaters in each heat pump product class.

Because the technology options examined do not impact blower energy consumption in off mode, DOE determined that energy savings from equipment utilizing ECM or PSC blower motors would be identical for each off mode technology option.

See chapter 7 in the direct final rule TSD for additional detail on the energy analysis and results for central air conditioner and heat pump off mode operation.

b. Furnaces

As described in section IV.C.7, DOE analyzed two efficiency levels that reflect the design options for furnaces with ECM blower motors. The energy use calculations account only for the portion of the market with ECM blower motors, because the power use of furnaces with PCS motors is already below the power limits being considered for standby mode and off mode power, and, thus, would be unaffected by standards.

To project the market share of furnaces with ECM blower motors, for non-weatherized gas furnaces DOE relied on market research data from studies conducted in Vancouver, Canada[56] and the State of Oregon.[57] From these data, DOE estimated that non-weatherized gas furnaces with ECMs comprise approximately 29 percent of the market. For oil-fired, mobile home gas, and electric furnaces, DOE estimated that furnaces with ECMs comprise 10 percent of the market.

DOE calculated furnace standby mode and off mode electricity consumption by multiplying the power consumption at each efficiency level by the number of standby mode and off mode hours. To calculate the annual number of standby mode and off mode hours for each sample household, DOE subtracted the estimated burner operating hours (calculated as described in section IV.E.2) from the total hours in a year (8,760).

Commenting on the furnaces RAP, Ingersoll Rand stated that standby mode and off mode power should not be included in DOE's calculation of furnace energy consumption during the cooling season, when the furnace may

[54] Dubin, J.A., Miedema, A.K., Chandran, R.V., 1986. Price effects of energy-efficient technologies—a study of residential demand for heating and cooling. *Rand Journal of Economics* 17(3), 310–25. Hausman, J.A., 1979. Individual discount rates and the purchase and utilization of energy-using durables. *Bell Journal of Economics* 10(1), 33–54.

[55] Australian Greenhouse Office, ''*Air Conditioners Standby Product Profile 2004/2006*'' (June 2004) (Available at: *http://www.energyrating.gov.au/library/pubs/sb200406-aircons.pdf*).

[56] Hood, Innes, ''High Efficiency Furnace Blower Motors Market Baseline Assessment'' (March 31, 2004) (Available at: *http://www.cee1.org/eval/db_pdf/416.pdf*).

[57] Habart, Jack, ''Natural Gas Furnace Market Assessment'' (August 2005) (Available at: *http://www.cee1.org/eval/db_pdf/434.pdf*).

provide power for a central air conditioner. (Ingersoll Rand, No. 1.3.006 at p. 9) In response, DOE would clarify that for homes that have both a furnace and a split central air conditioner, during the cooling season, the furnace blower controls operate in standby mode and off mode in conjunction with the air conditioner, but such energy consumption is not accounted for in the energy use calculation for the air conditioner. Therefore, DOE included this energy use in the calculation of furnace standby mode and off mode energy use.

See chapter 7 in the direct final rule TSD for additional detail on the energy analysis and results for furnace standby mode and off mode operation.

*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 furnaces and central air conditioners and heat pumps. The LCC is the total consumer expense over the expected 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 discounted future operating costs to the time of purchase and summed them over the expected 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 or energy use level, DOE measures the PBP and the change in LCC relative to an estimate of the base-case appliance efficiency or energy use levels. The base-case estimate reflects the market in the absence of new or amended mandatory 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. As discussed in section IV.E, DOE developed household samples from the 2005 RECS. For each sampled household, DOE determined the energy consumption for the furnace, central air conditioner, or heat pump and the appropriate energy prices in the area where the household is located. By developing a representative sample of households, the analysis captured the variability in energy consumption and energy prices associated with the use of residential furnaces, central air conditioners, and heat pumps.

Inputs to the calculation of total installed cost include the cost of the product—which includes manufacturer costs, 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, expected product lifetimes, discount rates, and the year in which compliance with new or amended standards is required. DOE created distributions of values for some inputs to account for their uncertainty and variability. Specifically, 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 furnace and central air conditioner and heat pump 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 LCC spreadsheet model, and of all the inputs to the LCC and PBP analyses, are contained in TSD chapter 8 and its appendices.

Table IV.10 and Table IV.11 summarize the inputs and methods DOE used for the LCC and PBP calculations for furnaces and central air conditioners and heat pumps, respectively. For central air conditioners and heat pumps, the table provides the data and approach DOE used for the preliminary TSD and the changes made for today's direct final rule. For furnaces, DOE has not conducted a preliminary analysis, so there are no changes to describe. The subsections that follow discuss the initial inputs and the changes DOE made to them.

TABLE IV.10—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS FOR FURNACES*

| Inputs | Direct final rule |
|---|---|
| **Installed Product Costs** | |
| Product Cost | Derived by multiplying manufacturer cost by manufacturer and retailer markups and sales tax, as appropriate.<br>Used experience curve fits to develop a price scaling index to forecast product costs. |
| Installation Cost | Derived from *RS Means* data for 2010, the furnace installation model developed for the November 2007 Rule, and consultant reports. |
| **Operating Costs** | |
| Annual Energy Use | Used household sample from 2005 RECS data. |
| Energy Prices | Natural Gas: Based on EIA's *Natural Gas Monthly* data for 2009.<br>Electricity: Based on EIA's Form 861 data for 2008.<br>LPG and Oil: Based on data from EIA's State Energy Data System (SEDS) 2008.<br>Variability: Separate energy prices determined for 13 geographic areas. |
| Energy Price Trends | Forecasted using *AEO2010* data at the Census division level. |
| Repair and Maintenance Costs | Costs for annual maintenance derived using data from a proprietary consumer survey.<br>Repair costs based on *Consumer Reports* data on frequency of repair for gas furnaces in 2000–06, and estimate that an average repair has a parts cost equivalent to one-fourth of the equipment cost. |

TABLE IV.10—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS FOR FURNACES*—Continued

| Inputs | Direct final rule |
|---|---|
| **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. Variability: characterized using Weibull probability distributions. |
| Discount Rates | Approach involves identifying 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 Survey of Consumer Finances for 1989, 1992, 1995, 1998, 2001, 2004 and 2007. |
| Compliance Date of Standard | 2016. |

* 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.

TABLE IV.11—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS FOR CENTRAL AIR CONDITIONERS AND HEAT PUMPS*

| Inputs | Preliminary TSD | Changes for the direct final rule |
|---|---|---|
| **Installed Product Costs** | | |
| Product Cost | Derived by multiplying manufacturer cost by manufacturer and retailer markups and sales tax, as appropriate. | Incremental retail markup changed as described in section IV.D. Additional multi-speed fan kit cost added for coil only air conditioners at 15 SEER and above. Used experience curve fits to develop a price scaling index to forecast product costs. |
| Installation Cost | National average cost of installation derived from *RS Means* data for 2008, adjusted for regional labor price differences. Does not change with efficiency level or equipment size. | Derived from *RS Means* data for 2009. Does not change with efficiency level or equipment size. |
| **Operating Costs** | | |
| Annual Energy Use | Residential: Derived using household sample from 2005 RECS data and reported energy use for space heating and cooling. Commercial: Derived using whole building simulations. | No change in approach. |
| Energy Prices | Electricity: Marginal and average prices based on residential and commercial electricity tariffs for 90 electric utilities in the Lawrence Berkeley National Lab Tariff Analysis Project database. Commercial prices incorporate demand and time of use rates calculated based on hourly electricity consumption. | No change in approach. |
| Energy Price Trends | Forecasted using the April 2009 update to *Annual Energy Outlook 2009* (*AEO2009*).. | Forecasts updated using *AEO2010* forecasts at the Census division level. |
| Repair and Maintenance Costs | Repair and maintenance costs calculated for 3-ton (36,000 Btu/hr) units. Varies with efficiency level of equipment. | Repair costs calculated for 3-ton (36,000 Btu/hr) units. Varies with efficiency level and size of equipment (2-ton, 3-ton, or 5-ton). Preventative maintenance cost assumed to not vary with efficiency or size of equipment. |
| **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. Variability: characterized using Weibull probability distributions. | No change. |
| Discount Rates | Approach involves identifying 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 Survey of Consumer Finances for 1989, 1992, 1995, 1998, 2001, 2004 and 2007. For commercial installations used weighted average cost of capital derived from Value-Line listed firms at Damodaran Online Web site for 2008. | No change to residential rates. Commercial discount rates updated to 2009, using Damodaran Online for January 2010 and revised values for risk-free rates and market risk factor. |

TABLE IV.11—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS FOR CENTRAL AIR CONDITIONERS AND HEAT PUMPS*—Continued

| Inputs | Preliminary TSD | Changes for the direct final rule |
|---|---|---|
| Compliance Date of New Standard ..... | 2016 ..... | 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.

As discussed in section IV.E, DOE is taking into account the rebound effect associated with more-efficient residential furnaces, central air conditioners, and heat pumps. The take-back in energy consumption associated with the rebound effect provides consumers with increased value (*e.g.,* enhanced comfort associated with a cooler or warmer indoor environment). The net impact on consumers is the sum of the change in the cost of owning the space-conditioning equipment (*i.e.,* life-cycle cost) and the increased value of the more comfortable indoor environment. DOE believes that, if it were able to monetize the increased value to consumers of the rebound effect, this value would be similar in value to the foregone energy savings. Thus, for this standards rulemaking, DOE assumes that this value is equivalent to the monetary value of the energy savings that would have occurred without the rebound effect. Therefore, the economic impacts on consumers with or without the rebound effect, as measured in the LCC analysis, are the same.

1. Product Cost

To calculate the consumer product cost at each considered efficiency level, DOE multiplied the manufacturer costs developed in the engineering analysis by the supply-chain markups described above (along with applicable average sales taxes). For wholesalers and contractors, DOE used different markups for baseline products and higher-efficiency products, because DOE applies an incremental markup to the cost increase associated with higher-efficiency products.

During the direct final rule analysis, DOE determined that split-system coil-only air conditioners rated at or above 15 SEER often have two stages of cooling capacity. Realizing the full efficiency of the product would require a fan that can operate at multiple speeds. DOE included a cost for a ''multi-speed fan kit'' that could be used to adapt the existing furnace fan for two-speed cooling operation. DOE estimated the kit cost to the consumer at $798 on a national average basis. DOE applied this cost to half of the split system, coil-only installations at 15 SEER, and all of the installations at 15.5 SEER.

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 sought to apply the experience curve approach to this rulemaking. To do so, DOE used historical shipments data together with historical producer price indices (PPI) for unitary air conditioners and warm-air furnace equipment. DOE recognizes the limitations of PPI as a proxy for manufacturing costs because it represents wholesale price.[58] However, the agency determined that even with this limitation, the use of PPI may offer some directionally-correct information related to the experience curve approach. DOE believes that the PPI data may indicate long-term declining real price trends for both products. Thus, DOE used experience curve fits to develop price scaling indices to forecast product costs for this rulemaking.

DOE also considered the public comments that were received in response to the NODA and refined 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 is consistent when there are data gaps with the historical data for the products covered in this rule. As a result, DOE is presenting a range of estimates reflecting both the assumption-based approach and the experience curve approach.

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 was consistent with the available data and justified by the amount of data that was available to DOE at this time. 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 on different analytical assumptions. DOE also included a constant real price trend assumption. DOE found that for the selected standard levels the benefits outweighed the burdens under all scenarios.

A more detailed discussion of DOE's development of price scaling indices is provided in appendix 8–J of the direct final rule TSD.

2. Installation Cost

Installation cost includes labor, overhead, and any miscellaneous materials and parts needed to install the equipment.

a. Central Air Conditioners and Heat Pumps

In its central air conditioners and heat pumps preliminary analysis, DOE calculated average installation costs for each class of equipment based on installation costs found in *RS Means.*[59] In the preliminary analysis, installation costs were assumed constant across efficiency levels, based on reported practices of installers in a limited telephone survey.

Commenting on the above approach, Carrier suggested that DOE further explore the variation in installation costs by efficiency level, because when

[58] U.S. Department of Labor, Bureau of Labor Statistics Handbook of Methods (Available at: *http://www.bls.gov/opub/hom/homch14.htm*).

[59] RS Means, *Residential Cost Data 2010,* Reed Construction Data, Kingston, MA.

an installation project changes from one-man to a two-man job because of the size of the unit, this change will impact contractor installation costs. (CAC: Carrier, Public Meeting Transcript at p. 140)

For the direct final rule analysis, DOE conducted some additional interviews with mechanical contractor/installers and learned that while some contractors use one-man crews for SEER 13 installations, generally two-man crews are dispatched. If extra labor is required beyond a two-man crew to move heavy components, additional laborers are brought to the site for the few minutes they are needed, resulting in minimal (less than $15) labor cost increase. Further, installation contractors reported that while installation costs vary due to specific differences among installation sites, they do not generally vary by efficiency level. Larger equipment is needed to move some of the larger 5-ton units, but investments in such equipment generally have been made already. Installation labor costs differ by less than 20 percent between 2-ton or 3-ton units and the larger 5-ton units. The primary reason for the difference in installation cost is not related to the greater weight of 5-ton systems, but rather to the greater effort required to install larger duct systems and longer refrigeration line sets, which are not within the scope of the rulemaking. Therefore, DOE concluded that installation cost for central air conditioners and heat pumps generally does not increase with the efficiency or the size of equipment, so it retained the approach used in the preliminary analysis. DOE did include additional installation costs of $161 for the multi-speed fan kit used for split system coil-only air conditioners with ratings at 15 SEER and above.

b. Furnaces

In the furnaces RAP, DOE stated that it will: (1) Estimate installation costs at each considered efficiency level using a variety of sources, including *RS Means,* manufacturer literature, and information from expert consultants; (2) account for regional differences in labor costs; and (3) estimate specific installation costs for each sample household based on building characteristics set forth in the 2005 RECS.

DOE received a number of comments concerning installation costs when a non-condensing furnace is replaced with a condensing furnace. AGA and APGA stated that DOE should consider important differences in classes of consumers, particularly northern consumers having to replace a non-condensing furnace with a condensing furnace. (FUR: AGA, No.1.3.010 at p. 4; APGA, No.1.3.004 at p. 4) APGA and NPGA stated that DOE must consider venting issues and other considerations unique to the replacement market. (FUR: APGA, No.1.3.004 at p. 4; NPGA, No.1.3.005 at p. 3)

Several parties provided comments regarding the need for venting system modification when replacing a non-condensing furnace with a condensing gas furnace. Several comments referred to the venting considerations when installation of a condensing furnace no longer permits common venting with the pre-existing gas water heater. Ingersoll Rand stated that when a non-condensing furnace is replaced with a condensing furnace, the rework of gas appliance venting will add considerable cost; according to the commenter, it will have to include the cost of a dedicated vent for the condensing furnace, plus reworking the venting for a water heater, which was most likely on a common vent that will now be too large for the water heater. (FUR: Ingersoll Rand, No. 1.3.006 at p. 12) AGA, APGA, and NPGA made similar comments. (FUR: AGA, No. 1.3.010 at pp. 3–4; AGA, No. 1.2.006 at p. 41; APGA, No. 1.3.004 at p. 4; NPGA, No. 1.3.005 at p. 3) AGA added that DOE must also consider consumer and installer behaviors that favor inadequate venting system attention aimed at reducing installation costs; AGA cautioned that such practices may represent code violations, as well as threats to consumer safety from carbon monoxide poisoning, due to improper venting or venting system failure. (FUR: AGA, No. 1.3.010 at p. 3) HARDI stated that there are significant portions of existing gas furnace installations that could not use a condensing furnace without performing major renovations to the building. (FUR: HARDI, No. 1.3.016 at p. 3) ACCA stated that in a recent ACCA member survey, a majority of respondents said that 15–30 percent of furnace retrofits in the north would only accommodate non-condensing furnaces due to vent path issues or concerns about freezing condensate. (FUR: ACCA, No. 1.3.007 at pp. 3–4)

In contrast to some of the above comments, AHRI and Rheem stated that the venting issues resulting from the ''orphaned'' gas water heater can be resolved through power venting and new venting systems. (FUR: AHRI, No. 1.3.008 at p. 4; Rheem, No.1.3.022 at p. 4)

In response to these comments, for the direct final rule analysis, DOE conducted a detailed analysis of installation costs when a non-condensing gas furnace is replaced with a condensing gas furnace, with particular attention to venting issues in replacement applications. DOE gave separate consideration to the cost of installing a condensing gas furnace in new homes. As part of its analysis, DOE used information in the 2005 RECS to estimate the location of the furnace in each of the sample homes.

First, DOE estimated basic installation costs that are applicable to both replacement and new home applications. These costs, which apply to both condensing and non-condensing gas furnaces, include putting in place and setting up the furnace, gas piping, ductwork, electrical hookup, permit and removal/disposal fees, and where applicable, additional labor hours for an attic installation.

For replacement applications, DOE then included a number of additional costs (''adders'') for a fraction of the sample households. For non-condensing gas furnaces, these additional costs included updating flue vent connectors, vent resizing, and chimney relining. For condensing gas furnaces, DOE included new adders for flue venting (PVC), combustion air venting (PVC), concealing vent pipes, addressing an orphaned water heater (by updating flue vent connectors, vent resizing, or chimney relining), and condensate removal. Freeze protection is accounted for in the cost of condensate removal. Table IV.12 shows the fraction of installations impacted and the average cost for each of the adders. The estimate of the fraction of installations impacted was based on the furnace location (primarily derived from information in the 2005 RECS) and a number of other sources that are described in chapter 8 of the direct final rule TSD. The costs were based on 2010 *RS Means.* Chapter 8 of the direct final rule TSD describes in detail how DOE estimated the cost for each installation item.

TABLE IV.12—ADDITIONAL INSTALLATION COSTS FOR NON-WEATHERIZED GAS FURNACES IN REPLACEMENT APPLICATIONS

| Installation cost adder | Replacement installations impacted | Average cost (2009$) |
|---|---|---|
| **Non-Condensing Furnaces** | | |
| Updating Flue Vent Connectors | 7% | $211 |
| Vent Resizing | 1% | 591 |
| Chimney Relining | 16% | 591 |
| **Condensing Furnaces** | | |
| New Flue Venting (PVC) | 100% | 308 |
| Combustion Air Venting (PVC) | 60% | 301 |
| Concealing Vent Pipes | 5% | 290 |
| Orphaned Water Heater | 24% | 447 |
| Condensate Removal | 100% | 49 |

DOE also included installation adders for fractions of new home applications. For non-condensing gas furnaces, a new flue vent (metal) is the only adder. For condensing gas furnaces, the adders include new flue venting (PVC), combustion air venting (PVC), accounting for a commonly-vented water heater, and condensate items. Table IV.13 shows the estimated fraction of new home installations impacted and the average cost for each of the adders. For details, see chapter 8 of the direct final rule TSD.

TABLE IV.13—ADDITIONAL INSTALLATION COSTS FOR NON-WEATHERIZED GAS FURNACES IN NEW HOME APPLICATIONS

| Installation cost adder | New construction installations impacted | Average cost (2009$) |
|---|---|---|
| **Non-Condensing Furnaces** | | |
| New Flue Vent (Metal) | 100% | $818 |
| **Condensing Furnaces** | | |
| New Flue Venting (PVC) | 100% | 249 |
| Combustion Air Venting (PVC) | 60% | 240 |
| Accounting for Commonly Vented WH | 50% | 402 |
| Condensate Removal | 100% | 7 |

Several parties provided comments regarding special considerations for installing condensing gas furnaces in manufactured homes. AGA, AGPA, and NPGA stated that replacement installation costs need to consider either: (1) Freeze protection from condensate in the furnace as well as in the condensate handling system; or (2) altering the closet insulation system to put the furnace within the thermal boundary of the manufactured home. (FUR: AGA, No. 1.3.010 at p. 5; APGA, No. 1.3.004 at p. 4; NPGA, No. 1.3.005 at p. 4) ACEEE stated that furnace manufacturers signed the consensus agreement and, therefore, foresaw no problems with use of their condensing products in manufactured housing. ACEEE added that applicable codes require that furnaces in manufactured housing be installed in separate cabinets with outdoor air supply, which makes retrofitting with a condensing furnace relatively easy. (FUR: ACEEE, No. 1.3.009 at p. 8)

For the direct final rule analysis, DOE included basic installation costs for manufactured home gas furnaces similar to those described above for non-weatherized gas furnaces. DOE also included costs for venting and condensate removal. Freeze protection is accounted for in the cost of condensate removal. In addition, DOE considered the cost of dealing with space constraints that could be encountered when a condensing furnace is installed.

For oil-fired furnaces, DOE included basic installation costs similar to those described above for non-weatherized gas furnaces. DOE also included costs for venting (including stainless steel vent for some installations at 83–85 percent AFUE) and condensate removal. In addition, DOE assumed that condensing furnaces require two additional labor hours to tune up the combustion system. For further details on installation costs for both manufactured home gas furnaces and oil-fired furnaces, see chapter 8 of the direct final rule TSD.

3. Annual Energy Consumption

For each sample household, DOE determined the energy consumption for a furnace, central air conditioner, or heat pump at different efficiency levels using the approach described above in section IV.E.

4. Energy Prices

In its central air conditioners and heat pumps preliminary analysis, DOE developed marginal electricity prices to express the value of electricity cost savings from more-efficient central air conditioners and heat pumps. The marginal electricity price for a given consumer is the cost of the next increment of electricity use on his or her utility bill, and is the correct estimate of the value of savings that a consumer would see in the real world.

DOE developed residential marginal electricity prices from tariffs collected in 2008 from a representative sample of

electric utilities throughout the United States. DOE collected data for over 150 residential tariffs from a sample of about 90 electric utilities. As described earlier, DOE developed samples of households using central air conditioners and heat pumps from the 2005 RECS. The location of each household can be identified within broad geographic regions (*e.g.,* Census Divisions). DOE developed a weighted-average marginal electricity price for each household from all the possible utility tariffs that could be assigned to that household. DOE also developed commercial marginal electricity prices from tariffs for those commercial building applications that use residential central air conditioners and heat pumps. As with the residential household sample, DOE developed a weighted-average marginal electricity price for each commercial building from the utility tariffs that could possibly be assigned to that building. For further details, see chapter 8 of the direct final rule TSD.

Commenting on the central air conditioners and heat pumps preliminary TSD, the Joint Comment stated that the current impact analysis does not account for time-dependent valuation (TDV) of electricity,[60] which is expected to change significantly by 2015 due to smart grid technology. (CAC: CA IOUs, No. 69 at p. 5) PG&E stated that time-of-use (TOU) tariffs are going to be present and important with respect to the impact of the standards on these products. (CAC: PG&E, Public Meeting Transcript at p. 113)

In response, DOE determined in its preliminary analysis that many utilities in the U.S. offer optional time-of-use (TOU) tariffs that generally charge consumers more for electricity during peak periods, when it presumably costs the utility more to provide electrical service, in exchange for lower rates at other times. To determine the effect of TOU pricing structures on residential consumers, DOE collected data on TOU tariffs for those utilities in its sample that offered optional TOU tariffs. DOE found that approximately 50 percent of customers in the sample were offered TOU tariffs. Coupling hourly energy savings derived from typical residential household and central air conditioner/heat pump load profiles with TOU tariffs, DOE was able to derive TOU-based marginal electricity prices. These data show that, currently, there is no significant difference (on average less than 2 percent) between TOU and default tariffs for the electricity costs used in the LCC and PBP analysis.

The consensus agreement includes EER standards in addition to SEER requirements in the hot-dry region for split-system and single-package central air conditioners. Efficiency requirements that would improve the EER of a central air conditioner in the hot-dry region are believed to improve the performance of the equipment at peak conditions when the equipment is operating at its full capacity. Because the TOU tariffs in hot-dry climates are likely to yield higher electricity prices during peak conditions, DOE placed renewed focus on deriving TOU-based marginal prices for the hot-dry region. DOE also investigated the impact of TDV of electricity in the hot-dry region, given that the most populous State in the region (California) has used TDV of electricity to evaluate efficiency measures in updates to its building code standards. TOU-based and TDV-based marginal prices are not significantly different from the marginal prices derived from default tariffs. Therefore, DOE determined that they would not have a significant effect on the economic justification of more-stringent efficiency standards. Appendix 8–D of the direct final rule TSD describes the analysis that compares marginal prices developed from TOU tariffs and TDV of electricity with marginal prices developed from non-TOU tariffs.

For commercial-sector prices, the existing tariff structures that DOE has used in it analysis of electricity prices already account for the effect that an end use, such as central air conditioning, has on marginal electricity prices. Because utilities bill their commercial customers with demand charges (*i.e.,* charges on power demand expressed in $/kW) in addition to energy charges, the resulting marginal prices reflect the contribution that air conditioning has on peak demand.

In the furnaces RAP, DOE stated that it will derive average monthly energy prices using recent EIA data for each of 13 geographic areas, consisting of the nine U.S. Census divisions, with four large States (New York, Florida, Texas, and California) treated separately, to establish appropriate energy prices for each sample household. It added that in contrast to the situation with residential air conditioner and heat pumps, for which the appliance's load primarily occurs during utility peak periods during the summer, electricity consumption of furnaces is not concentrated during peak periods, so DOE did not see a compelling reason to use marginal electricity prices.

Commenting on the furnaces RAP, Ingersoll Rand stated that DOE's intention to use average, not marginal, energy prices for the furnace LCC analysis is reasonable and avoids much unnecessary complexity. Ingersoll Rand further stated that, to improve accuracy, DOE should use State-level energy prices rather than prices determined according to Census division. (FUR: Ingersoll Rand, No. 1.3.006 at p. 11) In response, DOE agrees that average energy prices are appropriate for the furnace LCC analysis for the reason described above. DOE does not use State-level energy prices in its analyses, because the location of each sample household in the 2005 RECS dataset can be identified only within broad geographic regions. Thus, it would not be possible to make use of State-level energy prices in the LCC and PBP analysis. Accordingly, for the direct final rule analysis of furnaces, DOE derived average energy prices for the 13 geographic areas mentioned above. 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'').[61] 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 kilowatt-hour sales); and (2) weighting each utility by the number of residential consumers it served in that region. The direct final rule analysis used the data available for 2008.

DOE calculated average residential natural gas prices for each of the 13 geographic areas using data from EIA's ''Natural Gas Monthly.'' [62] 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. The direct final rule analysis used the data for 2009.

DOE estimated average residential liquefied petroleum gas (LPG) and oil prices for each of the 13 geographic

[60] TDV accounts for variations in electricity cost related to time of day, season, and geography. The concept behind TDV is that savings associated with energy efficiency measures should be valued differently at different times to better reflect the actual costs to users, the utility system, and society.

[61] Available at: *http://www.eia.doe.gov/cneaf/electricity/page/eia861.html.*

[62] Available at: *http://www.eia.gov/oil_gas/natural_gas/data_publications/natural_gas_monthly/ngm.html.*

areas based on data from EIA's State Energy Data System (SEDS) 2008.[63]

For each of the above energy forms, DOE disaggregated the annual energy prices into monthly prices using factors that relate historical prices for each month to the average annual prices.

5. Energy Price Projections

To estimate energy prices in future years for the central air conditioners and heat pumps preliminary TSD, DOE multiplied the average marginal electricity prices in each of the 13 geographic areas by the forecast of annual average residential or commercial electricity price changes in the Reference Case[64] derived from *AEO2009.* In the furnaces RAP, DOE stated its intention to use projections of national average natural gas, LPG, electricity, and fuel oil prices for residential consumers to estimate future energy prices, and to use the most recent available edition of the *AEO.*

Commenting on the furnaces RAP, Ingersoll Rand stated that using national-average price changes to forecast future energy prices may distort the regional results. (FUR: Ingersoll Rand, No. 1.3.006 at p. 9) In response, DOE agrees that using regional energy price forecasts is appropriate for the analysis in this rulemaking. For this rule, for central air conditioners and heat pumps as well as furnaces, DOE developed electricity price forecasts for the considered geographic areas using the forecasts by Census division for residential and commercial heating and cooling end uses from *AEO2010.* To estimate the electricity price trend after 2035 (the end year in *AEO2010* projections) and through 2060, DOE assumed that prices would rise at the average annual rate of change from 2020 to 2035 forecasted in *AEO2010.* To estimate the trends in natural gas, LPG, and fuel oil prices after 2035 and through 2060, DOE assumed that prices would rise at the average annual rate of change from 2020 to 2035 forecasted in *AEO2010.* DOE intends to update its energy price forecasts for the final rule based on the latest available *AEO.*

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 proper operation of the equipment.

a. Central Air Conditioners and Heat Pumps

In its central air conditioners and heat pumps preliminary analysis, DOE used *RS Means* and industry literature to obtain estimates of average repair costs and preventative maintenance costs. Both costs were scaled proportionately with equipment price for higher-efficiency equipment. DOE did not receive any significant comments on its procedure or findings. However, after further review, DOE determined that the actual functions carried out as part of annual preventative maintenance (such as coil cleaning or checking of system pressures) are tasks that are not affected by the cost of the equipment and, thus, would not be more expensive as efficiency increased. Therefore, for the direct final rule, maintenance costs were held constant as efficiency increased.

b. Furnaces

In the furnaces RAP, DOE stated that it will: (1) Estimate maintenance and repair costs at each considered efficiency level using a variety of sources, including *RS Means,* manufacturer literature, and information from expert consultants; and (2) account for regional differences in labor costs. DOE did not receive any significant comments on this topic.

For the direct final rule, DOE estimated costs for annual maintenance using data from a proprietary consumer survey[65] on the frequency with which owners of different types of furnaces perform maintenance. For condensing oil furnaces, the high quantity of sulfur in the fuel results in frequent cleaning of the secondary heat exchanger, and DOE accounted for this cost.

DOE estimated that about three percent of furnaces are repaired annually based on *Consumer Reports* data on frequency of repair for gas furnaces installed between 2000 and 2006.[66] DOE assumed that an average repair has a parts cost equivalent to one-fourth of the equipment cost, marked up by a factor of two, and requires 1.5 hours of labor.

7. Product Lifetime

In the central air conditioners and heat pumps preliminary analysis, DOE conducted an analysis of actual product lifetime in the field using a combination of shipments data, responses in RECS on the age of household central air conditioner and heat pump products, and total installed stock data in the U.S. Census's American Housing Survey (AHS).[67] DOE used RECS data from surveys conducted in 1990, 1993, 1997, 2001, and 2005. DOE used AHS data from surveys conducted every other year from 1991 to 2007. By combining the results of RECS and AHS with the known history of appliance shipments, DOE estimated the percentage of central air conditioner and heat pump products of a given age still in operation. This analysis yielded distributions with a mean life of 19 years for central air conditioners and 16.3 years for heat pumps.

Commenting on the central air conditioners and heat pumps preliminary TSD, Southern stated that the impact of the hydrochlorofluorocarbon (HCFC) R22 refrigerant phase-out on equipment lifetimes needs to be considered. (CAC: SCS, No. 73 at p. 4) By way of background, effective January 1, 2010, the Montreal Protocol requires the U.S. to reduce its consumption of HCFCs by 75 percent below the U.S. baseline cap. As of January 1, 2010, HVAC system manufacturers may only produce or import HCFC–22 to service existing equipment. Virgin HCFC–22 may not be used in new equipment. As a result, HVAC system manufacturers may not produce new air conditioners and heat pumps containing HCFC–22. The timeline for the phase-out of HCFC–22 in new equipment has been known since the mid-1990s. Since that time, the industry has sponsored considerable research into the development of refrigerant alternatives with zero ozone depletion potential, and they eventually settled on R–410a as a replacement. Manufacturers have been producing products that utilize R–410a for the past decade in anticipation of the 2010 phase-out date. DOE concluded that given the lead time accorded to the industry, and the fact that these products are widely distributed in the market, products manufactured with R–410a provide the same level of utility and performance, including product lifetime, as equipment utilizing HCFC–22.

In the furnaces RAP, DOE stated its intention to use an approach based on an analysis of furnace lifetimes in the field using a combination of shipments data, the stock of furnaces, RECS data

[63] Table S2a, Residential Sector Energy Price Estimates by Source (June 2010) (Available at: *http://www.eia.doe.gov/emeu/states/_seds.html*).

[64] 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.

[65] Decision Analysts, ''2008 American Home Comfort Study'' (2009).

[66] Consumer Reports, ''Brand Repair History: Gas furnaces'' (Jan. 2008) (Available at: *http://www.consumerreports.org/cro/appliances/heating-cooling-and-air/gas-furnaces/furnaces-repair-history-205/overview/index.htm*).

[67] Available at: *http://www.census.gov/hhes/www/housing/ahs/ahs.html.*

on the age of the furnaces in the surveyed homes, and AHS data on the total installed furnace stock. The same survey years were utilized to determine furnace lifetimes as were used for central air conditioners and heat pumps. Commenting on the furnaces RAP, Ingersoll Rand requested that DOE review and refine its lifetime estimate for gas furnaces, because the often-cited 18-year to 20-year lifetime may be unrealistically long. Instead, Ingersoll Rand stated that the mean population life expectancy for furnaces is probably in the range of 15–20 years. (FUR: Ingersoll Rand, No. 1.3.006 at pp. 8 & 10)

For the direct final rule analysis, DOE derived probability distributions ranging from minimum to maximum lifetime for the products considered in this rulemaking. For central air conditioners and heat pumps, DOE used the same approach as it did in the preliminary analysis. For furnaces, it used the approach described in the RAP. The mean lifetimes estimated for the direct final rule are 23.6 years for non-weatherized gas furnaces, 18.7 years for mobile home gas furnaces, and 29.7 years for oil-fired furnaces. Regarding the comment by Ingersoll Rand, DOE believes that the method DOE used is reasonable because it relies on data from the field on furnace lifetimes. DOE was not able to substantiate the validity of the life expectancy mentioned by Ingersoll Rand, because the commenter did not provide any corroborating data in its comment.

Chapter 8 of the direct final rule TSD provides further details on the methodology 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.

In its central air conditioners and heat pumps preliminary analysis, to establish consumer (residential) discount rates for the LCC analysis, DOE identified all debt or asset classes that might be used to purchase major appliances or 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 a number of years.[68] 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. For the purchase of products for new homes, which are included in the sales price of the home, DOE uses finance costs based on a distribution of mortgage rates. DOE assigned each sample household a specific discount rate drawn from the distributions.

In the central air conditioners and heat pumps preliminary analysis, DOE developed commercial discount rates based on the weighted average cost of capital (WACC) calculated for commercial businesses expected to occupy small commercial buildings. For the commercial cost of capital data, DOE relied on financial data found in the Damodaran Online Web site as of January 2009 (since updated to January 2010). In the furnaces RAP, DOE stated its intention to use the same approach for furnaces as it used in the central air conditioners and heat pumps preliminary analysis.

DOE did not receive any significant comments on consumer discount rates. Therefore, for the direct final rule, DOE used the same approach as it used in the central air conditioners and heat pumps preliminary analysis, with minor modifications to the estimation of risk-free rates and risk premiums that are needed to calculate WACC. See chapter 8 in the direct final rule TSD for further details on the development of discount rates for the LCC analysis.

9. Compliance Date of Amended Standards

In the context of EPCA, the compliance date is the future date when parties subject to a new or amended standard must meet its applicable requirements. DOE calculates the LCC and PBP for each of the considered efficiency levels as if consumers would purchase new products in the year compliance with the standard is required.

For the reasons discussed in section III.C, DOE determined that for all TSLs analyzed—except for the consensus agreement TSL—DOE is bound to calculate compliance dates in accordance with EPCA. For those TSLs, the analysis accounts for a five-year lead time between the publication of the final rule for furnaces and central air conditioners and heat pumps and the date by which manufacturers must comply with the amended standard.

A final rule for the products that are the subject of this rulemaking is scheduled to be completed by June 30, 2011. Thus, for most of the TSLs analyzed, compliance with amended standards for furnaces and central air conditioners and heat pumps would be required in 2016. Accordingly, for purposes of the LCC and PBP analysis, DOE used 2016 as the year compliance with the amended standards is required.

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 estimates the distribution of product efficiencies that consumers would purchase under the base case (*i.e.,* the case without new or amended energy efficiency standards) in the year compliance with the standard is required. DOE refers to this distribution of product efficiencies as a base-case efficiency distribution. DOE develops base-case efficiency distributions for each of the considered product classes.

a. Energy Efficiency

In the central air conditioners and heat pumps preliminary analysis, DOE assumed that the base-case efficiency distributions in 2016 would be the same as in 2008. Southern commented that it is not reasonable to assume efficiencies are going to stay frozen from 2008 to 2016, as there has been a huge increase in utility incentive programs for higher-efficiency units. Southern stated that there will be some increase in the shipment-weighted efficiency between 2008 and 2016. (CAC: SCS, Public Meeting Transcript at p. 196) HARDI commented that DOE must incorporate the role that energy efficiency incentive programs play in the sale and installation of higher-efficiency units. (CAC: HARDI, No. 70 at p. 1)

In the furnaces RAP, DOE stated that its development of base-case efficiency distributions will use available data on recent market trends in furnace efficiency and will take into account the potential impacts of the ENERGY STAR program and other policies that may affect the demand for more-efficient furnaces. Commenting on the furnaces RAP, several parties stated that DOE should consider the extent to which incentives and other market forces are expanding the market for high-efficiency furnaces even without new standards. (FUR: AGA, No. 1.3.010 at p. 2 & pp. 5–6; APGA, No. 1.3.004 at p. 4; and HARDI, No. 1.2.006 at pp. 168–70)

For the direct final rule analysis, DOE considered incentives and other market forces that have increased the sales of high-efficiency furnaces and central air conditioners and heat pumps to estimate base-case efficiency distributions for the considered products. DOE started with data provided by AHRI on historical shipments for each product class. For

[68] Available at: *http://www.federalreserve.gov/pubs/oss/oss2/scfindex.html.* The surveys used range from 1989 to 2007.

non-weatherized gas furnaces, the historical shipments data were further specified by region and type of furnace (*i.e.,* non-condensing or condensing). DOE then used data on the distribution of models in AHRI's Directory of Certified Product Performance: Furnaces (October 2010) [69] to disaggregate shipments among condensing efficiency levels for 2009. For central air conditioners and heat pumps, the historical shipments data were accompanied with annual shipment-weighted efficiency data by product class. DOE then used data from the Air-Conditioning, Heating, and Refrigeration (ACHR) News [70] to disaggregate shipments among efficiency levels for 2008.

DOE forecasted the non-weatherized gas furnace and central air conditioner and heat pump efficiency distributions to 2011 based on the average growth in efficiency from 2006 to 2009. The historical efficiency data from AHRI indicate a rapid growth in average equipment efficiency, based in large part on the availability of Federal tax credits for the purchase of high-efficiency products. The Federal tax credits expire on December 31, 2011. After the expiration, DOE believes that the demand for high-efficiency products is likely to decline somewhat initially, but it assumed that the average efficiency will then increase at the historic rate seen in the decade prior to availability of the Federal tax credits. For further information on DOE's estimation of the base-case efficiency distributions for non-weatherized gas furnaces and central air conditioners and heat pumps, see chapter 8 of the direct final rule TSD.

Table IV.14 shows the estimated base-case efficiency distributions in 2016 for non-weatherized gas furnaces. Table IV.15 shows the estimated base-case efficiency distributions in 2016 for the four primary central air conditioner and heat pump product classes. DOE was unable to develop unique efficiency distributions by region, as data were not provided by AHRI on a regional basis. Therefore, DOE assumed that the efficiency distributions are the same in each region.

TABLE IV.14—BASE-CASE EFFICIENCY DISTRIBUTION IN 2016 FOR NON-WEATHERIZED GAS FURNACES

| Efficiency | North | South | National |
|---|---|---|---|
| *AFUE* | *Market share in percent* | | |
| 80% | 29.1 | 75.6 | 48.1 |
| 90% | 13.7 | 4.7 | 10.0 |
| 92% | 33.6 | 11.6 | 24.6 |
| 95% | 23.0 | 7.9 | 16.9 |
| 98% | 0.6 | 0.2 | 0.4 |

TABLE IV.15—BASE-CASE EFFICIENCY DISTRIBUTION IN 2016 FOR CENTRAL AIR CONDITIONERS AND HEAT PUMPS

| Efficiency | Split CAC | Split HP | Single-package CAC | Single-package HP |
|---|---|---|---|---|
| *SEER* | *Market share in percent* | | | |
| 13.0 | 24.0 | 13.0 | 62.7 | 32.1 |
| 13.5 | 47.0 | 40.0 | 20.0 | 32.0 |
| 14.0 | 4.0 | 10.0 | 14.3 | 28.9 |
| 14.5 | 7.3 | 13.0 | 2.0 | 5.0 |
| 15.0 | 5.8 | 11.5 | 1.0 | 2.0 |
| 15.5 | 2.0 | 3.5 | 0.0 | 0.0 |
| 16.0 | 7.0 | 5.0 | 0.0 | 0.0 |
| 16.5 | 0.5 | 2.0 | 0.0 | 0.0 |
| 17.0 | 1.0 | 1.5 | 0.0 | 0.0 |
| 18.0 | 0.7 | 0.5 | 0.0 | 0.0 |
| 19.0 | 0.3 | 0.0 | 0.0 | 0.0 |
| 20.0 | 0.2 | 0.0 | 0.0 | 0.0 |
| 21.0 | 0.2 | 0.0 | 0.0 | 0.0 |
| 22.0 | 0.1 | 0.0 | 0.0 | 0.0 |

For mobile home gas furnaces and oil-fired furnaces, DOE used data in the AHRI furnace models directory and manufacturer input to estimate current efficiency distributions. Because there is little indication of a trend in efficiency for these products, DOE assumed that the efficiency distributions in 2016 will be the same as in the current market (see Table IV.16).

[69] See: *http://www.ahridirectory.org/.*

[70] ACHR News, ''Higher SEERs got popular'' (Dec. 24, 2007) (Available at: *http://www.achrnews.com/Articles/Web_Exclusive/BNP_GUID_9–5–2006_A_10000000000000222513*).

**Table IV.16 Base-Case Efficiency Distribution in 2016 for Mobile Home Gas Furnaces and Oil-Fired Furnaces**

| Mobile Home Furnaces | | Oil-fired Furnaces | |
|---|---|---|---|
| **Efficiency** | **National** | **Efficiency** | **National** |
| ***AFUE*** | ***Market share in percent*** | ***AFUE*** | ***Market share in percent*** |
| 80% | 90 | 82% | 42 |
| 90% | 2 | 83% | 20 |
| 92% | 4 | 84% | 6 |
| 96% | 4 | 85% | 32 |
| | | 97% | 1 |

b. Standby Mode and Off Mode Power

DOE also estimated base-case efficiency distributions for furnace standby mode and off mode power. As discussed in section IV.C.7.c, DOE considered efficiency levels only for furnaces with ECM motors. Baseline products contain the highest energy-consuming components, which include an ECM blower motor (rather than a PSC). Although DOE's test results for furnaces showed that the standby mode and off mode consumption could be reduced by eliminating certain features (*e.g.,* replacing an ECM blower motor with a PSC motor), DOE did not consider these reductions because the elimination of such features and components would result in a reduction of consumer utility. (The ECM motor maintains constant airflow volume and is suited for two-speed equipment, which allows the consumer to maintain better comfort.) In its analysis, DOE only considered efficiency levels that could be implemented with no noticeable impacts on the performance and utility of the unit. As shown in Table IV.17 through Table IV.19, DOE estimated that all of the affected market would be at the baseline level in 2016.

TABLE IV.17—STANDBY MODE AND OFF MODE BASE-CASE EFFICIENCY DISTRIBUTION IN 2016 FOR NON-WEATHERIZED GAS FURNACES AND ELECTRIC FURNACES

| Efficiency level | Motor type | Standby/off-mode *watts* | Market share in percent* |
|---|---|---|---|
| Baseline | ECM | 11.0 | 100 |
| 1 | ECM | 9.8 | 0 |
| 2 | ECM | 9.0 | 0 |

* Refers to share of furnaces with ECM motor.

TABLE IV.18—STANDBY MODE AND OFF MODE BASE-CASE EFFICIENCY DISTRIBUTION IN 2016 FOR OIL-FIRED FURNACES

| Efficiency level | Motor type | Standby/off-mode *watts* | Market share in percent* |
|---|---|---|---|
| Baseline | ECM | 12.0 | 100 |
| 1 | ECM | 10.8 | 0 |
| 2 | ECM | 10.0 | 0 |

* Refers to share of furnaces with ECM motor.

TABLE IV.19—STANDBY MODE AND OFF MODE BASE-CASE EFFICIENCY DISTRIBUTION IN 2016 FOR MOBILE HOME GAS FURNACES

| Efficiency level | Motor type | Standby/off-mode *watts* | Market share in percent* |
|---|---|---|---|
| Baseline | ECM | 11.0 | 100 |
| 1 | ECM | 9.8 | 0 |
| 2 | ECM | 9.0 | 0 |

* Refers to share of furnaces with ECM motor.

DOE also estimated base-case efficiency distributions for central air conditioner and heat pump off mode power. As discussed in section IV.C.7.c, DOE considered efficiency levels only for air conditioning and heat pump equipment with crankcase heaters. DOE found that crankcase heaters account for the vast majority of off mode power consumption for air conditioners and heat pumps. However, not every unit has a crankcase heater and, to accurately

reflect this in the analyses, DOE determined separate efficiency levels within each product class for units with and without a crankcase heater. Although DOE's test results for central air conditioners and heat pumps showed that the standby mode and off mode consumption could be reduced eliminating certain features (such as the crankcase heater), DOE did not consider such measures because the elimination of the features and components would result in a reduction of consumer utility.[71] In its analysis, DOE only considered designs that could be implemented with no noticeable impacts on the performance and utility of the unit.

As shown in Table IV.20, for split-system air conditioners, DOE estimated that 60 percent of the affected market would be at the baseline level, 30 percent at efficiency level 1, and 10 percent at efficiency level 2 in 2016. Because off mode power consumption is a function of system type (*i.e.,* blower-coil or coil-only), the market share is further disaggregated by system type for each efficiency level. As a result of this further disaggregation, two different off mode power consumption levels are reported at each efficiency level.

TABLE IV.20—OFF MODE BASE-CASE EFFICIENCY DISTRIBUTION IN 2016 FOR SPLIT-SYSTEM CENTRAL AIR CONDITIONERS

| Efficiency level | AC type | Off-Mode *watts* | Market share of affected market in percent* | |
|---|---|---|---|---|
| | | | By efficiency level | By efficiency level and AC type |
| Baseline | Blower-Coil | 48 | 60 | 6 |
| | Coil-Only | 40 | | 54 |
| 1 | Blower-Coil | 36 | 30 | 1 |
| | Coil-Only | 28 | | 9 |
| 2 | Blower-Coil | 30 | 10 | 3 |
| | Coil-Only | 22 | | 27 |
| 3 | Blower-Coil | 29 | 0 | 0 |
| | Coil-Only | NA | | 0 |

* Refers to share of air conditioners with crankcase heaters.

As shown in Table IV.21, for single-package air conditioners, DOE estimated that 60 percent of the affected market would be at the baseline level, 30 percent at efficiency level 1, and 10 percent at efficiency level 2 in 2016. For split-system and single-package heat pumps (Table IV.22), DOE estimated that 50 percent of the affected market would be at the baseline level and 50 percent at efficiency level 1 in 2016. The off mode power consumption levels associated with ECM-equipped systems set the wattage limitations for each of the efficiency levels considered. Of further note, in the case of efficiency level 3 for single-package air conditioners and efficiency level 2 for heat pumps, only the fraction of the market equipped with ECMs is impacted. Single-package air conditioners with PSC motors that comply with the off mode power requirements in efficiency level 2 already meet the requirements in efficiency level 3. For heat pumps, units with PSC motors that comply with the off mode power requirements in efficiency level 1 already meet the requirements in efficiency level 2.

TABLE IV.21—OFF MODE BASE-CASE EFFICIENCY DISTRIBUTION IN 2016 FOR SINGLE-PACKAGE CENTRAL AIR CONDITIONERS

| Efficiency level | Off-Mode *watts* | Market share of affected market in percent* |
|---|---|---|
| Baseline | 48 | 60 |
| 1 | 36 | 30 |
| 2 | 30 | 10 |
| 3** | 29 | 0 |

* Refers to fraction of central air conditioners with crankcase heaters.

** Impacts only that fraction of the market with ECMs; market with PSC motors meeting efficiency level 2 already meet efficiency level 3 off mode power requirements.

TABLE IV.22—OFF MODE BASE-CASE EFFICIENCY DISTRIBUTION IN 2016 FOR SPLIT-SYSTEM AND SINGLE-PACKAGE HEAT PUMPS

| Efficiency level | Off-Mode *watts* | Market share of affected market in percent * |
|---|---|---|
| Baseline | 50 | 50 |
| 1 | 33 | 50 |

TABLE IV.22—OFF MODE BASE-CASE EFFICIENCY DISTRIBUTION IN 2016 FOR SPLIT-SYSTEM AND SINGLE-PACKAGE HEAT PUMPS—Continued

| Efficiency level | Off-Mode *watts* | Market share of affected market in percent * |
|---|---|---|
| 2** | 32 | 0 |

* Refers to fraction of heat pumps with crankcase heaters.

** Impacts only that fraction of the market with ECMs; market with PSC motors meeting efficiency level 1 already meet efficiency level 2 off mode power requirements.

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

[71] Crankcase heaters are used in some compressors and prevent refrigerant condensation in the crankcase of a compressor. Without the crankcase heater, the condensed refrigerant will mix with the crankcase oil, resulting in a watery mixture that can wash out compressor bearings, leading to premature compressor failure.

increase in 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 needed. The results of DOE's PBP analysis are presented in section V.B.1.

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 DOE's analysis are presented in section V.B.1.

*G. National Impact Analysis—National Energy Savings and Net Present Value*

The national impact analysis (NIA) assesses the national energy savings (NES) and the national net present value (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 users 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 most of the TSLs considered in the present analysis, DOE forecasted the energy savings from 2016 through 2045, and it calculated product costs, operating cost savings, and NPV of consumer benefits for products sold from 2016 through 2045. For TSL 4, which matches the recommendations in the consensus agreement, DOE forecasted the energy savings from 2015 through 2045 for central air conditioners and heat pumps, and from 2013 through 2045 for furnaces.[72] For TSL 4, it calculated product costs, operating cost savings, and NPV of consumer benefits for products sold in these periods.

DOE evaluates the impacts of new or 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 (*i.e.,* 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 products with efficiencies greater than the standard.

To make the analysis more accessible and transparent to all interested parties, DOE makes publicly available a spreadsheet model (in Excel format) to calculate the energy savings and the national consumer costs and savings from each TSL. The TSD and other documentation that DOE provides during the rulemaking explain the models and how to use them, and interested parties can review DOE's analyses and also change various input values 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* High Economic Growth and Low 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, respectively, 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.23 summarizes the inputs and methodology DOE used for the NIA analysis for the central air conditioners and heat pumps preliminary analysis and the changes to the analyses for this rule. For the direct final rule analysis, DOE used the same basic methodology for furnaces as it used for central air conditioners and heat pumps. Discussion of these inputs and methods follows the table. See chapter 10 of the direct final rule TSD for further details.

TABLE IV.23—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS

| Inputs | Preliminary TSD | Changes for the Direct Final Rule |
|---|---|---|
| Shipments | Annual shipments from shipments model | No change. |
| Compliance Date of Standard | 2016. * | No change. |
| Base-Case Forecasted Efficiencies. | Based on historical SWEF ** growth rates from 1992 to 2005. | No change in basic approach; modified efficiency distributions based on new information from AHRI; historical SWEF growth rates from 1993 to 2002 (CAC and HP) or 2005 (Furnaces) used to forecast efficiencies. |
| Standards-Case Forecasted Efficiencies. | Used a ''roll-up'' scenario to establish the distribution of efficiencies in the compliance year; forecasted efficiencies based on historical SWEF growth rates from 1992 to 2005 (same as base case). | Modified efficiency distributions based on new information. Retained ''roll-up'' scenario. Forecasted efficiencies based on maintaining constant per-unit total installed costs relative to base case. |
| Annual Energy Consumption per Unit. | Annual weighted-average values as a function of SWEF. | No change. |

[72] Compared to all other TSLs, the compliance date for TSL 4 is earlier for furnaces (in 2013) and for central air conditioners and heat pumps (in 2015). DOE used the same end year for TSL 4 as for all other TSLs to demonstrate the additional national impacts that would result from these earlier compliance dates.

TABLE IV.23—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS—Continued

| Inputs | Preliminary TSD | Changes for the Direct Final Rule |
|---|---|---|
| Total Installed Cost per Unit | Annual weighted-average values as a function of SWEF. | Incorporated learning rate to forecast product prices. |
| 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 are discounted to 2010 | Future expenses are discounted to 2011, when the final rule will be published. |

* The compliance date used for TSL 4 is 2013 for furnaces and 2015 for central air conditioners and heat pumps.
** Shipments-Weighted Energy Factor.

1. Shipments

The shipments portion of the NIA spreadsheet is a model that uses historical data as a basis for projecting future shipments of the products that are the subjects of this rulemaking. In DOE's shipments models, shipments of products are driven by replacement of the existing stock of installed products, new home or building construction, and existing households or buildings that do not already own the product (referred to hereafter as ''new owners''). Central air conditioners and heat pumps are used in some commercial buildings as well as for residences. Based on industry input, DOE estimated that 7 percent of central air conditioner and heat pump shipments are to commercial applications, and accounted for these shipments in the shipments model.

The shipments model takes 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 relevant years. The age distribution of in-service product stocks is a key input to NES and NPV calculations because operating costs for any year depend on the age distribution of the stock. DOE used historical product shipments to assist in calibrating the shipments model.

For the central air conditioners and heat pumps preliminary analysis, AHRI provided historical shipments data for each of the four primary product classes—split-system air conditioners, single-package air conditioners, split-system heat pumps, and single-package heat pumps. AHRI also provided regional shipments data for each product class for two years—2008 and 2009. The limited regional shipments data, in combination with calibration of the resulting product stock saturations to the values specified by past RECS surveys and U.S. Census Bureau American Housing Survey (AHS) data, allowed DOE to develop historical residential shipments disaggregated by region. Commercial shipments were allocated regionally based on the percentage allocations determined for residential shipments.

In the furnaces RAP, DOE stated its intention to: (1) Develop base-case shipments forecasts for each of the four Census regions that, in turn, could be aggregated to produce regional or national forecasts; and (2) to project shipments of residential furnaces by primarily accounting for sales to the replacement market and new homes.

For the direct final rule analysis, DOE's base-case shipments forecasts used the same approach for central air conditioners and heat pumps as was used in the preliminary analysis, and used the approach described in the RAP for furnaces. For details on the shipments analysis, see chapter 9 of the direct final rule TSD.

a. Impact of Potential Standards on Shipments

For the central air conditioners and heat pumps preliminary analysis, to estimate the impact that potential standards would have on product shipments, DOE analyzed the impact that purchase price, operating costs, and household income have had on historical central air conditioner and heat pump shipments. From this analysis, DOE derived a relative price elasticity that estimates shipments impacts as a function of the increase in purchase price, operating cost savings, and household income. Although the correlation among historical shipments and the above three parameters is not strong, there is enough evidence to suggest a connection. Of the three parameters, purchase price has the most significant impact on product shipments (an increase in product purchase price will lead to a decrease in product shipments). DOE only considered shipments decreases in the replacement and new owner markets.[73] In the case of the replacement market, DOE assumed that any drop in shipments would be caused by consumers deciding to repair rather than replace their products. DOE estimated that the extended repair would last 6 years, after which time the products would be replaced.

Commenting on the central air conditioners and heat pumps preliminary TSD, HARDI expressed concern that increases in the minimum efficiency required of residential central air conditioner units could lead to increased repair of legacy units, which would impact sales of new units. (CAC: HARDI, No. 56 at p. 3) Ingersoll Rand expressed a similar view, arguing that such a trend was noticeable after the implementation of the 13–SEER central air conditioner standard. (CAC: Ingersoll Rand, No. 66 at p. 3)

In the furnaces RAP, DOE stated its intention to develop standards-case forecasts that reflect the projected impacts of potential standards on product shipments. In the planned approach, the magnitude of the difference between the standards-case and base-case shipment forecasts depends on the estimated purchase price increase, as well as the operating cost savings caused by the considered

[73] Because most new construction is now routinely equipped with either a central air conditioner or heat pump, DOE assumed that any increase in purchase price caused by standards would not affect the decision to install a central air conditioner or heat pump system in new construction.

energy conservation standard, relative to household income.

Commenting on the furnaces RAP, several parties stated that DOE should consider that high installed costs resulting from amended energy conservation standards might cause some consumers to repair their existing furnaces instead of replacing them with higher-efficiency units. Specifically, AGA stated that DOE has not considered the likelihood of repair over replacement of existing furnaces, particularly where replacement of non-condensing furnaces with condensing furnaces has potentially high venting system upgrade costs. (FUR: AGA, No. 1.3.010 at p. 2) Carrier stated that the economic burden of a 90-percent AFUE standard may lead some consumers in some areas not to replace a furnace that they might otherwise replace. (FUR: Carrier, No. 1.2.006 at p. 207) APGA made the same point, adding that the installation cost adders (*i.e.,* costs over and above typical costs) of furnaces at 90-percent AFUE and above could even lead to the need for replacement of heat exchangers. (FUR: APGA, No. 1.3.004 at p. 3) Ingersoll Rand stated that preservation of the existing HVAC system is a very real prospect if the price for increased efficiency is not deemed warranted by the consumer. It added that if amended standards would require a condensing furnace with an ECM blower in a climate where consumers do not feel the added expense is warranted, they will be disposed to extend the life of the existing furnace, even to the point of replacing a heat exchanger and burners if that is necessary. (FUR: Ingersoll Rand, No. 1.3.006 at p. 12) AGA and APGA stated that DOE particularly needs to consider the likelihood of higher rates of repair over replacement in manufactured housing, where owners may have limited ability to afford a condensing furnace as a replacement. (FUR: AGA, No. 1.3.010 at p. 5; APGA, No. 1.3.004 at p. 4) HARDI stated that increases in minimum efficiency standards for HVAC systems could encourage repair of existing systems in need of replacement, which could risk the health and safety of homeowners. (FUR: HARDI, No. 1.3.016 at p. 3)

DOE agrees that amended standards that result in considerably higher installed costs could lead some consumers to repair their existing furnace, central air conditioner, or heat pump instead of replacing it with a new, higher-efficiency unit. However, DOE is not aware of a satisfactory approach for estimating the extent of this phenomenon. There exists considerable uncertainty regarding the metric that consumers might use to make the decision to repair rather than replace their HVAC equipment. In addition, there are a variety of potential repair possibilities, each having different costs and impacts on extending equipment lifetime, and DOE has no way to estimate which types of repair would be most likely. Thus, DOE was not able to explicitly model the extent to which consumers might repair their existing furnace (or central air conditioner or heat pump) instead of replacing it with a higher-efficiency unit. Instead, for the direct final rule analysis, DOE used the same approach as in the central air conditioners and heat pumps preliminary TSD to estimate the impact that standards may have on shipments of central air conditioners, heat pumps, and also furnaces. That is, DOE applied a relative price elasticity that estimates shipments impacts as a function of the increase in purchase price, operating cost savings, and household income. Application of this elasticity parameter likely captures some of the effects of ''extended repair'' by some consumers. Although the elasticity parameter was estimated using data on historical central air conditioner and heat pump shipments, DOE believes that it is reasonable to apply it to the case of furnaces as well, given the broad similarities in the markets for residential central air conditioning and heating equipment.

Regarding the expressed concern that repair of existing systems in need of replacement could risk the health and safety of homeowners, DOE notes that contractors have a legal responsibility to perform repairs according to the requirements of applicable codes. Further, issues about sub-standard repair practices could as well arise in the absence of amended standards.

Because home builders are sensitive to the cost of HVAC equipment, a standard level that significantly increases purchase price may induce some builders to switch to a different heating system than they would have otherwise installed. Such an amended standard level may also induce some home owners to replace their existing furnace at the end of its useful life with a different type of heating product, although in this case, switching may incur additional costs to accommodate the different product. The decision to switch is also affected by the prices of the energy sources for competing equipment. For the central air conditioners and heat pumps preliminary analysis, DOE used the relative price elasticity described above to account for any equipment switching that may result from standards requiring higher-efficiency products. That is, equipment switching was implicitly included in the response to higher equipment prices that is modeled using the elasticity parameter. In the furnaces RAP, DOE stated its intention to account for fuel and equipment switching that may result from amended standards requiring higher-efficiency furnaces.

Commenting on the furnaces RAP, some parties stated that a standard requiring condensing furnaces could cause some consumers to switch from gas furnaces to electric resistance heating systems. (FUR: AGA, No. 1.3.010 at p. 6; APGA, No. 1.3.004 at p. 3; NPGA, No. 1.3.005 at p. 3) NPGA stated that in existing homes with central air conditioning and gas furnaces, switching to a heat pump represents a feasible option. (FUR: NPGA, No. 1.3.005 at p. 3) AGA and APGA also stated that a standard requiring condensing furnaces could cause some consumers with hybrid heat pump/furnace-backup heating systems to switch to all-electric heat pump systems. (AGA, No. 1.3.010 at p. 7; APGA, No. 1.3.004 at p. 3)

Several parties regarded fuel switching as unlikely for a variety of reasons. ACEEE stated that the barriers to fuel switching in the retrofit market are high enough that few cases will be encountered. As an example, it stated that switching from a heat pump to a gas furnace is prohibitively expensive if gas service is not already available at the curb or in the house. With respect to fuel switching in new construction, ACEEE stated that it expects builders to seek favorable terms for installing gas heat and water heat rather than switch to electric heating. (FUR: ACEEE, No.1.3.009 at pp. 7–8) NEEP stated they found no reason consumers would switch from gas-fueled to either oil-fueled or electric technologies in response to standards. (NEEP, No. 1.3.021 at pp. 2–3) HARDI stated that a change in efficiency standards is unlikely to spur fuel switching, which more commonly is driven by energy costs. (HARDI, No. 1.3.016 at p. 10) Ingersoll Rand stated that consumers tend to heat with gas if it is available. It added that retail gas suppliers can be expected, on the whole, to maintain gas prices at a level to discourage switching in existing homes, and with new construction, to strive to remain competitive in areas they wish to serve. (FUR: Ingersoll Rand, No. 1.3.006 at p. 14)

For the direct final rule, DOE did not explicitly quantify the potential for fuel switching from gas furnaces to electric heating equipment, based upon the following reasoning. DOE conducted a

thorough review of the 2005 RECS to assess the type of space-heating system utilized by consumers as a function of house heating load. Gas furnaces are primarily utilized in households with high heating loads, while electric space heating systems are almost exclusively used in households with low heating loads. Generally, this is because the operating costs of electric space heating systems are relatively high due to the price of electricity, so using an electric system in a cold climate is significantly more expensive than using a gas furnace. Based on the above finding, DOE inferred that consumers with high heating loads would be unlikely to switch to electric space heating systems as a result of amended standards. In addition, for a household with a gas furnace to switch to electric space heating, a separate circuit up to 30-amps would need to be installed at a cost of approximately $300 to power the electric resistance heater within an electric furnace or heat pump system.[74] On average, the electrical circuit cost is approximately 60 percent of the added installation cost of a more expensive venting system required for high-efficiency, condensing furnaces, further diminishing the likelihood of a consumer switching from gas to electric heating.

As briefly described above, for the direct final rule, DOE conducted an analysis of the potential for equipment switching between a split system heat pump and the combination of a split system central air conditioner and electric furnace. To estimate the likelihood of equipment switching between these two systems, DOE utilized proprietary data from Decision Analysts,[75] which identified for a representative sample of consumers their willingness to purchase more-efficient space-conditioning systems. From these data, DOE deduced the payback period that consumers would expect for a more-expensive but more-efficient product. For each pairing of split heat pump and split air conditioner efficiency levels, DOE applied the payback period criterion to estimate the fraction of consumers who would be expected to switch to the other type of equipment. For example, when comparing a 15 SEER split system heat pump and a combination of a 14 SEER split air conditioner and an electric furnace, DOE calculated the payback period of the more-efficient split system heat pump relative to the less-expensive combination of split air conditioner and electric furnace. If the resulting payback period for the split system heat pump exceeded the expected payback period deduced from the Decision Analysts' data, DOE forecasted that the consumer would switch to the combination of split air conditioner and electric furnace. For every possible pairing of split system heat pump and split system air conditioner efficiencies, DOE calculated the fraction of consumers who would be expected to switch from one type of split system to the other. The fraction of consumers switching was in turn used by DOE to forecast split system heat pump and split system air conditioner shipments in specific standards cases, as well as the increase in electric furnace shipments. Including the latter in accounting for the impacts of equipment switching is important for proper determination of national energy savings and national economic impacts.

Because measures to limit standby mode and off mode power consumption have a very small impact on equipment total installed cost, and thereby would have a minimal effect on consumer purchase decisions, DOE did not analyze the impact to central air conditioner, heat pumps, and furnace shipments due to potential standards limiting standby mode and off mode power consumption. In other words, DOE estimated that base-case product shipments would be unaffected by standards to limit standby mode and off mode power consumption.

For details on DOE's analysis of the impacts of standards on shipments, see chapter 9 of the direct final rule TSD. For details on DOE's analysis of equipment and fuel switching, see appendix 9–A 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 describes how DOE developed a base-case energy efficiency distribution (which yields a shipment-weighted average efficiency (SWEF)) for each of the considered product classes for the compliance year used in the LCC analysis (2016). To forecast base-case efficiencies over the entire forecast period for the direct final rule, DOE extrapolated from the historical trends in efficiency, as described below.

For central air conditioners and heat pumps, DOE reviewed historical SWEF data from 1990 to 2009 provided by AHRI. The historical data, which encompassed years when new standards for central air conditioners and heat pumps required compliance (1992 and 2006), specified SWEFs for each of the four primary central air conditioner and heat pump product classes. DOE considered only the 1993 to 2002 time period to forecast SWEF growth rates in order to factor out: (1) Any lingering effects on equipment SWEFs from industry efforts to comply with the 1992 standards; (2) any anticipatory efforts by the industry to comply with the 2006 standards that DOE issued in 2001; and (3) the effects of recent Federal tax credits to promote the purchase of high-efficiency central air conditioners and heat pumps. From 1993 to 2002, central air conditioner and heat pump efficiency increased, on average, by 0.5 to 0.7 SEER, depending on product class, which is an efficiency growth rate of approximately 0.06 to 0.07 SEER per year.

For non-weatherized gas furnaces, DOE was provided historical data from 1990 to 2009 by AHRI, detailing the market shares of non-condensing (80 percent AFUE and less) and condensing (90 percent AFUE and greater) equipment.[76] Similar to its approach for central air conditioners and heat pumps, DOE used only the data from 1993 to 2002 to factor out the lingering effects of new furnace standards that required compliance in 1992 as well as the effects of market-pull programs, including recent Federal tax credits, to promote the purchase of high-efficiency condensing furnaces. From 1993 to 2002, non-weatherized gas furnace efficiency increased, on average, by 0.5 AFUE and 1.5 AFUE percentage points in the southern and northern U.S., respectively, which implies efficiency growth rates of approximately 0.05 and 0.17 AFUE percentage points per year.

DOE used the above growth rates for central air conditioners and heat pumps and furnaces to forecast base-case SWEFs over the forecast period. Due to the lack of historical efficiency data for mobile home and oil-fired furnaces, DOE estimated that product efficiency distributions would remain the same throughout the forecast period.

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

[74] Based on RS Means, *Residential Cost Data 2010,* Reed Construction Data, Kingston, MA.

[75] Decision Analysts, ''2008 American Home Comfort Study'' (2009).

[76] The market share of furnaces with AFUE between 80 and 90 percent is well below 1 percent due to the very high installed cost of 81-percent AFUE furnaces, compared with condensing designs, and concerns about safety of operation.

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 retains the pattern of the base-case efficiency distribution but reorients the distribution at and above the potential new minimum energy conservation standard.

In the central air conditioners and heat pumps preliminary TSD, DOE concluded that amended standards will cause baseline models to roll up to the standard efficiency level in the year of compliance, but that some fraction of shipments will remain above the minimum. DOE calculated the SWEFs from the resulting efficiency distribution. In the years following the year of compliance, DOE estimated that SWEFs will continue to grow at the rate observed between 1992 and 2005 until the max-tech efficiency level is attained, at which point the SWEF was held constant.

Commenting on the furnaces RAP, NRDC and ASAP stated that market penetration in standards cases will resemble the shift scenario more than the roll-up scenario. (FUR: NRDC, No. 1.3.020 at p. 10; ASAP, No. 1.2.006 at p. 216) NRDC added that the existence of successful Federal tax incentives for furnaces with 95 percent AFUE indicates that sales of these units are likely to continue to increase. (FUR: NRDC, No. 1.3.020 at p. 11) In contrast, HARDI commented that roll-up and shift scenarios are unlikely under an amended energy conservation standard, and stated that an increase in minimum efficiency standards for furnaces or central air conditioners and heat pumps is likely to negatively impact the other energy efficiency programs that have been vital to achieving the growing penetration of higher-efficiency HVAC systems. (FUR: HARDI, No.1.3.016 at p. 3) ACEEE stated there is no strong reason to choose a roll-up scenario instead of a shift scenario based on the available evidence, and ACEEE encouraged DOE to consider both scenarios, premised on the likelihood of the continuation of incentives if there is a 90-percent AFUE furnace efficiency standard for the north. (FUR: ACEEE, No.1.3.009 at p. 8) The California IOUs also supported the use of both the roll-up and shift scenarios. (FUR: CA IOUs, No. 1.3.017 at p. 5)

In response, DOE again reviewed the historical efficiency data for central air conditioners and heat pumps and furnaces from AHRI. It did not find any evidence to support a shift in the efficiency distribution in the year of compliance with amended standards. Therefore, for the direct final rule analysis, DOE decided to continue to utilize the roll-up scenario for central air conditioners and heat pumps in order to forecast the impact of standards for the year of compliance. DOE applied the roll-up scenario to furnaces as well. However, DOE agrees with the suggestion by some of the commenters that the efficiency distribution will shift after compliance with amended standards is required. DOE captured this expected market change in its forecast of efficiency in the standards cases, as described below.

To forecast standards-case SWEFs after the year of compliance, rather than use the same efficiency growth rate as the base case, DOE developed growth trends for each candidate standard level that reflect the likelihood that the consumer willingness to pay for an increment of efficiency will be the same in the base case and the standards case. In revising its analysis, DOE found that the cost of a relatively small efficiency improvement over the most common product in the standards case is much higher than in the base case. Therefore, assuming the same efficiency increment in the base case and standards case would imply that the consumer willingness to pay for an increment of efficiency would dramatically increase under standards without the addition of any incentives or information. This is a phenomenon that DOE has not observed in any of its efficiency market analysis or modeling investigations. Therefore, for the direct final rule, DOE developed an approach in which the growth rate slows over time in response to the increasing incremental cost of efficiency improvements. DOE assumed that the rate of adoption of more-efficient products under a standards case occurs at a rate which ensures that the average total installed cost difference between the standards case and base case over the entire forecast period is constant.

DOE modified the general approach for split-system coil-only air conditioner replacement units at 15 SEER and above, for which many consumers would incur a very large additional cost (an average of $959) to install a furnace fan kit (as explained in section IV.F.1). DOE believes that for much of the market, this cost would constrain demand for split-system coil-only air conditioner replacement units at 15 SEER and above. Thus, in analyzing standards cases below 15 SEER, as well as the base case, DOE forecast that the market shares of units at 15 SEER and above would remain at the 2016 level.

For split-system coil-only air conditioner replacement units, DOE also analyzed a sensitivity case that reflects a more sophisticated model of efficiency market shares than the reference case analysis. In this case, there is a gradual shift of efficiency in the base case, with the rate of shift dependent on the price difference between an efficiency market share and the next highest efficiency market share. DOE calibrated the parameters of this model to the observed historical shift rate without tax incentives. The result of this model is that while there is more market shifting over the long term forecast to the very high efficiency levels, there is slower market shifting at the lower efficiency levels earlier in the forecast period. In analyzing standards cases below 15 SEER, DOE forecast that the market shares of units at 15 SEER and above would be no greater than the base case. The results of this sensitivity in terms of the consumer NPV are presented in section V.B.3.a. More discussion along with detailed results from the sensitivity calculation are provided in appendix 10–D of the TSD.

For single package air conditioners and heat pumps, DOE observes that the market conditions are somewhat distinct from split system air conditioners as more than 90 percent of the single package market is comprised of low efficiency products of 13 to 14 SEER. In addition, DOE observes that higher efficiency single-package systems are more expensive relative to the lower efficiency models compared to the general cost structure for split system units. This indicates that efficiency trends for single-package systems are likely to be smaller than those for split systems. Nonetheless, DOE modeled the efficiency trends for single-package units the same as it modeled the trends for blower-coil split systems. While DOE believes that this approach is conservative, DOE did not have the data available to calibrate a more precise forecast of efficiency trends for this product class. An overestimate of the efficiency trend will likely lead to an overestimate of equipment costs resulting from a standard for these products. As a result, net consumer benefits from a standard are likely to be higher than the DOE estimate provided in this notice.

In the case of standby mode and off mode power consumption, DOE used a roll-up scenario to forecast the impact of potential standards for the year of compliance. Due to the lack of historical information on standby mode and off mode power consumption in central air conditioners, heat pumps, and furnace equipment, DOE estimated that efficiency distributions of standby mode and off mode power consumption would remain the same until 2045.

For further details about the forecasted efficiency distributions, see chapter 10 of the direct final rule TSD.

3. Installed Cost per Unit

In the preliminary analysis, DOE assumed that the manufacturer costs and retail prices of products meeting various efficiency levels remain fixed, in real terms, after 2009 (the year for which the engineering analysis estimated costs) and throughout the period of the analysis. As discussed in section IV.F.1, examination of historical price data for certain appliances and equipment that have been subject to energy conservation standards indicates that the assumption of constant real prices and costs may, in many cases, over-estimate long-term appliance and equipment price trends.

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 used historical producer price indices (PPI) for room air conditioners and household laundry equipment as a proxy for price data. DOE does not have price data for this equipment. DOE believes that PPI might shed some directionally-correct light on the price trend, recognizing that PPI is not a good proxy for price information because it incorporates shipment information, among other reasons. DOE found a long-term declining real price trend for both products. 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 is consistent with the NODA when data gaps are sufficient. DOE presents the estimates based on a constant real price trend as 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 that was available to DOE at this time. DOE recognizes that its price trend forecasting methods are likely to be modified as more data and information becomes available to enhance the rigor and robustness 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 on different analytical assumptions. DOE also included a constant real price trend assumption as 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.

4. National Energy Savings

For each year in the forecast period, DOE calculates the NES for each considered 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.

To estimate the national energy savings expected from amended appliance standards, DOE used 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 changes in generation sources (*i.e.,* the power plant types projected to provide electricity to the country) projected in *AEO2010.* The factors that DOE developed are marginal values, which represent the response of the electricity sector to an incremental decrease in consumption associated with potential appliance standards.

In the central air conditioners and heat pumps preliminary analysis, DOE used annual site-to-source conversion factors based on the version of NEMS that corresponds to *AEO2009.* For today's direct final rule, DOE updated its conversion factors based on the NEMS that corresponds to *AEO2010,* which provides energy forecasts through 2035. For 2036–2045, 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 (Aug. 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: (1) Energy consumed in the extraction, processing, and transport of primary fuels such as coal, oil, and natural gas; (2) energy losses in thermal combustion in power generation plants; and (3) energy losses in transmission and distribution to homes and commercial buildings.[77]

In evaluating the merits of using point-of-use and full-fuel-cycle measures, the NAS committee noted that DOE currently 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

[77] 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).

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 (*e.g.,* 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 recommendations, DOE published in the **Federal Register**, 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. 75 FR 51423. Specifically, DOE proposed to use full-fuel-cycle (FFC) measures of energy and 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 so as to enable consumers to make cross-class comparisons. On October 7, 2010, DOE held an informal public meeting at DOE headquarters in Washington, DC to discuss and receive comments on its planned approach. The Notice of Proposed Policy, a transcript of the public meeting, and all public comments received by DOE are available at: *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 rulemakings and other activities that are undertaken during 2011.

5. 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 central air conditioners and heat pumps preliminary analysis and today's direct 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.[78] 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. The discount rates for the determination of NPV are in contrast to the discount rates used in the LCC analysis, which are designed to reflect a consumer's perspective

As noted above, DOE is accounting for the rebound effect associated with more-efficient furnaces, central air conditioners, and heat pumps in its determination of national energy savings. As previously discussed in section IV.F, because the rebound effect provides consumers with increased value (*i.e.,* a more comfortable environment), DOE believes that, if it were able to monetize the increased value to consumers added by the rebound effect, this value would be similar in value to the foregone energy savings. For this standards rulemaking, DOE estimates that this value is equivalent to the monetary value of the energy savings that would have occurred without the rebound effect. Therefore, DOE concluded that the economic impacts on consumers with or without the rebound effect, as measured in the NPV, are the same.

6. Benefits From Effects of Standards on Energy Prices

In the furnaces RAP, DOE described its plans to use NEMS–BT to analyze the impact on natural gas prices resulting from amended standards on furnaces, and the associated benefits for all natural gas consumers in all sectors of the economy. Commenting on the RAP, EarthJustice stated that DOE must consider standards' economic benefit to the nation through reductions in natural gas prices resulting from gas furnace efficiency improvements. (FUR: EarthJustice, No. 1.3.014 at p. 7) In contrast, Ingersoll Rand stated that standards may bring gas users no cost savings, and that DOE should not incorporate any potential savings into its considerations. (FUR: Ingersoll Rand, No. 1.3.006 at p. 13)

For the direct final rule analysis, DOE used NEMS–BT to model the impact of the natural gas savings associated with possible standards on natural gas prices. The response of price observed in the NEMS–BT output changes over the forecast period based on the model's dynamics of natural gas supply and demand. For each year, DOE calculated the nominal savings in total natural gas expenditures by multiplying the estimated annual change in the national-average end-user natural gas price by the annual total U.S. natural gas consumption projected in *AEO2010,* adjusted for the estimated natural gas savings associated with each TSL. DOE then calculated the NPV of the savings in natural gas expenditures for 2016–2045 (or 2013–2045 for TSL 4), using 3-percent and 7-percent discount rates for each scenario.

Although amended standards for furnaces may yield benefits to all consumers associated with reductions in natural gas prices, DOE retains the position (recently set forth in the final rule for residential heating products (75 FR 20112, 20175 (April 16, 2010)) that it should not place a heavy emphasis on this factor in its consideration of the economic justification of standards. EPCA specifically directs DOE to consider the economic impact of an amended standard on manufacturers and consumers of the products subject to the standard. (42 U.S.C. 6295(o)(2)(B)(i)(I)) While it is true that EPCA directs DOE to consider other factors the Secretary considers relevant, in so doing, DOE takes under advisement the guidance provided by OMB on the development of regulatory analysis. Specifically, Circular A–4 states, ''You should not include transfers in the estimates of the benefits and costs of a regulation.'' [79] When gas prices drop in response to lower demand and lower output of existing natural gas production capacity, consumers benefit but producers suffer. In economic terms, the situation represents a benefits transfer to

[78] OMB Circular A–4, section E, ''Identifying and Measuring Benefits and Costs'' (Sept. 17, 2003) (Available at: *http://www.whitehouse.gov/omb/memoranda/m03-21.html*).

[79] OMB Circular A–4, section E, ''Identifying and Measuring Benefits and Costs'' (Sept. 17, 2003), p. 38. (Available at: *http://www.whitehouse.gov/omb/memoranda/m03-21.html*).

consumers (whose expenditures fall) from producers (whose revenue falls equally). On the other hand, when gas prices decrease because extraction costs decline, however, consumers and producers both benefit, and the change in natural gas prices represents a net gain to society. Consumers benefit from the lower prices, and producers, whose revenues and costs both fall, are no worse off. DOE is continuing to investigate the extent to which a change in natural gas prices projected to result from potential standards represents a net gain to society. At this time, however, it is not able to reasonably determine the extent of transfers associated with a decrease in gas prices resulting from appliance standards.

Reduction in electricity consumption associated with amended standards for central air conditioners and heat pumps could reduce the electricity prices charged to consumers in all sectors of the economy and thereby reduce total electricity expenditures. In chapter 2 of the central air conditioners and heat pumps preliminary TSD, DOE explained that, because the electric power industry is a complex mix of fuel and equipment suppliers, electricity producers, and distributors, and because it has a varied institutional structure, DOE did not plan to estimate the value of potentially-reduced electricity costs for all consumers associated with amended standards for central air conditioners and heat pumps.

Commenting on the preliminary TSD, NPCC stated that the economic benefits of the reduced need for new power plants should be estimated using the NEMS–BT forecast. (FUR: NPCC, No. 74 at p. 6) ACEEE made a similar point. (ACEEE, No. 72 at p. 7)

For the direct final rule, DOE used NEMS–BT to assess the impacts of the reduced need for new electric power plants and infrastructure projected to result from amended 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 the electricity supply chain, 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 the electricity supply chain to electricity consumers, DOE has concluded that, at present, it should not place a heavy emphasis on 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 amended standards represent a net gain to society.

*H. Consumer Subgroup Analysis*

In analyzing the potential impacts of new or amended standards on consumers, DOE evaluates the impacts on identifiable subgroups of consumers 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.

In the central air conditioners and heat pumps preliminary TSD, DOE stated that it will evaluate impacts on consumer subgroups, especially low-income and small-business consumers. For the direct final rule, DOE also analyzed a consumer subgroup consisting of households occupied solely by senior citizens (senior-only households) for national standards. However, in the 2005 RECS sample used for the subgroup analysis, the number of low-income and senior-only households with a central air conditioner was too small to produce reliable results at the regional level, and the number of low-income and senior-only households with a heat pump was too small to produce reliable results at either the national or the regional level. Accordingly, DOE performed the analysis for these subgroups only at the national level and only for air conditioners.

During the development of the preliminary TSD, it was thought that an analysis could be done of small businesses. However, DOE was not able to locate information on the energy use or economic characteristics of commercial users of residential air conditioning units in commercial buildings, so no analysis was done of a small business subgroup.

In the furnaces RAP, DOE stated its intention to evaluate impacts of amended furnace standards on low-income and senior-only households, because the potential higher first cost of products that meet amended standards may lead to negative impacts for these particular groups. In response to the furnaces RAP, DOE received comments about which subgroups should be included in the consumer subgroup analysis. AGA and APGA stated that DOE should analyze the new construction and replacement markets separately for the subgroup analysis. (FUR: AGA, No. 1.3.010 at pp. 3–4; APGA, No. 1.3.004 at p. 4) Southern stated that DOE should consider multi-family housing units and dwellings that require significant venting system work to accommodate a new furnace. (FUR: Southern, No. 1.2.006 at pp. 227–28) Ingersoll Rand stated that DOE should consider landlords and tenants as subgroups for the analysis. (FUR: Ingersoll Rand, No. 1.3.006 at p. 15) NPGA stated that owners of manufactured homes should be considered as a subgroup. (FUR: NPGA, No. 1.3.005 at p. 4)

For the direct final rule analysis, DOE evaluated the impacts of the considered energy efficiency standard levels for non-weatherized gas furnaces on low-income consumers and senior citizens (*i.e.,* senior-only households). DOE did not analyze these subgroups for mobile home gas furnaces or oil-fired furnaces because of the small sample sizes in the 2005 RECS database. In response to comments, for non-weatherized gas furnaces, DOE analyzed the impacts for three other subgroups: (1) Multi-family housing units; (2) new homes; and (3) replacement applications.

DOE did not consider dwellings that require significant venting system work to accommodate a new furnace as a subgroup, because there is no way to define ''significant'' venting system work that would not be arbitrary. DOE did not consider landlords and tenants as subgroups because DOE's LCC and payback period calculation method implicitly assumes that either the landlord purchases an appliance and also pays its energy costs, or in those cases where the tenant pays the energy costs, the landlord purchases an appliance and passes on the expense in the rent. If a landlord passes on the expense in the rent, which is the more common situation, he or she is not a ''consumer'' in the context of DOE's methodology, so landlords are not a meaningful consumer subgroup. DOE does not consider tenants (renters) as a consumer subgroup because: (1) DOE is not able to evaluate the pace at which the incremental purchase cost of a covered product is passed on in the rent, and (2) not all tenants pay the energy costs for their dwelling.

DOE did not consider owners of manufactured homes as a subgroup because the impacts of potential amended standards on these consumers are addressed in the LCC and PBP analysis of mobile home gas furnaces.

DOE did not perform a subgroup analysis for the standby mode and off mode efficiency levels. The standby mode and off mode LCC analysis relied

on the test procedure to assess energy savings for the off mode efficiency levels, and, thus, energy savings are not different for population subgroups. In addition, the analysis was done with national average energy prices and national average markups for residential and commercial users, and thus, these inputs would not vary for the subgroups. The information sources for the other parameters affecting LCC (*e.g.,* repair and maintenance cost) also did not differ by subgroup.

Results of the subgroup analysis are presented in section V.B.1.b of today's direct final rule. For further information, consult chapter 11 of the direct final rule TSD, which describes the consumer subgroup analysis and its results.

*I. Manufacturer Impact Analysis*

1. Overview

DOE performed a manufacturer impact analysis (MIA) to estimate the financial impact of amended energy conservation standards on manufacturers of residential furnaces and central air conditioners and heat pumps, and to calculate the impact of such standards on direct employment and manufacturing capacity. The MIA has both quantitative and qualitative aspects. The quantitative component of the MIA primarily relies on the Government Regulatory Impact Model (GRIM), an industry cash-flow model customized for this rulemaking. The key GRIM inputs are data on the industry cost structure, product costs, shipments, and assumptions about markups and conversion expenditures. The key output is the industry net present value (INPV). Different sets of assumptions (markup scenarios) will produce different results. The qualitative component of the MIA addresses factors such as product characteristics, industry and market trends, and includes an assessment of the impacts of standards on sub-groups of manufacturers. Chapter 12 of the direct final rule TSD describes the complete MIA.

DOE conducted the MIA for this rulemaking in three phases. In Phase 1, ''Industry Profile,'' DOE prepared an industry characterization. In Phase 2, ''Industry Cash Flow,'' DOE focused on the financial aspects of the industry as a whole. In this phase, DOE used the publicly-available information gathered in Phase 1 to prepare an industry cash flow analysis using the GRIM model. DOE adapted the GRIM structure specifically to analyze the impact of new and amended standards on manufacturers of residential furnace and central air conditioner and heat pump products. In Phase 3, ''Sub-Group Impact Analysis,'' the Department conducted structured, detailed interviews with a representative cross-section of manufacturers that represent approximately 75 percent of furnace and central air conditioning sales. During these interviews, DOE discussed engineering, manufacturing, procurement, and financial topics specific to each company, and obtained each manufacturer's view of the industry as a whole. The interviews provided valuable information that the Department used to evaluate the impacts of potential amended standards on manufacturers' cash flows, manufacturing capacities, and employment levels. Each of these phases is discussed in further detail below.

a. Phase 1: Industry Profile

In Phase 1 of the MIA, DOE prepared a profile of the residential furnace and central air conditioner and heat pump industry based on the Market and Technology Assessment (MTA) prepared for this rulemaking. Before initiating detailed impact studies, DOE collected information on the present and past structure and market characteristics of the industry. This information included market share, product shipments, markups, and cost structure for various manufacturers. The industry profile includes: (1) Detail on the overall market and product characteristics; (2) estimated manufacturer market shares; (3) financial parameters such as net plant, property, and equipment (*i.e.,* after accounting for depreciation), SG&A expenses, cost of goods sold, *etc.;* and (4) trends in the residential furnace and central air conditioner and heat pump industry, including the number of firms, technology, sourcing decisions, and pricing.

The industry profile included a top-down cost analysis of residential furnace and central air conditioner and heat pump manufacturers that DOE used to derive preliminary financial inputs for the GRIM (*e.g.,* revenues; SG&A expenses; research and development (R&D) expenses; and tax rates). DOE also used public sources of information to further calibrate its initial characterization of the industry, including company SEC 10–K filings, Moody's company data reports, corporate annual reports, the U.S. Census Bureau's 2008 Economic Census, and Dun & Bradstreet reports.

b. Phase 2: Industry Cash Flow Analysis

Phase 2 of the MIA focused on the financial impacts of the potential amended energy conservation standards on the industry as a whole. New or more-stringent energy conservation standards can affect manufacturer cash flow 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 possible changes in sales volumes. To quantify these impacts, in Phase 2, DOE used the GRIM to perform a cash-flow analysis of the residential furnace and central air conditioner and heat pump industry. In performing this analysis, DOE used the financial values determined during Phase 1, which were updated based on industry feedback and additional research, and the shipment projections used in the NIA. The GRIM modeled both impacts from energy efficiency standards (standards based on SEER, HSPF, and AFUE ratings) and impacts from standby mode and off mode standards (standards based on standby mode and off mode wattage). The GRIM results from the two standards were evaluated independent of one another.

c. Phase 3: Sub-Group Impact Analysis

In Phase 3, DOE conducted interviews with manufacturers and refined its preliminary cash flow analysis. Many of the manufacturers interviewed also participated in interviews for the engineering analysis. As indicated above, the MIA interviews broadened the discussion from primarily technology-related issues to include finance-related topics. One key objective for DOE was to obtain feedback from the industry on the assumptions used in the GRIM and to isolate key issues and concerns. See section IV.I.3 for a description of the key issues manufacturers raised during the interviews.

Using average-cost assumptions to develop an industry cash-flow estimate may not adequately assess differential impacts of new or amended standards among manufacturer sub-groups. For example, small manufacturers, niche players, or manufacturers exhibiting a cost structure that largely differs from the industry average could be more negatively affected. Thus, during Phase 3, DOE used the results of the industry characterization analysis in Phase 1 to evaluate how groups of manufacturers could be differentially affected by potential standards, and to group manufacturers that exhibited similar production and cost structure characteristics. The manufacturer interviews provided additional, valuable information on manufacturer subgroups.

DOE investigated whether small business manufacturers should be analyzed as a manufacturer subgroup. During its research, DOE identified multiple companies that manufacture products covered by this rulemaking and qualify as a small business under the applicable Small Business Administration (SBA) definition. The SBA defines a ''small business'' as having 750 employees or less for NAICS 333415, ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.'' As a result of this inquiry, DOE decided to analyze small business manufacturers as a separate subgroup in this direct final rule. The small businesses were further sub-divided by product class to understand the impacts of the rulemaking on those entities. The small business subgroup is discussed in chapter 12 of the direct final rule TSD and in section VI.B.1 of today's notice.

2. GRIM Analysis

As discussed previously, DOE uses the GRIM to quantify the changes in cash flow that result in a higher or lower industry value due to amended standards. The GRIM uses a discounted cash-flow analysis that incorporates manufacturer costs, markups, shipments, and industry financial information as inputs. The GRIM models changes in costs, distribution of shipments, investments, and manufacturer margins that could result from amended energy conservation standards. The GRIM spreadsheet uses the inputs to arrive at a series of annual cash flows, beginning in 2010 (the base year of the analysis) and continuing to 2045 (the last year of the analysis period). DOE calculated INPVs by summing the stream of annual discounted cash flows during these periods.

The GRIM calculates cash flows using standard accounting principles and compares changes in INPV between the base case and each TSL (the standards case). The difference in INPV between the base case and standards case represents the financial impact of the amended standard on manufacturers. The GRIM results are shown in section V.B.2. Additional details about the GRIM can be found in chapter 12 of the direct final rule TSD.

DOE typically presents its estimates of industry impacts by grouping the major product classes served by the same manufacturers. In the residential HVAC industry, split-system air conditioning, split-system heat pumps, single-package air conditioning, single-package heat pumps, and non-weatherized gas furnaces make up 95 percent of total shipments, according to the NIA shipment model for 2010. These five product classes are considered to be ''conventional'' products. Manufacturers that compete in the marketplace for conventional products generally produce products in all five conventional product classes.

Additionally, consumer selection of conventional products is often interdependent. As discussed in section IV.G.1 of the NIA methodology, the shipments forecasts that are an input to the GRIM incorporate product switching among the split-system air conditioning, split-system heat pumps, and non-weatherized gas furnaces product classes. To better capture the impacts of this rulemaking on industry, DOE aggregates results for split-system air conditioning, split-system heat pumps, single-package air conditioning, single-package heat pumps, and non-weatherized gas furnaces into a single ''conventional'' product grouping.

In section V.B.2.d pertaining to the MIA analysis, DOE discusses impacts on subgroups of manufacturers that produce niche products. Niche products, which serve much smaller segments of the market with unique needs, are produced by different manufacturers and include niche furnace products and niche central air conditioning and heat pumps products. Niche furnace products include weatherized gas furnaces, oil furnaces, and mobile home furnaces. Niche central air conditioning and heat pump products consist of the space-constrained and the small-duct, high-velocity (SDHV) product classes.

For the weatherized gas furnaces product class and the space-constrained product class, the current energy efficiency standard was determined to be equal to the max-tech efficiency level in the engineering analysis. Based on DOE's screening analysis, teardown analysis, and market research, DOE determined it would be unable to raise the energy efficiency standards on these products due to the state of technology and the design constraints inherent to these products. Therefore, DOE concluded that there is no need to perform an additional analysis for these products given that the current standard already meets the max-tech efficiency. For these product classes, no manufacturer impact analysis for energy efficiency standards was performed.

For the small-duct, high-velocity product class, limited information was available for this market niche. DOE had insufficient information to build a shipments forecast model, and thus, did not perform a quantitative analysis using the GRIM for this product class. However, DOE did conduct interviews with manufacturers of this product class and has performed a qualitative analysis of the impacts on manufacturers of SDHV products.

For consideration of standby mode and off mode regulations, DOE modeled the impacts of the design options for reducing electricity usage discussed in section IV.C.7 pertaining to the engineering analysis. The GRIM analysis incorporates the additional MPC cost of standby mode and off mode features and the resulting impacts on markups.

Due to the small cost of standby mode and off mode components relative to the overall cost of a furnace, central air conditioner, or heat pump, DOE assumes that standards regarding standby mode and off mode features alone will not impact product shipment numbers. Additionally, DOE does not believe the incremental cost of standby mode and off mode features will have a differentiated impact on manufacturers of different product classes. DOE models the impact of standby mode and off mode for the industry as a whole.

The GRIM results for standby mode and off mode standards include the electric furnace product class. Based on product catalogue information, DOE concluded that the major manufacturers of conventional products are also the major manufacturers of electric furnaces.

The space-constrained and SDHV product classes were not analyzed in the GRIM for energy efficiency standards. As a result, quantitative numbers are also not available for the GRIM analyzing standby mode and off mode standards. However, the standby mode and off mode design options considered for space-constrained and SDHV products are identical to the design options for split-systems air conditioning and heat pump products. DOE expects the standby mode and off mode impacts on space-constrained and SDHV products to be of the same order of magnitude as the impacts on split-system air conditioning and heat pump products.

a. GRIM Key Inputs

i. Manufacturer Production Costs

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 manufacturer production cost (MPC) 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.

In the MIA, DOE used the MPCs for each considered efficiency level calculated in the engineering analysis, as described in section IV.C.1 pertaining to the engineering analysis and further detailed in chapter 5 of the direct final rule TSD. In addition, DOE used information from its teardown analysis, described in section IV.C.1, to disaggregate the MPCs into material, labor, and overhead costs. To calculate the MPCs for products above the baseline, DOE added the incremental material, labor, and overhead costs from the engineering cost-efficiency curves to the baseline MPCs. These cost breakdowns and product mark-ups were validated with manufacturers during manufacturer interviews.

ii. Base-Case Shipments Forecast

The GRIM estimates manufacturer revenues based on total unit shipment forecasts and the distribution of shipments by product class and efficiency level. Changes in the efficiency mix at each potential standard level affect manufacturer finances. For this analysis, the GRIM uses the NIA shipments forecasts from 2010, the base year for the MIA analysis, to 2045, the last year of the analysis period. In the shipments analysis, DOE estimates the distribution of efficiencies in the base case for all product classes. See section IV.G.1, above, for additional details.

iii. Shipment Forecasts

The GRIM used shipments figures developed in the NIA for residential furnace and central air conditioner and heat pump products. To determine efficiency distributions for the standards case, DOE used a ''roll-up + market shift'' scenario. DOE assumed that product efficiencies in the base case that did not meet the standard under consideration would ''roll up'' to meet the new standard in the standard year, when compliance with amended standards is required. DOE further assumed that revised standards would result in a market shift such that market shares of products with efficiencies better than the standard would gradually increase because ''market-pull'' programs, such as ENERGY STAR, would continue to promote efficient appliances after amended standards are introduced.

The shipment forecasts account for possible product switching that may occur among split-system air conditioning, split-system heat pumps, non-weatherized gas furnaces, and electric furnaces. The product switching calculations incorporate considerations of consumer climate zones, existing equipment, equipment costs, and installation costs. In the MIA results discussion in section V.B.2, the presentation of INPV and the MIA analysis of conventional products incorporate the impacts of product switching. See section IV.G.1 of this direct final rule and chapter 10 of the direct final rule TSD for more information on the standards-case shipment scenario.

iv. Product and Capital Conversion Costs

New or amended energy conservation standards will cause manufacturers to incur one-time conversion costs to bring their production facilities and product designs into compliance. DOE evaluated the level of conversion-related capital expenditures needed to comply with each considered efficiency level in each product class. For the purpose of the MIA, DOE classified these conversion costs into two major groups: (1) Product conversion costs, and (2) capital conversion costs. Product conversion costs are one-time investments in research, development, testing, and marketing, focused on making product designs comply with the new energy conservation standard. Capital conversion costs are one-time investments in property, plant, and equipment to adapt or change existing production facilities so that new equipment designs can be fabricated and assembled.

DOE assessed the product conversion costs at each considered standard level by integrating data from multiple sources. Those R&D expenditures, and other components of product conversion cost, were validated through manufacturer interviews. DOE considered feedback from multiple manufacturers at each level. Manufacturer numbers were averaged using market share weighting of each company to provide a number that better reflects the industry as a whole.

DOE also evaluated the level of capital conversion expenditures manufacturers would incur to comply with energy conservation standards. DOE used the manufacturer interviews to gather data on the level of capital investment required at each possible efficiency level. Manufacturer values were aggregated and scaled using market share weighting to better reflect the industry. Additionally, DOE validated manufacturer comments through estimates of capital expenditure requirements derived from the product teardown analysis and engineering model described in section IV.C.1.

In general, DOE assumes that all conversion-related investments occur between the announcement year and the standards compliance year. For evaluation of the TSL corresponding to the consensus agreement, DOE used the accelerated timeframes to reflect the compliance dates recommended in the agreement. The GRIM models all furnace conversion costs occurring during the period between 2011 and 2013 for the TSL corresponding to the consensus agreement. Similarly, DOE assumed all central air conditioner and heat pump conversion costs would occur between 2011 and 2015 for the TSL corresponding to the consensus agreement.

For standby mode and off mode, DOE did not receive quantitative feedback during MIA interviews on the conversion costs associated with standby mode and off mode features. Based on the design options from the engineering analysis, DOE assumed that the standby mode and off mode capital conversion costs would be small relative to the capital conversion cost for meeting energy efficiency standards. However, DOE did incorporate product conversion costs for R&D, testing, and revision of marketing materials. The product conversion costs were based on product testing cost quotations and on market information about the number of platforms and product families for each manufacturer.

The investment figures used in the GRIM can be found in section V.B.2.a of today's notice. For additional information on the estimated product conversion and capital conversion costs, see chapter 12 of the TSD.

b. Markup Scenarios

As discussed above, manufacturer selling prices (MSPs) include direct manufacturing production costs (*i.e.,* labor, material, and overhead estimated in DOE's MPCs) and all non-production costs (*i.e.,* SG&A, R&D, and interest), along with profit. To calculate the MSPs in the GRIM, DOE applied markups to the MPCs estimated in the engineering analysis for each product class and efficiency level. Modifying these markups in the standards case yields different sets of impacts on manufacturers. For the MIA, DOE modeled three 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 tiered markup scenario, (2) a preservation of earnings before interest and taxes (EBIT), and (3) a preservation of gross

margin percentage. These scenarios lead to different markups values which, when applied to the inputted MPCs, result in varying revenue and cash flow impacts. The first and second scenarios were determined to best represent the impacts of potential energy efficiency standards on industry mark ups. The second and third scenarios were used to model potential standby mode and off mode standards, because pricing tiers would not likely be impacted by standby mode and off mode standards.

Under the ''preservation of gross margin percentage'' scenario, DOE applied a single uniform ''gross margin percentage'' markup across all efficiency levels. As production costs increase with efficiency, this scenario implies that the absolute dollar markup will increase as well. DOE assumed the non-production cost markup—which includes SG&A expenses, R&D expenses, interest, and profit—stays constant at the base-case percentage even as the standards-case efficiency increases. This markup is consistent with the one DOE assumed in the base case for the GRIM. Manufacturers noted in interviews that it is optimistic to assume that as their production costs increase in response to an amended energy conservation standard, they would be able to maintain the same gross margin percentage markup. Therefore, DOE assumed that this scenario represents a high bound to industry profitability under an energy conservation standard.

The tiered markup scenario models the situation in which manufacturers set markups based on three tiers of products. The tiers described by manufacturers in MIA interviews were defined as ''good, better, best,'' or ''value, standard, premium.'' The high-volume ''value'' product lines typically have fewer features, lower efficiency, and lower markups, while ''premium'' product lines typically have more features, higher efficiency, and higher markups. In the standards case, the tiered markups scenario considers the situation in which the breadth of a manufacturer's portfolio of products shrinks and amended standards ''demote'' higher-tier products to lower tiers. As a result, higher-efficiency products that previously commanded ''standard'' and ''premium'' mark-ups are assigned ''value'' and ''standard'' markups, respectively.

In the preservation of earnings before interest and taxes (EBIT) scenario, the manufacturer markups are set so that EBIT one year after the compliance date of the amended energy conservation standards is the same as in the base case. Under this scenario, as the cost of production and the cost of sales go up, manufacturers are generally required to reduce their markups to a level that maintains base-case operating profit. The implicit assumption behind this markup scenario is that the industry can only maintain its operating profit in absolute dollars after the amended standards. Operating margin in percentage terms is squeezed (reduced) between the base case and standards case.

During the March 2010 public meeting for residential furnaces and the May 2010 public meeting for central air conditioners and heat pumps and in the written comments for those public meetings, there were no comments on the assumptions of the preliminary MIA.

3. Manufacturer Interviews

As part of the MIA interviews, DOE discussed potential impacts of standards with five of the seven leading manufacturers of residential furnaces, central air conditioners, and heat pumps.[80] DOE also interviewed six niche product manufacturers.

In the interviews, DOE asked manufacturers to describe their major concerns about this rulemaking. The following sections discuss manufacturers' concerns about the most significant issues they identified.

a. Consensus Agreement

All manufacturers interviewed either strongly supported or were amenable to the consensus agreement that was recommended and signed by a number of manufacturers, advocacy organizations, and trade groups. Most interviewees were signatories and urged the Department to act as quickly as possible to adopt the consensus agreement. Manufacturers indicated that the consensus agreement provides regulatory certainty, manageable conversion costs, and accelerated compliance dates that provide energy savings earlier than would otherwise be achieved. Due to the tight timelines outlined in the agreement, manufacturers stated their desire for DOE to adopt the agreement as soon as possible in order to have sufficient time to meet the agreement's energy conservation standards and associated compliance dates.

b. Potential for Significant Changes to Manufacturing Facilities

During interviews, several manufacturers indicated that central air conditioning and heat pump conversion costs are not linear, but would step up dramatically at various efficiency levels. In general, manufacturers were concerned that a national baseline energy conservation standard above 14 SEER for split-system air conditioners and split-system heat pumps would require extensive and costly product line redesigns. At various higher efficiency levels, system designs would have to incorporate additional or more complex technologies, including two-stage compressors, ECM fan motors, and larger heater exchangers. Therefore, to reach higher levels, units would have to increase in size, necessitating larger cabinet sizes and the purchase of new equipment and tooling. Several large manufacturers indicated that offshore production or completely new production facilities would be considered above 14 SEER due to the scope of changes required to meet an amended standard. Manufacturer estimates for the total investment required to meet national standards in the 14.5 to 16 SEER range varied widely, often depending on the current state of each manufacturer's production lines and whether a completely new production facility was required.

c. Increase in Product Repair and Migration to Alternative Products

Several manufacturers stated that the higher cost of more-efficient systems resulting from amended energy conservation standards would need to be passed on to consumers, absorbed by manufacturers, or some combination of both. If manufacturers were to attempt to pass on higher costs, the industry is concerned higher prices would result in consumers pursuing lower-cost, less-efficient alternatives. In addition, manufacturers believe that consumers, facing higher first costs, would be more likely to repair older, less-efficient heating and cooling systems rather than replace those units with new, more-efficient models. Similarly, manufacturers expressed concern that consumers would be more likely to switch to lower up-front cost, lower-efficiency technologies such as room air conditioners and electric space heaters. Manufacturers agreed that these alternatives would reduce energy savings and reduce energy conserved.

As evidence, manufacturers cited market trends following the 2006 compliance date of the 2004 central air conditioners and heat pump energy conservation rulemaking. 69 FR 50997 (Aug. 14, 2004). Since 2006, manufacturers have noted a decline in central air conditioner and heat pump sales coupled with an increase in room air conditioner sales and an increase in

[80] The remaining two major manufacturers were approached, but they declined to be interviewed.

orders for repair components. In general, the manufacturers are concerned that the decline in shipments from 2006 to 2010 will continue, and that a revised energy conservation standard will exacerbate the decline in unitary air conditioner shipments.

d. HFC Phase-Out Legislation

Manufacturers expressed strong concerns about legislation proposed in Congress that would phase out HFC refrigerants, including R–410A and R–134a. Any phase-out would require extensive redesign of all central air conditioners and heat pump products to make use of an alternative refrigerant. Manufacturers asserted that there is no clear replacement for HFC refrigerants today. Without a clear replacement, the manufacturers stated that any phase-out would create a period of uncertainty as the industry identifies suitable alternatives and then redesigns products around the replacement. It is unclear what efficiency levels could be achieved at reasonable cost without HFC refrigerants. Manufacturers observed that past phase-outs generally have led to more-expensive and less-efficient refrigerant replacements. Additionally, manufacturers stated that alternative refrigerants may require substantially larger systems to achieve the same levels of performance.

e. Physical Constraints

Multiple manufacturers expressed concern that an increase in appliance efficiency standards would leave older homes, and multi-family homes in particular, with few cost-effective options for replacing their cooling systems. As the efficiency of air conditioning increases, the physical sizes of the units also increase. Manufacturers are concerned because central air conditioner and heat pump units are already so large that they can be difficult to fit into some end-user homes. Attic entryways, basement doors, and condensing unit pads all present physical constraints when replacing an air conditioner with a larger, more-efficient system. Multifamily homes are particularly restricted due to the limited space in utility closets and due to the limited options for renovation. These physical constraints lead to higher installation costs, which may encourage customers to repair existing systems rather than replace them.

f. Supply Chain Constraints

Some manufacturers expressed concern about the impact of more-stringent standards on their supply chain. Changes in energy conservation standards could affect the competitive positioning and dominance of component suppliers. One manufacturer cited the example of the 2001 central air conditioner rulemaking (66 FR 7170 (Jan. 22, 2001)), after which one of two critical compressor suppliers nearly went bankrupt (because the change in standards led most manufacturers to choose design options that favored the technology of one supplier over the other). According to the manufacturer, having the industry rely on a single supplier for critical components, even just a few, puts the entire industry at risk.

Additionally, manufacturers stated that more-stringent energy conservation standards would increase the demand for some key components over current levels. Given that most manufacturers rely on the same set of suppliers, amended standards could result in long lead times for obtaining critical components, such as high-efficiency compressors, ECM motors, modulating gas valves, advanced control systems, and new production tooling.

*J. Employment Impact Analysis*

DOE considers employment impacts in the domestic economy as one factor in selecting a standard. Employment impacts consist of both direct and indirect impacts. Direct employment impacts are any changes in the number of employees of manufacturers of the appliance products which 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 addresses the direct employment impacts that concern manufacturers of furnaces, central air conditioners, and heat pumps. 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 amended energy conservation 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 BLS.[81] 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.[82]

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, the Department believes net national employment will increase due to shifts in economic activity resulting from amended standards for furnaces, central air conditioners, and heat pumps.

For the standards 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.[83] ImSET is a special purpose version of the ''U.S. Benchmark National Input-

[81] 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.nro.htm.*)

[82] See Bureau of Economic Analysis, *Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II),* U.S. Department of Commerce (1992).

[83] M.J. Scott, O.V. Livingston, J.M. Roop, R.W. Schultz, and P.J. Balducci, *ImSET 3.1: Impact of Sector Energy Technologies; Model Description and User's Guide* (2009) (Available at: *http://www.pnl.gov/main/publications/external/technical_reports/PNNL-18412.pdf*).

Output'' (I–O) model,[84] 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 furnaces, central air conditioners, and heat pumps.

No comments were received on the preliminary TSD for central air conditioners and heat pumps or the furnaces RAP concerning the employment impacts analysis. For more details on the employment impact analysis, see chapter 13 of the direct final rule TSD.

*K. Utility Impact Analysis*

The utility impact analysis estimates several important effects on the utility industry that would result from the adoption of new or amended energy conservation standards. For the direct final rule analysis, DOE used the NEMS–BT model to generate forecasts of electricity and natural gas consumption, electricity generation by plant type, and electric generating capacity by plant type, that would result from each considered TSL. DOE obtained the energy savings inputs associated with efficiency improvements to the subject products from the NIA. DOE conducts the utility impact analysis as a scenario that departs from the latest *AEO* Reference case. For this direct final rule, the estimated impacts of amended energy conservation standards are the differences between values forecasted by NEMS–BT and the values in the *AEO2010* Reference case (which does not contemplate amended standards).

As part of the utility impact analysis, DOE used NEMS–BT to assess the impacts on natural gas prices of the reduced demand for natural gas projected to result from the considered standards. DOE also 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, which in turn affects electricity prices. DOE estimated the change in electricity prices projected to result over time from each considered TSL. The benefits associated with the impacts of the standards in this rule on energy prices are discussed in section IV.G.5.

For more details on the utility impact analysis, see chapter 14 of the direct final rule TSD.

*L. Environmental Assessment*

Pursuant to the National Environmental Policy Act of 1969 and the requirements of 42 U.S.C. 6295(o)(2)(B)(i)(VI), DOE has prepared an environmental assessment (EA) of the impacts of the potential standards for residential furnaces, central air conditioners, and heat pumps in this rule, which it has included as chapter 15 of the direct final rule TSD.

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 furnace, central air conditioner, and heat pump 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 this 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 coverage of all sectors and inclusion of interactive effects. Because the on-site operation of non-electric heating products 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 potential amended standards at the sites where these appliances are used. For today's direct final rule, DOE used NEMS–BT based on *AEO 2010.* For the final rule, DOE intends to revise the emissions analysis using the most current version of *NEMS–BT.*

DOE 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-trade programs that create uncertainty about the potential amended 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 all 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 D.C. 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 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 amended 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 energy conservation standards may have little or no physical effect on $NO_X$ emissions in the 28 eastern States and the D.C. 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

[84] R.L. Stewart, J.B. Stone, and M.L. Streitwieser. U.S. Benchmark Input-Output Accounts, 2002. *Survey of Current Business,* October 2007. (Available at *http://www.bea.gov/scb/pdf/2007/10%20October/1007_benchmark_io.pdf*).

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,* 517 F.3d 574 (DC Cir. 2008), in which it vacated CAMR. EPA has decided to develop emissions standards for power plants under Section 112 of the Clean Air Act, 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 is using 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 non-electric heating products 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 potential standards in this rule on the above site emissions based on emissions factors that are described in chapter 15 of the direct final rule TSD.

Commenting on the furnaces RAP, EEI stated that DOE should include the environmental impacts of furnace production, especially if higher standards involve more equipment being manufactured in and transported from other countries. (FUR: EEI, No. 1.3.015 at p. 6) APPA made a similar point. (FUR: APPA, No. 1.3.011 at p. 5)

In response, DOE notes that the inputs to the EA for national energy savings come from the NIA. In the NIA, DOE only accounts for 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 the phrase ''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.

EEI commented that DOE's environmental assessment should consider the standards' effect on emissions associated with the extraction, refining, and transport of oil and natural gas. (FUR: EEI, No. 1.3.015 at p. 7) As noted in chapter 15 of the TSD, DOE developed only qualitative estimates of effects on upstream fuel-cycle emissions because NEMS–BT does a thorough accounting only of emissions at the power plant due to downstream energy consumption. In other words, NEMS–BT does not account for upstream emissions. Therefore, the environmental assessment for this rule did not estimate effects on upstream emissions associated with oil and natural gas. As discussed in section IV.G.3, however, DOE is in the process of developing an approach that will allow it to estimate full-fuel-cycle energy use associated with products covered by energy conservation standards.

*M. Monetizing Carbon Dioxide and Other Emissions Impacts*

As part of the development of this rule, DOE considered the estimated monetary benefits likely to result from the reduced emissions of $CO_2$ and $NO_X$ 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 relied on a set of values for the social cost of carbon (SCC) that was developed 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 as in chapter 16 of the direct final rule TSD.

1. Social Cost of Carbon

Under section 1(b) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), 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 [85] 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

[85] National Research Council, *Hidden Costs of Energy: Unpriced Consequences of Energy Production and Use,* National Academies Press: Washington, DC (2009).

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 in Executive Order 12866 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,[86] 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 two 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.[87] See *Average Fuel Economy Standards Passenger Cars and Light Trucks Model Year 2011,* 74 FR 14196 (March 30, 2009) (Final Rule); 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) (Proposed Rule); 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 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) (Advance Notice of Proposed Rulemaking). 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). See *id.* at 44416.

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 considered in the evaluation of this rule. Specifically, the group considered public comments and further explored the technical literature in relevant fields. The interagency group relied on three integrated assessment

[86] 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.

[87] Throughout this section, the term ''tons of $CO_2$'' refers to metric tons.

models (IAMs) commonly used to estimate the SCC: the FUND, DICE, and PAGE models.[88] 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: (1) Climate sensitivity; (2) socio-economic and emissions trajectories; and (3) 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.24.

TABLE IV.24—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 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 furnaces, central air conditioners, and heat pumps, DOE used the values identified in Table A1 in the ''Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866,'' which is reprinted as appendix 16A of the direct final rule TSD, appropriately adjusted to 2009$.[89] 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, new or 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 $4,591 per ton in 2009$).[90] In accordance with

[88] The models are described in appendix 16–A of the direct final rule TSD.

[89] Table A1 in appendix 16–A 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.

[90] For additional information, refer to U.S. Office of Management and Budget, Office of Information

Continued

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.[91]

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.

Commenting on the central air conditioners and heat pumps preliminary TSD, Southern stated that the incremental climate change from a rulemaking is too uncertain to be included in the decision-making for energy conservation standard levels, and the benefits of reduced carbon emissions should not be included. (CAC: SCS, No. 73 at p. 2) Commenting on the furnaces RAP, several parties provided comments regarding the economic valuation of $CO_2$ emissions. EEI objected to using the global value for the social cost of carbon because the rest of DOE's analyses use domestic values. (FUR: EEI, No. 1.3.015 at pp. 8–9) APPA recommended that DOE use a set of hyperbolic discount rates for the value of $CO_2$. It also stated that the wide range of values for the SCC could adversely impact the calculation of benefits from amended energy conservation standards, and that DOE should consider the value of carbon reduction separately from the NIA analysis. (FUR: APPA, No. 1.3.011 at p. 5)

DOE acknowledges that the economic value of future $CO_2$ emissions reductions is uncertain, and for this reason, it uses a wide range of potential values, and a range of discount rates, as described above. DOE further notes that the estimated monetary benefits of reduced $CO_2$ emissions are only one factor among many that DOE considers in evaluating the economic justification of potential standard levels.

As to whether DOE should consider the value of carbon reduction separately from the NIA, the NIA assesses the national energy savings and the national net present value of total consumer costs and savings expected to result from standards at specific efficiency levels. Thus, DOE does not aggregate the estimated economic benefits of avoided $CO_2$ emissions (and other emissions) into the NIA. However, it does believe that the NPV of the monetized benefits associated with emissions reductions can be viewed as a complement to the NPV of the consumer savings expected to result from new or amended energy conservation standards. Therefore, in section V of this notice, DOE presents 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.

Commenting on the furnaces RAP, EEI stated that utilities have embedded the cost of complying with existing environmental legislation in the price for electricity and that DOE must not double-count the benefits of reduced emissions related to standards. (FUR: EEI, No. 1.3.015 at p. 6) In response, DOE calculates emissions reductions associated with potential standards relative to an *AEO* Reference case that includes the costs of complying with existing environmental legislation. The *AEO* Reference case still has emissions, of course, which are reduced in the case of standards. The reduction in emissions avoids impacts on human health or other damages, and DOE's monetization of emissions reductions seeks to quantify the value of those avoided damages.

## 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 trial standard levels examined by DOE, the projected impacts of each of these levels if adopted as energy conservation standards for furnaces, central air conditioners, and heat pumps, and the standards levels that DOE is adopting in today's direct final rule. Additional details regarding the analyses conducted by DOE 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 furnaces, central air conditioners, and heat pumps that are the subject of this rule. A description of each TSL DOE analyzed is provided below. DOE attempted to limit the number of TSLs considered for the direct final rule by excluding efficiency levels that do not exhibit significantly different economic and/or engineering characteristics from the efficiency levels already selected as TSLs. While DOE only presents the results for those efficiency levels in TSL combinations in today's direct final rule, DOE presents the results for all efficiency levels that it analyzed in the direct final rule TSD.

#### 1. TSLs for Energy Efficiency[92]

Table V.1 presents the TSLs and the corresponding product class efficiency levels that DOE considered for furnace, central air conditioner, and heat pump energy efficiency. Eight product classes are specified in Table V.1: (1) Split-system central air conditioners (SAC); (2) split-system heat pumps (SHP); (3) single-package central air conditioners (PAC); (4) single-package heat pumps (PHP); (5) SDHV systems; (6) non-weatherized gas furnaces (NWGF); (7) oil furnaces (OF); and (8) mobile home gas furnaces (MHF).

TSL 7 consists of the max-tech efficiency levels. For split-system central air conditioners and heat pumps, max-tech levels vary by capacity (tonnage) and, in the case of air conditioners, the type of unit (*i.e.,* coil-only or blower-coil). Specifically, for split-system central air conditioners, the max-tech level specified in Table V.1 of 22 SEER pertains only to 3-ton blower-coil units. The max-tech levels for the other tonnages and unit types are: 24.5 SEER for 2-ton, blower-coil; 18 SEER for 5-ton, blower-coil and 2-ton, coil-only; 17 SEER for 3-ton, coil-only; and 16 SEER for 5-ton, coil-only. For split-system heat pumps, the max-tech level specified in Table V.1 of 21 SEER/9.9 HSPF pertains only to 3-ton units. The max-tech levels for the other tonnages are: 22 SEER/9.9 HSPF for 2-ton; and 17 SEER/9.0 HSPF for 5-ton.

TSL 6 consists of a cooling efficiency level of 15 SEER for all central air conditioner and heat pump product classes with the exception of specifying a cooling efficiency level of 14 SEER for split-system central air conditioners in the ''rest of country'' region (*i.e.,* the North) and SDHV systems. For furnaces, TSL 6 consists of efficiency levels for each product class which are one level below the max-tech level.

TSL 5 consists of cooling efficiency levels for each central air conditioner and heat pump product class which are one level below the efficiencies in TSL 6. This corresponds to a cooling efficiency level of 14 SEER for all

and Regulatory Affairs, ''2006 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities'' (Available at: *http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/2006_cb/2006_cb_final_report.pdf*).

[91] OMB, Circular A–4: Regulatory Analysis (Sept. 17, 2003).

[92] In the context of presenting TSLs and results for each of them, DOE uses the term ''energy efficiency'' to refer to potential standards on SEER, HSPF, and AFUE throughout section V of this notice. TSLs for standby mode and off mode are addressed separately in the next section.

product classes with the exception of specifying a cooling efficiency at the baseline level (13 SEER) for split-system central air conditioners in the ''rest of country'' region (*i.e.,* the North) and SDHV systems. For furnaces, TSL 5 consists of the same efficiency levels as TSL 6 (*i.e.,* each product class has an efficiency level which is one level below the max-tech level).

TSL 4 consists of the efficiency levels included in the consensus agreement, including accelerated compliance dates (*i.e.,* by 3 years for furnaces and 1.5 years for central air conditioners and heat pumps) and requirements for a second metric (EER) applicable to split-system air conditioners and packaged air conditioners in the hot-dry region. For SDHV systems, TSL 4 consists of the baseline efficiency level.

TSL 3 consists of the same efficiency levels as specified in TSL 4, except with a lead time for compliance of five years after the final rule publication, and no EER requirements for split system air conditioners and packaged air conditioners in the hot-dry region. TSL 2 consists of the efficiency levels within each region that correspond to those products which currently have the largest market share. TSL 1 refers to a single national standard and consists of the efficiency levels in each product class with the largest market share. For SDHV systems, TSLs 1, 2, and 3 consist of the baseline efficiency level.

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**Table V.1. Trial Standard Levels for Central Air Conditioners, Heat Pumps, and Furnaces (Energy Efficiency)**

| | | SAC | SHP | PAC | PHP | SDHV | NWGF | OF | MHF |
|---|---|---|---|---|---|---|---|---|---|
| **TSL** | **Region Applicable** | *SEER* | *SEER/HSPF* | *SEER* | *SEER/HSPF* | *SEER/HSPF* | *AFUE* | *AFUE* | *AFUE* |
| 7 | Rest of Country* | 22** | 21 / 9.9† | 16.5 | 16.5 / 9.0 | 14.5 / 8.6 | 98% | 97% | 96% |
| | North (Furnace) | | | | | | 98% | | 96% |
| | Hot Humid (CAC-HP) | 22** | 21 / 9.9† | 16.5 | 16.5 / 9.0 | 14.5 / 8.6 | | | |
| | Hot Dry (CAC-HP) | 22** | 21/ 9.9† | 16.5 | 16.5 / 9.0 | 14.5 / 8.6 | | | |
| 6 | Rest of Country* | 14 | 15 / 8.5 | 15 | 15 / 8.4 | 14 / 8.5 | 80% | 85% | 80% |
| | North (Furnace) | | | | | | 95% | | 96% |
| | Hot Humid (CAC-HP) | 15 | 15 / 8.5 | 15 | 15 / 8.4 | 14 / 8.5 | | | |
| | Hot Dry (CAC-HP) | 15 | 15 / 8.5 | 15 | 15 / 8.4 | 14 / 8.5 | | | |
| 5 | Rest of Country* | 13 | 14 / 8.2 | 14 | 14 / 8.0 | 13 / 7.7 | 80% | 85% | 80% |
| | North (Furnace) | | | | | | 95% | | 96% |
| | Hot Humid (CAC-HP) | 14 | 14 / 8.2 | 14 | 14 / 8.0 | 13 / 7.7 | | | |
| | Hot Dry (CAC-HP) | 14 | 14 / 8.2 | 14 | 14 / 8.0 | 13 / 7.7 | | | |
| 4†† | Rest of Country* | 13 | 14 / 8.2 | 14 | 14 / 8.0 | 13 / 7.7 | 80% | 83% | 80% |
| | North (Furnace) | | | | | | 90% | | 90% |
| | Hot Humid (CAC-HP) | 14 | 14 / 8.2 | 14 | 14 / 8.0 | 13 / 7.7 | | | |
| | Hot Dry (CAC-HP) | 14 / 12.2 & 11.7 EER | 14 / 8.2 | 14 / 11 EER | 14 / 8.0 | 13 / 7.7 | | | |
| 3 | Rest of Country* | 13 | 14 / 8.2 | 14 | 14 / 8.0 | 13 / 7.7 | 80% | 83% | 80% |
| | North (Furnace) | | | | | | 90% | | 90% |
| | Hot Humid (CAC-HP) | 14 | 14 / 8.2 | 14 | 14 / 8.0 | 13 / 7.7 | | | |
| | Hot Dry (CAC-HP) | 14 | 14 / 8.2 | 14 | 14 / 8.0 | 13 / 7.7 | | | |
| 2 | Rest of Country* | 13.5 | 13.5 / 8.1 | 13 | 13 / 7.7 | 13 / 7.7 | 80% | 82% | 80% |
| | North (Furnace) | | | | | | 92% | | 80% |
| | Hot Humid (CAC-HP) | 13.5‡ | 13.5 / 8.1‡ | 13‡ | 13 / 7.7‡ | 13 / 7.7 | | | |
| | Hot Dry (CAC-HP) | 13.5‡ | 13.5 / 8.1‡ | 13‡ | 13 / 7.7‡ | 13 / 7.7 | | | |
| 1 | Nation | 13.5 | 13.5 / 8.1 | 13 | 13 / 7.7 | 13 / 7.7 | 80% | 82% | 80% |

* The values presented under "Rest of Country" are the national standards, but they effectively apply to those States not subject to regional standards. Rest of Country refers to the Northern region for SAC, SHP and SDHV and to the Southern region for NWGF and MHF. For PAC, PHP and OF, the value refers to the entire Nation.

** Max-tech of 22 SEER pertains to 3-ton blower-coil units only, which is the most common cooling capacity of products on the market. Max-tech efficiencies vary by tonnage and type. See chapter 5 of the direct final rule TSD or section III.G.2 of this direct final rule for more information on the max-tech efficiency levels.

† Max- tech of 21 SEER / 9.9 HSPF pertains to 3-ton units only, which is the most common cooling capacity of products on the market. Max-tech efficiencies vary by tonnage. See chapter 5 of the direct final rule TSD or section III.G.2 of this direct final rule for more information on the max-tech efficiency levels.

†† Compliance date is 1/1/2015 for central air conditioners and heat pumps and 5/1/2013 for furnaces. For the Hot Dry region, TSL 4 has separate EER levels for SAC of 12.2 and 11.7 based on capacity (see section III.B.2).

‡ Largest market share unknown; assumed to be equal to the market share for entire Nation.

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2. TSLs for Standby Mode and Off Mode Power

Table V.2 presents the TSLs and the corresponding product class efficiency levels (expressed in watts) that DOE considered for furnace, central air conditioner, and heat pump standby mode and off mode power consumption. For the central air conditioner product classes, DOE considered three efficiency levels, while for the heat pump and furnace product classes, two efficiency levels were considered.

TSL 3 consists of the max-tech efficiency levels. For the central air conditioner product classes, the max-tech level is efficiency level 3, which specifies a maximum off mode power consumption of 29 watts. (For split-system central air conditioners, only blower-coil systems equipped with ECMs would be affected; the other system types are already below this level.) For the heat pump and furnace product classes, the max-tech level is efficiency level 2, which specifies a maximum standby mode and off mode power consumption of 9 watts for gas and electric furnaces and 10 watts for oil furnaces, and a maximum off mode power consumption of 32 watts for heat pumps.

TSL 2 represents the efficiency level from each product class that is just below the max-tech efficiency level. TSL 2 consists of efficiency level 2 for the central air conditioner product classes, which specifies a maximum off mode power consumption of 30 watts. (For split-system central air conditioners, only blower-coil systems equipped with ECMs would be affected; the other system types are already below this level.) For the heat pump and furnace product classes, TSL 2 consists of efficiency level 1, which specifies a maximum standby mode and off mode power consumption of 10 watts for gas and electric furnaces and 11 watts for oil furnaces, and a maximum off mode power consumption of 33 watts for heat pumps.

TSL 1 consists of efficiency level 1 for all product classes. TSL 1 consists of efficiency level 1 for the central air conditioner product classes, which specifies a maximum off mode power consumption of 36 watts. For the heat pump and furnace product classes, it consists of efficiency level 1, which specifies a maximum standby mode and off mode power consumption of 10 watts for gas and electric furnaces and 11 watts for oil furnaces, and a maximum off mode power consumption of 33 watts for heat pumps. Because the heat pump and furnace product classes have only two considered efficiency levels, TSL 1 for these classes is no different than TSL 2.

Coil-only systems at efficiency level 1 would comply with off mode power requirements set at either efficiency levels 2 or 3 based on the blower-coil market. Of further note, in the case of efficiency level 3, only the fraction of the blower-coil market equipped with ECMs is impacted. Blower-coil systems with PSC motors and coil-only systems equipped with either ECMs or PSC motors that comply with the off mode power requirements in efficiency level 2 already meet the requirements in efficiency level 3.

TABLE V.2—TRIAL STANDARD LEVELS FOR CENTRAL AIR CONDITIONERS, HEAT PUMPS, AND FURNACES (STANDBY MODE AND OFF MODE POWER)

| TSL | SAC | SHP | PAC | PHP | SDHV | SCAC* | SCHP* | NWGF | OF | MHF | EF |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | *Efficiency Level (Watts)* | | | | | | | | | | |
| 3 | 29 | 32 | 29 | 32 | 29 | 29 | 32 | 9 | 10 | 9 | 9 |
| 2 | 30 | 33 | 30 | 33 | 30 | 30 | 33 | 10 | 11 | 10 | 10 |
| 1 | 36 | 33 | 36 | 33 | 36 | 36 | 33 | 10 | 11 | 10 | 10 |

* SCAC = Space-Constrained Air Conditioner; SCHP = Space-Constrained Heat Pump; and EF = electric furnace.

*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. DOE evaluates these impacts on individual consumers by calculating changes in life-cycle costs (LCC) and the payback period (PBP) associated with potential standard levels. Using the approach described in section IV.F, DOE calculated the LCC impacts and PBPs for the efficiency levels considered in this rulemaking. For each product class, DOE's analysis provided several outputs for each efficiency level. For energy efficiency, these results are reported for central air conditioners and heat pumps in Table V.3 through Table V.8, and for furnaces in Table V.9 through Table V.11. For standby mode and off mode, these results are reported for central air conditioners and heat pumps in Table V.12, and for furnaces in Table V.13. 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 product purchased in the base case. The last output in the tables is the median PBP for the consumer purchasing a design that complies with each TSL.

The results for each TSL are relative to the energy efficiency distribution in the base case (no amended standards). The average LCC savings and payback period presented in the tables were calculated only for those consumers that would be affected by a standard at a specific efficiency level. At some lower efficiency levels, no consumers would be impacted by a potential standard, because the products they would purchase in the base case are as efficient, or more efficient, than the specific efficiency level. In the cases where no consumers would be impacted, calculation of LCC savings or payback period is not applicable.

DOE based the LCC and PBP analyses on energy consumption under conditions of actual product use, whereas it based the rebuttable presumption PBP test on consumption under conditions prescribed by the DOE test procedure, as required by EPCA. (42 U.S.C. 6295(o)(2)(B)(iii))

In its regional analysis, DOE used the same technology designs to describe the baseline and other considered efficiency levels in each region. However, the total installed cost varies among regions because the installation cost varies by region (due to labor cost differences),

and in addition, there is some variation in the equipment price due to differences in the overall markup (including sales tax) among regions.

(i) Central Air Conditioners and Heat Pumps

TABLE V.3—LCC AND PBP RESULTS FOR SPLIT-SYSTEM AIR CONDITIONERS (COIL-ONLY)

| Trial standard level | Efficiency level *SEER* | Life-Cycle cost *(2009$)* | | | Life-Cycle cost savings *(2009$)* | | | | Payback period (years) |
|---|---|---|---|---|---|---|---|---|---|
| | | Installed cost | Discounted operating cost | LCC | Average savings | % of Consumers that experience | | | |
| | | | | | | Net cost | No impact | Net benefit | Median |
| | ***Nation*** | | | | | | | | |
| | Baseline | 2,026 | 4,872 | 6,898 | n/a | 0 | 100 | 0 | n/a |
| 1 | 13.5 | 2,074 | 4,770 | 6,844 | 55 | 11 | 75 | 14 | 9.1 |
| | ***Hot-Humid*** | | | | | | | | |
| | Baseline | 1,834 | 5,649 | 7,484 | n/a | 0 | 100 | 0 | n/a |
| 2 | 13.5 | 1,880 | 5,514 | 7,393 | 86 | 7 | 75 | 18 | 5.6 |
| 3, 4, 5 | 14 | 1,934 | 5,393 | 7,326 | 93 | 26 | 27 | 46 | 7.2 |
| 6 | 15 | 2,515 | 5,188 | 7,702 | (303) | 73 | 16 | 12 | 34.4 |
| 7 | 18* | 3,365 | 4,923 | 8,288 | (797) | 90 | 0 | 10 | 46.6 |
| | ***Hot-Dry*** | | | | | | | | |
| | Baseline | 2,582 | 6,134 | 8,716 | n/a | 0 | 100 | 0 | n/a |
| 2 | 13.5 | 2,642 | 5,977 | 8,619 | 104 | 10 | 75 | 14 | 8.0 |
| 3, 4, 5 | 14 | 2,713 | 5,837 | 8,550 | 107 | 37 | 27 | 36 | 10.3 |
| 6 | 15 | 3,510 | 5,598 | 9,108 | (468) | 75 | 16 | 9 | 49.0 |
| 7 | 18* | 4,673 | 5,288 | 9,960 | (1,182) | 91 | 0 | 9 | 71.2 |
| | ***North (Rest of Country)*** | | | | | | | | |
| 3,4,5 | Baseline | 2,127 | 3,476 | 5,603 | n/a | 0 | 100 | 0 | n/a |
| 2 | 13.5 | 2,175 | 3,434 | 5,609 | (8) | 17 | 75 | 8 | 23.1 |
| 6 | 14 | 2,231 | 3,401 | 5,633 | (26) | 56 | 27 | 16 | 33.1 |
| 7 | 18* | 3,753 | 3,360 | 7,113 | (1,343) | 99 | 0 | 1 | 100.0 |

*Varies by size of equipment: 2-ton units are 18 SEER; 3-ton units are 17 SEER; and 5-ton units are 16 SEER.
Parentheses indicate negative (−) values. For LCCs, a negative value means an increase in LCC by the amount indicated.

TABLE V.4—LCC AND PBP RESULTS FOR SPLIT-SYSTEM AIR CONDITIONERS (BLOWER-COIL)

| Trial standard level | Efficiency level *SEER* | Life-Cycle cost *(2009$)* | | | Life-Cycle cost savings *(2009$)* | | | | Payback period (years) |
|---|---|---|---|---|---|---|---|---|---|
| | | Installed cost | Discounted operating cost | LCC | Average savings | % of Consumers that experience | | | |
| | | | | | | Net cost | No impact | Net benefit | Median |
| | ***Nation*** | | | | | | | | |
| | Baseline | 3,015 | 4,869 | 7,884 | n/a | 0 | 100 | 0 | n/a |
| 1 | 13.5 | 3,078 | 4,762 | 7,840 | 46 | 9 | 82 | 9 | 11.4 |
| | ***Hot-Humid*** | | | | | | | | |
| | Baseline | 2,774 | 5,640 | 8,413 | n/a | 0 | 100 | 0 | n/a |
| 2 | 13.5 | 2,833 | 5,500 | 8,333 | 77 | 6 | 82 | 12 | 7.2 |
| 3, 4, 5 | 14 | 2,894 | 5,371 | 8,265 | 89 | 21 | 45 | 34 | 7.9 |
| 6 | 15 | 3,015 | 5,139 | 8,154 | 177 | 25 | 37 | 39 | 8.4 |
| 7 | 24.5* | 4,069 | 4,298 | 8,367 | (130) | 70 | 1 | 29 | 20.8 |
| | ***Hot-Dry*** | | | | | | | | |
| | Baseline | 3,825 | 6,171 | 9,995 | n/a | 0 | 100 | 0 | n/a |
| 2 | 13.5 | 3,903 | 6,009 | 9,912 | 90 | 9 | 82 | 10 | 9.5 |
| 3, 4, 5 | 14 | 3,984 | 5,860 | 9,844 | 101 | 28 | 45 | 27 | 10.7 |
| 6 | 15 | 4,142 | 5,592 | 9,734 | 196 | 33 | 37 | 31 | 10.8 |
| 7 | 24.5* | 5,559 | 4,606 | 10,166 | (311) | 76 | 1 | 23 | 30.6 |
| | ***North (Rest of Country)*** | | | | | | | | |
| 3, 4, 5 | Baseline | 3,110 | 3,468 | 6,577 | n/a | 0 | 100 | 0 | n/a |
| 2 | 13.5 | 3,172 | 3,422 | 6,594 | (18) | 14 | 82 | 4 | 26.1 |
| 6 | 14 | 3,236 | 3,381 | 6,617 | (30) | 43 | 45 | 12 | 27.5 |

TABLE V.4—LCC AND PBP RESULTS FOR SPLIT-SYSTEM AIR CONDITIONERS (BLOWER-COIL)—Continued

| Trial standard level | Efficiency level *SEER* | Life-Cycle cost *(2009$)* | | | Life-Cycle cost savings *(2009$)* | | | | Payback period (years) |
|---|---|---|---|---|---|---|---|---|---|
| | | Installed cost | Discounted operating cost | LCC | Average savings | % of Consumers that experience | | | |
| | | | | | | Net cost | No impact | Net benefit | Median |
| 7 | 24.5* | 4,410 | 3,193 | 7,603 | (903) | 96 | 1 | 3 | 100.0 |

*Varies by size of equipment: 2-ton units are 24.5 SEER; 3-ton units are 22 SEER; and 5-ton units are 18 SEER.
Parentheses indicate negative (−) values. For LCCs, a negative value means an increase in LCC by the amount indicated.

TABLE V.5—LCC AND PBP RESULTS FOR SPLIT-SYSTEM HEAT PUMPS

| Trial standard level | Efficiency level *SEER* | Life-Cycle cost *(2009$)* | | | Life-Cycle cost savings *(2009$)* | | | | Payback period (years) |
|---|---|---|---|---|---|---|---|---|---|
| | | Installed cost | Discounted operating cost | LCC | Average savings | % of Consumers that experience | | | |
| | | | | | | Net cost | No impact | Net benefit | Median |
| | ***Nation*** | | | | | | | | |
| | Baseline | 2,934 | 6,882 | 9,816 | n/a | 0 | 100 | 0 | n/a |
| 1 | 13.5 | 2,999 | 6,743 | 9,742 | 71 | 5 | 86 | 9 | 6.6 |
| | ***Hot-Humid*** | | | | | | | | |
| | Baseline | 2,804 | 6,943 | 9,747 | n/a | 0 | 100 | 0 | n/a |
| 2 | 13.5 | 2,867 | 6,791 | 9,658 | 82 | 4 | 86 | 10 | 6.1 |
| 3, 4, 5 | 14 | 2,932 | 6,644 | 9,576 | 102 | 17 | 45 | 38 | 6.0 |
| 6 | 15 | 3,114 | 6,383 | 9,496 | 137 | 29 | 23 | 48 | 7.2 |
| 7 | 22* | 3,983 | 5,513 | 9,496 | 103 | 60 | 0 | 40 | 12.6 |
| | ***Hot-Dry*** | | | | | | | | |
| | Baseline | 3,808 | 9,221 | 13,029 | n/a | 0 | 100 | 0 | n/a |
| 2 | 13.5 | 3,890 | 8,987 | 12,877 | 148 | 4 | 86 | 11 | 4.5 |
| 3, 4, 5 | 14 | 3,973 | 8,763 | 12,735 | 175 | 15 | 45 | 40 | 4.8 |
| 6 | 15 | 4,212 | 8,348 | 12,560 | 274 | 25 | 23 | 52 | 5.4 |
| 7 | 22* | 5,387 | 6,894 | 12,280 | 477 | 51 | 0 | 49 | 9.4 |
| | ***North (Rest of Country)*** | | | | | | | | |
| | Baseline | 3,065 | 5,927 | 8,993 | n/a | 0 | 100 | 0 | n/a |
| 2 | 13.5 | 3,129 | 5,861 | 8,990 | 5 | 9 | 86 | 5 | 13.2 |
| 3, 4, 5 | 14 | 3,193 | 5,792 | 8,986 | 4 | 35 | 45 | 20 | 13.3 |
| 6 | 15 | 3,380 | 5,693 | 9,073 | (89) | 58 | 23 | 19 | 20.1 |
| 7 | 22* | 4,262 | 5,362 | 9,624 | (604) | 87 | 0 | 13 | 32.7 |

*Varies by size of equipment: 2-ton units are 22 SEER; 3-ton units are 21 SEER; and 5-ton units are 18 SEER.
Parentheses indicate negative (−) values. For LCCs, a negative value means an increase in LCC by the amount indicated.

TABLE V.6—LCC AND PBP RESULTS FOR SINGLE-PACKAGE AIR CONDITIONERS

| Trial standard level | Efficiency level *SEER* | Life-Cycle cost *(2009$)* | | | Life-Cycle cost savings *(2009$)* | | | | Payback period (years) |
|---|---|---|---|---|---|---|---|---|---|
| | | Installed cost | Discounted operating cost | LCC | Average savings | % of Consumers that experience | | | |
| | | | | | | Net cost | No impact | Net benefit | Median |
| | ***Nation*** | | | | | | | | |
| 1, 2 | Baseline 13 | 3,040 | 5,303 | 8,343 | n/a | 0 | 100 | 0 | n/a |
| 3, 4, 5 | 14 | 3,223 | 5,077 | 8,301 | 37 | 50 | 17 | 33 | 15.1 |
| 6 | 15 | 3,492 | 4,908 | 8,400 | (68) | 72 | 1 | 27 | 24.2 |
| 7 | 16.5 | 4,064 | 4,760 | 8,825 | (492) | 84 | 0 | 16 | 46.3 |

Parentheses indicate negative (−) values. For LCCs, a negative value means an increase in LCC by the amount indicated.

TABLE V.7—LCC AND PBP RESULTS FOR SINGLE-PACKAGE HEAT PUMPS

| Trial standard level | Efficiency level *SEER* | Life-Cycle cost *(2009$)* | | | Life-Cycle cost savings *(2009$)* | | | | Payback period (years) |
|---|---|---|---|---|---|---|---|---|---|
| | | Installed cost | Discounted operating cost | LCC | Average savings | % of Consumers that experience | | | |
| | | | | | | Net cost | No impact | Net benefit | Median |
| | ***Nation*** | | | | | | | | |
| 1, 2 | Baseline | 3,623 | 7,834 | 11,457 | n/a | 0 | 100 | 0 | n/a |
| 3, 4, 5 | 14 | 3,828 | 7,463 | 11,291 | 104 | 29 | 36 | 35 | 8.4 |
| 6 | 15 | 4,163 | 7,182 | 11,345 | 15 | 63 | 2 | 35 | 13.6 |
| 7 | 16.5 | 4,866 | 6,856 | 11,722 | (363) | 79 | 0 | 21 | 20.7 |

Parentheses indicate negative (−) values. For LCCs, a negative value means an increase in LCC by the amount indicated.

TABLE V.8—LCC AND PBP RESULTS FOR SMALL-DIAMETER HIGH VELOCITY (SDHV) AIR CONDITIONERS

| Trial standard level | Efficiency level *SEER* | Life-Cycle cost *(2009$)* | | | Life-Cycle cost savings *(2009$)* | | | | Payback Period (years) |
|---|---|---|---|---|---|---|---|---|---|
| | | Installed cost | Discounted operating cost | LCC | Average savings | % of Consumers that experience | | | |
| | | | | | | Net cost | No impact | Net benefit | Median |
| | ***Nation*** | | | | | | | | |
| 1 | Baseline 13 | 4,915 | 4,853 | 9,768 | n/a | 0 | 100 | 0 | n/a |
| | ***Hot-Humid*** | | | | | | | | |
| 2–5 | Baseline 13 | 4,610 | 5,643 | 10,253 | n/a | 0 | 100 | 0 | n/a |
| 6 | 14 | 4,883 | 5,385 | 10,268 | (14) | 68 | 0 | 32 | 17.8 |
| 7 | 14.5 | 5,029 | 5,250 | 10,279 | (25) | 67 | 0 | 33 | 17.3 |
| | ***Hot-Dry*** | | | | | | | | |
| 2–5 | Baseline 13 | 6,302 | 6,105 | 12,407 | n/a | 0 | 100 | 0 | n/a |
| 6 | 14 | 6,665 | 5,807 | 12,472 | (65) | 74 | 0 | 26 | 26.1 |
| 7 | 14.5 | 6,859 | 5,654 | 12,513 | (106) | 74 | 0 | 26 | 23.3 |
| | ***North (Rest of Country)*** | | | | | | | | |
| 2–5 | Baseline 13 | 4,919 | 3,447 | 8,367 | n/a | 0 | 100 | 0 | n/a |
| 6 | 14 | 5,198 | 3,370 | 8,568 | (202) | 95 | 0 | 5 | 74.3 |
| 7 | 14.5 | 5,347 | 3,313 | 8,660 | (294) | 92 | 0 | 8 | 74.7 |

Parentheses indicate negative (−) values. For LCCs, a negative value means an increase in LCC by the amount indicated.

(ii) Furnaces

TABLE V.9—LCC AND PBP RESULTS FOR NON-WEATHERIZED GAS FURNACES

| Trial standard level | Efficiency level *SEER* | Life-Cycle cost *(2009$)* | | | Life-Cycle cost savings *(2009$)* | | | | Payback Period (years) |
|---|---|---|---|---|---|---|---|---|---|
| | | Installed cost | Discounted operating cost | LCC | Average savings *2009$* | % of Households that experience | | | |
| | | | | | | Net cost | No impact | Net benefit | Median |
| | ***Nation*** | | | | | | | | |
| 1 | Baseline 80% | 1,786 | 9,551 | 11,337 | n/a | 0 | 100 | 0 | n/a |
| | ***South (Rest of Country)*** | | | | | | | | |
| 2–6 | Baseline 80% | 1,614 | 6,566 | 8,180 | n/a | 0 | 100 | 0 | n/a |
| 7 | 98% | 2,661 | 5,624 | 8,286 | (181) | 72.3 | 0.2 | 27.4 | 28.9 |
| | ***North*** | | | | | | | | |
| 3,4 | 90% | 2,474 | 10,409 | 12,883 | 155 | 10.0 | 71.4 | 18.6 | 10.1 |
| 2 | 92% | 2,536 | 10,206 | 12,742 | 215 | 10.9 | 56.5 | 32.6 | 7.7 |
| 5,6 | 95% | 2,685 | 9,916 | 12,601 | 323 | 22.8 | 22.9 | 54.3 | 9.4 |
| 7 | 98% | 2,943 | 9,784 | 12,727 | 198 | 58.7 | 0.6 | 40.7 | 17.1 |

Parentheses indicate negative (−) values. For LCCs, a negative value means an increase in LCC by the amount indicated.

TABLE V.10—LCC AND PBP RESULTS FOR MOBILE HOME GAS FURNACES

| Trial standard level | Efficiency level *SEER* | Life-Cycle cost *(2009$)* | | | Life-Cycle cost savings *(2009$)* | | | | Payback Period (years) |
|---|---|---|---|---|---|---|---|---|---|
| | | Installed cost | Discounted operating cost | LCC | Average savings | % of Households that experience | | | |
| | | | | | | Net cost | No impact | Net benefit | Median |
| | ***Nation*** | | | | | | | | |
| 1 | Baseline 80% | 1,432 | 11,749 | 13,181 | n/a | 0 | 100 | 0 | n/a |
| | ***South (Rest of Country)*** | | | | | | | | |
| 2–6 | Baseline 80% | 1,340 | 11,453 | 12,793 | n/a | 0 | 100 | 0 | n/a |
| 7 | 96% | 2,415 | 9,780 | 12,194 | 391 | 51.0 | 3.8 | 45.2 | 13.0 |
| | ***North*** | | | | | | | | |
| 2 | Baseline 80% | 1,488 | 13,060 | 14,548 | n/a | 0 | 100 | 0 | n/a |
| 3,4 | 90% | 2,112 | 11,974 | 14,086 | 419 | 43.6 | 9.7 | 46.7 | 10.7 |
| 5–7 | 96% | 2,611 | 11,301 | 13,912 | 585 | 46.2 | 7.7 | 46.1 | 11.5 |

TABLE V.11—LCC AND PBP RESULTS FOR OIL-FIRED FURNACES

| Trial standard level | Efficiency level *AFUE* | Life-Cycle cost *(2009$)* | | | Life-Cycle cost savings *(2009$)* | | | | Payback period (years) |
|---|---|---|---|---|---|---|---|---|---|
| | | Installed cost | Discounted operating cost | LCC | Average savings | % of Households that experience | | | |
| | | | | | | Net cost | No impact | Net benefit | Median |
| | ***Nation*** | | | | | | | | |
| 1, 2 | Baseline 82% | 3,008 | 30,287 | 33,295 | n/a | 0 | 100 | 0 | n/a |
| 3, 4 | 83% | 3,157 | 29,946 | 33,103 | 15 | 9.9 | 58.3 | 31.8 | 1.0 |
| 5, 6 | 85% | 3,622 | 29,287 | 32,909 | (18) | 34.6 | 33.0 | 32.4 | 19.8 |
| 7 | 97% | 4,810 | 27,809 | 32,619 | 272 | 51.0 | 0.9 | 48.1 | 18.2 |

(iii) Results for Standby Mode and Off Mode

Table V.12 and Table V.13 present the LCC and PBP results for the standby mode and off mode power efficiency levels considered for central air conditioners/heat pumps and furnaces, respectively.

TABLE V.12—LCC AND PBP RESULTS FOR CENTRAL AIR CONDITIONER AND HEAT PUMP STANDBY MODE AND OFF MODE POWER

| Trial standard level | Efficiency level | Life-Cycle cost *(2009$)* | | | Life-Cycle cost savings *(2009$)* | | | | Payback period (years) |
|---|---|---|---|---|---|---|---|---|---|
| | | Installed cost | Discounted operating cost | LCC | Average savings | % of Households that experience | | | |
| | | | | | | Net cost | No impact | Net benefit | Median |
| | ***Split-System Air Conditioners (Blower-Coil)*** | | | | | | | | |
| | Baseline | 17 | 105 | 122 | n/a | 0 | 100 | 0 | n/a |
| 1 | 1 | 27 | 96 | 114 | 84 | 0 | 94 | 6 | 1 |
| 2 | 2 | 23 | 93 | 115 | 40 | 3 | 91 | 6 | 6 |
| 3 | 3 | 23 | 92 | 116 | 35 | 3 | 91 | 6 | 7 |
| | ***Split-System Air Conditioners (Coil-Only)*** | | | | | | | | |
| | Baseline | 1 | 27 | 27 | n/a | 0 | 100 | 0 | n/a |
| 1, 2, 3 | 1 | 1 | 18 | 19 | 84 | 0 | 94 | 6 | 1 |
| | ***Split-System Heat Pumps*** | | | | | | | | |
| | Baseline | 19 | 31 | 50 | n/a | 0 | 100 | 0 | n/a |
| 1, 2 | 1 | 23 | 21 | 44 | 9 | 0 | 67 | 33 | 4 |
| 3 | 2 | 26 | 21 | 47 | (1) | 19 | 57 | 24 | 5 |
| | ***Single-Package Air Conditioners*** | | | | | | | | |
| | Baseline | 17 | 105 | 122 | n/a | 0 | 100 | 0 | n/a |
| 1 | 1 | 17 | 96 | 114 | 84 | 0 | 94 | 6 | 1 |

TABLE V.12—LCC AND PBP RESULTS FOR CENTRAL AIR CONDITIONER AND HEAT PUMP STANDBY MODE AND OFF MODE POWER—Continued

| Trial standard level | Efficiency level | Life-Cycle cost *(2009$)* | | | Life-Cycle cost savings *(2009$)* | | | | Payback period (years) |
|---|---|---|---|---|---|---|---|---|---|
| | | Installed cost | Discounted operating cost | LCC | Average savings | % of Households that experience | | | |
| | | | | | | Net cost | No impact | Net benefit | Median |
| 2 | 2 | 23 | 93 | 115 | 41 | 3 | 91 | 6 | 6 |
| 3 | 3 | 23 | 92 | 116 | 36 | 3 | 91 | 6 | 7 |
| | ***Single-Package Heat Pumps*** | | | | | | | | |
| | Baseline | 20 | 31 | 51 | n/a | 0 | 100 | 0 | n/a |
| 1, 2 | 1 | 24 | 21 | 45 | 9 | 0 | 66 | 34 | 4 |
| 3 | 2 | 27 | 21 | 49 | (1) | 19 | 57 | 24 | 5 |
| | ***Small-Duct High-Velocity Air Conditioners*** | | | | | | | | |
| | Baseline | 18 | 107 | 124 | n/a | 0 | 100 | 0 | n/a |
| 1 | 1 | 18 | 98 | 116 | 84 | 0 | 94 | 6 | 1 |
| 2 | 2 | 24 | 94 | 117 | 37 | 3 | 91 | 6 | 7 |
| 3 | 3 | 24 | 94 | 118 | 32 | 3 | 91 | 6 | 7 |
| | ***Space-Constrained Air Conditioners*** | | | | | | | | |
| | Baseline | 17 | 107 | 123 | n/a | 0 | 100 | 0 | n/a |
| 1 | 1 | 17 | 98 | 115 | 84 | 0 | 94 | 6 | 1 |
| 2 | 2 | 23 | 94 | 117 | 42 | 3 | 91 | 6 | 6 |
| 3 | 3 | 23 | 94 | 117 | 37 | 3 | 91 | 6 | 7 |
| | ***Space-Constrained Heat Pumps*** | | | | | | | | |
| | Baseline | 19 | 31 | 50 | n/a | 0 | 100 | 0 | n/a |
| 1, 2 | 1 | 23 | 21 | 44 | 9 | 0 | 67 | 33 | 4 |
| 3 | 2 | 26 | 21 | 47 | (1) | 19 | 58 | 23 | 5 |

Parentheses indicate negative (−) values. For LCCs, a negative value means an increase in LCC by the amount indicated.

TABLE V.13.—LCC AND PBP RESULTS FOR FURNACE STANDBY MODE AND OFF MODE POWER

| Trial standard level | Efficiency level | Life-Cycle cost *(2009$)* | | | Life-Cycle cost savings *(2009$)* | | | | Payback period (years) |
|---|---|---|---|---|---|---|---|---|---|
| | | Installed cost | Discounted operating cost | LCC | Average savings | % of Households that experience | | | |
| | | | | | | Net cost | No impact | Net benefit | Median |
| | ***Non-weatherized Gas Furnaces*** | | | | | | | | |
| | Baseline | 0 | 133 | 133 | n/a | 0 | 100 | 0 | n/a |
| 1, 2 | 1 | 3 | 128 | 132 | 2 | 9.2 | 72.4 | 18.4 | 10.7 |
| 3 | 2 | 8 | 125 | 133 | (0) | 16.8 | 72.4 | 10.8 | 16.1 |
| | ***Mobile Home Furnaces*** | | | | | | | | |
| | Baseline | 0 | 103 | 103 | n/a | 0 | 100 | 0 | n/a |
| 1, 2 | 1 | 1 | 102 | 103 | (0) | 5.7 | 90.6 | 3.8 | 11.9 |
| 3 | 2 | 4 | 101 | 104 | (1) | 7.7 | 90.6 | 1.8 | 17.9 |
| | ***Oil-fired Furnaces*** | | | | | | | | |
| | Baseline | 0 | 180 | 180 | n/a | 0 | 100 | 0 | n/a |
| 1, 2 | 1 | 1 | 178 | 179 | 1 | 1.4 | 90.6 | 8.0 | 7.9 |
| 3 | 2 | 3 | 177 | 179 | 1 | 3.8 | 90.6 | 5.7 | 11.9 |
| | ***Electric Furnaces*** | | | | | | | | |
| | Baseline | 0 | 111 | 111 | n/a | 0 | 100 | 0 | n/a |
| 1, 2 | 1 | 1 | 110 | 111 | 0 | 4.3 | 89.9 | 5.1 | 10.3 |
| 3 | 2 | 3 | 109 | 111 | (1) | 6.9 | 89.9 | 2.5 | 15.5 |

Parentheses indicate negative (−) values. For LCCs, a negative value means an increase in LCC by the amount indicated.

b. Consumer Subgroup Analysis [93]

(i) Central Air Conditioners and Heat Pumps

As described in section IV.H, for central air conditioners and heat pumps, DOE determined the impact of the considered energy efficiency TSLs on low-income households and senior-only households. For low-income and senior-only households, the sample sizes from 2005 RECS were very small (*i.e.,* less than 1 percent of the entire sample) at the regional level for central air conditioners and even at the national level for heat pumps, so DOE only performed the subgroup analysis at the national level for air conditioners.

Table V.14 and Table V.15 present key results for split-system coil-only and blower-coil air conditioners, respectively. The analysis for low-income and senior-only households did not show substantially different impacts for these subgroups in comparison with the general population. See chapter 11 of the direct final rule TSD for further details.

TABLE V.14.—SPLIT-SYSTEM AIR CONDITIONERS (COIL-ONLY): COMPARISON OF IMPACTS FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS, NATION

| TSL | Efficiency level *SEER* | LCC Savings *(2009$)* | | | Median payback period *Years* | | |
|---|---|---|---|---|---|---|---|
| | | Senior | Low income | All | Senior | Low income | All |
| 1, 2 | 13.5 | 21 | 33 | 55 | 13 | 12 | 9 |
| 3, 4, 5 | 13 | 0 | 0 | 0 | n/a | n/a | n/a |
| 6 | 14 | 9 | 24 | 51 | 18 | 17 | 12 |
| 7 | * 18 | (1,212) | (1,150) | (1,046) | 100+ | 100+ | 100+ |

*Varies by size of equipment: 2-ton units are 18 SEER; 3-ton units are 17 SEER; and 5-ton units are 16 SEER.
Parentheses indicate negative (−) values. For LCCs, a negative value means an increase in LCC by the amount indicated.

TABLE V.15.—SPLIT-SYSTEM AIR CONDITIONERS (BLOWER-COIL): COMPARISON OF IMPACTS FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS, NATION

| TSL | Efficiency level *SEER* | LCC savings *(2009$)* | | | Median payback period *Years* | | |
|---|---|---|---|---|---|---|---|
| | | Senior | Low income | All | Senior | Low income | All |
| 1, 2 | 13.5 | 11 | 25 | 46 | 15 | 15 | 11 |
| 3, 4, 5 | 13 | 0 | 0 | 0 | n/a | n/a | n/a |
| 6 | 14 | 7 | 22 | 49 | 17 | 16 | 13 |
| 7 | * 24.5 | (696) | (630) | (421) | 68 | 62 | 41 |

* Varies by size of equipment: 2-ton units are 24.5 SEER; 3-ton units are 22 SEER; and 5-ton units are 18 SEER.
Parentheses indicate negative (−) values. For LCCs, a negative value means an increase in LCC by the amount indicated.

(ii) Furnaces

As described in section IV.H, for furnaces, DOE evaluated the impacts of the considered energy efficiency standard levels on low-income consumers and senior citizens (*i.e.,* senior-only households). In addition, DOE analyzed the impacts for three other subgroups: (1) Multi-family housing units; (2) new homes; and (3) replacement applications. DOE only presents the results for the Northern region in this section because, with the exception of TSL 7, there are no consumers impacted by national standards at the considered TSLs. At TSL 7, the impacts of national standards on the considered subgroups are approximately the same as the impacts of the standard for the Northern region.

Table V.16 compares the impacts of the TSLs for the Northern region for non-weatherized gas furnaces for low-income, senior-only, and multi-family households with those for all households. The senior and low-income households show somewhat higher LCC savings from more-efficient furnaces than the general population. In contrast, the multi-family households show lower LCC savings due to generally higher installation costs and lower heating energy use.

Table V.17 compares the impacts of the TSLs for the Northern region for non-weatherized gas furnaces for new home and replacement subgroups with those for all households. The households in new homes show significantly higher LCC savings because their average installation costs are lower, while the households in replacement applications show lower, but still positive, LCC savings compared to the general population. The latter result is primarily due to the high installation costs in some replacement applications. See chapter 11 of the direct final rule TSD for further details.

[93] As described in section IV.H, DOE did not perform a subgroup analysis for the standby mode and off mode efficiency levels. The standby mode and off mode analysis relied on the test procedure to assess energy savings for the considered standby mode and off mode efficiency levels. Because the analysis used the same test procedure parameters for all sample households, the energy savings is the same among the consumer subgroups.

TABLE V.16—NON-WEATHERIZED GAS FURNACES: COMPARISON OF IMPACTS FOR SENIOR-ONLY, LOW-INCOME, AND MULTI-FAMILY CONSUMER SUBGROUPS AND ALL HOUSEHOLDS (NORTH)

| TSL | Efficiency level *AFUE* (percent) | LCC savings *(2009$)* | | | | Median payback period *years* | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | Senior | Low income | Multi-family | All | Senior | Low income | Multi-family | All |
| 2, 4 | 90 | 201 | 175 | 63 | 155 | 8.4 | 9.4 | 13.9 | 10.1 |
| 3 | 92 | 273 | 242 | 104 | 215 | 6.6 | 7.2 | 9.8 | 7.7 |
| 5, 6 | 95 | 410 | 367 | 176 | 323 | 8.3 | 8.5 | 11.3 | 9.4 |
| 7 | 98 | 307 | 229 | (26) | 198 | 14.8 | 16.5 | 23.2 | 17.1 |

Parentheses indicate negative (−) values. For LCCs, a negative value means an increase in LCC by the amount indicated.

TABLE V.17—NON-WEATHERIZED GAS FURNACES: COMPARISON OF IMPACTS FOR REPLACEMENT AND NEW HOME CONSUMER SUBGROUPS AND ALL HOUSEHOLDS (NORTH)

| TSL | Efficiency level *AFUE* (percent) | LCC savings *(2009$)* | | | Median payback period *years* | | |
|---|---|---|---|---|---|---|---|
| | | Replacement | New home | All | Replacement | New home | All |
| 2, 4 | 90 | 90 | 343 | 155 | 12.9 | 2.5 | 10.1 |
| 3 | 92 | 151 | 404 | 215 | 9.0 | 5.1 | 7.7 |
| 5, 6 | 95 | 262 | 502 | 323 | 9.7 | 8.8 | 9.4 |
| 7 | 98 | 158 | 315 | 198 | 16.9 | 17.9 | 17.1 |

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 (and, as applicable, water) savings resulting from the amended standard. (42 U.S.C. 6295(o)(2)(B)(iii)) In calculating a rebuttable presumption payback period for the considered standard levels, DOE used discrete values based on the applicable DOE test procedures rather than distributions for input values, and it based the energy use calculation on the DOE test procedures for furnaces and central air conditioners and heat pumps, as required by statute. *Id.* As a result, DOE calculated a single rebuttable presumption payback value, and not a distribution of payback periods, for each considered efficiency level.

For central air conditioner and heat pump energy efficiency, only single-package heat pumps at the 13.5 SEER level meet the less-than-three-year criteria. Rebuttable paybacks calculated for standby mode and off mode TSL 1 for the split system, single-package, small-duct high-velocity, and space-constrained air conditioners also meet the less-than-three-year criteria. None of the furnace energy efficiency levels meet the less-than-three-year criteria. The rebuttable presumption payback values for each considered efficiency level and product class are presented in chapter 8 of the direct final rule TSD.

While DOE examined the rebuttable presumption criterion, it considered whether the standard levels considered for today's direct final rule are economically justified through a more detailed analysis of the economic impacts of these levels, including those 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).

2. Economic Impacts on Manufacturers

DOE performed a manufacturer impact analysis (MIA) to estimate the impact of amended energy conservation standards on manufacturers of residential furnaces, central air conditioners, and heat pumps. The section below describes the expected impacts on manufacturers at each considered energy efficiency TSL (trial standard levels based on SEER, HSPF, and AFUE ratings) and each considered standby mode and off mode TSL (trial standard levels based on standby mode and off mode wattage). Chapter 12 of the TSD explains the analysis in further detail. A summary of the energy efficiency TSLs can be found in Table V.1, and a summary of standby mode and off mode TSLs can be found in Table V.2.

a. Industry Cash-Flow Analysis Results

Table V.18 through Table V.22 depict the financial impacts on manufacturers and the conversion costs DOE estimates manufacturers could incur at each TSL. The financial impacts on manufacturers are represented by changes in industry net present value (INPV). DOE presents the results by grouping product classes that are commonly produced by the same manufacturers.

Results for the energy efficiency standards for furnaces and central air conditioners and heat pumps are grouped as conventional products and niche products. These product groupings were analyzed under two markup scenarios: (1) The preservation of earnings before income and taxes (EBIT) scenario; and (2) the tiered markup scenario. As discussed in section IV.I.1 of the Methodology and Discussion section of this document, DOE considered the preservation of EBIT scenario to model manufacturer concerns about the inability to maintain their margins as manufacturing production costs increase to reach more-stringent efficiency levels. In this scenario, while manufacturers make the necessary investments required to convert their facilities to produce amended standards-compliant equipment, operating profit does not change in absolute dollars and decreases as a percentage of revenue.

DOE also considered the tiered markup scenario. The tiered markup scenario models the situation in which manufacturers maintain, when possible, three tiers of product markups. The tiers

described by manufacturers in MIA interviews were defined as ''good, better, best'' or ''value, standard, premium.'' In the standards case, the tiered markups scenario considers the situation in which the breadth of a manufacturer's portfolio of products shrinks and amended standards effectively ''demote'' higher-tier products to lower tiers. As a result, higher-efficiency products that previously commanded ''standard'' and ''premium'' mark-ups are assigned ''value'' and ''standard'' markups, respectively. Typically, a significant fraction of the market will seek the lowest-cost unit available for purchase, particularly in the new construction market. Manufacturers expect this phenomenon, in the standards case, to drive price competition at the new minimum efficiency and foster efforts to convert what was previously a ''better'' product into the new baseline ''good'' product. This scenario, therefore, reflects one of the industry's key concerns regarding this effect of product commoditization at higher efficiency levels.

Standby mode and off mode standards results are presented for the industry as a whole, without groupings. Due to the small incremental cost of standby mode and off mode components relative to the overall cost of furnaces, central air conditioners, and heat pumps, DOE has concluded that standby mode and off mode features would not have a differentiated impact on different manufacturers or different product classes. The impacts of standby mode and off mode features were analyzed for two markup scenarios: (1) A preservation of gross margin percentage scenario; and (2) a preservation of EBIT scenario. The preservation of gross margin percentage scenario assumes that manufacturers will maintain a constant gross margin percentage even as product costs increase in the standards case. This scenario represents an upper bound to manufacturer profitability after energy conservation standards are amended. In contrast, the preservation of EBIT scenario assumes manufacturers will not be able to maintain the base case gross margin level. Rather, as production costs go up, manufacturers will only be able to maintain the same operating profit—in absolute dollars—reducing gross margin as a percentage of revenue. In other words, as products get more expensive to produce, manufacturers are not able to make as much profit per unit on a percentage basis.

Each of the modeled scenarios results in a unique set of cash flows and corresponding industry value at each TSL. In the following discussion, the INPV results refer to the difference in industry value between the base case and each standards case that result from the sum of discounted cash flows from the base year 2010 through 2045, the end of the analysis period. To provide perspective on the short-run cash flow impact, DOE includes in the discussion of the results a comparison of free cash flow between the base case and the standards case at each TSL in the year before amended standards take effect.

(i) Cash-Flow Analysis Results for Conventional Products

Table V.18 and Table V.19 show the MIA results for each TSL using the markup scenarios described above for conventional residential furnace, central air conditioner, and heat pump products. This ''conventional products'' grouping includes the following product classes: (1) Split-system air conditioning; (2) split-system heat pumps; (3) single-package air conditioning; (4) single-package heat pumps; and (5) non-weatherized gas furnaces.

TABLE V.18—MANUFACTURER IMPACT ANALYSIS FOR CONVENTIONAL PRODUCTS UNDER THE PRESERVATION OF EBIT SCENARIO

| | Units | Base case | Trial standard level | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | | 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| INPV | 2009$ millions | 8,347 | 8,354 | 7,847 | 7,936 | 7,893 | 7,857 | 7,685 | 6,855 |
| Change in INPV | 2009$ millions | *n/a* | 8 | (500) | (411) | (454) | (490) | (662) | (1,492) |
| | (%) | *n/a* | 0.1 | (6.0) | (4.9) | (5.4) | (5.9) | (7.9) | (17.9) |
| Product Conversion Costs. | 2009$ millions | *n/a* | 0.0 | 5 | 12 | 12 | 25 | 127 | 279 |
| Capital Conversion Costs. | 2009$ millions | *n/a* | 0.0 | 15 | 16 | 16 | 52 | 158 | 532 |
| Total Investment Required. | 2009$ millions | *n/a* | 0.0 | 20 | 28 | 28 | 77 | 284 | 810 |

Parentheses indicate negative (−) values.

TABLE V.19.—MANUFACTURER IMPACT ANALYSIS FOR CONVENTIONAL PRODUCTS UNDER THE TIERED MARKUPS SCENARIO

| | Units | Base case | Trial standard level | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | | 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| INPV | 2009$ millions | 8,347 | 8,379 | 8,021 | 7,638 | 7,475 | 7,467 | 6,509 | 4,578 |
| Change in INPV | 2009$ millions | *n/a* | 33 | (326) | (709) | (871) | (879) | (1,837) | (3,768) |
| | (%) | *n/a* | 0.4 | (3.9) | (8.5) | (10.4) | (10.5) | (22.0) | (45.1) |
| Product Conversion Costs. | 2009$ millions | *n/a* | 0.0 | 5 | 12 | 12 | 25 | 127 | 279 |
| Capital Conversion Costs. | 2009$ millions | *n/a* | 0.0 | 15 | 16 | 16 | 52 | 158 | 532 |

TABLE V.19.—MANUFACTURER IMPACT ANALYSIS FOR CONVENTIONAL PRODUCTS UNDER THE TIERED MARKUPS SCENARIO—Continued

| | Units | Base case | Trial standard level | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | | 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Total Investment Required. | 2009$ millions .. | *n/a* | 0.0 | 20 | 28 | 28 | 77 | 284 | 810 |

Parentheses indicate negative (−) values.

Sales of split-system air conditioners make up more than 60 percent of residential central cooling shipments, and non-weatherized gas furnaces make up more than 80 percent of the residential furnace shipments, respectively. These two product classes are the largest drivers of INPV in the conventional product grouping. In the base case, the conventional products industry is estimated to have an INPV value of $8,347 million (2009$).

TSL 1 represents the efficiency levels for the conventional product classes that have the largest market share today. At TSL 1, DOE estimates impacts on INPV to be small, but positive. INPV impacts range from $33 million to $8 million, or a change in INPV of 0.4 percent to 0.1 percent. At this considered level, industry free cash flow [94] is estimated to remain steady at $511 million for both the base case and standards case in the year before the TSL 1 compliance date (2015).

At TSL 1, the impacts on the industry are minor because manufacturers already ship products at TSL 1 efficiencies in high volumes. Eighty-one percent of all conventional HVAC products shipped today meet or exceed the TSL 1 standards. Additionally, an increase in standards from 13 SEER to 13.5 SEER for split-system air conditioning and heat pumps is expected to require no significant conversion costs. As a result, INPV remains mostly stable at this considered standard level.

TSL 2 has a higher standard for non-weatherized gas furnaces than TSL 1. This results in a greater negative impact on INPV. TSL requires non-weatherized gas furnaces to meet a 92-percent AFUE minimum efficiency in the North. DOE estimates TSL 2 impacts on INPV to range from −$326 million to −$500 million, or a change in INPV of −3.9 percent to −6.0 percent. At this level, industry free cash flow is estimated to decrease by approximately 5.3 percent to $484 million, compared to the base-case value of $511 million, in the year 2015.

At TSL 2, for the non-weatherized gas furnace standard, manufacturers may incur elevated conversion costs as they redesign a 92-percent AFUE furnace product to meet the requirements of the builder market and adjust their product families accordingly in the North. At 92-percent AFUE, these furnaces would require a secondary heat exchanger, and, when compared to a 90-percent AFUE design, the heat exchangers would need to be sized up. DOE estimates that at this level, non-weatherized gas furnace conversion costs total approximately $20 million for the industry. These conversion costs, along with changes in shipments due to standards, account for much of the drop in INPV from TSL 1 to TSL 2.

TSL 3 incorporates regional standards for split-system air conditioning and furnace products. Compared to the baseline, TSL 3 proposes a higher air conditioning and heat pump standard in the South (14 SEER minimum) and a higher furnace standard in the North (90-percent AFUE minimum). At TSL 3, DOE estimates impacts on INPV to range from −$411 million to −$709 million, or a change in INPV of −4.9 percent to −8.5 percent. At this considered level, industry free cash flow is estimated to decrease by approximately 5.8 percent to $481 million, compared to the base-case value of $511 million, in the year leading up to the year in which compliance with considered energy conservation standards would be required (2015).

Both markup scenarios in the GRIM for the energy efficiency standards at TSL 3 assume that a commoditization of 14 SEER air conditioning units in the South would put downward pressure on margins for 14 SEER units sold in all regions. Similarly, the 90-percent AFUE standard for non-weatherized gas furnaces in the North would negatively affect margins for non-weatherized gas furnace units sold in all regions. This impact on markups is more severe in the tiered scenario, because the change in the standard also compresses markups on higher-AFUE products, which are effectively demoted in the ''good, better, best'' sales model. As a result, INPV decreases by 8.5 percent in the tiered markup scenario, compared to 4.9 percent in the preservation of EBIT scenario.

TSL 4 represents the consensus agreement level and incorporates accelerated compliance dates. The standards are set at the same level as TSL 3, except that TSL 4 also includes EER standards for central air conditioners in the hot-dry region. In addition, the furnace standards are modeled to take effect in 2013, and the air conditioning and heat pump standards are modeled to take effect in 2015, instead of the 2016 compliance dates used in TSL 3. At TSL 4, DOE estimates impacts on INPV to range −$454 million to −$871 million, or a change in INPV of −5.4 percent to −10.4 percent. At this level, industry free cash flow is estimated to decrease by approximately 9.6 percent to $462 million, compared to the base-case value of $511 million, in the year 2015.

To comply with the earlier compliance dates, manufacturers must make earlier investments in product conversions, which negatively affect INPV because of discounting effects. Additionally, the accelerated schedule for amended standards leads to earlier commoditization of residential furnace, central air conditioner, and heat pump products. As a result, the INPV value is slightly more negative in TSL 4 than in TSL 3 for both the preservation of EBIT scenario and the tiered markups scenario.

TSL 5 includes higher furnace standards than TSL 4. Non-weatherized gas furnace standards would increase to 95-percent AFUE. Additionally, TSL 5 lacks the accelerated compliance dates associated with TSL 4. All HVAC standards in TSL 5 would require compliance in 2016. At TSL 5, DOE estimates impacts on INPV to range from −$490 million to −$879 million, or a change in INPV of −5.9 percent to −10.5 percent. At this considered level,

[94] Free cash flow (FCF) is a metric commonly used in financial valuation. DOE calculates FCF by adding back depreciation to net operating profit after tax and subtracting increases in working capital and capital expenditures. See TSD chapter 12 for more detail on FCF and its relevance to DOE's MIA results.

industry free cash flow is estimated to decrease by approximately 9.7 percent to $461 million, compared to the base-case value of $511 million, in the year 2015.

At 95-percent AFUE, non-weatherized gas furnace efficiency would be one efficiency level below max-tech. To comply with such a standard, manufacturers would need to increase heat exchanger size up to the physical constraints of the furnace cabinets. Furnace manufacturers would need to upgrade their 95-percent AFUE production lines to meet demand. Additionally, manufacturers expect this efficiency level would require significant R&D costs to redesign and convert a premium, feature-loaded product into a basic value-line product, which would be demanded by the builder market. As a result, industry conversion costs could grow from $28 million at TSL 4 to $77 million at TSL 5. INPV becomes slightly more negative from TSL 4 to TSL 5.

TSL 6 elevates the standard for air conditioning and heat pumps over TSL 5 while maintaining the same standards for all furnace product classes. TSL 6 is the most aggressive regional standard considered in this rulemaking (although TSL 7 has more stringent standards, the standards in TSL 7 are national rather than regional). At TSL 6, DOE estimates impacts on INPV to range from −$662 million to −$1837 million, or a change in INPV of −7.9 percent to −22.0 percent. At this considered level, industry free cash flow is estimated to decrease by approximately 24.7 percent to $385 million, compared to the base-case value of $511 million, in the year 2015.

In the base case, 73 percent of split-system air conditioning shipments in the North are below 14 SEER, and 84 percent of split-system air conditioning shipments in the South are below 15 SEER. Increasing the minimum efficiency to 14 SEER in the North and 15 SEER in the South requires significantly more capital expenditure from manufacturers. At TSL 6, manufacturers would need to redesign their highest-volume product lines in both the South and the North. There are multiple design paths that manufacturer could take; however, the changes will likely involve the addition of two-stage compressors, the enlargement of heat exchangers, the application of more-sophisticated controls, the incorporation of microchannel technology, or some combination of these options. Some manufacturers indicated that new production facilities would be necessary at this potential standard level.

TSL 7 represents the max-tech efficiency level for all product classes. At TSL 7, DOE estimates impacts on INPV to range from −$1,492 million to −$3,768 million, or a change in INPV of −17.9 percent to −45.1 percent. At this considered level, industry free cash flow is estimated to decrease by approximately 65.9 percent to $174 million, compared to the base-case value of $511 million, in the year 2015.

At TSL 7, the industry incurs significant R&D costs and loses the ability to differentiate products based on efficiency. For central air conditioning systems, manufacturers would likely have to move to add a second compressor, incorporate inverter technology, or make their product significantly larger. For furnaces, manufacturers would likely have to incorporate burner modulation technology, which would include adding modulating gas valves, variable speed inducer fans, and more-sophisticated controls. These potential standard levels would require much higher R&D and product design expenditures by manufacturers. It could be difficult for all major manufacturers to justify the investments necessary to reach max-tech. A few manufacturers indicated that building a new facility would create less business disruption risk than attempting to completely redesign and upgrade existing facilities. Additionally, some manufacturers noted that lower labor rates in Mexico and other countries abroad may entice them to move their production facilities outside of the U.S. There was general agreement that the high conversion costs and more expensive components required in TSL 7 could also make foreign-based technologies, which have traditionally been more expensive, more attractive in the domestic market.

(ii) Cash-Flow Analysis Results for Niche Furnace Products

Table V.20 and Table V.21 show the MIA results for each TSL using the markup scenarios described above for niche furnace products. The niche furnace grouping includes the mobile home and oil furnace product classes. In the base case, annual mobile home furnace shipments total approximately 120,000 units/year, while annual oil furnace shipments total approximately 80,000 units/year for 2010.

TABLE V.20—MANUFACTURER IMPACT ANALYSIS FOR NICHE FURNACE PRODUCTS UNDER THE PRESERVATION OF EBIT SCENARIO

| | Units | Base case | Trial standard level | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | | 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| INPV | 2009$ millions | 149 | 149 | 151 | 132 | 125 | 131 | 131 | 109 |
| Change in INPV | 2009$ millions | *n/a* | 0 | 2 | (17) | (24) | (18) | (18) | (40) |
| | (%) | *n/a* | 0.0 | 1.2 | (11.6) | (16.4) | (12.1) | (12.1) | (26.7) |
| Product Conversion Costs. | 2009$ millions | *n/a* | 0.0 | 0 | 4 | 4 | 8 | 8 | 16 |
| Capital Conversion Costs. | 2009$ millions | *n/a* | 0.0 | 0 | 11 | 11 | 17 | 17 | 35 |
| Total Investment Required. | 2009$ millions | *n/a* | 0.0 | 0 | 15 | 15 | 24 | 24 | 51 |

Parentheses indicate negative (−) values.

TABLE V.21—MANUFACTURER IMPACT ANALYSIS FOR NICHE FURNACE PRODUCTS UNDER THE TIERED MARKUP SCENARIO

| | Units | Base case | Trial standard level | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | | 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| INPV | 2009$ millions | 149 | 149 | 151 | 129 | 120 | 114 | 114 | 94 |
| Change in INPV | 2009$ millions | *n/a* | (0) | 2 | (20) | (29) | (36) | (36) | (55) |

TABLE V.21—MANUFACTURER IMPACT ANALYSIS FOR NICHE FURNACE PRODUCTS UNDER THE TIERED MARKUP SCENARIO—Continued

| | Units | Base case | Trial standard level | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | | 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| | (%) | *n/a* | (0.0) | 1.4 | (13.5) | (19.6) | (23.8) | (23.8) | (36.7) |
| Product Conversion Costs. | 2009$ millions | *n/a* | 0.0 | 0 | 4 | 4 | 8 | 8 | 16 |
| Capital Conversion Costs. | 2009$ millions | *n/a* | 0.0 | 0 | 11 | 11 | 17 | 17 | 35 |
| Total Investment Required. | 2009$ millions | *n/a* | 0.0 | 0 | 15 | 15 | 24 | 24 | 51 |

Parentheses indicate negative (−) values.

At TSL 1 and TSL 2, the standards-case efficiency remains at the baseline level for both mobile home furnaces and oil furnaces. There are no conversion costs, and the INPV varies very little from the baseline value.

At TSL 3, the oil furnace standard increases to 83-percent AFUE, while the mobile home furnace standard increases to 90-percent AFUE in the North. At TSL 3, DOE estimates impacts on INPV to range from −$17 million to −$20 million, or a change in INPV of −11.6 percent to −13.5 percent. At this level, industry free cash flow is estimated to decrease by approximately 54.0 percent to $5.1 million, compared to the base-case value of $11.0 million, in the year 2015.

TSL 3 would require the addition of a secondary heat exchanger for mobile home furnace products sold in the North. As a result, mobile home furnace manufacturers could incur conversion costs for redesigns and tooling. Oil furnace manufacturers would likely need to increase the surface area of heat exchangers. DOE estimates conversion costs for the entire industry to meet the TSL 3 to be $15 million.

TSL 4 represents the consensus agreement level and incorporates accelerated compliance dates. The mobile home furnace standard and the oil furnace standard do not vary from TSL 3. DOE estimates impacts on INPV to range from −$24 million to −$29 million, or a change in INPV of −16.4 percent to −19.6 percent. At this level, industry free cash flow is estimated to decrease by approximately 11.5 percent to $9.8 million, compared to the base-case value of $11.0 million, in the year 2015.

The accelerated compliance dates of TSL 4 lead to earlier investments by manufacturers. The production line changes necessary to produce secondary heat exchangers for mobile home furnace products and larger heat exchanges for oil furnaces would need to occur before the standards year 2013. Manufacturers could incur conversion costs for redesigns and additional tooling totaling $15 million. There is a decrease in INPV in TSL 4, as compared to TSL 3, due to the earlier commoditization impacts of the accelerated compliance dates. In TSL 4, INPV decreases 4.8 percent to 6.1 percent lower than in TSL 3.

TSL 5 and TSL 6 represent an increase in standards for mobile home furnaces and oil furnaces above the level set in TSL 1 through TSL 4. The standard in the North for mobile home furnaces increases to 96-percent AFUE, and the national standard for oil furnaces increases to 85-percent AFUE. TSL 5 and TSL 6 require compliance in 2016. DOE estimates impacts on INPV to range from −$18 million to −$36 million, or a change in INPV of −12.1 percent to −23.8 percent. At this level, industry free cash flow is estimated to decrease by approximately 86.0 percent to $1.6 million, compared to the base-case value of $11 million, in the year 2015.

TSL 5 and TSL 6 would raise the standard in the North for mobile home furnaces to the max-tech level (*i.e.,* 96-percent AFUE). At this level, all mobile home furnaces in the North would be required to be condensing. This change would drive the increase in conversion cost, as manufacturers work on condensing furnace designs that function within the physical dimension and price constraints of the mobile home market. Mobile home furnace manufacturers would no longer be able to differentiate products based on efficiency. In interviews, manufacturers noted that the loss of product differentiation would lead to increased focus on cost competitiveness. Given the size of the mobile home furnace market (approximately 120,000 units per year) and manufacturer feedback that the mobile home market is highly price sensitive, a number of manufacturers could choose to exit the market rather than compete at this efficiency level. Additionally, TSL 5 and TSL 6 would increase the standard for oil furnaces to 85-percent AFUE. To reach this level, manufacturers would continue to increase the surface area of heat exchangers, incurring additional production costs and higher raw material costs. Conversion costs for TSL 5 and TSL 6 are $24 million. At this cost, it is possible that some oil furnace manufacturers would exit the business.

TSL 7 raises the standard for oil furnaces and mobile home furnaces to max-tech. DOE estimates impacts on INPV to range −$40 million to −$55 million, or a change in INPV of −26.7 percent to −36.7 percent. At this considered level, industry free cash flow is estimated to decrease by approximately 193 percent to −$9.2 million, compared to the base-case value of $11 million, in the year 2015.

TSL 7 sets a national standard for oil furnaces at the max-tech level (*i.e.,* 97-percent AFUE). This efficiency level would require the development of condensing oil furnaces as the baseline product. DOE was only able to identify one domestic manufacturer offering a condensing oil furnace. The development of cost-effective, reliable, and durable oil furnace products would require significant capital expenditures by a majority of the industry. It is unclear how many manufacturers would make the product conversion investment to compete in a market that supplies fewer than 80,000 units/year and, according to most manufacturers, is shrinking. However, given the limited size of the oil furnace market and the market's declining shipments, it could be expected that a number of manufacturers would choose to leave the market rather than compete at this efficiency level. DOE expects a similar effect in the mobile home furnace market.

(iii) Cash-Flow Analysis Results for Standby Mode and Off Mode Standards

TABLE V.22—STANDBY MODE AND OFF MODE IMPACTS FOR FURNACE, CENTRAL AIR CONDITIONING, AND HEAT PUMP PRODUCTS UNDER THE PRESERVATION OF GROSS MARGIN PERCENTAGE SCENARIO

| | Units | Base case | Standby mode and off mode TSL | | |
|---|---|---|---|---|---|
| | | | 1 | 2 | 3 |
| INPV | *2009$ millions* | 8,711 | 8,715 | 8,716 | 8,734 |
| Change in INPV | *2009$ millions* | *n/a* | 4 | 5 | 23 |
| | (%) | n/a | 0.05 | 0.06 | 0.26 |
| Product Conversion Costs | *2009$ millions* | *n/a* | 2.77 | 2.77 | 2.77 |
| Capital Conversion Costs | *2009$ millions* | *n/a* | 0 | 0 | 0 |
| Total Investment Required | *2009$ millions* | *n/a* | 2.77 | 2.77 | 2.77 |

TABLE V.23—STANDBY MODE AND OFF MODE IMPACTS FOR FURNACE, CENTRAL AIR CONDITIONING, AND HEAT PUMP PRODUCTS UNDER THE PRESERVATION OF EBIT SCENARIO

| | Units | Base case | Standby mode and off mode TSL | | |
|---|---|---|---|---|---|
| | | | 1 | 2 | 3 |
| INPV | *2009$ millions* | 8,711 | 8,458 | 8,457 | 8,456 |
| Change in INPV | *2009$ millions* | *n/a* | (253) | (253) | (255) |
| | (%) | *n/a* | (2.91) | (2.91) | (2.93) |
| Product Conversion Costs | *2009$ millions* | *n/a* | 2.77 | 2.77 | 2.77 |
| Capital Conversion Costs | *2009$ millions* | *n/a* | 0 | 0 | 0 |
| Total Investment Required | *2009$ millions* | *n/a* | 2.77 | 2.77 | 2.77 |

Parentheses indicate negative (−) values.

The preservation of gross margin percentage and preservation of EBIT markup scenarios for the standby mode and off mode analysis provide similar results. DOE estimates impacts on INPV to range from $23 million to −$255 million, or a change in INPV of 0.26 percent to −2.93 percent. These results include the impacts of conversion costs, estimated at $2.8 million for the industry. DOE estimated total conversion costs to be similar at all three standby mode and off mode TSLs, because the levels of R&D, testing, and compliance expenditures do not vary dramatically. Furthermore, DOE did not identify significant changes to manufacturer production processes that would result from standby mode and off mode standards. In general, the range of potential impacts resulting from the standby mode and off mode standards is small when compared to the range of potential impacts resulting from the energy efficiency standards.

b. Impacts on Employment

DOE quantitatively assessed the impacts of amended energy conservation standards on domestic employment. DOE used the GRIM to estimate the domestic labor expenditures and number of domestic production workers in the base case and at each energy efficiency TSL from 2010 to 2045. DOE used statistical data from the U.S. Census Bureau's 2008 Economic Census,[95] 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 resulting from the manufacture of products are a function of the labor intensity of the product, the sales volume, and an assumption that wages remain fixed in real terms over time.

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 industry. DOE used Census data and interviews with manufacturers to estimate the portion of the total labor expenditures that is attributable to U.S. (*i.e.,* domestic) labor.

The production worker estimates in this section only cover employment up to the line-supervisor level for functions involved in fabricating and assembling a product within a manufacturer 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 only account for production workers who manufacture the specific products covered by this rulemaking. For example, even though a manufacturer may also produce hearth products, a worker on a hearth product line would not be included with the estimate of the number of residential furnace workers.

Impact on employment results are based on analysis of energy efficiency standards. For standby mode and off mode, the technology options considered in the engineering analysis result in component swaps, which do not add significant product complexity. While some product development effort will be required, DOE does not expect the standby mode and off mode standard to meaningfully affect the amount of labor required in production. Therefore, the standby and off mode would not result in significant changes to employment calculations based on the energy efficiency TSLs.

The employment impacts shown in Table V.24 represent the potential production employment that could result following the adoption of amended energy conservation standards. The upper end of the results in the table estimates the maximum change in the number of production workers after amended energy conservation standards must be met. The upper end of the results assumes that manufacturers would continue to produce the same scope of covered products in the same production facilities, or in new or expanded facilities located in the United States.

[95] Annual Survey of Manufacturing: 2006. American FactFinder. 2008. Bureau of the Census (Available at: < *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-ds_name=AM0631GS101*>).

The upper end of the range, therefore, assumes that domestic production does not shift 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.24 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 U.S. Finally, it is noted that the employment impacts shown are independent of the employment impacts to 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 16,902 domestic production workers involved in manufacturing residential furnaces, central air conditioners, and heat pumps in 2016. Using 2008 Census Bureau data and interviews with manufacturers, DOE estimates that approximately 89 percent of products sold in the United States are manufactured domestically. Table V.24 shows the range of the impacts of potential amended energy conservation standards on U.S. production workers in the residential furnace, central air conditioner, and heat pump market. The table accounts for both conventional products and niche furnace products.

TABLE V.24—POTENTIAL CHANGES IN THE TOTAL NUMBER OF RESIDENTIAL FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP PRODUCTION WORKERS IN 2016

| | Trial standard level | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Base Case | 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Total Number of Domestic Production Workers in 2016 (without facilities moving offshore) | 16,902 | 16,998 | 17,242 | 17,485 | 17,746 | 17,940 | 17,998 | 18,102 |
| Potential Changes in Domestic Production Workers in 2016* | *n/a* | 96–(16,902) | 340–(16,902) | 583–(16,902) | 844–(16,902) | 1038–(16,902) | 1096–(16,902) | 1200–(16,902) |

*DOE presents a range of potential employment impacts.
Parentheses indicate negative (−) values.

Based on the GRIM analysis, DOE estimates that there would be positive employment impacts among conventional residential furnace, central air conditioner, and heat pump manufacturers at the upper bound of the employment estimates. This effect occurs because the required labor content increases per product at higher efficiency levels, and the analysis assumes manufacturers do not alter the current mix of domestic and international production. DOE believes the assumption for the employment scenarios become less realistic at the most stringent TSLs when complete technology changes would likely require the development of new manufacturing plants.

c. Impacts on Manufacturing Capacity

(i) Conventional Furnaces, Central Air Conditioners, and Heat Pumps

Most manufacturers currently have excess production capacity, reflected in part by the substantial decline in shipments since the height of the housing boom in 2005. Manufacturers did not express major capacity-related concerns at the efficiency levels included at TSL 1, 2, and 3. Additionally, manufacturers did not express concerns about the production capacity at TSL 4, which includes accelerated compliance dates arising out of the consensus agreement. All major manufacturers that were interviewed agreed that the timelines in TSL 4 could be met and that no capacity shortages were likely to occur.

At TSL 5, the standard levels for all central air conditioners and heat pumps product classes would be the same as at TSL 4, so DOE does not anticipate capacity impacts for these products. For non-weatherized gas furnaces, TSL 5 would be more challenging for manufacturers because of the 95-percent AFUE standard in the North (as opposed to the 90-percent AFUE standard in the North in TSL 4). However, because the regional standard in the South is set at the baseline efficiency, manufacturers would not have to redesign all production lines. Additionally, TSL 5 allows for an additional 3 years beyond TSL 4's consensus timeline for manufacturers to ramp up production capabilities. Therefore, DOE does not believe there would be any impact on manufacturing capacity from TSL 1 to TSL 5.

At the efficiency levels included in TSL 6 and TSL 7, manufacturers were concerned that the changes in technology could impose production capacity constraints in the near to medium term. At TSL 6, the higher energy conservation standard would increase industry demand for some key components and tooling over current levels. All major manufacturers would seek to increase their purchasing volumes of high-efficiency compressors, ECM motors, and production tooling during the same timeframe. Given that the industry relies on a limited number of suppliers for these parts, some manufacturers expressed concern that a bottleneck in the supply chain could create production constraints.

At TSL 7, the major domestic manufacturers of split-system air conditioners and heat pumps would likely need to redesign all of their existing products to incorporate more-efficient technologies for residential applications. If manufacturers chose not to or could not afford to develop new technologies, they would likely need to significantly enlarge the products' exchangers, which in turn would require a redesign of their production lines to accommodate significantly larger units or to add a second compressor. This increased demand for components and production tooling could lead to short-term constraints on production. Manufacturers would face similar concerns with non-weatherized gas furnaces. Manufacturers would have to redesign all product lines to incorporate burner modulation technology, which would include adding modulating gas valves, variable-speed inducer fans, and more-sophisticated controls. The coinciding demand for modulating gas valves and variable-speed inducer fans from seven major manufacturers could potentially create supply chain constraints.

In summary, production capacity implications for the conventional product classes would be most severe at TSL 6 and TSL 7.

(ii) Niche Furnace Products

According to the manufacturers of oil furnace and mobile home furnace products, amended energy conservation standards should not significantly affect production capacity, except at the max-tech levels (where condensing operation would be required). According to manufacturers interviewed, these capacity-related concerns are focused on the technical feasibility of increasing oil furnace efficiency to condensing levels. Most manufacturers have not found a design that reliably delivers performance above 95-percent AFUE. Some manufacturers indicated that they would not be able to produce products at the condensing level until the sulfur content of heating oil was regulated and substantially lowered in key markets.

d. Impacts on Sub-Groups of Small Manufacturers

As discussed in section IV.I.1, 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. DOE used the results of the industry characterization to group manufacturers exhibiting similar characteristics. Consequently, DOE identified two sub-groups for analysis: (1) Small manufacturers and (2) SDHV manufacturers.

(i) Small Manufacturers Sub-Group

DOE evaluated the impact of amended energy conservation standards on small manufacturers, specifically ones defined as ''small businesses'' by the U.S. Small Business Administration (SBA). The SBA defines a ''small business'' as having 750 employees or less for NAICS 333415, ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.'' Based on this definition, DOE identified four niche central air conditioner and heat pump manufacturers and five niche furnace manufacturers that are classified as small businesses. DOE describes the differential impacts on these small businesses in today's notice at section VI.B, Review Under the Regulatory Flexibility Act.

Section VI.B concludes that larger manufacturers could have a competitive advantage in multiple niche product markets due to their size and ability to access capital. Additionally, in some market segments, larger manufacturers have significantly higher production volumes over which to spread costs. The Department cannot certify this rule would not have a significant economic impact on a substantial number of small manufacturers. However, DOE has carefully considered these potential impacts and has sought to mitigate any such impacts in this rule. For a complete discussion of the impacts on small businesses, see chapter 12 of the direct final rule TSD.

(ii) Small-Duct, High-Velocity Manufacturers Sub-Group

Small-duct, high-velocity systems serve a niche within the residential air conditioning market. A SDHV system consists of a non-conventional indoor unit and air distribution system (produced by the SDHV manufacturer) mated to a conventional outdoor unit (produced by split-system manufacturers). These SDHV systems typically make use of flexible ducting and operate at a higher static pressure than conventional air conditioning systems. This product class makes up less than 0.5 percent of central air conditioning shipments. DOE estimates the total market size to be less than 30,000 units per year.

SDHV systems are primarily installed in existing structures that do not have air conditioning duct work. In this application, SDHV systems are often a more cost-effective solution for centralized cooling because conventional systems may require substantial installation and retrofit costs to install ducting. The SDHV system delivers conditioned air via small diameter flexible tubing, which requires less space than conventional ductwork. SDHV systems are often paired with hydronic heat, radiant heat, and ground temperature heat pump systems. Historically, approximately 80 percent of shipments have been for the retrofit market, and 20 percent of shipments have been for the new construction market.

DOE has identified three manufacturers of SDHV systems that serve the U.S. market. The two domestic manufacturers, Unico Systems and SpacePak, serve the majority of the market. SpacePak is a subsidiary of MesTek Inc., a U.S. holding company with over 30 specialty manufacturing brands. Unico is a small business, as defined by the SBA.

DOE's analysis of AHRI Directory product listings indicates that the primary difference between SDHV products rated at 11 SEER and SDHV products rated above 11 SEER is the paired condensing unit. The indoor unit, which is the component designed and manufactured by SpacePak and Unico, does not change as the AHRI-certified efficiency increases. SpacePak and Unico are reaching higher efficiencies by pairing their products with larger condensing units, which are produced by conventional air conditioning and heat pump manufacturers.

According to SDHV manufacturers, the small size of the SDHV industry limits influence on key suppliers. As a result, SDHV manufacturers must choose from stock fan motors, compressors, and products that are optimized for other applications and industries. The selection of available components limits the technology options available to SDHV manufacturers, thereby constraining the manufacturers' ability to achieve efficiencies above 11 SEER through improved product design. Interviewed SDHV manufacturers indicated that they are near max-tech for the SDHV indoor unit with the standards in this rule and available components.

In 2004, both Unico and SpacePak petitioned DOE's Office of Hearings and Appeals (OHA) for exception relief from the 13 SEER energy efficiency standard found at 10 CFR 430.32(c)(2), with which compliance was required for products manufactured on or after January 23, 2006. OHA granted both petitions on October 14, 2004.[96] Accordingly, the manufacturers were authorized to produce equipment that performed at 11 SEER/6.8 HSPF and above. In their 2004 application for exception relief, SpacePak and Unico both indicated that a 13 SEER standard would create significant hardships for the SDHV industry. SpacePak wrote in its application for exception relief that an absence of relief would lead to ''the loss of all sales within the United States.'' As part of the 2004 OHA Decision and Order (case #TEE–0010), Lennox International filed comments stating that ''it agrees these [SDHV] products would be unfairly burdened by * * * the 13 SEER/7.7 HSPF minimum level.''

Since 2004, SDHV manufacturers have been able to reach efficiencies of 13 SEER, but the vast majority of products listed in the AHRI Directory are below 13 SEER (see chapter 3 of the direct final rule TSD for a distribution of SDHV systems by efficiency level). This improved efficiency is primarily the result of pairing their products with higher-efficiency outdoor units

[96] Department of Energy: Office of Hearings and Appeals, Decision and Order, Case #TEE 0010 (2004) (Available at: *http://www.oha.doe.gov/cases/ee/tee0010.pdf*) (last accessed September 2010).

produced by other manufacturers. One manufacturer has incorporated variable-speed technology to improve product efficiency. However, overall, SDHV manufacturers still face many of the same challenges they faced in 2004 and have limited options for further improving the efficiency of the air handling unit, which is the only component designed and produced by SDHV manufacturers. As a result, higher standards would force SDHV manufactures to pair their products with more expensive, higher-efficiency outdoor units to provide performance that meets energy conservation standards. TSL 1 through TSL 5 would require only the baseline efficiency level (13 SEER), while TSL 6 and TSL 7 would increase the level to 14 SEER and 14.5 SEER, respectively. DOE believes the increases represented by TSL 6 and TSL 7 would significantly adversely impact the financial standing of SDHV manufacturers. As discussed in their 2004 application for exception relief, such an increase would likely significantly depress shipments because it would require additional controls and a much more expensive outdoor unit. As a result manufacturers would be forced to spread fixed costs over a lower volume and would be less able to pass on the higher incremental costs. Manufacturers would face increasingly difficult decisions regarding the investment of resources toward what would likely be a much smaller market.

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 DOE 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 furnaces, central air conditioners, and heat pumps, that manufacturers of these products will face for products they manufacture within three years prior to and three years after the anticipated compliance date of the amended standards. These requirements included DOE's amended energy conservation standards for other products produced by the manufacturers covered under this rulemaking. Amended energy conservation standards coming into effect during the analysis period that are expected to affect at least a subset of the manufacturers include the rulemakings for residential boilers, packaged terminal air conditioners/packaged terminal heat pumps, furnace fans, room air conditioners, and residential water heaters. DOE discusses these requirements in greater detail in chapter 12 of the direct final rule TSD.

The most common regulatory burden concern raised by manufacturers during interviews was the potential phase-down of HFCs. While no phase-down is currently required, air conditioning and heat pump manufacturers raised these concerns because of HFC phase-down language in proposed legislation, such as H.R. 2454, the *American Clean Energy and Security Act of 2009.* Manufacturers cited concerns that a phase-down of HFC refrigerants could negatively impact product efficiency, product functionality, and manufacturing processes for central air conditioners and heat pumps. Additionally, there is the potential for significant conversion costs as well as higher on-going costs for production.

Furnace manufacturers also cited concerns about the cumulative burden associated with low $NO_X$ and ultra-low $NO_X$ standards adopted in the South Coast Air Quality Management District (SCAQMD) and other air quality districts of California for mobile home furnaces, weatherized gas furnaces, and non-weatherized gas furnaces.[97] Manufacturers stated that these standards will require R&D resources, which may be limited due to conversion costs associated with Federal standards.

Several manufacturers indicated that Canada has programs in place that regulate products covered in this rulemaking. DOE research indicates that Natural Resources Canada (NRCan) regulates residential furnaces, central air conditioners and heat pumps, and furnace fans.[98]

DOE discusses these and other requirements, and includes the full details of the cumulative regulatory burden, in chapter 12 of the direct final rule TSD.

3. National Impact Analysis

This section presents DOE's estimates of the national energy savings and the NPV of consumer benefits that would result from each of the TSLs considered as potential amended furnace, central air conditioner, and heat pump energy efficiency standards, as well as from each of the TSLs considered as potential standards for standby mode and off mode.

In estimating national energy savings and the NPV of consumer benefits, for TSLs 2, 3, and 4, DOE calculated a range of results that reflect alternative assumptions with respect to how the market for non-weatherized and mobile home furnaces will respond to a standard at 90-percent or 92-percent AFUE. DOE believes that the response of the market to a standard at either of these efficiency levels is sufficiently uncertain that it is reasonable to use a range to represent the expected impacts. The low end of the range reflects the approach to forecasting standards-case efficiency distributions described in section IV.G.2. With this approach, the part of the market that was below the amended standard level rolls up to the amended standard level in the year of compliance, and some fraction of shipments remains above the minimum. The high end of the range reflects the possibility that, under an amended standard that requires a minimum AFUE of 90 percent or 92 percent, the entire market will shift to 95 percent because the additional installed cost, relative to 90-percent or 92-percent AFUE, is minimal. In both cases, the approach to forecasting the change in efficiency in the years after the year of compliance is the same.

a. Significance of Energy Savings

To estimate the energy savings attributable to potential standards for furnaces, central air conditioners, and heat pumps, 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 20 percent for furnaces, central air conditioners, and heat pumps (*i.e.,* 20 percent of the total savings from higher product efficiency are ''taken back'' by consumers through more intensive use of the product).

Table V.25 presents DOE's forecasts of the national energy savings for each TSL considered for energy efficiency, and Table V.26 presents DOE's forecasts of

[97] California Air Resources Board, South Coast AQMD List of Current Rules (2010) (Available at: *http://www.arb.ca.gov/drdb/sc/cur.htm*) (last accessed September 2010).

[98] Natural Resources Canada, Canada's Energy Efficiency Regulations (2009) (Available at: *http://oee.nrcan.gc.ca/regulations/guide.cfm*) (last accessed October 2010).

the national energy savings for each TSL considered for standby mode and off mode power. 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 percent 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.25—FURNACES, CENTRAL AIR CONDITIONERS, AND HEAT PUMPS: CUMULATIVE NATIONAL ENERGY SAVINGS FOR ENERGY EFFICIENCY TSLS FOR 2016–2045

| Trial standard level | Quads |
|---|---|
| 1 | 0.18 |
| 2 | 2.32 to 2.91 |
| 3 | 2.97 to 3.84 |
| 4* | 3.20 to 4.22 |
| 5 | 3.89 |
| 6 | 5.91 |
| 7 | 19.18 |

*For TSL 4, which matches the recommendations in the consensus agreement, DOE forecasted the energy savings from 2015 through 2045 for central air conditioners and heat pumps, and from 2013 through 2045 for furnaces.

TABLE V.26—FURNACES, CENTRAL AIR CONDITIONERS, AND HEAT PUMPS: CUMULATIVE NATIONAL ENERGY SAVINGS FOR STANDBY MODE AND OFF MODE POWER TSLS FOR 2016–2045

| Trial standard level | Quads |
|---|---|
| 1 | 0.153 |
| 2 | 0.16 |
| 3 | 0.186 |

DOE also conducted a sensitivity analysis that reflects alternate assumptions regarding the market demand for split-system coil-only air conditioner replacement units at 15 SEER and above in the standards cases (see section IV.G.2 for details). Table V.27 shows the NES results for this sensitivity analysis.

TABLE V.27—FURNACES, CENTRAL AIR CONDITIONERS, AND HEAT PUMPS: CUMULATIVE NATIONAL ENERGY SAVINGS FOR ENERGY EFFICIENCY TSLS FOR 2016–2045 (ALTERNATE ASSUMPTIONS FOR SPLIT-SYSTEM COIL-ONLY AIR CONDITIONER REPLACEMENT MARKET)

| Trial standard level | Quads |
|---|---|
| 1 | 0.20 |
| 2 | 2.34 to 2.93 |
| 3 | 2.91 to 3.78 |
| 4* | 3.14 to 4.16 |
| 5 | 3.83 |
| 6 | 5.69 |
| 7 | 19.01 |

*For TSL 4, which matches the recommendations in the consensus agreement, DOE forecasted the energy savings from 2015 through 2045 for central air conditioners and heat pumps, and from 2013 through 2045 for furnaces.

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 furnaces, central air conditioners, and heat pumps. In accordance with the OMB's guidelines on regulatory analysis,[99] 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 (*e.g.,* 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, which has averaged about 3 percent on a pre-tax basis for the last 30 years.

Table V.28 shows the consumer NPV for each considered energy efficiency TSL for furnaces, central air conditioners, and heat pumps, using both a 7-percent and a 3-percent discount rate, and Table V.29 shows the consumer NPV results for each TSL DOE considered for standby mode and off mode power. For all TSLs except TSL 4 (the level corresponding to the consensus agreement), the impacts cover the lifetime of products purchased in 2016–2045; for TSL 4, the impacts cover the lifetime of products purchased in 2013–2045 for furnaces and in 2015–2045 for central air conditioners and heat pumps. See chapter 10 of the direct final rule TSD for more detailed NPV results.

TABLE V.28—FURNACES, CENTRAL AIR CONDITIONERS, AND HEAT PUMPS: CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR ENERGY EFFICIENCY TSLS FOR PRODUCTS SHIPPED IN 2016–2045

| Trial standard level | 3-percent discount rate | 7-percent discount rate |
|---|---|---|
| | *Billion 2009$* | |
| 1 | 0.76 | 0.23 |
| 2 | 10.61 to 11.56 | 2.60 to 2.41 |
| 3 | 13.35 to 15.29 | 3.36 to 3.36 |
| 4* | 14.73 to 17.55 | 3.93 to 4.21 |
| 5 | 15.69 | 3.47 |
| 6 | 8.18 | (2.56) |
| 7 | (45.12) | (44.98) |

*For TSL 4, which matches the recommendations in the consensus agreement, DOE forecasted the consumer benefits for products sold in 2015–2045 for central air conditioners and heat pumps, and in 2013–2045 for furnaces.

[99] OMB Circular A–4, section E (Sept. 17, 2003). Available at: *http://www.whitehouse.gov/omb/circulars_a004_a-4.*

Parentheses indicate negative (−) values.

TABLE V.29—FURNACES, CENTRAL AIR CONDITIONERS, AND HEAT PUMPS: CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR STANDBY MODE AND OFF MODE POWER TSLS FOR PRODUCTS SHIPPED IN 2016–2045

| Trial standard level | 3-percent discount rate | 7-percent discount rate |
|---|---|---|
| | *Billion 2009$* | |
| 1 | 1.14 | 0.371 |
| 2 | 1.18 | 0.373 |
| 3 | 1.01 | 0.235 |

Parentheses indicate negative (−) values.

DOE also conducted a sensitivity analysis that reflects alternate assumptions regarding the market demand for split-system coil-only air conditioner replacement units at 15 SEER and above in the standards cases (see section IV.G.2 for details). Table V.30 shows the consumer NPV results for this sensitivity analysis.

TABLE V.30—FURNACES, CENTRAL AIR CONDITIONERS, AND HEAT PUMPS: CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR ENERGY EFFICIENCY TSLS FOR PRODUCTS SHIPPED IN 2016–2045 (ALTERNATE ASSUMPTIONS FOR SPLIT-SYSTEM COIL-ONLY AIR CONDITIONER REPLACEMENT MARKET)

| Trial standard level | 3-percent Discount rate | 7-percent Discount rate |
|---|---|---|
| | *Billion 2009$* | |
| 1 | 0.87 | 0.26 |
| 2 | 10.71 to 11.65 | 2.63 to 2.45 |
| 3 | 14.32 to 16.27 | 3.74 to 3.75 |
| 4* | 15.71 to 18.53 | 4.31 to 4.59 |
| 5 | 16.66 | 3.85 |
| 6 | 10.36 | (1.68) |
| 7 | (38.87) | (42.47) |

*For TSL 4, which matches the recommendations in the consensus agreement, DOE forecasted the consumer benefits for products sold in 2015–2045 for central air conditioners and heat pumps, and in 2013–2045 for furnaces.
Parentheses indicate negative (−) values.

DOE also investigated the impact of different learning rates on the NPV for the seven energy efficiency TSLs. The NPV results presented in Table V.28 are based on learning rates of 18.1 percent for central air conditioners and heat pumps, and 30.6 percent for furnaces, 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. The ''high learning''' rates are 20.5 percent for central air conditioners and heat pumps and 33.3 percent for furnaces. The ''low learning'' rates are 11.5 percent for central air conditioners and heat pumps and 19.2 percent for furnaces. The ''no learning'' rate sensitivity assumes constant real prices over the entire forecast period. Refer to appendix 8–J of the TSD for details on the development of the above learning rates.

Table V.31 provides the annualized NPV of consumer benefits at a 7-percent discount rate, combined with the annualized present value of monetized benefits from $CO_2$ and $NO_X$ emissions reductions, for each of the energy efficiency TSLs for the ''default'' learning rate and the three sensitivity cases. (DOE's method for annualization is described in section V.C.3 of this notice.) Table V.32 provides the same combined annualized NPVs using a 3-percent discount rate. (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 these results, see appendix 10–C of the direct final rule TSD.

TABLE V.31—FURNACES, CENTRAL AIR CONDITIONERS, AND HEAT PUMPS: ANNUALIZED NET PRESENT VALUE OF CONSUMER BENEFITS (7-PERCENT DISCOUNT RATE) AND ANNUALIZED PRESENT VALUE OF MONETIZED BENEFITS FROM $CO_2$ AND $NO_X$ EMISSIONS REDUCTIONS** FOR ENERGY EFFICIENCY TSLS FOR PRODUCTS SHIPPED IN 2016–2045

| Trial standard level | Learning Rate (LR) | | | |
|---|---|---|---|---|
| | Default: $LR_{CAC-HP}$ = 18.1% $LR_{FURN}$ = 30.6% | High sensitivity: $LR_{CAC-HP}$ = 20.5% $LR_{FURN}$ = 33.3% | Low sensitivity: $LR_{CAC-HP}$ = 11.5% $LR_{FURN}$ = 19.2% | No learning: LR = 0% (constant real prices) |
| | *Billion 2009$* | | | |
| 1 | 0.036 | 0.037 | 0.034 | 0.028 |
| 2 | 0.304 to 0.287 | 0.309 to 0.294 | 0.285 to 0.258 | 0.242 to 0.195 |
| 3 | 0.414 to 0.437 | 0.421 to 0.448 | 0.389 to 0.400 | 0.328 to 0.312 |

TABLE V.31—FURNACES, CENTRAL AIR CONDITIONERS, AND HEAT PUMPS: ANNUALIZED NET PRESENT VALUE OF CONSUMER BENEFITS (7-PERCENT DISCOUNT RATE) AND ANNUALIZED PRESENT VALUE OF MONETIZED BENEFITS FROM $CO_2$ AND $NO_X$ EMISSIONS REDUCTIONS ** FOR ENERGY EFFICIENCY TSLS FOR PRODUCTS SHIPPED IN 2016–2045—Continued

| Trial standard level | Learning Rate (LR) | | | |
|---|---|---|---|---|
| | Default: $LR_{CAC-HP}$ = 18.1% $LR_{FURN}$ = 30.6% | High sensitivity: $LR_{CAC-HP}$ = 20.5% $LR_{FURN}$ = 33.3% | Low sensitivity: $LR_{CAC-HP}$ = 11.5% $LR_{FURN}$ = 19.2% | No learning: LR = 0% (constant real prices) |
| 4* | 0.456 to 0.517 | 0.464 to 0.528 | 0.430 to 0.479 | 0.366 to 0.387 |
| 5 | 0.451 | 0.462 | 0.414 | 0.326 |
| 6 | 0.075 | 0.106 | (0.016) | (0.266) |
| 7 | (2.497) | (2.360) | (2.890) | (3.998) |

* For TSL 4, which matches the recommendations in the consensus agreement, DOE forecasted the consumer benefits for products sold in 2015–2045 for central air conditioners and heat pumps, and in 2013–2045 for furnaces.

Parentheses indicate negative (−) values.

** The economic benefits from reduced $CO_2$ emissions were calculated using a SCC value of $22.1/metric ton in 2010 (in 2009$) for $CO_2$, increasing at 3% per year, and a discount rate of 3%. The economic benefits from reduced $NO_X$ emissions were calculated using a value of $2,519/ton (in 2009$), which is the average of the low and high values used in DOE's analysis, and a 7-percent discount rate.

TABLE V.32—FURNACES, CENTRAL AIR CONDITIONERS, AND HEAT PUMPS: ANNUALIZED NET PRESENT VALUE OF CONSUMER BENEFITS (3-PERCENT DISCOUNT RATE) AND ANNUALIZED PRESENT VALUE OF MONETIZED BENEFITS FROM $CO_2$ AND $NO_X$ EMISSIONS REDUCTIONS ** FOR ENERGY EFFICIENCY TSLS FOR PRODUCTS SHIPPED IN 2016–2045

| Trial standard level | Learning Rate (LR) | | | |
|---|---|---|---|---|
| | Default: $LR_{CAC-HP}$ = 18.1% $LR_{FURN}$ = 30.6% | High sensitivity: $LR_{CAC-HP}$ = 20.5% $LR_{FURN}$ = 33.3% | Low sensitivity: $LR_{CAC-HP}$ = 11.5% $LR_{FURN}$ = 19.2% | No learning: LR = 0% (constant real prices) |
| | Billion 2009$ | | | |
| 1 | 0.057 | 0.058 | 0.055 | 0.048 |
| 2 | 0.639 to 0.685 | 0.646 to 0.694 | 0.611 to 0.644 | 0.553 to 0.559 |
| 3 | 0.827 to 0.950 | 0.837 to 0.964 | 0.793 to 0.898 | 0.711 to 0.782 |
| 4* | 0.871 to 1.049 | 0.880 to 1.062 | 0.836 to 0.998 | 0.755 to 0.882 |
| 5 | 0.976 | 0.990 | 0.924 | 0.807 |
| 6 | 0.704 | 0.745 | 0.580 | 0.255 |
| 7 | (1.152) | (0.972) | (1.673) | (3.094) |

* For TSL 4, which matches the recommendations in the consensus agreement, DOE forecasted the consumer benefits for products sold in 2015–2045 for central air conditioners and heat pumps, and in 2013–2045 for furnaces.

Parentheses indicate negative (−) values.

** The economic benefits from reduced $CO_2$ emissions were calculated using a SCC value of $22.1/metric ton in 2010 (in 2009$) for $CO_2$, increasing at 3% per year, and a discount rate of 3%. The economic benefits from reduced $NO_X$ emissions were calculated using a value of $2,519/ton (in 2009$), which is the average of the low and high values used in DOE's analysis, and a 3-percent discount rate.

c. Indirect Impacts on Employment

DOE develops estimates of the indirect employment impacts of potential standards on the economy in general. As discussed above, DOE expects amended energy conservation standards for furnaces, central air conditioners, and heat pumps 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.33 presents the estimated net indirect employment impacts in 2025 and 2045 for the energy efficiency TSLs that DOE considered in this rulemaking. Table V.34 shows the indirect employment impacts of the standby mode and off mode TSLs. Chapter 13 of the direct final rule TSD presents more detailed results.

TABLE V.33—NET INCREASE IN JOBS FROM INDIRECT EMPLOYMENT EFFECTS UNDER FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP ENERGY EFFICIENCY TSLS

| Trial standard level | Jobs in 2025 | Jobs in 2045 |
|---|---|---|
| 1 | 1,000 | 500 |
| 2 | 3,000 | 2,700 |
| 3 | 5,400 | 6,100 |
| 4 | 6,000 | 6,300 |
| 5 | 6,400 | 6,300 |
| 6 | 16,000 | 18,500 |
| 7 | 60,200 | 81,400 |

TABLE V.34—NET INCREASE IN JOBS FROM INDIRECT EMPLOYMENT EFFECTS UNDER FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP STANDBY MODE AND OFF MODE POWER TSLS

| Trial standard level | Jobs in 2025 | Jobs in 2045 |
|---|---|---|
| 1 | 320 | 800 |
| 2 | 350 | 860 |
| 3 | 420 | 1,020 |

The input/output model suggests that the standards in this rule would be likely to increase the net demand for labor in the economy. However, the gains would most likely be very small relative to total national employment. Moreover, neither the BLS data nor the input/output model DOE uses includes the quality or wage level of the jobs. Therefore, DOE has concluded that the standards in this rule are likely to produce employment benefits sufficient to fully offset any adverse impacts on employment in the manufacturing industry for the furnaces, central air conditioners, and heat pumps that are the subjects of this rulemaking.

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 products under consideration in this rulemaking. Furthermore, manufacturers of these products currently offer furnaces, central air conditioners, and heat pumps that meet or exceed the standards in this rule. (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 in writing to the Secretary, together with an analysis of the nature and extent of such impact. (42 U.S.C. 6295(o)(2)(B)(i)(V) and (ii))

DOE is publishing a NOPR containing energy conservation standards identical to those set forth in today's direct final rule and has 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 direct final 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. (42 U.S.C. 6295(o)(2)(B)(i)(VI)) As a measure of this reduced demand, Table V.35 and Table V.36 present the estimated reduction in generating capacity in 2045 for the TSLs that DOE considered in this rulemaking for energy efficiency and standby mode and off mode power, respectively.

TABLE V.35—REDUCTION IN ELECTRIC GENERATING CAPACITY IN 2045 UNDER CONSIDERED FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP ENERGY EFFICIENCY TSLS

| Trial standard level | Gigawatts |
|---|---|
| 1 | 0.397 |
| 2 | 0.646 to 1.12 |
| 3 | 3.61 to 3.53 |
| 4 | 3.81 to 3.69 |
| 5 | 3.56 |
| 6 | 10.5 |
| 7 | 35.6 |

TABLE V.36—REDUCTION IN ELECTRIC GENERATING CAPACITY IN 2045 UNDER CONSIDERED FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP STANDBY MODE AND OFF MODE POWER TSLS

| Trial standard level | Gigawatts |
|---|---|
| 1 | 0.103 |
| 2 | 0.110 |
| 3 | 0.127 |

Energy savings from amended standards for furnaces, central air conditioners, and heat pumps could also produce environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with electricity production, and also reduced site emissions. Table V.37 provides DOE's estimate of cumulative $CO_2$, $NO_X$, and Hg emissions reductions that would be expected to result from each of the TSLs considered in this rulemaking for energy efficiency standards, and Table V.38 provides the results for each of the TSLs considered for standby mode and off mode power standards. In the environmental assessment (chapter 15 in the direct final rule TSD), DOE reports annual $CO_2$, $NO_X$, and Hg emissions reductions for each considered 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 amended 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.37—CUMULATIVE EMISSIONS REDUCTION FOR 2016–2045 UNDER FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP ENERGY EFFICIENCY TSLS

| Trial standard level | $CO_2$ *million metric tons* | $NO_X$ *thousand tons* | Hg *tons* |
|---|---|---|---|
| 1 | 15.2 | 12.3 | 0.022 |
| 2 | 62.8 to 61.2 | 55.5 to 56.7 | 0.011 to (0.012) |
| 3 | 97.1 to 113 | 83.1 to 98.5 | 0.086 to 0.059 |
| 4* | 105 to 134 | 90.1 to 117 | 0.097 to 0.071 |
| 5 | 116 | 102 | 0.059 |
| 6 | 200 | 168 | 0.270 |

TABLE V.37—CUMULATIVE EMISSIONS REDUCTION FOR 2016–2045 UNDER FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP ENERGY EFFICIENCY TSLS—Continued

| Trial standard level | $CO_2$ *million metric tons* | $NO_X$ *thousand tons* | Hg *tons* |
|---|---|---|---|
| 7 | 772 | 640 | 1.160 |

* For TSL 4, which matches the recommendations in the consensus agreement, DOE forecasted the emissions reductions from 2015 through 2045 for central air conditioners and heat pumps, and from 2013 through 2045 for furnaces.
Parentheses indicate a negative value.

TABLE V.38—CUMULATIVE EMISSIONS REDUCTION FOR 2016–2045 UNDER FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP STANDBY MODE AND OFF MODE POWER TSLS

| Trial standard level | $CO_2$ *million metric tons* | $NO_X$ *thousand tons* | Hg *tons* |
|---|---|---|---|
| 1 | 8.23 | 6.60 | 0.056 |
| 2 | 8.73 | 7.00 | 0.072 |
| 3 | 10.1 | 8.11 | 0.079 |

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 furnaces, central air conditioners, and heat pumps. 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.

As discussed in section IV.M, a Federal interagency group selected four SCC values for use in regulatory analyses, which DOE used in the direct final rule analysis. The four SCC values (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 $CO_2$ 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.39 presents the global values of $CO_2$ emissions reductions at each TSL considered for energy efficiency. As explained in section IV.M.1, 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.40. Table V.41 and Table V.42 present similar results for the TSLs considered for standby mode and off mode power.

TABLE V.39—ESTIMATES OF GLOBAL PRESENT VALUE OF $CO_2$ EMISSIONS REDUCTIONS UNDER FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP ENERGY EFFICIENCY TSLS

| TSL | *Million 2009$* | | | |
|---|---|---|---|---|
| | 5% Discount rate, average * | 3% Discount rate, average * | 2.5% Discount rate, average * | 3% Discount rate, 95th percentile * |
| 1 | 65 | 332 | 562 | 1013 |
| 2 | 328 to 320 | 1805 to 1757 | 3105 to 3021 | 5490 to 5344 |
| 3 | 496 to 577 | 2711 to 3149 | 4657 to 5409 | 8249 to 9581 |
| 4 | 530 to 672 | 2860 to 3622 | 4902 to 6204 | 8705 to 11025 |
| 5 | 596 | 3253 | 5586 | 9897 |
| 6 | 987 | 5326 | 9123 | 16209 |
| 7 | 3926 | 21391 | 36723 | 65087 |

* 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—ESTIMATES OF DOMESTIC PRESENT VALUE OF $CO_2$ EMISSIONS REDUCTIONS UNDER FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP ENERGY EFFICIENCY TSLS

| TSL | *Million 2009$* | | | |
|---|---|---|---|---|
| | 5% Discount rate, average * | 3% Discount rate, average * | 2.5% Discount rate, average * | 3% Discount rate, 95th percentile * |
| 1 | 4.6 to 15.0 | 23.2 to 76.4 | 39.3 to 129 | 70.9 to 233 |
| 2 | 22.4 to 75.4 | 123 to 415 | 211 to 714 | 374 to 1263 |
| 3 | 34.7 to 133 | 190 to 724 | 326 to 1244 | 577 to 2204 |

TABLE V.40—ESTIMATES OF DOMESTIC PRESENT VALUE OF $CO_2$ EMISSIONS REDUCTIONS UNDER FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP ENERGY EFFICIENCY TSLS—Continued

| TSL | *Million 2009$* | | | |
|---|---|---|---|---|
| | 5% Discount rate, average * | 3% Discount rate, average * | 2.5% Discount rate, average * | 3% Discount rate, 95th percentile * |
| 4 | 37.1 to 155 | 200 to 833 | 343 to 1427 | 609 to 2536 |
| 5 | 41.7 to 137 | 228 to 748 | 391 to 1285 | 691 to 2269 |
| 6 | 69.1 to 227 | 373 to 1225 | 639 to 2098 | 1135 to 3728 |
| 7 | 275 to 903 | 1497 to 4920 | 2571 to 8446 | 4556 to 14970 |

* 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.41—ESTIMATES OF GLOBAL PRESENT VALUE OF $CO_2$ EMISSIONS REDUCTIONS UNDER FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP STANDBY MODE AND OFF MODE POWER TSLS

| TSL | *Million 2009$* | | | |
|---|---|---|---|---|
| | 5% Discount rate, average* | 3% Discount rate, average* | 2.5% Discount rate, average* | 3% Discount rate, 95th percentile* |
| 1 | 41.7 | 228 | 392 | 694 |
| 2 | 44.3 | 242 | 417 | 738 |
| 3 | 51.7 | 283 | 487 | 862 |

* 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.42—ESTIMATES OF DOMESTIC PRESENT VALUE OF $CO_2$ EMISSIONS REDUCTIONS UNDER FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP STANDBY MODE AND OFF MODE POWER TSLS

| TSL | Million 2009$ | | | |
|---|---|---|---|---|
| | 5% Discount rate, average* | 3% Discount rate, average* | 2.5% Discount rate, average* | 3% discount rate, 95th percentile* |
| 1 | 2.92 to 9.59 | 16.0 to 52.4 | 27.4 to 90.2 | 48.6 to 159.6 |
| 2 | 3.10 to 10.2 | 16.9 to 55.7 | 29.2 to 95.9 | 51.7 to 169.7 |
| 3 | 3.62 to 11.9 | 19.8 to 65.1 | 34.1 to 112.0 | 60.3 to 198.3 |

* 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 any 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 notice 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 furnaces, central air conditioners, and heat pumps. The dollar-per-ton values that DOE used are discussed in section IV.M. Table V.43 presents the cumulative present values for each TSL considered for energy efficiency, calculated using 7-percent and 3-percent discount rates. Table V.44 presents similar results for the TSLs considered for standby mode and off mode power.

TABLE V.43—ESTIMATES OF PRESENT VALUE OF $NO_X$ EMISSIONS REDUCTIONS UNDER FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP ENERGY EFFICIENCY TSLS

| TSL | 3% Discount rate *million 2009$* | 7% Discount rate *million 2009$* |
|---|---|---|
| 1 | 3.4 to 35.3 | 1.7 to 17.0 |
| 2 | 17.9 to 188 | 6.8 to 72.3 |
| 3 | 26.4 to 322 | 10.3 to 126 |

TABLE V.43—ESTIMATES OF PRESENT VALUE OF $NO_X$ EMISSIONS REDUCTIONS UNDER FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP ENERGY EFFICIENCY TSLS—Continued

| TSL | 3% Discount rate *million 2009$* | 7% Discount rate *million 2009$* |
|---|---|---|
| 4 | 28.5 to 380 | 11.9 to 160 |
| 5 | 32.3 to 332 | 12.7 to 131 |
| 6 | 52.2 to 536 | 21.2 to 218 |
| 7 | 203 to 2082 | 79.8 to 820 |

TABLE V.44—ESTIMATES OF PRESENT VALUE OF $NO_X$ EMISSIONS REDUCTIONS UNDER FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP STANDBY MODE AND OFF MODE POWER TSLS

| TSL | 3% discount rate *million 2009$* | 7% discount rate *million 2009$* |
|---|---|---|
| 1 | 2.07 to 21.3 | 0.793 to 8.15 |
| 2 | 2.20 to 22.6 | 0.841 to 8.65 |
| 3 | 2.56 to 26.3 | 0.975 to 10.0 |

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.45 shows an example of the calculation of the combined NPV, including benefits from emissions reductions for the case of TSL 4 for furnaces, central air conditioners, and heat pumps. Table V.46 and 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 for energy efficiency, at both a 7-percent and a 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.48 and Table V.49 present similar results for the TSLs considered for standby mode and off mode power.

TABLE V.45—ADDING NET PRESENT VALUE OF CONSUMER SAVINGS TO PRESENT VALUE OF MONETIZED BENEFITS FROM $CO_2$ AND $NO_X$ EMISSIONS REDUCTIONS UNDER TSL 4 FOR FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP ENERGY EFFICIENCY

| Category | Present value *billion 2009$* | Discount rate % |
|---|---|---|
| **Benefits** | | |
| Operating Cost Savings | 10.6 to 14.0 | 7 |
| | 26.3 to 34.4 | 3 |
| $CO_2$ Reduction Monetized Value (at $4.9/Metric Ton)* | 0.530 | 5 |
| $CO_2$ Reduction Monetized Value (at $22.1/Metric Ton)* | 2.860 | 3 |
| $CO_2$ Reduction Monetized Value (at $36.3/Metric Ton)* | 4.902 | 2.5 |
| $CO_2$ Reduction Monetized Value (at $67.1/Metric Ton)* | 8.705 | 3 |
| $NO_X$ Reduction Monetized Value (at $2,519/Ton)* | 0.067 | 7 |
| | 0.161 | 3 |
| Total Monetary Benefits** | 13.5 to 16.9 | 7 |
| | 29.3 to 37.4 | 3 |
| **Costs** | | |
| Incremental Installed Costs | 6.7 to 9.8 | 7 |
| | 11.5 to 16.8 | 3 |
| **Net Benefits/Costs** | | |
| Including $CO_2$ and $NO_X$** | 6.8 to 7.1 | 7 |
| | 17.8 to 20.6 | 3 |

*These 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. 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 and Net Benefits/Costs for both the 3% and 7% 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.46—RESULTS OF ADDING NET PRESENT VALUE OF CONSUMER SAVINGS (AT 7% DISCOUNT RATE) TO PRESENT VALUE OF MONETIZED BENEFITS FROM $CO_2$ AND $NO_X$ EMISSIONS REDUCTIONS UNDER FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP ENERGY EFFICIENCY TSLS

| TSL | Consumer NPV at 7% discount rate added to: | | | |
|---|---|---|---|---|
| | 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 | 0.29 | 0.57 | 0.80 | 1.26 |
| 2 | 2.93 to 2.74 | 4.44 to 4.21 | 5.74 to 5.47 | 8.16 to 7.8379 |
| 3 | 3.87 to 3.95 | 6.13 to 6.58 | 8.08 to 8.84 | 11.7 to 13.1 |
| 4 | 4.47 to 4.90 | 6.85 to 7.92 | 8.89 to 10.5 | 12.8 to 15.4 |
| 5 | 4.08 | 6.80 | 9.13 | 13.5 |
| 6 | (1.55) | 2.89 | 6.69 | 13.9 |
| 7 | (41.0) | (23.1) | (7.81) | 20.9 |

*These label values represent the global SCC of $CO_2$ in 2010, in 2009$. The 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.

Parentheses indicate negative (−) values.

TABLE V.47—RESULTS OF ADDING NET PRESENT VALUE OF CONSUMER SAVINGS (AT 3% DISCOUNT RATE) TO PRESENT VALUE OF MONETIZED BENEFITS FROM $CO_2$ AND $NO_X$ EMISSIONS REDUCTIONS UNDER FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP ENERGY EFFICIENCY TSLS

| TSL | Consumer NPV at 3% discount rate added to: | | | |
|---|---|---|---|---|
| | 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 | 0.83 | 1.12 | 1.33 | 1.79 |
| 2 | 11.0 to 11.9 | 12.5 to 13.4 | 13.8 to 14.6 | 16.2 to 17.0 |
| 3 | 13.9 to 15.9 | 16.2 to 18.6 | 18.1 to 20.8 | 21.7 to 25.0 |
| 4 | 15.3 to 18.2 | 17.8 to 21.4 | 19.7 to 22.8 | 23.6 to 28.7 |
| 5 | 16.3 | 19.1 | 21.4 | 25.7 |
| 6 | 9.2 | 13.8 | 17.4 | 24.6 |
| 7 | (41.1) | (22.6) | (8.0) | 20.8 |

*The label values represent the global SCC of $CO_2$ in 2010, in 2009$. The 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.

Parentheses indicate negative (−) values.

TABLE V.48—RESULTS OF ADDING NET PRESENT VALUE OF CONSUMER SAVINGS (AT 7% DISCOUNT RATE) TO PRESENT VALUE OF MONETIZED BENEFITS FROM $CO_2$ AND $NO_X$ EMISSIONS REDUCTIONS UNDER FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP STANDBY MODE AND OFF MODE POWER TSLS

| TSL | Consumer NPV at 7% discount rate added to: | | | |
|---|---|---|---|---|
| | 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 | 0.413 | 0.603 | 0.767 | 1.072 |
| 2 | 0.418 | 0.620 | 0.794 | 1.119 |
| 3 | 0.288 | 0.524 | 0.728 | 1.107 |

*The label values represent the global SCC of $CO_2$ in 2010, in 2009$. The 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.49—RESULTS OF ADDING NET PRESENT VALUE OF CONSUMER SAVINGS (AT 3% DISCOUNT RATE) TO PRESENT VALUE OF MONETIZED BENEFITS FROM $CO_2$ AND $NO_X$ EMISSIONS REDUCTIONS UNDER FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP STANDBY MODE AND OFF MODE POWER TSLS

| TSL | Consumer NPV at 3% discount rate added to: | | | |
|---|---|---|---|---|
| | 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 | 1.182 | 1.378 | 1.542 | 1.854 |
| 2 | 1.226 | 1.434 | 1.608 | 1.939 |
| 3 | 1.069 | 1.312 | 1.516 | 1.903 |

*The label values represent the global SCC of $CO_2$ in 2010, in 2009$. The 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 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 the 30-year period after the compliance date. 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.

7. Other Factors

The Secretary, in determining whether a proposed standard is economically justified, may consider any other factors that he deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VI)) In developing the proposals set forth in this notice, DOE has also considered the comments submitted by interested parties, including the recommendations in the consensus agreement, which DOE believes provides a reasoned 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. In the present case, one outcome of the consensus agreement was a recommendation to accelerate the compliance dates for these products, which would have the effect of producing additional energy savings at an earlier date. 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. Conclusion*

When considering 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 the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In determining whether a standard is economically justified, the Secretary 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))

For today's direct final rule, DOE considered the impacts of standards at each TSL, beginning with the maximum technologically feasible level, to determine whether that level was economically justified. Where the max-tech level was not 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/or burdens of each TSL, tables 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 an amended 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 (*e.g.,* 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 (*e.g.,* renter versus owner; builder versus 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. First, 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. Second, 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 under standards 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 Furnace, Central Air Conditioner, and Heat Pump Energy Efficiency

Table V.50 through Table V.54 present summaries of the quantitative impacts estimated for each TSL for furnace, central air conditioner, and heat pump energy efficiency. The efficiency levels contained in each TSL are described in section V.A.

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TABLE V.50—SUMMARY OF RESULTS FOR FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP ENERGY EFFICIENCY TSLS: NATIONAL IMPACTS

| Category | TSL 1 | TSL 2 | TSL 3 | TSL 4 | TSL 5 | TSL 6 | TSL 7 |
|---|---|---|---|---|---|---|---|
| National Energy Savings (quads) | 0.18 | 2.32 to 2.91 | 2.97 to 3.84 | 3.20 to 4.22 | 3.89 | 5.91 | 19.18 |
| **NPV of Consumer Benefits (2009$ billion)** | | | | | | | |
| 3% discount rate | 0.76 | 10.61 to 11.56 | 13.35 to 15.29 | 14.73 to 17.55 | 15.69 | 8.18 | (45.12) |
| 7% discount rate | 0.23 | 2.60 to 2.41 | 3.36 to 3.36 | 3.93 to 4.21 | 3.47 | (2.56) | (44.98) |
| **Cumulative Emissions Reduction** | | | | | | | |
| $CO_2$ (million metric tons) | 15.2 | 62.8 to 61.2 | 971.1 to 113 | 105 to 134 | 116 | 200 | 772 |
| $NO_X$ (thousand tons) | 12.3 | 55.5 to 56.7 | 83.1 to 98.5 | 90.1 to 117 | 102 | 168 | 640 |
| Hg (tons) | 0.022 | 0.011 to (0.012) | 0.086 to 0.059 | 0.097 to 0.071 | 0.059 | 0.270 | 1.160 |
| **Value of Emissions Reductions** | | | | | | | |
| $CO_2$ (2009$ billion)* | 0.065 to 1.013 | 0.320 to 5.49 | 0.496 to 9.58 | 0.530 to 11.03 | 0.596 to 9.90 | 0.987 to 16.21 | 3.93 to 65.09 |
| $NO_X$—3% discount rate (2009$ million) | 3.4 to 35.3 | 17.9 to 188 | 26.4 to 322 | 28.5 to 380 | 32.3 to 332 | 52.2 to 536 | 203 to 2082 |
| $NO_X$—7% discount rate (2009$ million) | 1.7 to 17.0 | 6.8 to 72.3 | 10.3 to 126 | 11.9 to 160 | 12.7 to 131 | 21.2 to 218 | 79.8 to 820 |
| Generation Capacity Reduction (GW)** | 0.397 | 0.646 to 1.12 | 3.61 to 3.53 | 3.81 to 3.69 | 3.56 | 10.5 | 35.6 |
| **Employment Impacts** | | | | | | | |
| Changes in Domestic Production Workers in 2016 (thousands) | 0.1 to (16.9) | 0.3 to (16.9) | 0.6 to (16.9) | 0.8 to (16.9) | 1 to (16.9) | 1.1 to (16.9) | 1.2 to (16.9) |
| Indirect Domestic Jobs (thousands)** | 0.5 | 2.7 | 6.1 | 6.3 | 6.3 | 18.5 | 81.4 |

Parentheses indicate negative (−) values.
* Range of the value of $CO_2$ reductions is based on estimates of the global benefit of reduced $CO_2$ emissions.
** Changes in 2045.

TABLE V.51—SUMMARY OF RESULTS FOR FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP ENERGY EFFICIENCY TSLS: MANUFACTURER IMPACTS

| Category | TSL 1 | TSL 2 | TSL 3 | TSL 4 | TSL 5 | TSL 6 | TSL 7 |
|---|---|---|---|---|---|---|---|
| **Manufacturer Impacts** | | | | | | | |
| Change in Industry NPV (2009$ million) | 8 to 33 | (324) to (498) | (428) to (729) | (478) to (900) | (508) to (915) | (680) to (1873) | (1530) to (3820) |
| Industry NPV (% change) | 0.4 to 0.1 | (3.8) to (5.9) | (5.0) to (8.6) | (5.6) to (10.6) | (6.0) to (10.8) | (8.0) to (22.0) | (18.0) to (45.0) |

Parentheses indicate negative (−) values.

**Table V.52. Summary of Results for Furnace, Central Air Conditioner, and Heat Pump Energy Efficiency TSLs: Consumer LCC Savings and Payback Period**

| Category | TSL 1* | TSL 2 | TSL 3 | TSL 4 | TSL 5 | TSL 6 | TSL 7 |
|---|---|---|---|---|---|---|---|
| **Mean LCC Savings**** (2009$) | | | | | | | |
| Non-Weatherized Gas Furnaces | n/a | | | | | | |
| North | | 215 | 155 | 155 | 323 | 323 | 198 |
| South | | n/a | n/a | n/a | n/a | n/a | (181) |
| Mobile Home Gas Furnaces | n/a | | | | | | |
| North | | n/a | 419 | 419 | 585 | 585 | 585 |
| South | | n/a | n/a | n/a | n/a | n/a | 391 |
| Oil-Fired Furnaces | n/a | n/a | 15 | 15 | (18) | (18) | 272 |
| Split-System Air Conditioners (coil-only) | 55 | | | | | | |
| Rest of Country | | (8) | n/a | n/a | n/a | (26) | (1,343) |
| Hot-Humid | | 86 | 93 | 93 | 93 | (303) | (797) |
| Hot-Dry | | 104 | 107 | 107 | 107 | (468) | (1,182) |
| Split-System Air Conditioners (blower-coil) | 46 | | | | | | |
| Rest of Country | | (18) | n/a | n/a | n/a | (30) | (903) |
| Hot-Humid | | 77 | 89 | 89 | 89 | 177 | (130) |
| Hot-Dry | | 90 | 101 | 101 | 101 | 196 | (311) |
| Split-System Heat Pumps | 71 | | | | | | |
| Rest of Country | | 5 | 4 | 4 | 4 | (89) | (604) |
| Hot-Humid | | 82 | 102 | 102 | 102 | 137 | 103 |
| Hot-Dry | | 148 | 175 | 175 | 175 | 274 | 477 |
| Single-Package Air Conditioners | n/a | n/a | 37 | 37 | 37 | (68) | (492) |
| Single-Package Heat Pumps | n/a | n/a | 104 | 104 | 104 | 15 | (363) |
| SDHV Air Conditioners | n/a | | | | | | |
| Rest of Country | | n/a | n/a | n/a | n/a | (202) | (294) |
| Hot-Humid | | n/a | n/a | n/a | n/a | (14) | (25) |
| Hot-Dry | | n/a | n/a | n/a | n/a | (65) | (106) |
| **Median Payback Period** (years) | | | | | | | |
| Non-Weatherized Gas Furnaces | n/a | | | | | | |
| North | | 7.7 | 10.1 | 10.1 | 9.4 | 9.4 | 17.1 |
| South | | n/a | n/a | n/a | n/a | n/a | 28.9 |
| Mobile Home Gas Furnaces | n/a | | | | | | |
| North | | n/a | 10.7 | 10.7 | 11.5 | 11.5 | 11.5 |

| Category | TSL 1* | TSL 2 | TSL 3 | TSL 4 | TSL 5 | TSL 6 | TSL 7 |
|---|---|---|---|---|---|---|---|
| South | | n/a | n/a | n/a | n/a | n/a | 13 |
| Oil-Fired Furnaces | n/a | n/a | 1.0 | 1.0 | 19.8 | 19.8 | 18.2 |
| Split-System Air Conditioners (coil-only) | 9 | | | | | | |
| Rest of Country | | 23 | n/a | n/a | n/a | 33 | 100 |
| Hot-Humid | | 6 | 7 | 7 | 7 | 34 | 47 |
| Hot-Dry | | 8 | 10 | 10 | 10 | 49 | 71 |
| Split-System Air Conditioners (blower-coil) | 11 | | | | | | |
| Rest of Country | | 26 | n/a | n/a | n/a | 28 | 100 |
| Hot-Humid | | 7 | 8 | 8 | 8 | 8 | 21 |
| Hot-Dry | | 10 | 11 | 11 | 11 | 11 | 31 |
| Split-System Heat Pumps | 7 | | | | | | |
| Rest of Country | | 13 | 13 | 13 | 13 | 20 | 33 |
| Hot-Humid | | 6 | 6 | 6 | 6 | 7 | 13 |
| Hot-Dry | | 5 | 5 | 5 | 5 | 5 | 9 |
| Single-Package Air Conditioners | n/a | n/a | 15 | 15 | 15 | 24 | 46 |
| Single-Package Heat Pumps | n/a | n/a | 8 | 8 | 8 | 14 | 21 |
| SDHV Air Conditioners | n/a | | | | | | |
| Rest of Country | | n/a | n/a | n/a | n/a | 74 | 75 |
| Hot-Humid | | n/a | n/a | n/a | n/a | 18 | 17 |
| Hot-Dry | | n/a | n/a | n/a | n/a | 26 | 23 |

* TSL 1 does not include regional standards.

** Calculation of LCC savings or payback period is not applicable (n/a) in some cases because no consumers are impacted at some of the TSLs. A negative value (indicated by parentheses) means an increase in LCC by the amount indicated.

**Table V.53. Summary of Results for Furnace, Central Air Conditioner, and Heat Pump Energy Efficiency TSLs: Distribution of Consumer LCC Impacts (Central Air Conditioners and Heat Pumps)**

| Category | TSL 1 | TSL 2 | TSL 3 | TSL 4 | TSL 5 | TSL 6 | TSL 7 |
|---|---|---|---|---|---|---|---|
| **Distribution of Consumer LCC Impacts** | | | | | | | |
| Split-System Air Conditioners (coil-only) | | | | | | | |
| Rest of Country | | | | | | | |
| Net Cost (%) | 11* | 17 | 0 | 0 | 0 | 57 | 99 |
| No Impact (%) | 75* | 75 | 100 | 100 | 100 | 27 | 0 |
| Net Benefit (%) | 14* | 8 | 0 | 0 | 0 | 16 | 1 |
| Hot-Humid | | | | | | | |
| Net Cost (%) | | 7 | 26 | 26 | 26 | 72 | 90 |
| No Impact (%) | | 75 | 27 | 27 | 27 | 16 | 0 |
| Net Benefit (%) | | 18 | 47 | 47 | 47 | 12 | 10 |
| Hot-Dry | | | | | | | |
| Net Cost (%) | | 11 | 37 | 37 | 37 | 75 | 91 |
| No Impact (%) | | 75 | 27 | 27 | 27 | 16 | 0 |
| Net Benefit (%) | | 14 | 36 | 36 | 36 | 10 | 9 |
| Split-System Air Conditioners (blower-coil) | | | | | | | |
| Rest of Country | | | | | | | |
| Net Cost (%) | 9* | 14 | 0 | 0 | 0 | 43 | 96 |
| No Impact (%) | 82* | 82 | 100 | 100 | 100 | 45 | 1 |
| Net Benefit (%) | 9* | 4 | 0 | 0 | 0 | 12 | 3 |
| Hot-Humid | | | | | | | |
| Net Cost (%) | | 6 | 21 | 21 | 21 | 24 | 70 |
| No Impact (%) | | 82 | 45 | 45 | 45 | 37 | 1 |
| Net Benefit (%) | | 12 | 34 | 34 | 34 | 39 | 29 |
| Hot-Dry | | | | | | | |
| Net Cost (%) | | 9 | 28 | 28 | 28 | 33 | 76 |
| No Impact (%) | | 82 | 45 | 45 | 45 | 37 | 1 |
| Net Benefit (%) | | 9 | 27 | 27 | 27 | 30 | 23 |
| Split-System Heat Pumps | | | | | | | |
| Rest of Country | | | | | | | |
| Net Cost (%) | 5* | 9 | 35 | 35 | 35 | 58 | 87 |
| No Impact (%) | 86* | 86 | 45 | 45 | 45 | 23 | 0 |
| Net Benefit (%) | 9* | 5 | 20 | 20 | 20 | 19 | 13 |
| Hot-Humid | | | | | | | |
| Net Cost (%) | | 4 | 17 | 17 | 17 | 29 | 60 |
| No Impact (%) | | 86 | 45 | 45 | 45 | 23 | 0 |
| Net Benefit (%) | | 10 | 38 | 38 | 38 | 48 | 40 |
| Hot-Dry | | | | | | | |
| Net Cost (%) | | 4 | 15 | 15 | 15 | 25 | 51 |
| No Impact (%) | | 86 | 45 | 45 | 45 | 23 | 0 |
| Net Benefit (%) | | 11 | 40 | 40 | 40 | 52 | 49 |
| Single-Package Air Conditioners (Nation) | | | | | | | |
| Net Cost (%) | 0* | 0 | 50 | 50 | 50 | 72 | 84 |
| No Impact (%) | 100* | 100 | 17 | 17 | 17 | 1 | 0 |
| Net Benefit (%) | 0* | 0 | 33 | 33 | 33 | 27 | 16 |

| Category | TSL 1 | TSL 2 | TSL 3 | TSL 4 | TSL 5 | TSL 6 | TSL 7 |
|---|---|---|---|---|---|---|---|
| Single-Package Heat Pumps (Nation) | | | | | | | |
| Net Cost (%) | 0* | 0 | 29 | 29 | 29 | 63 | 79 |
| No Impact (%) | 100* | 100 | 36 | 36 | 36 | 2 | 0 |
| Net Benefit (%) | 0* | 0 | 35 | 35 | 35 | 35 | 21 |
| SDHV Air Conditioners | | | | | | | |
| Rest of Country | | | | | | | |
| Net Cost (%) | 0* | 0 | 0 | 0 | 0 | 95 | 92 |
| No Impact (%) | 100* | 100 | 100 | 100 | 100 | 0 | 0 |
| Net Benefit (%) | 0* | 0 | 0 | 0 | 0 | 5 | 8 |
| Hot-Humid | | | | | | | |
| Net Cost (%) | | 0 | 0 | 0 | 0 | 68 | 67 |
| No Impact (%) | | 100 | 100 | 100 | 100 | 0 | 0 |
| Net Benefit (%) | | 0 | 0 | 0 | 0 | 32 | 33 |
| Hot-Dry | | | | | | | |
| Net Cost (%) | | 0 | 0 | 0 | 0 | 74 | 74 |
| No Impact (%) | | 100 | 100 | 100 | 100 | 0 | 0 |
| Net Benefit (%) | | 0 | 0 | 0 | 0 | 26 | 26 |

* Results refer to Nation for TSL 1.

**Table V.54 Summary of Results for Furnace, Central Air Conditioner, and Heat Pump Energy Efficiency TSLs: Distribution of Consumer LCC Impacts (Furnaces)**

| Category | TSL 1 | TSL 2 | TSL 3 | TSL 4 | TSL 5 | TSL 6 | TSL 7 |
|---|---|---|---|---|---|---|---|
| **Distribution of Consumer LCC Impacts** | | | | | | | |
| Non-Weatherized Gas Furnaces | | | | | | | |
| North | | | | | | | |
| Net Cost (%) | 0* | 11 | 10 | 10 | 23 | 23 | 59 |
| No Impact (%) | 100* | 56 | 71 | 71 | 23 | 23 | 1 |
| Net Benefit (%) | 0* | 33 | 19 | 19 | 54 | 54 | 41 |
| South | | | | | | | |
| Net Cost (%) | | 0 | 0 | 0 | 0 | 0 | 72 |
| No Impact (%) | | 100 | 100 | 100 | 100 | 100 | 0 |
| Net Benefit (%) | | 0 | 0 | 0 | 0 | 0 | 27 |
| Mobile Home Gas Furnaces | | | | | | | |
| North | | | | | | | |
| Net Cost (%) | 0* | 0 | 44 | 44 | 46 | 46 | 46 |
| No Impact (%) | 100* | 100 | 10 | 10 | 8 | 8 | 8 |
| Net Benefit (%) | 0* | 0 | 47 | 47 | 46 | 46 | 46 |
| South | | | | | | | |
| Net Cost (%) | | 0 | 0 | 0 | 0 | 0 | 51 |
| No Impact (%) | | 100 | 100 | 100 | 100 | 100 | 4 |
| Net Benefit (%) | | 0 | 0 | 0 | 0 | 0 | 45 |
| Oil-Fired Furnaces (Nation) | | | | | | | |
| Net Cost (%) | 0 | 0 | 10 | 10 | 35 | 35 | 51 |
| No Impact (%) | 100 | 100 | 58 | 58 | 33 | 33 | 1 |
| Net Benefit (%) | 0 | 0 | 32 | 32 | 33 | 33 | 48 |

* Results refer to Nation for TSL 1.

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DOE first considered TSL 7, which represents the max-tech efficiency levels. TSL 7 would save 19.18 quads of energy, an amount DOE considers significant. Under TSL 7, the NPV of consumer benefit would be −$44.98 billion, using a discount rate of 7 percent, and −$45.12 billion, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 7 are 772 Mt of $CO_2$, 640 thousand tons of $NO_X$, and 1.160 ton of Hg. The estimated monetary value of the cumulative $CO_2$ emissions reductions at TSL 7 ranges from $3.93 billion to $65.1 billion. Total generating capacity in 2045 is estimated to decrease by 35.6 GW under TSL 7.

At TSL 7, the average LCC impact is a savings (LCC decrease) of $198 for non-weatherized gas furnaces in the northern region and a cost (LCC increase) of $181 in the southern region; a savings of $585 for mobile home gas furnaces in the northern region and a savings of $391 in the southern region; and a savings of $272 for oil-fired furnaces.

For split-system air conditioners (coil-only), the average consumer LCC impact is a cost of $1,343 in the rest of country, a cost of $797 in the hot-humid region, and a cost of $1,182 in the hot-dry region. For split-system air conditioners (blower-coil), the average LCC impact is a cost of $903 in the rest of country, a cost of $130 in the hot-humid region, and a cost of $311 in the hot-dry region. For split-system heat pumps, the average LCC impact is a cost of $604 in

the rest of country, a savings of $103 in the hot-humid region, and a savings of $477 in the hot-dry region. For single-package air conditioners, the average LCC impact is a cost of $492. For single-package heat pumps, the average LCC impact is a cost of $363. For SDHV air conditioners, the average LCC impact is a cost of $294 in the rest of country, a cost of $25 in the hot-humid region, and a cost of $106 in the hot-dry region.

At TSL 7, the median payback period for non-weatherized gas furnaces is 17.1 years in the northern region and 28.9 years in the southern region; 11.5 years for mobile home gas furnaces in the northern region and 13 years in the southern region; and 18.2 years for oil-fired furnaces.

For split-system air conditioners (coil-only), the median payback period is 100 years in the rest of country, 47 years in the hot-humid region, and 71 years in the hot-dry region. For split-system air conditioners (blower-coil), the median payback period is 100 years in the rest of country, 21 years in the hot-humid region, and 31 years in the hot-dry region. For split-system heat pumps, the median payback period is 33 years in the rest of country, 13 years in the hot-humid region, and 9 years in the hot-dry region. For single-package air conditioners, the median payback period is 46 years. For single-package heat pumps, the median payback period is 21 years. For SDHV air conditioners, the median payback period is 75 years in the rest of country, 17 years in the hot-humid region, and 23 years in the hot-dry region.

At TSL 7, the fraction of consumers experiencing an LCC benefit is 41 percent for non-weatherized gas furnaces in the northern region and 27 percent in the southern region; 46 percent for mobile home gas furnaces in the northern region and 45 percent in the southern region; and 48 percent for oil-fired furnaces.

For split-system air conditioners (coil-only), the fraction of consumers experiencing an LCC benefit at TSL 7 is 1 percent in the rest of country, 10 percent in the hot-humid region, and 9 percent in the hot-dry region. For split-system air conditioners (blower-coil), the fraction of consumers experiencing an LCC benefit is 3 percent in the rest of country, 29 percent in the hot-humid region, and 23 percent in the hot-dry region. For split-system heat pumps, the fraction of consumers experiencing an LCC benefit is 13 percent in the rest of country, 40 percent in the hot-humid region, and 49 percent in the hot-dry region. For single-package air conditioners, the fraction of consumers experiencing an LCC benefit is 16 percent. For single-package heat pumps, the fraction of consumers experiencing an LCC benefit is 21 percent. For SDHV air conditioners, the fraction of consumers experiencing an LCC benefit is 8 percent in the rest of country, 33 percent in the hot-humid region, and 26 percent in the hot-dry region.

At TSL 7, the fraction of consumers experiencing an LCC cost is 59 percent for non-weatherized gas furnaces in the northern region and 72 percent in the southern region; 46 percent for mobile home gas furnaces in the northern region and 51 percent in the southern region; and 51 percent for oil-fired furnaces.

For split-system air conditioners (coil-only), the fraction of consumers experiencing an LCC cost is 99 percent in the rest of country, 90 percent in the hot-humid region, and 91 percent in the hot-dry region. For split-system air conditioners (blower-coil), the fraction of consumers experiencing an LCC cost is 96 percent in the rest of country, 70 percent in the hot-humid region, and 76 percent in the hot-dry region. For split-system heat pumps, the fraction of consumers experiencing an LCC cost is 87 percent in the rest of country, 60 percent in the hot-humid region, and 51 percent in the hot-dry region. For single-package air conditioners, the fraction of consumers experiencing an LCC cost is 84 percent. For single-package heat pumps, the fraction of consumers experiencing an LCC cost is 79 percent. For SDHV air conditioners, the fraction of consumers experiencing an LCC cost is 92 percent in the rest of country, 67 percent in the hot-humid region, and 74 percent in the hot-dry region.

At TSL 7, the projected change in INPV ranges from a decrease of $1,530 million to a decrease of $3,820 million. At TSL 7, 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 7 could result in a net loss of 45.0 percent in INPV to furnace, central air conditioner, and heat pump manufacturers.

The Secretary concludes that at TSL 7 for furnace, central air conditioner, and heat pump energy efficiency, 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 very large reduction in INPV for the manufacturers. Consequently, the Secretary has concluded that TSL 7 is not economically justified.

DOE then considered TSL 6. TSL 6 would save 5.91 quads of energy, an amount DOE considers significant. Under TSL 6, the NPV of consumer benefit would be −$2.56 billion, using a discount rate of 7 percent, and $8.18 billion, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 6 are 200 Mt of $CO_2$, 168 thousand tons of $NO_X$, and 0.270 ton of Hg. The estimated monetary value of the cumulative $CO_2$ emissions reductions at TSL 6 ranges from $0.987 billion to $16.2 billion. Total generating capacity in 2045 is estimated to decrease by 10.5 GW under TSL 6.

At TSL 6, the average LCC impact is a savings (LCC decrease) of $323 for non-weatherized gas furnaces in the northern region and not applicable in the south, a savings of $585 for mobile home gas furnaces in the northern region and not applicable in the south, and a cost of $18 for oil-fired furnaces.

For split-system air conditioners (coil-only), the average LCC impact is a cost of $26 in the rest of country, a cost of $303 in the hot-humid region, and a cost of $468 in the hot-dry region. For split-system air conditioners (blower-coil), the average LCC impact is a cost of $30 in the rest of country, a savings of $177 in the hot-humid region, and a savings of $196 in the hot-dry region. For split-system heat pumps, the average LCC impact is a cost of $89 in the rest of country, a savings of $137 in the hot-humid region, and a savings of $274 in the hot-dry region. For single-package air conditioners, the average LCC impact is a cost of $68. For single-package heat pumps the average LCC impact is a savings of $15. For SDHV air conditioners, the average LCC impact is a cost of $202 in the rest of country, a cost of $14 in the hot-humid region, and a cost of $65 in the hot-dry region.

At TSL 6, the median payback period is 9.4 years for non-weatherized gas furnaces in the northern region and not applicable in the south; 11.5 years for mobile home gas furnaces in the northern region and not applicable in the south; and 19.8 years for oil-fired furnaces.

For split-system air conditioners (coil-only), the median payback period is 33 years in the rest of country, 34 years in the hot-humid region, and 49 years in the hot-dry region. For split-system air conditioners (blower-coil), the median payback period is 28 years in the rest of country, 8 years in the hot-humid region, and 11 years in the hot-dry

region. For split-system heat pumps, the median payback period is 20 years in the rest of country, 7 years in the hot-humid region, and 5 years in the hot-dry region. For single-package air conditioners, the median payback period is 24 years. For single-package heat pumps, the median payback period is 14 years. For SDHV air conditioners, the median payback period is 74 years in the rest of country, 18 years in the hot-humid region, and 26 years in the hot-dry region.

At TSL 6, the fraction of consumers experiencing an LCC benefit is 54 percent for non-weatherized gas furnaces in the northern region and 0 percent in the south; 46 percent for mobile home gas furnaces in the northern region and 0 percent in the south; and 33 percent for oil-fired furnaces.

For split-system air conditioners (coil-only), the fraction of consumers experiencing an LCC benefit is 16 percent in the rest of country, 12 percent in the hot-humid region, and 9 percent in the hot-dry region. For split-system air conditioners (blower-coil), the fraction of consumers experiencing an LCC benefit is 12 percent in the rest of country, 39 percent in the hot-humid region, and 31 percent in the hot-dry region. For split-system heat pumps, the fraction of consumers experiencing an LCC benefit is 19 percent in the rest of country, 48 percent in the hot-humid region, and 52 percent in the hot-dry region. For single-package air conditioners, the fraction of consumers experiencing an LCC benefit is 27 percent. For single-package heat pumps, the fraction of consumers experiencing an LCC benefit is 35 percent. For SDHV air conditioners, the fraction of consumers experiencing an LCC benefit is 5 percent in the rest of country, 32 percent in the hot-humid region, and 26 percent in the hot-dry region.

At TSL 6, the fraction of consumers experiencing an LCC cost is 23 percent for non-weatherized gas furnaces in the northern region and 0 percent in the south; 46 percent for mobile home gas furnaces in the northern region and 0 percent in the south; and 35 percent for oil-fired furnaces.

For split-system air conditioners (coil-only), the fraction of consumers experiencing an LCC cost is 56 percent in the rest of country, 73 percent in the hot-humid region, and 75 percent in the hot-dry region. For split-system air conditioners (blower-coil), the fraction of consumers experiencing an LCC cost is 43 percent in the rest of country, 25 percent in the hot-humid region, and 33 percent in the hot-dry region. For split-system heat pumps, the fraction of consumers experiencing an LCC cost is 58 percent in the rest of country, 29 percent in the hot-humid region, and 25 percent in the hot-dry region. For single-package air conditioners, the fraction of consumers experiencing an LCC cost is 72 percent. For single-package heat pumps, the fraction of consumers experiencing an LCC cost is 63 percent. For SDHV air conditioners, the fraction of consumers experiencing an LCC cost is 95 percent in the rest of country, 68 percent in the hot-humid region, and 74 percent in the hot-dry region.

At TSL 6, the projected change in INPV ranges from a decrease of $680 million to a decrease of $1,873 million. At TSL 6, 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 6 could result in a net loss of 22.0 percent in INPV to furnace, central air conditioner, and heat pump manufacturers.

The Secretary concludes that at TSL 6 for furnace and central air conditioner and heat pump energy efficiency, 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 increases in installed product cost, and the capital 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.

As discussed above, DOE calculated a range of results for national energy savings and NPV of consumer benefit under TSL 4. Because the range of results for TSL 4 overlaps with the results for TSL 5, and because TSLs 4 and 5 are similar in many aspects, DOE discusses the benefits and burdens of TSLs 4 and 5 together below.

TSL 5 would save 3.98 quads of energy, an amount DOE considers significant. TSL 4 would save 3.20 to 4.22 quads of energy, an amount DOE considers significant. Under TSL 5, the NPV of consumer benefit would be $3.47 billion, using a discount rate of 7 percent, and $15.69 billion, using a discount rate of 3 percent. Under TSL 4, the NPV of consumer benefit would be $3.93 billion to $4.21 billion, using a discount rate of 7 percent, and $14.73 billion to $17.55 billion, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 5 are 116 Mt of $CO_2$, 102 thousand tons of $NO_X$, and 0.059 ton of Hg. The cumulative emissions reductions at TSL 4 are 105 to 134 Mt of $CO_2$, 90.1 to 117 thousand tons of $NO_X$, and 0.097 to 0.071 ton of Hg. The estimated monetary value of the cumulative $CO_2$ emissions reductions at TSL 5 ranges from $0.596 billion to $9.90 billion. The estimated monetary value of the cumulative $CO_2$ emissions reductions at TSL 4 ranges from $0.530 billion to $11.0 billion. Total generating capacity in 2045 is estimated to decrease by 3.56 GW under TSL 5, and by 3.81 to 3.69 GW under TSL 4.

At TSL 5, the average LCC impact is a savings (LCC decrease) of $323 for non-weatherized gas furnaces in the northern region and not applicable in the south; a savings of $585 for mobile home gas furnaces in the northern region and not applicable in the south; and a cost of $18 for oil-fired furnaces. At TSL 4, the average LCC impact is a savings of $155 for non-weatherized gas furnaces in the northern region and not applicable in the south, a savings of $419 for mobile home gas furnaces in the northern region and not applicable in the south, and a savings of $15 for oil-fired furnaces.

For central air conditioners and heat pumps, the average LCC impacts for TSL 5 and TSL 4 are the same. For split-system air conditioners (coil-only), the average LCC impact is not applicable in the rest of country, but is a savings of $93 in the hot-humid region, and a savings of $107 in the hot-dry region. For split-system air conditioners (blower-coil), the average LCC impact is not applicable in the rest of country, but is a savings of $89 in the hot-humid region, and a savings of $101 in the hot-dry region. For split-system heat pumps, the average LCC impact is a savings of $4 in the rest of country, a savings of $102 in the hot-humid region, and a savings of $175 in the hot-dry region. For single-package air conditioners, the average LCC impact is a cost of $37. For single-package heat pumps, the average LCC impact is a cost of $104. For SDHV air conditioners, the average LCC impact is not applicable for all regions.

At TSL 5, the median payback period is 9.4 years for non-weatherized gas furnaces in the northern region and not applicable in the south, 11.5 years for mobile home gas furnaces in the northern region and not applicable in the south, and 19.8 years for oil-fired furnaces. At TSL 4, the median payback period is 10.1 years for non-weatherized gas furnaces in the northern region and not applicable in the south, 10.7 years for mobile home gas furnaces in the northern region and not applicable in

the south, and 1.0 year for oil-fired furnaces.

For central air conditioners and heat pumps, the median payback periods for TSL 5 and TSL 4 are the same. For split-system air conditioners (coil-only), the median payback period is not applicable in the rest of country, 7 years in the hot-humid region, and 10 years in the hot-dry region. For split-system air conditioners (blower-coil), the median payback period is not applicable in the rest of country, 8 years in the hot-humid region, and 11 years in the hot-dry region. For split-system heat pumps, the median payback period is 13 years in the rest of country, 6 years in the hot-humid region, and 5 years in the hot-dry region. For single-package air conditioners, the median payback period is 15 years. For single-package heat pumps, the median payback period is 8 years. For SDHV air conditioners, the median payback period is not applicable in all regions.

At TSL 5, the fraction of consumers experiencing an LCC benefit is 54 percent for non-weatherized gas furnaces in the northern region and 0 percent in the south, 46 percent for mobile home gas furnaces in the northern region and 0 percent in the south, and 33 percent for oil-fired furnaces. At TSL 4, the fraction of consumers experiencing an LCC benefit is 19 percent for non-weatherized gas furnaces in the northern region and 0 percent in the south, 47 percent for mobile home gas furnaces in the northern region and 0 percent in the south, and 32 percent for oil-fired furnaces.

For central air conditioners and heat pumps, at TSL 5 and at TSL 4, the fraction of consumers experiencing an LCC benefit is the same. For split-system air conditioners (coil-only), the fraction of consumers experiencing an LCC benefit is 0 percent in the rest of country, 46 percent in the hot-humid region, and 36 percent in the hot-dry region. For split-system air conditioners (blower-coil), the fraction of consumers experiencing an LCC benefit is 0 percent in the rest of country, 34 percent in the hot-humid region, and 27 percent in the hot-dry region. For split-system heat pumps, the fraction of consumers experiencing an LCC benefit is 20 percent in the rest of country, 38 percent in the hot-humid region, and 40 percent in the hot-dry region. For single-package air conditioners, the fraction of consumers experiencing an LCC benefit is 33 percent. For single-package heat pumps, the fraction of consumers experiencing an LCC benefit is 35 percent. For SDHV air conditioners, no consumers experience an LCC benefit in any of the regions.

At TSL 5, the fraction of consumers experiencing an LCC cost is 23 percent for non-weatherized gas furnaces in the northern region and 0 percent in the south, 46 percent for mobile home gas furnaces in the northern region and 0 percent in the south, and 35 percent for oil-fired furnaces. At TSL 4, the fraction of consumers experiencing an LCC cost is 10 percent for non-weatherized gas furnaces in the northern region and 0 percent in the south, 44 percent for mobile home gas furnaces in the northern region and 0 percent in the south, and 10 percent for oil-fired furnaces.

For central air conditioners and heat pumps, at TSL 5 and at TSL 4, the fraction of consumers experiencing an LCC cost is the same. For split-system air conditioners (coil-only), the fraction of consumers experiencing an LCC cost is 0 percent in the rest of country, 26 percent in the hot-humid region, and 37 percent in the hot-dry region. For split-system air conditioners (blower-coil), the fraction of consumers experiencing an LCC cost is 0 percent in the rest of country, 21 percent in the hot-humid region, and 28 percent in the hot-dry region. For split-system heat pumps, the fraction of consumers experiencing an LCC cost is 35 percent in the rest of country, 17 percent in the hot-humid region, and 15 percent in the hot-dry region. For single-package air conditioners, the fraction of consumers experiencing an LCC cost is 37 percent. For single-package heat pumps, the fraction of consumers experiencing an LCC cost is 29 percent. For SDHV air conditioners, no consumers experience an LCC cost in any of the regions.

At TSL 5, the projected change in INPV ranges from a decrease of $508 million to a decrease of $915 million. At TSL 5, 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 5 could result in a net loss of 10.8 percent in INPV to furnace, central air conditioner, and heat pump manufacturers. At TSL 4, the projected change in INPV ranges from a net loss of $478 million to a net loss of $900 million. 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 10.6 percent in INPV to furnace, central air conditioner, and heat pump manufacturers.

The Secretary concludes that at TSL 5 for furnace and central air conditioner and heat pump energy efficiency, 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 are outweighed by the economic burden on some consumers due to large increases in installed 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 5 is not economically justified.

The Secretary concludes that at TSL 4 for furnace and central air conditioner and heat pump energy efficiency, 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 outweigh the economic burden on some consumers due to increases in installed cost, and the capital conversion costs and profit margin impacts that could result in a moderate reduction in INPV for the manufacturers. TSL 4 may yield greater cumulative energy savings than TSL 5, and also a higher NPV of consumer benefits at both 3-percent and 7-percent discount rates.

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. In the present case, one outcome of the consensus agreement was a recommendation to accelerate the compliance dates for these products, which would have the effect of producing additional energy savings at an earlier date. 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 furnaces RAP and the preliminary TSD for central air

conditioners and heat pumps, and the benefits and burdens of TSL 4, the Secretary has concluded that this trial standard level offers the maximum improvement in efficiency that is technologically feasible and economically justified, and will result in significant conservation of energy. Therefore, DOE today adopts TSL 4 for furnaces and central air conditioners and heat pumps. Today's amended energy conservation standards for furnaces, central air conditioners, and heat pumps, expressed in terms of minimum energy efficiency, are shown in Table V.55.

TABLE V.55—AMENDED STANDARDS FOR FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP ENERGY EFFICIENCY

| Product class | National standards | Northern region ** standards |
|---|---|---|
| **Residential Furnaces** * | | |
| Non-weatherized gas | AFUE = 80% | AFUE = 90% |
| Mobile home gas | AFUE = 80% | AFUE = 90% |
| Non-weatherized oil-fired | AFUE = 83% | AFUE = 83% |
| Weatherized gas | AFUE = 81% | AFUE = 81% |
| Mobile home oil-fired ‡‡ | AFUE = 75% | AFUE = 75% |
| Weatherized oil-fired ‡‡ | AFUE = 78% | AFUE = 78% |
| Electric ‡‡ | AFUE = 78% | AFUE = 78% |

| Product class | National standards | Southeastern region †† standards | Southwestern region ‡ standards |
|---|---|---|---|
| **Central Air Conditioners and Heat Pumps** † | | | |
| Split-system air conditioners | SEER = 13 | SEER = 14 | SEER = 14<br>EER = 12.2 (for units with a rated cooling capacity less than 45,000 Btu/h)<br>EER = 11.7 (for units with a rated cooling capacity equal to or greater than 45,000 Btu/h). |
| Split-system heat pumps | SEER = 14<br>HSPF = 8.2 | SEER = 14<br>HSPF = 8.2 | SEER = 14.<br>HSPF = 8.2. |
| Single-package air conditioners ‡‡ | SEER = 14 | SEER = 14 | SEER = 14.<br>EER = 11.0. |
| Single-package heat pumps | SEER = 14<br>HSPF = 8.0 | SEER = 14<br>HSPF = 8.0 | SEER = 14.<br>HSPF = 8.0. |
| Small-duct, high-velocity systems | SEER = 13<br>HSPF = 7.7 | SEER = 13<br>HSPF = 7.7 | SEER = 13.<br>HSPF = 7.7. |
| Space-constrained products—air conditioners ‡‡. | SEER = 12 | SEER = 12 | SEER = 12. |
| Space-constrained products—heat pumps ‡‡ | SEER = 12<br>HSPF = 7.4 | SEER = 12<br>HSPF = 7.4 | SEER = 12.<br>HSPF = 7.4. |

* AFUE is Annual Fuel Utilization Efficiency.

** The Northern region for furnaces contains the following States: Alaska, Colorado, Connecticut, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.

† SEER is Seasonal Energy Efficiency Ratio; EER is Energy Efficiency Ratio; HSPF is Heating Seasonal Performance Factor; and Btu/h is British Thermal Units per hour.

†† The Southeastern region for central air conditioners and heat pumps contains the following States: Alabama, Arkansas, Delaware, Florida, Georgia, Hawaii, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia, and the District of Columbia.

‡The Southwestern region for central air conditioners and heat pumps contains the States of Arizona, California, Nevada, and New Mexico.

DOE is not amending energy conservation standards for these product classes in this direct final rule.

2. Benefits and Burdens of TSLs Considered for Furnace, Central Air Conditioner, and Heat Pump Standby Mode and Off Mode Power

Table V.56 through Table V.58 present a summary of the quantitative impacts estimated for each TSL considered for furnace, central air conditioner, and heat pump standby mode and off mode power. The efficiency levels contained in each TSL are described in section V.A.

TABLE V.56—SUMMARY OF RESULTS FOR FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP STANDBY MODE AND OFF MODE POWER TSLS: NATIONAL IMPACTS

| Category | TSL 1 | TSL 2 | TSL 3 |
|---|---|---|---|
| National Energy Savings (quads) | 0.153 | 0.16 | 0.186. |
| NPV of Consumer Benefits (2009$ billion) | | | |
| 3% discount rate | 1.14 | 1.18 | 1.01. |
| 7% discount rate | 0.371 | 0.373 | 0.235. |

TABLE V.56—SUMMARY OF RESULTS FOR FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP STANDBY MODE AND OFF MODE POWER TSLS: NATIONAL IMPACTS—Continued

| Category | TSL 1 | TSL 2 | TSL 3 |
|---|---|---|---|
| Cumulative Emissions Reduction | | | |
| $CO_2$ (million metric tons) | 8.23 | 8.73 | 10.1. |
| $NO_X$ (thousand tons) | 6.60 | 7.00 | 8.11. |
| Hg (ton) | 0.056 | 0.072 | 0.079. |
| Value of Emissions Reductions | | | |
| $CO_2$ (2009$ million)* | 41.7 to 694 | 44.3 to 738 | 51.7 to 862. |
| $NO_X$—3% discount rate (2009$ million) | 2.07 to 21.3 | 2.20 to 22.6 | 2.56 to 26.3. |
| $NO_X$—7% discount rate (2009$ million) | 0.793 to 8.15 | 0.841 to 8.65 | 0.975 to 10.0. |
| Generation Capacity Reduction (GW)** | 0.103 | 0.110 | 0.127. |
| Employment Impacts | | | |
| Total Potential Change in Domestic Production Workers in 2016 (thousands) | negligible | negligible | negligible. |
| Indirect Domestic Jobs (thousands)** | 0.8 | 0.86 | 1.02. |

Parentheses indicate negative (−) values.
* Range of the value of $CO_2$ reductions is based on estimates of the global benefit of reduced $CO_2$ emissions.
** Changes in 2045.

TABLE V.57—SUMMARY OF RESULTS FOR FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP STANDBY MODE AND OFF MODE POWER TSLS: MANUFACTURER AND CONSUMER IMPACTS

| Category | TSL 1 | TSL 2 | TSL 3 |
|---|---|---|---|
| Manufacturer Impacts | | | |
| Change in Industry NPV (2009$ million) | 4 to (253) | 5 to (253) | 23 to (255) |
| Industry NPV (% change) | .05 to (2.91) | .06 to (2.91) | 0.26 to (2.93) |
| Consumer Mean LCC Savings* (2009$) | | | |
| Non-Weatherized Gas Furnaces | 2 | 2 | 0 |
| Mobile Home Gas Furnaces | 0 | 0 | (1) |
| Oil-Fired Furnaces | 1 | 1 | 1 |
| Electric Furnaces | 0 | 0 | (1) |
| Split-System Air Conditioners (coil-only) | 84 | 84 | 84 |
| Split-System Air Conditioners (blower-coil) | 84 | 40 | 35 |
| Split-System Heat Pumps | 9 | 9 | (1) |
| Single-Package Air Conditioners | 84 | 41 | 36 |
| Single-Package Heat Pumps | 9 | 9 | (1) |
| SDHV Air Conditioners | 84 | 37 | 32 |
| Space-Constrained Air Conditioners | 84 | 42 | 37 |
| Space-Constrained Heat Pumps | 9 | 9 | (1) |
| Consumer Median PBP (years) | | | |
| Non-Weatherized Gas Furnaces | 11 | 11 | 16 |
| Mobile Home Gas Furnaces | 12 | 12 | 18 |
| Oil-Fired Furnaces | 8 | 8 | 12 |
| Electric Furnaces | 10 | 10 | 16 |
| Split-System Air Conditioners (coil-only) | 1 | 1 | 1 |
| Split-System Air Conditioners (blower-coil) | 1 | 6 | 7 |
| Split-System Heat Pumps | 4 | 4 | 5 |
| Single-Package Air Conditioners | 1 | 6 | 7 |
| Single-Package Heat Pumps | 4 | 4 | 5 |
| SDHV Air Conditioners | 1 | 7 | 7 |
| Space-Constrained Air Conditioners | 1 | 6 | 7 |
| Space-Constrained Heat Pumps | 4 | 4 | 5 |

* Parentheses indicate negative (-) values. For LCCs, a negative value means an increase in LCC by the amount indicated.

TABLE V.58—SUMMARY OF RESULTS FOR FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP STANDBY MODE AND OFF MODE POWER TSLS: DISTRIBUTION OF CONSUMER IMPACTS

| Category | TSL 1 | TSL 2 | TSL 3 |
|---|---|---|---|
| **Distribution of Consumer LCC Impacts** | | | |
| *Non-Weatherized Gas Furnaces* | | | |
| Net Cost (%) | 9 | 9 | 17 |
| No Impact (%) | 72 | 72 | 72 |
| Net Benefit (%) | 18 | 18 | 11 |
| *Mobile Home Gas Furnaces* | | | |
| Net Cost (%) | 6 | 6 | 8 |
| No Impact (%) | 91 | 91 | 91 |
| Net Benefit (%) | 4 | 4 | 2 |
| *Oil-Fired Furnaces* | | | |
| Net Cost (%) | 1 | 1 | 4 |

TABLE V.58—SUMMARY OF RESULTS FOR FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP STANDBY MODE AND OFF MODE POWER TSLS: DISTRIBUTION OF CONSUMER IMPACTS—Continued

| Category | TSL 1 | TSL 2 | TSL 3 |
|---|---|---|---|
| No Impact (%) | 91 | 91 | 91 |
| Net Benefit (%) | 8 | 8 | 6 |
| *Electric Furnaces* | | | |
| Net Cost (%) | 4 | 4 | 7 |
| No Impact (%) | 90 | 90 | 90 |
| Net Benefit (%) | 5 | 5 | 3 |
| *Split-System Air Conditioners (coil-only)* | | | |
| Net Cost (%) | 0 | 0 | 0 |
| No Impact (%) | 94 | 94 | 94 |
| Net Benefit (%) | 6 | 6 | 6 |
| *Split-System Air Conditioners (blower-coil)* | | | |
| Net Cost (%) | 0 | 3 | 3 |
| No Impact (%) | 94 | 91 | 91 |
| Net Benefit (%) | 6 | 6 | 6 |
| *Split-System Heat Pumps* | | | |
| Net Cost (%) | 0 | 0 | 19 |
| No Impact (%) | 67 | 67 | 57 |
| Net Benefit (%) | 33 | 33 | 24 |
| *Single-Package Air Conditioners* | | | |
| Net Cost (%) | 0 | 3 | 3 |
| No Impact (%) | 94 | 91 | 91 |
| Net Benefit (%) | 6 | 6 | 6 |
| *Single-Package Heat Pumps* | | | |
| Net Cost (%) | 0 | 0 | 19 |
| No Impact (%) | 66 | 66 | 57 |
| Net Benefit (%) | 34 | 34 | 24 |
| *SDHV Air Conditioners* | | | |
| Net Cost (%) | 0 | 3 | 3 |
| No Impact (%) | 94 | 91 | 91 |
| Net Benefit (%) | 6 | 6 | 6 |
| *Space-Constrained Air Conditioners* | | | |
| Net Cost (%) | 0 | 3 | 3 |
| No Impact (%) | 94 | 91 | 91 |
| Net Benefit (%) | 6 | 6 | 6 |
| *Space-Constrained Heat Pumps* | | | |
| Net Cost (%) | 0 | 0 | 19 |
| No Impact (%) | 67 | 67 | 58 |
| Net Benefit (%) | 33 | 33 | 23 |

Values in the table are rounded off, and thus, sums may not equal 100 percent in all cases.

DOE first considered TSL 3, which represents the max-tech efficiency levels. TSL 3 would save 0.186 quads of energy, an amount DOE considers significant. Under TSL 3, the NPV of consumer benefit would be $0.235 billion, using a discount rate of 7 percent, and $1.01 billion, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 3 are 10.1 Mt of $CO_2$, 8.11 thousand tons of $NO_X$, and 0.079 ton of Hg. The estimated monetary value of the cumulative $CO_2$ emissions reductions at TSL 3 ranges from $51.7 million to $862 million. Total generating capacity in 2045 is estimated to decrease by 0.127 GW under TSL 3.

At TSL 3, the average LCC impact is a cost (LCC increase) of $0 for non-weatherized gas furnaces, a cost of $1 for mobile home gas furnaces, a savings of $1 for oil-fired furnaces, and a cost of $1 for electric furnaces. For split-system air conditioners (coil-only), the average LCC impact is a savings (LCC decrease) of $84. For split-system air conditioners (blower-coil), the average LCC impact is a savings of $35. For split-system heat pumps, the average LCC impact is a cost of $1. For single-package air conditioners, the average LCC impact is a savings of $36. For single-package heat pumps, the average LCC impact is a cost of $1. For SDHV air conditioners, the average LCC impact is a savings of $32. For space-constrained air conditioners, the average LCC impact is a savings of $37. For space-constrained heat pumps, the average LCC impact is a cost of $1.

At TSL 3, the median payback period is 16 years for non-weatherized gas furnaces; 18 years for mobile home gas furnaces; 12 years for oil-fired furnaces; and 16 years for electric furnaces. For split-system air conditioners (coil-only), the median payback period is 1 year. For split-system air conditioners (blower-coil), the median payback period is 7 years. For split-system heat pumps, the median payback period is 5 years. For single-package air conditioners, the median payback period is 7 years. For single-package heat pumps, the median payback period is 5 years. For SDHV air conditioners, the median payback period is 7 years. For space-constrained air conditioners, the median payback period is 7 years. For space-constrained heat pumps, the median payback period is 5 years.

At TSL 3, the fraction of consumers experiencing an LCC benefit is 11 percent for non-weatherized gas furnaces, 2 percent for mobile home gas furnaces, 6 percent for oil-fired furnaces, and 3 percent for electric furnaces. For split-system air conditioners (coil-only), the fraction of consumers experiencing an LCC benefit is 6 percent. For split-system air conditioners (blower-coil), the fraction of consumers experiencing an LCC benefit is 6 percent. For split-system heat pumps, the fraction of consumers experiencing an LCC benefit is 24 percent. For single-package air conditioners, the fraction of consumers

experiencing an LCC benefit is 6 percent. For single-package heat pumps, the fraction of consumers experiencing an LCC benefit is 24 percent. For SDHV air conditioners, the fraction of consumers experiencing an LCC benefit is 6 percent. For space-constrained air conditioners, the fraction of consumers experiencing an LCC benefit is 6 percent. For space-constrained heat pumps, the fraction of consumers experiencing an LCC benefit is 23 percent.

At TSL 3, the fraction of consumers experiencing an LCC cost is 17 percent for non-weatherized gas furnaces, 8 percent for mobile home gas furnaces, 4 percent for oil-fired furnaces, and 7 percent for electric furnaces. For split-system air conditioners (coil-only), the fraction of consumers experiencing an LCC cost is 0 percent. For split-system air conditioners (blower-coil), the fraction of consumers experiencing an LCC cost is 3 percent. For split-system heat pumps, the fraction of consumers experiencing an LCC cost is 19 percent. For single-package air conditioners, the fraction of consumers experiencing an LCC cost is 3 percent. For single-package heat pumps, the fraction of consumers experiencing an LCC cost is 19 percent. For SDHV air conditioners, the fraction of consumers experiencing an LCC cost is 3 percent. For space-constrained air conditioners, the fraction of consumers experiencing an LCC cost is 3 percent. For space-constrained heat pumps, the fraction of consumers experiencing an LCC cost is 19 percent.

At TSL 3, the projected change in INPV ranges from an increase of $23 million to a decrease of $255 million. The model anticipates impacts on INPV to range from 0.26 percent to -2.93 percent. In general, the cost of standby mode and off mode features is not expected to significantly affect manufacturer profit margins for furnace, central air conditioner, and heat pump products.

The Secretary concludes that at TSL 3 for furnace and central air conditioner and heat pump standby mode and off mode power, the benefits of energy savings, positive NPV of consumer benefits at 3-percent discount rate, 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 at 7 percent and the economic burden on some consumers due to the increases in product cost. Of the consumers of furnaces and heat pumps who would be impacted, many more would be burdened by standards at TSL 3 than would benefit. Consequently, the Secretary has concluded that TSL 3 is not economically justified.

DOE then considered TSL 2. TSL 2 would save 0.16 quads of energy, an amount DOE considers significant. Under TSL 2, the NPV of consumer benefit would be $0.373 billion, using a discount rate of 7 percent, and $1.18 billion, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 2 are 8.73 Mt of $CO_2$, 7.00 thousand tons of $NO_X$, and 0.072 tons of Hg. The estimated monetary value of the cumulative $CO_2$ emissions reductions at TSL 2 ranges from $44.3 million to $738 million. Total generating capacity in 2045 is estimated to decrease by 0.11 GW under TSL 2.

At TSL 2, the average LCC impact is a savings (LCC decrease) of $2 for non-weatherized gas furnaces, a savings of $0 for mobile home gas furnaces, a savings of $1 for oil-fired furnaces, and a savings of $0 for electric furnaces. For split-system air conditioners (coil-only), the average LCC impact is a savings of $84. For split-system air conditioners (blower-coil), the average LCC impact is a savings of $40. For split-system heat pumps, the average LCC impact is a savings of $9. For single-package air conditioners, the average LCC impact is a savings of $41. For single-package heat pumps, the average LCC impact is a savings of $9. For SDHV air conditioners, the average LCC impact is a savings of $37. For space-constrained air conditioners, the average LCC impact is a savings of $42. For space-constrained heat pumps, the average LCC impact is a savings of $9.

At TSL 2, the median payback period is 11 years for non-weatherized gas furnaces; 12 years for mobile home gas furnaces; 8 years for oil-fired furnaces; and 10 years for electric furnaces. For split-system air conditioners (coil-only), the median payback period is 1 year. For split-system air conditioners (blower-coil), the median payback period is 6 years. For split-system heat pumps, the median payback period is 4 years. For single-package air conditioners, the median payback period is 6 years. For single-package heat pumps, the median payback period is 4 years. For SDHV air conditioners, the median payback period is 7 years. For space-constrained air conditioners, the median payback period is 6 years. For space-constrained heat pumps, the median payback period is 4 years.

At TSL 2, the fraction of consumers experiencing an LCC benefit is 18 percent for non-weatherized gas furnaces, 4 percent for mobile home gas furnaces, 8 percent for oil-fired furnaces, and 5 percent for electric furnaces. For split-system air conditioners (coil-only), the fraction of consumers experiencing an LCC benefit is 6 percent. For split-system air conditioners (blower-coil), the fraction of consumers experiencing an LCC benefit is 6 percent. For split-system heat pumps, the fraction of consumers experiencing an LCC benefit is 33 percent. For single-package air conditioners, the fraction of consumers experiencing an LCC benefit is 6 percent. For single-package heat pumps, the fraction of consumers experiencing an LCC benefit is 34 percent. For SDHV air conditioners, the fraction of consumers experiencing an LCC benefit is 6 percent. For space-constrained air conditioners, the fraction of consumers experiencing an LCC benefit is 6 percent. For space-constrained heat pumps, the fraction of consumers experiencing an LCC benefit is 33 percent.

At TSL 2, the fraction of consumers experiencing an LCC cost is 9 percent for non-weatherized gas furnaces, 6 percent for mobile home gas furnaces, 1 percent for oil-fired furnaces, and 4 percent for electric furnaces. For split system air conditioners (coil-only), the fraction of consumers experiencing an LCC cost is 0 percent. For split-system air conditioners (blower-coil), the fraction of consumers experiencing an LCC cost is 3 percent. For split-system heat pumps, the fraction of consumers experiencing an LCC cost is 0 percent. For single-package air conditioners, the fraction of consumers experiencing an LCC cost is 3 percent. For single-package heat pumps, the fraction of consumers experiencing an LCC cost is 0 percent. For SDHV air conditioners, the fraction of consumers experiencing an LCC cost is 3 percent. For space-constrained air conditioners, the fraction of consumers experiencing an LCC cost is 3 percent. For space-constrained heat pumps, the fraction of consumers experiencing an LCC cost is 0 percent.

At TSL 2, the projected change in INPV ranges from an increase of $5 million to a decrease of $253 million. The modeled impacts on INPV range from 0.06 percent to 2.91 percent. In general, the incremental cost of standby mode and off mode features are not expected to significantly affect INPV for the furnace, central air conditioner, and heat pump industry at this level.

The Secretary concludes that at TSL 2 for furnace, central air conditioner, and heat pump standby mode and off mode power, the benefits of energy savings, positive NPV of consumer benefits at both 7-percent and 3-percent

discount rates, generating capacity reductions, emission reductions, and the estimated monetary value of the $CO_2$ emissions reductions would outweigh the economic burden on a small fraction of consumers due to the increases in product cost. With the exception of consumers of mobile home gas furnaces (whose mean LCC impact is zero), the majority of the consumers that would be affected by standards at TSL 2 would see an LCC benefit. Consequently, the Secretary has concluded that TSL 2 is economically justified.

After considering the analysis and the benefits and burdens of TSL 2, the Secretary has concluded that this trial standard level offers the maximum improvement in energy efficiency that is technologically feasible and economically justified, and will result in the significant conservation of energy. Therefore, DOE today adopts TSL 2 for furnace, central air conditioner, and heat pump standby mode and off mode. Today's amended energy conservation standards for standby mode and off mode, expressed as maximum power in watts, are shown in Table V.59.

TABLE V.59—STANDARDS FOR FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP STANDBY MODE AND OFF MODE *

| Product class | Standby mode and off mode standard levels |
|---|---|
| **Residential Furnaces** ** | |
| Non-Weatherized Gas | $P_{W,SB}$ = 10 watts.<br>$P_{W,OFF}$ = 10 watts. |
| Mobile Home Gas | $P_{W,SB}$ = 10 watts.<br>$P_{W,OFF}$ = 10 watts. |
| Non-Weatherized Oil-Fired | $P_{W,SB}$ = 11 watts.<br>$P_{W,OFF}$ = 11 watts. |
| Mobile Home Oil-Fired | $P_{W,SB}$ = 11 watts.<br>$P_{W,OFF}$ = 11 watts. |
| Electric | $P_{W,SB}$ = 10 watts.<br>$P_{W,OFF}$ = 10 watts. |
| **Central Air Conditioners and Heat Pumps** † | |
| Product class | Off mode standard levels † |
| Split-system air conditioners | $P_{W,OFF}$ = 30 watts. |
| Split-system heat pumps | $P_{W,OFF}$ = 33 watts. |
| Single-package air conditioners | $P_{W,OFF}$ = 30 watts. |
| Single-package heat pumps | $P_{W,OFF}$ = 33watts. |
| Small-duct, high-velocity systems | $P_{W,OFF}$ = 30 watts. |
| Space-constrained air conditioners | $P_{W,OFF}$ = 30 watts. |
| Space-constrained heat pumps | $P_{W,OFF}$ = 33 watts. |

* $P_{W,SB}$ is standby mode electrical power consumption, and $P_{W,OFF}$ is off mode electrical power consumption for furnaces.
** Standby mode and off mode energy consumption for weatherized gas and oil-fired furnaces is regulated as a part of single-package air conditioners and heat pumps, as discussed in section III.E.1.
† $P_{W,OFF}$ is off mode electrical power consumption for central air conditioners and heat pumps.
‡ DOE is not adopting a separate standby mode standard level for central air conditioners and heat pumps, because standby mode power consumption for these products is already regulated by SEER and HSPF.

3. Annualized Benefits and Costs of Standards for Furnace, Central Air Conditioner, and Heat Pump Energy Efficiency

The benefits and costs of the standards in this rule can also be expressed in terms of annualized values over the analysis period. 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 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.[100] 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 Federal 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 2013–2045 for furnaces and 2015–2045 for central air conditioners and heat pumps. 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

[100] 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 32-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.

carbon dioxide in each year. These impacts continue well beyond 2100.

Estimates of annualized benefits and costs of the standards in this rule for furnace, central air conditioner, and heat pump energy efficiency are shown in Table V.60. The results under the primary estimate are as follows. Using a 7-percent discount rate and the SCC value of $22.1/ton in 2010 (in 2009$), the cost of the energy efficiency standards in today's direct final rule is $527 million to $773 million per year in increased equipment installed costs, while the annualized benefits are $837 million to $1106 million per year in reduced equipment operating costs, $140 million to $178 million in $CO_2$ reductions, and $5.3 million to $6.9 million in reduced $NO_X$ emissions. In this case, the net benefit amounts to $456 million to $517 million per year. DOE also calculated annualized net benefits using a range of potential electricity and equipment price trend forecasts. Given the range of modeled price trends, the range of net benefits using a 7-percent discount rate is from $295 million to $623 million per year. The low estimate corresponds to a scenario with a low electricity price trend and a constant real price trend for equipment. Using a 3-percent discount rate and the SCC value of $22.1/metric ton in 2010 (in 2009$), the cost of the energy efficiency standards in today's direct final rule is $566 million to $825 million per year in increased equipment installed costs, while the benefits are $1289 million to $1686 million per year in reduced operating costs, $140 million to $178 million in $CO_2$ reductions, and $7.9 million to $10.2 million in reduced $NO_X$ emissions. In this case, the net benefit amounts to $871 million to $1049 million per year. DOE also calculated annualized net benefits using a range of potential electricity and equipment price trend forecasts. Given the range of modeled price trends, the range of net benefits using a 3-percent discount rate is from $601 million to $1,260 million per year. The low estimate corresponds to a scenario with a low electricity price trend and a constant real price trend for equipment.

TABLE V.60—ANNUALIZED BENEFITS AND COSTS OF STANDARDS FOR FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP ENERGY EFFICIENCY (TSL 4)

| | Discount rate | Monetized (million 2009$/year) | | |
|---|---|---|---|---|
| | | Primary estimate * | Low estimate * | High estimate * |
| **Benefits** | | | | |
| Operating Cost Savings | 7% | 837 to 1,106 | 723 to 959 | 955 to 1,258 |
| | 3% | 1,289 to 1,686 | 1,083 to 1,422 | 1,493 to 1,948 |
| $CO_2$ Reduction at $4.9/t ** | 5% | 34 to 43 | 34 to 43 | 34 to 43 |
| $CO_2$ Reduction at $22.1/t ** | 3% | 140 to 178 | 141 to 178 | 140 to 178 |
| $CO_2$ Reduction at $36.3/t ** | 2.5% | 224 to 284 | 225 to 285 | 224 to 284 |
| $CO_2$ Reduction at $67.1/t ** | 3% | 427 to 541 | 428 to 543 | 427 to 541 |
| $NO_X$ Reduction at $2,519/ton ** | 7% | 5.3 to 6.9 | 5.3 to 7.0 | 5.3 to 6.9 |
| | 3% | 7.9 to 10.2 | 7.9 to 10.3 | 7.9 to 10.2 |
| Total † | 7% plus $CO_2$ range | 876 to 1,653 | 762 to 1,509 | 994 to 1,805 |
| | 7% | 983 to 1,290 | 869 to 1,144 | 1,100 to 1,442 |
| | 3% | 1,437 to 1,874 | 1,232 to 1,611 | 1,641 to 2,136 |
| | 3% plus $CO_2$ range | 1,330 to 2,237 | 1,125 to 1,975 | 1,535 to 2,499 |
| **Costs** | | | | |
| Incremental Product Costs | 7% | 527 to 773 | 574 to 840 | 555 to 819 |
| | 3% | 566 to 825 | 630 to 916 | 599 to 876 |
| **Net Benefits/Costs** | | | | |
| Total †† | 7% plus $CO_2$ range | 349 to 880 | 188 to 669 | 438 to 986 |
| | 7% | 456 to 517 | 295 to 305 | 545 to 623 |
| | 3% | 871 to 1,049 | 601 to 695 | 1,042 to 1,260 |
| | 3% plus $CO_2$ range | 764 to 1,412 | 494 to 1,059 | 935 to 1,623 |

* The benefits and costs are calculated for products shipped in 2013–2045 for the furnace standards and in 2015–2045 for the central air conditioner and heat pump standards.

** 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. In addition, the low estimate uses incremental product costs that reflects constant prices (no learning rate) for product prices, and the high estimate uses incremental product costs that reflects a declining trend (high learning rate) for product prices. The derivation and application of learning rates for product prices is explained in section IV.F.1.

† The $CO_2$ values represent global monetized 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.

4. Annualized Benefits and Costs of Standards for Furnace, Central Air Conditioner, and Heat Pump Standby Mode and Off Mode Power

As explained in detail above, the benefits and costs of the standards in this rule for standby mode and off mode power 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 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.

Estimates of annualized benefits and costs of the standards in this rule for furnace, central air conditioner, and heat pump standby mode and off mode power are shown in Table V.61. The results under the primary estimate are as follows. Using a 7-percent discount rate and the SCC value of $22.1/ton in 2010 (in 2009$), the cost of the standby mode and off mode standards in today's direct final rule is $16.4 million per year in increased equipment costs, while the annualized benefits are $46.5 million per year in reduced equipment operating costs, $12.4 million in $CO_2$ reductions, and $0.4 million in reduced $NO_X$ emissions. In this case, the net benefit amounts to $42.8 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 standby mode and off mode standards in today's direct final rule is $19.1 million per year in increased equipment costs, while the benefits are $79.3 million per year in reduced operating costs, $12.4 million in $CO_2$ reductions, and $0.6 million in reduced $NO_X$ emissions. In this case, the net benefit amounts to $73.2 million per year.

TABLE V.61—ANNUALIZED BENEFITS AND COSTS OF STANDARDS FOR FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP STANDBY MODE AND OFF MODE POWER (TSL 2)

| | Discount rate | Monetized (million 2009$/year) | | |
|---|---|---|---|---|
| | | Primary estimate * | Low estimate * | High estimate * |
| **Benefits** | | | | |
| Operating Cost Savings | 7% | 46.5 | 40.4 | 52.8 |
| | 3% | 79.3 | 67.9 | 90.8 |
| $CO_2$ Reduction at $4.9/t ** | 5% | 2.9 | 2.9 | 2.9 |
| $CO_2$ Reduction at $22.1/t ** | 3% | 12.4 | 12.4 | 12.4 |
| $CO_2$ Reduction at $36.3/t ** | 2.5% | 19.9 | 19.9 | 19.9 |
| $CO_2$ Reduction at $67.1/t ** | 3% | 37.6 | 37.6 | 37.6 |
| $NO_X$ Reduction at $2,519/ton ** | 7% | 0.4 | 0.4 | 0.4 |
| | 3% | 0.6 | 0.6 | 0.6 |
| Total † | 7% plus $CO_2$ range | 49.7 to 84.5 | 43.6 to 78.4 | 56.1 to 90.8 |
| | 7% | 59.2 | 53.1 | 65.5 |
| | 3% | 92.3 | 80.9 | 103.8 |
| | 3% plus $CO_2$ range | 82.8 to 117.5 | 71.4 to 106.2 | 94.3 to 129.1 |
| **Costs** | | | | |
| Incremental Product Costs | 7% | 16.4 | 15.2 | 17.7 |
| | 3% | 19.1 | 17.6 | 20.6 |
| **Net Benefits/Costs** | | | | |
| Total † | 7% plus $CO_2$ range | 33.3 to 68.1 | 28.5 to 63.2 | 38.4 to 73.1 |
| | 7% | 42.8 | 38.0 | 47.9 |
| | 3% | 73.2 | 63.3 | 83.2 |
| | 3% plus $CO_2$ range | 63.7 to 98.4 | 53.8 to 88.5 | 73.7 to 108.5 |

* The benefits and costs are calculated for products shipped in 2013–2045 for the furnace standards and in 2015–2045 for the central air conditioner and heat pump standards.

** 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. In addition, the low estimate uses incremental product costs that reflects constant prices (no learning rate) for product prices, and the high estimate uses incremental product costs that reflects a declining trend (high learning rate) for product prices. The derivation and application of learning rates for product prices is explained in section IV.F.1.

†† The $CO_2$ values represent global monetized 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.

5. Certification Requirements

In today's direct final rule, in addition to proposing amended energy conservation standards for the existing AFUE levels (for furnaces) and SEER and HSPF levels (for central air conditioners and heat pumps), DOE is setting new requirements for standby mode and off mode energy consumption for residential furnaces and off mode energy consumption for central air conditioners and heat pumps. Additionally, DOE is adopting new requirements for EER for States in the hot-dry, southwestern region for central air conditioners. Because standby mode and off mode for furnaces, off mode for central air conditioners and heat pumps, and EER for central air conditioners have not previously been regulated, DOE does not currently require

certification for these metrics. DOE notes, however, that determining compliance with the standards in today's direct final rule will likely require manufacturers to certify these ratings (*i.e.,* $P_{W,OFF}$ and $P_{W,SB}$ for furnaces, $P_{W,OFF}$ for central air conditioners and heat pumps, and EER for central air conditioners sold in the southwestern region (Arizona, California, Nevada, and New Mexico)). DOE has decided that it will address these certification requirements in a separate certification and enforcement rulemaking, or in a rulemaking to determine the enforcement mechanism for regional standards.

## VI. Procedural Issues and Regulatory Review

### *A. Review Under Executive Order 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 the standards in this rule address are as follows:

(1) There is a lack of consumer information and/or information processing capability about energy efficiency opportunities in the furnace, central air conditioner, and heat pump 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 furnaces, central air conditioners, and heat pumps 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 this 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 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the 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*).

DOE reviewed the standard levels considered in today's direct final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. 68 FR 7990. As a result of this review, DOE prepared a FRFA in support of the standards in this rule, which DOE will transmit to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C 605(b). As presented and discussed below, the FRFA describes potential impacts on small residential furnace, central air conditioner, and heat pump manufacturers associated with today's direct final rule and discusses alternatives that could minimize these impacts. A description of the reasons why DOE is adopting the standards in this rule and the objectives of and legal basis for the rule are set forth elsewhere in the preamble and not repeated here.

#### 1. Description and Estimated Number of Small Entities Regulated

For the manufacturers of residential furnaces, central air conditioners, and heat pumps, 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, 30848 (May 15,

2000), as amended at 65 FR 53533, 53544 (Sept. 5, 2000) and codified at 13 CFR part 121. The size standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at: *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.* Residential furnace and central air conditioning (including heat pumps) manufacturing is classified under NAICS 333415, ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.'' The SBA sets a threshold of 750 employees or less for an entity to be considered as a small business for this category.

During its market survey, DOE used all available public information to identify potential small manufacturers. DOE's research involved industry trade association membership directories (including AHRI), public databases (*e.g.,* AHRI Directory [101], the SBA Database [102]), individual company Web sites, and market research tools (*e.g.,* Dunn and Bradstreet reports [103] and Hoovers reports [104]) to create a list of companies that manufacture or sell products covered by this rulemaking. DOE also asked stakeholders and industry representatives if they were aware of any other small manufacturers during manufacturer interviews and at DOE public meetings. DOE reviewed publicly-available data and contacted select companies on its list, as necessary, to determine whether they met the SBA's definition of a small business manufacturer of covered residential furnaces, central air conditioners, and heat pumps. DOE screened out companies that do not offer products covered by this rulemaking, do not meet the definition of a ''small business,'' or are foreign owned and operated.

For central air conditioners, DOE initially identified 89 distinct brands sold in the U.S. Out of these 89 brands, DOE determined that 18 brands are managed by small businesses. While identifying the parent companies of the 18 brands, DOE determined that only four companies are domestic small business manufacturers of central air conditioning products. Three of these small businesses produce space-constrained products and one produces small-duct, high-velocity products. None of the small businesses produced split-system air conditioning, split-system heat pumps, single-package air conditioning, or single-package heat pump products, which together make up 99 percent of industry air conditioner and heat pump shipments.

For residential furnaces, DOE initially identified at least 90 distinct brands sold in the U.S. Out of these 90 brands, DOE determined that 14 were managed by small businesses. When identifying the parent companies of the 14 brands, DOE determined that only five companies are domestic small business manufacturers of furnace products. All five small businesses manufacture oil furnaces as their primary product line. One of the small businesses also produces mobile home furnaces as a secondary product offering. DOE did not identify any small manufacturers producing non-weatherized gas furnaces or weatherized gas furnaces, which together make up over 95 percent of residential furnace shipments. DOE also did not identify any small manufacturers of electric furnaces affected by this rulemaking.

Next, DOE contacted all of the identified small business manufacturers listed in the AHRI directory to request an interview about the possible impacts of amended energy conservation standards on small manufacturers. Not all manufacturers responded to interview requests; however, DOE did interview three small furnace manufacturers and two small central air conditioning and heat pump manufacturers. From these discussions, DOE determined the expected impacts of the rule on affected small entities.

2. Description and Estimate of Compliance Requirements

After examining structure of the central air conditioner and heat pump and furnace market, DOE determined it necessary to examine impacts on small manufacturers in two broad categories: (1) Manufacturers of central air conditioners and heat pumps and (2) manufacturers of furnaces.

a. Central Air Conditioning and Heat Pumps

As discussed above, no small manufacturers for split-system air conditioning, split-system heat pump, single-package air conditioning, or single-package heat pump products were identified. DOE identified four domestic small business manufacturers of central air conditioner and heat pump products. All four small businesses manufacture niche products; three produce space-constrained products, and one produces SDHV products.

With regard to the space-constrained market, the three small business manufacturers identified by DOE make up the vast majority of shipments of these products in the United States. DOE did not identify any competing large manufacturers in this niche market. Supporting this finding, no large manufacturers listed through-the-wall, or space-constrained, products in the AHRI directory. According to manufacturer interviews, no manufacturers have entered or exited the space-constrained market in the past decade. Furthermore, based on the screening analysis, teardown analysis, and market research, DOE has determined that the current energy conservation standard applicable to these products is equal to the max-tech efficiency level. In other words, DOE has determined it is unable to raise the energy conservation standards applicable to space-constrained products due to the state of technology and the design constraints inherent to these products. Therefore, because the efficiency level to which these three small manufacturers are subject will not change, DOE does not anticipate that the rule would adversely affect the small businesses manufacturing space-constrained air conditioning products.

With respect to SDHV products, DOE identified one company as a small domestic manufacturer. The company's primary competitors are a small manufacturer based in Canada and a domestic manufacturer that does not qualify as a small business due to its parent company's size. These three manufacturers account for the vast majority of the SDHV market in the U.S., which makes up less than 1 percent of the overall domestic central air conditioning and heat pumps market.

The current energy conservation standard for SDHV is 13 SEER. In today's notice, DOE is not amending that level. Therefore, because the efficiency level to which the manufacturers are subject will not change, DOE does not anticipate that the standard level would adversely affect the manufacturers of SDHV products.

It should be noted that this rulemaking adopts a separate standard for the SDHV product class. As a result, exception relief granted in 2004 under the condition that ''exception relief will remain in effect until such time as the agency modifies the general energy efficiency standard for central air conditioners and establishes a different standard for SDHV systems that

[101] See *http://www.ahridirectory.org/ahriDirectory/pages/home.aspx.*

[102] See *http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm.*

[103] See *http://www.dnb.com/*

[104] See *http://www.hoovers.com/.*

comports with the EPCA [105]'' will expire. Large and small SDHV manufacturers operating under exception relief will be required to either comply with the standard or re-apply for exception relief ahead of the compliance date.

b. Residential Furnaces

DOE identified five domestic small business manufacturers of residential furnace products. All five produce oil furnaces as their primary product line. Oil furnaces make up less than 3 percent of residential furnace shipments. One of the small businesses also produces mobile home furnaces as a secondary product line. No additional small manufacturers of mobile home furnaces were identified.

The five small business manufacturers of residential furnace products account for 22 percent of the 1,207 active oil furnace product listings in the AHRI Directory (data based on information available from the AHRI Directory in September 2010). Ninety-nine percent of the small oil furnace manufacturer product listings were above the base standard of 78-percent AFUE. Seventy-seven percent of the small oil furnace manufacturer product listings had efficiencies equal to or above 83-percent AFUE, the efficiency level for oil furnaces adopted in today's notice. All small business manufacturers of residential furnace products have product lines that meet the efficiency level adopted in today's notice.

In interviews, several small manufacturers noted that the majority of their businesses' sales are above 83-percent AFUE today. According to interviews, the small manufacturers focus on marketing their brands as premium products in the replacement market, while the major manufacturers tend to sell their products at lower cost and lower efficiency. For this reason, a higher standard is unlikely to require investments in research and development by small manufacturers to catch up to larger manufacturers in terms of technology development. However, in interviews, small oil furnace manufacturers did indicate some concern if the energy conservation standard were to be raised to 85 percent, which is the efficiency level just below max-tech, or above. At these efficiency levels, according to manufacturers, the installation costs for oil furnaces could significantly increase due to the need for chimney liners, which are necessary to manage the acidic condensate that results from the high sulfur content of domestic heating oil. Small oil furnace manufacturers expressed concern that the additional installation costs of a chimney liner would deter home owners from purchasing new oil furnaces and accelerate the contraction of an already-shrinking oil furnace market. Additionally, small manufacturers were concerned that a high standard would leave little opportunity to differentiate their oil furnaces as premium products through higher efficiencies. If the amended standards were sufficiently stringent as to leave little room for small manufacturers to offer higher-efficiency products, it would become more difficult to for them to justify their premium positioning in the marketplace. However, manufacturers indicated that the change in the efficiency level corresponding to that adopted by today's notice would not significantly alter that premium pricing dynamic.

For oil furnaces, the majority of both small business product lines and sales are at efficiencies equal to or above 83-percent AFUE. Oil furnace manufacturers do not expect to face significant conversion costs to reach the adopted level. Based on manufacturer feedback, DOE estimated that a typical small oil furnace manufacturer would need to invest $250,000 to cover conversion costs, including both capital and product conversion costs such as investments in production lines, R&D and engineering resources, and product testing, to meet the standard. However, any relatively fixed costs associated with R&D, marketing, and testing necessitated by today's direct final rule would have to be spread over lower volumes, on average, as compared to larger manufacturers. DOE believes this disproportionate adverse impact on small manufacturers is somewhat mitigated by an industry trend toward large manufacturers outsourcing their oil furnace production to small manufacturers, which has increased the sales of both domestic and Canadian small manufacturers. Interviewed small manufacturers indicated that larger manufacturers are becoming less willing to allocate resources to the shrinking oil furnace market, yet still want to maintain a presence in this portion of the market in order to offer a full product line. In turn, market share in oil furnace production is shifting to small manufacturers. For all of the foregoing reasons, DOE does not believe today's direct final rule jeopardizes the viability of the small oil furnace manufacturers.

As noted above, DOE identified one small manufacturer of mobile home furnaces. This manufacturer primarily produces and sells oil furnaces, but it also produces mobile home furnaces as a secondary product offering. The standard promulgated in today's notice would require 90-percent AFUE in the North and 80-percent AFUE in the South. DOE believes the adopted standard level would be unlikely to cause the small manufacturer to incur significant conversion costs because their current product offering already meets it, as illustrated by the listings in the AHRI directory.

In multiple niche product classes, larger manufacturers could have a competitive advantage due to their size and ability to access capital that may not be available to small businesses. Additionally, in some market segments, larger businesses have larger production volumes over which to spread costs.

3. Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the rule being promulgated today.

4. Significant Alternatives to the Rule

The discussion above analyzes impacts on small businesses that would result from DOE's rule. In addition to the other TSLs being considered, the direct final rule TSD includes a regulatory impact analysis (RIA). For residential furnaces, central air conditioners, and heat pumps, the RIA discusses the following policy alternatives: (1) No change in standard; (2) consumer rebates; (3) consumer tax credits; (4) manufacturer tax credits; and (5) early replacement. While these alternatives may mitigate to some varying extent the economic impacts on small entities compared to the amended standards, DOE determined that the energy savings of these regulatory alternatives are at least 10 times smaller than those that would be expected to result from adoption of the amended standard levels. Thus, DOE rejected these alternatives and is adopting the amended standards set forth in this rulemaking. (See chapter 16 of the direct final rule TSD for further detail on the policy alternatives DOE considered.)

*C. Review Under the Paperwork Reduction Act of 1995*

Manufacturers of residential furnaces, central air conditioners, and heat pumps must certify to DOE that their products comply with any applicable energy conservation standard. In certifying compliance, manufacturers must test

[105] Department of Energy: Office of Hearings and Appeals, Decision and Order, Case #TEE 0010 (2004) (Available at: *http://www.oha.doe.gov/cases/ee/tee0010.pdf*) (last accessed September 2010).

their products according to the DOE test procedures for furnaces, central air conditioners, and heat pumps, as applicable, including any amendments adopted for those particular test procedures. DOE has proposed regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including residential furnaces, central air conditioners, and heat pumps. 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). (44 U.S.C. 3501 *et seq.*) 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 of 1969*

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 of 1969 (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.

*E. Review Under Executive Order 13132*

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999) imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. 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 (Feb. 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 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 ''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. DOE's policy statement is also available at *http://www.gc.doe.gov.*

Although this 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 furnace, central air conditioner, and heat pump manufacturers in the years between the final rule and the compliance date for the new standards, and (2) incremental additional expenditures by consumers to purchase higher-efficiency furnace, central air conditioner, and heat pump products, starting at the compliance date for the applicable standard.

Section 202 of UMRA authorizes a Federal agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the 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 the direct final

rule and the ''Regulatory Impact Analysis'' section of the TSD for this direct final 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(d), (f) and (o), this rule would establish amended energy conservation standards for residential furnaces, central air conditioners, and heat pumps 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'' chapter of the TSD for today's direct final rule.

*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 (Mar. 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 Federal 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 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 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 furnaces, central air conditioners, and heat pumps, is not a significant energy action because the amended 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 Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions.'' *Id.* at 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 a ''major rule'' as defined by 5 U.S.C. 804(2). DOE also will submit the supporting analyses to the Comptroller General in the U.S. Government Accountability Office (GAO) and make them available to each House of Congress.

## 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 direct final 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 Web site 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 e-mail, 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).

## 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, Imports, Intergovernmental relations, Reporting and recordkeeping requirements, and Small businesses.

Issued in Washington, DC, on June 6, 2011.

**Henry Kelly,**

*Acting Assistant Secretary, Energy Efficiency and Renewable Energy.*

For the reasons set forth in the preamble, DOE amends part 430 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, to read as set forth below:

## PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

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

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

■ 2. Section 430.23 is amended by:
■ a. Redesignating paragraphs (m)(4), (m)(5), and (n)(5) as paragraphs (m)(5), (m)(6), and (n)(6), respectively;
■ b. Adding new paragraphs (m)(4) and (n)(5); and
■ c. Revising paragraph (n)(2).

The additions and revision read as follows:

### § 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(m) *Central air conditioners and heat pumps.* * * *

(4) The average off mode power consumption for central air conditioners and central air conditioning heat pumps shall be determined according to appendix M of this subpart. Round the average off mode power consumption to the nearest watt.

* * * * *

(n) *Furnaces.* * * *

(2) The annual fuel utilization efficiency for furnaces, expressed in percent, is the ratio of the annual fuel output of useful energy delivered to the heated space to the annual fuel energy input to the furnace determined according to section 10.1 of appendix N of this subpart for gas and oil furnaces and determined in accordance with section 11.1 of the American National Standards Institute/American Society of

Heating, Refrigerating, and Air-Conditioning Engineers (ANSI/ASHRAE) Standard 103–1993 (incorporated by reference, see § 430.3) for electric furnaces. Round the annual fuel utilization efficiency to the nearest whole percentage point.

* * * * *

(5) The average standby mode and off mode electrical power consumption for furnaces shall be determined according to section 8.6 of appendix N of this subpart. Round the average standby mode and off mode electrical power consumption to the nearest watt.

* * * * *

■ 3. Appendix M to subpart B of part 430 is amended by adding a note after the heading that reads as follows:

## Appendix M to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Central Air Conditioners and Heat Pumps

**Note:** The procedures and calculations that refer to off mode energy consumption (*i.e.,* sections 3.13 and 4.2.8 of this appendix M) need not be performed to determine compliance with energy conservation standards for central air conditioners and heat pumps at this time. However, any representation related to standby mode and off mode energy consumption of these products made after corresponding revisions to the central air conditioners and heat pumps test procedure must be based upon results generated under this test procedure, consistent with the requirements of 42 U.S.C. 6293(c)(2). For residential central air conditioners and heat pumps manufactured on or after January 1, 2015, compliance with the applicable provisions of this test procedure is required in order to determine compliance with energy conservation standards.

■ 4. Appendix N to subpart B of part 430 is amended by:

■ a. Removing all references to ''$P_{OFF}$'' and adding in their place ''$P_{W,OFF}$'' in sections 8.6.2, 9.0, and 10.9;

■ b. Removing all references to ''$P_{SB}$'' and adding in their place ''$P_{W,SB}$'' in sections 8.6.1, 8.6.2, 9.0, and 10.9; and

■ c. Revising the note after the heading.

The revision reads as follows:

## Appendix N to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Furnaces and Boilers

**Note:** The procedures and calculations that refer to off mode energy consumption (*i.e.,* sections 8.6 and 10.9 of this appendix N) need not be performed to determine compliance with energy conservation standards for furnaces and boilers at this time. However, any representation related to standby mode and off mode energy consumption of these products made after April 18, 2011 must be based upon results generated under this test procedure, consistent with the requirements of 42 U.S.C. 6293(c)(2). For furnaces manufactured on or after May 1, 2013, compliance with the applicable provisions of this test procedure is required in order to determine compliance with energy conservation standards. For boilers, the statute requires that after July 1, 2010, any adopted energy conservation standard shall address standby mode and off mode energy consumption for these products, and upon the compliance date for such standards, compliance with the applicable provisions of this test procedure will be required.

* * * * *

■ 5. Section 430.32 is amended by:

■ a. Revising paragraph (c)(2);

■ b. Adding paragraphs (c)(3), (c)(4), (c)(5), (c)(6);

■ c. Revising paragraphs (e)(1)(i) and (e)(1)(ii); and

■ d. Adding paragraphs (e)(1)(iii) and (e)(1)(iv).

The additions and revisions read as follows:

### § 430.32 Energy and water conservation standards and their effective dates.

* * * * *

(c) * * *

(2) Central air conditioners and central air conditioning heat pumps manufactured on or after January 23, 2006, and before January 1, 2015, shall have Seasonal Energy Efficiency Ratio and Heating Seasonal Performance Factor no less than:

| Product class | Seasonal energy efficiency ratio (SEER) | Heating seasonal performance factor (HSPF) |
|---|---|---|
| (i) Split-system air conditioners | 13 | |
| (ii) Split-system heat pumps | 13 | 7.7 |
| (iii) Single-package air conditioners | 13 | |
| (iv) Single-package heat pumps | 13 | 7.7 |
| (v)(A) Through-the-wall air conditioners and heat pumps-split system [1] | 10.9 | 7.1 |
| (v)(B) Through-the-wall air conditioners and heat pumps-single package [1] | 10.6 | 7.0 |
| (vi) Small-duct, high-velocity systems | 13 | 7.7 |
| (vii)(A) Space-constrained products—air conditioners | 12 | |
| (vii)(B) Space-constrained products—heat pumps | 12 | 7.4 |

[1] The ''through-the-wall air conditioners and heat pump—split system'' and ''through-the-wall air conditioner and heat pump—single package'' product classes only applied to products manufactured prior to January 23, 2010. Products manufactured as of that date must be assigned to one of the remaining product classes listed in this table. The product class assignment depends on the product's characteristics. Product class definitions can be found in 10 CFR 430.2 and 10 CFR part 430, subpart B, appendix M. DOE believes that most, if not all, of the historically-characterized ''through-the-wall'' products will be assigned to one of the space-constrained product classes.

(3) Central air conditioners and central air conditioning heat pumps manufactured on or after January 1, 2015, shall have a Seasonal Energy Efficiency Ratio and Heating Seasonal Performance Factor not less than:

| Product class [1] | Seasonal energy efficiency ratio (SEER) | Heating seasonal performance factor (HSPF) |
|---|---|---|
| (i) Split-system air conditioners | 13 | |
| (ii) Split-system heat pumps | 14 | 8.2 |
| (iii) Single-package air conditioners | 14 | |
| (iv) Single-package heat pumps | 14 | 8.0 |
| (v) Small-duct, high-velocity systems | 13 | 7.7 |
| (vi)(A) Space-constrained products—air conditioners | 12 | |

| Product class [1] | Seasonal energy efficiency ratio (SEER) | Heating seasonal performance factor (HSPF) |
|---|---|---|
| (vi)(B) Space-constrained products—heat pumps | 12 | 7.4 |

[1] The "through-the-wall air conditioners and heat pump—split system" and "through-the-wall air conditioner and heat pump—single package" product classes only applied to products manufactured prior to January 23, 2010. Products manufactured as of that date must be assigned to one of the remaining product classes listed in this table. The product class assignment depends on the product's characteristics. Product class definitions can be found in 10 CFR 430.2 and 10 CFR part 430, subpart B, appendix M. DOE believes that most, if not all, of the historically-characterized "through-the-wall" products will be assigned to one of the space-constrained product classes.

(4) In addition to meeting the applicable requirements in paragraph (c)(3) of this section, products in product class (i) of that paragraph (*i.e.,* split-system air conditioners) that are manufactured on or after January 1, 2015, and installed in the States of Alabama, Arkansas, Delaware, Florida, Georgia, Hawaii, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, or Virginia, or in the District of Columbia, shall have a Seasonal Energy Efficiency Ratio not less than 14.

(5) In addition to meeting the applicable requirements in paragraphs (c)(3) of this section, products in product classes (i) and (iii) of paragraph (c)(3) (*i.e.,* split-system air conditioners and single-package air conditioners) that are manufactured on or after January 1, 2015, and installed in the States of Arizona, California, Nevada, or New Mexico shall have a Seasonal Energy Efficiency Ratio not less than 14 and have an Energy Efficiency Ratio (at a standard rating of 95 °F dry bulb outdoor temperature) not less than the following:

| Product class | Energy efficiency ratio (EER) |
|---|---|
| (i) Split-system rated cooling capacity less than 45,000 Btu/hr | 12.2 |
| (ii) Split-system rated cooling capacity equal to or greater than 45,000 Btu/hr | 11.7 |
| (iii) Single-package systems | 11.0 |

(6) Central air conditioners and central air conditioning heat pumps manufactured on or after January 1, 2015, shall have an average off mode electrical power consumption not more than the following:

| Product class | Average off mode power consumption $P_{W,OFF}$ (watts) |
|---|---|
| (i) Split-system air conditioners | 30 |
| (ii) Split-system heat pumps | 33 |
| (iii) Single-package air conditioners | 30 |
| (iv) Single-package heat pumps | 33 |
| (v) Small-duct, high-velocity systems | 30 |
| (vi) Space-constrained air conditioners | 30 |
| (vii) Space-constrained heat pumps | 33 |

* * * * *

(e) * * *

(1) * * *

(i) The Annual Fuel Utilization Efficiency (AFUE) of residential furnaces shall not be less than the following for non-weatherized furnaces manufactured before May 1, 2013, and weatherized furnaces manufactured before January 1, 2015:

| Product class | AFUE (percent) [1] |
|---|---|
| (A) Furnaces (excluding classes noted below) | 78 |
| (B) Mobile Home furnaces | 75 |
| (C) Small furnaces (other than those designed solely for installation in mobile homes) having an input rate of less than 45,000 Btu/hr | |
| (1) Weatherized (outdoor) | 78 |
| (2) Non-weatherized (indoor) | 78 |

[1] Annual Fuel Utilization Efficiency, as determined in § 430.23(n)(2) of this part.

(ii) The AFUE of residential non-weatherized furnaces manufactured on or after May 1, 2013, and weatherized gas and oil-fired furnaces manufactured on or after January 1, 2015 shall be not less than the following:

| Product class | AFUE (percent) [1] |
|---|---|
| (A) Non-weatherized gas furnaces (not including mobile home furnaces) | 80 |
| (B) Mobile Home gas furnaces | 80 |
| (C) Non-weatherized oil-fired furnaces (not including mobile home furnaces) | 83 |
| (D) Mobile Home oil-fired furnaces | 75 |

| Product class | AFUE (percent) [1] |
|---|---|
| (E) Weatherized gas furnaces | 81 |
| (F) Weatherized oil-fired furnaces | 78 |
| (G) Electric furnaces | 78 |

[1] Annual Fuel Utilization Efficiency, as determined in § 430.23(n)(2) of this part.

(iii) In addition to meeting the applicable requirements in paragraph (e)(1)(ii) of this section, products in product classes (A) and (B) of that paragraph (*i.e.,* residential non-weatherized gas furnaces (including mobile home furnaces)) that are manufactured on or after May 1, 2013, and installed in the States of Alaska, Colorado, Connecticut, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming, shall have an AFUE not less than 90 percent.

(iv) Furnaces manufactured on or after May 1, 2013, shall have an electrical standby mode power consumption ($P_{W,SB}$) and electrical off mode power consumption ($P_{W,OFF}$) not more than the following:

| Product class | Maximum standby mode electrical power consumption, $P_{W,SB}$ (watts) | Maximum off mode electrical power consumption, $P_{W,OFF}$(watts) |
|---|---|---|
| (A) Non-weatherized gas furnaces (including mobile home furnaces) | 10 | 10 |
| (B) Non-weatherized oil-fired furnaces (including mobile home furnaces) | 11 | 11 |
| (C) Electric furnaces | 10 | 10 |

* * * * *

[FR Doc. 2011–14557 Filed 6–24–11; 8:45 am]

**BILLING CODE 6450–01–P**

**DEPARTMENT OF ENERGY**

**10 CFR Part 430**

**[Docket Number EERE–2011–BT–STD–0011]**

**RIN 1904–AC06**

# Energy Conservation Program: Energy Conservation Standards for Residential Furnaces and Residential Central Air Conditioners and Heat Pumps

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Energy Policy and Conservation Act of 1975 (EPCA), as amended, prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including residential furnaces and residential central air conditioners and heat pumps. EPCA also requires the U.S. Department of Energy (DOE) to determine whether more-stringent, amended standards for these products would be technologically feasible and economically justified, and would save a significant amount of energy. In this notice, DOE proposes energy conservation standards for residential furnaces and for residential central air conditioners and heat pumps 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 direct final rule and will proceed with this proposed rule.

**DATES:** DOE will accept comments, data, and information regarding the proposed standards no later than October 17, 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 public meeting in the **Federal Register**.

Any comments submitted must identify the proposed rule for Energy Conservation Standards for Residential Furnaces, Central Air Conditioners, and Heat Pumps, and provide the docket number EERE–2011–BT–STD–0011 and/or regulatory information number (RIN) 1904–AC06. 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: ResFurnaceAC-2011-Std-0011@ee.doe.gov.* Include Docket Numbers EERE–2008–BT–STD–0006 and EE–2009–BT–STD–0022 and/or RIN number 1904–AC06 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, in which case 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, in which case it is not necessary to include printed copies.

No telefacsimilies will be accepted. 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 *http://www.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 *http://www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket Web page can be found at: *http://www.regulations.gov/#!docketDetail;dct=FR+PR+N+O+SR+PS;rpp=50;so=DESC;sb=postedDate;po=0;D=EERE-2011-BT-STD-0011.* The *http://www.regulations.gov* Web page contains simple instructions on how to access all documents, including public comments, in the docket. See section III for further information on how to submit comments through *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 by e-mail: *Brenda.Edwards@ee.doe.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Mohammed Khan (furnaces) or Mr. Wesley Anderson (central air conditioners and heat pumps), 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. Telephone: (202) 586–7892 or (202) 586–7335. E-mail: *Mohammed.Khan@ee.doe.gov* or *Wes.Anderson@ee.doe.gov.*

Mr. Eric Stas or Ms. Jennifer Tiedeman, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9507 or (202) 287–6111. E-mail: *Eric.Stas@hq.doe.gov* or *Jennifer.Tiedeman@hq.doe.gov.*

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## I. Introduction and Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles,[1] a program covering most major household appliances (collectively referred to as ''covered products''), which includes the types of residential central air conditioners and heat pumps and furnaces that are the subject of this rulemaking. (42 U.S.C. 6292(a)(3) and (5)) EPCA prescribed energy conservation standards for central air conditioners and heat pumps and directed DOE to conduct two cycles of rulemakings to determine whether to amend these standards. (42 U.S.C. 6295(d)(1)–(3)) The statute also prescribed standards for furnaces,

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

except for ''small'' furnaces (*i.e.,* those units with an input capacity less than 45,000 British thermal units per hour (Btu/h)), for which EPCA directed DOE to prescribe standards. (42 U.S.C. 6295(f)(1)–(2)) Finally, EPCA directed DOE to conduct rulemakings to determine whether to amend the standards for furnaces. (42 U.S.C. 6295(f)(4)(A)–(C)) This rulemaking represents the second round of amendments to both the central air conditioner/heat pump and the furnaces standards, under the authority of 42 U.S.C. 6295(d)(3)(B) and (f)(4)(C), respectively.

DOE notes that this rulemaking is one of the required agency actions in two court orders. First, pursuant to 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 residential central air conditioners and heat pumps that must be sent to the **Federal Register** by June 30, 2011. Second, pursuant to the Voluntary Remand in *State of New York, et al.* v. *Department of Energy, et al.,* 08–0311–ag(L); 08–0312–ag(con), DOE agreed to complete a final rule to consider amendments to the energy conservation standards for residential furnaces which it anticipated would be sent to the **Federal Register** by May 1, 2011.

DOE further notes that under 42 U.S.C. 6295(m), the agency must periodically review its already established energy conservation standards for a covered product. Under this requirement, the next review that DOE would need to conduct must occur no later than six years from the issuance of a final rule establishing or amending a standard for a covered product.

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 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 or water 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 NOPR. DOE must publish in the **Federal Register** the reason why the direct final rule was withdrawn. *Id.*

On January 15, 2010, Air-Conditioning, Heating, and Refrigeration Institute (AHRI), American Council for an Energy-Efficient Economy (ACEEE), Alliance to Save Energy (ASE), Appliance Standards Awareness Project (ASAP), National Resources Defense Council (NRDC), and Northeast Energy Efficiency Partnership (NEEP) submitted a joint comment [2] to DOE's residential furnaces and central air conditioners/heat pumps rulemakings recommending adoption of a package of minimum energy conservation standards for residential central air conditioners, heat pumps, and furnaces, as well as associated compliance dates for such standards, which represents a negotiated agreement among a variety of interested stakeholders including manufacturers and environmental and efficiency advocates. More specifically, the original agreement was completed on October 13, 2009, and had 15 signatories, including AHRI, ACEEE, ASE, NRDC, ASAP, NEEP, Northwest Power and Conservation Council (NPCC), California Energy Commission (CEC), Bard Manufacturing Company Inc., Carrier Residential and Light Commercial Systems, Goodman Global Inc., Lennox Residential, Mitsubishi Electric & Electronics USA, National Comfort Products, and Trane Residential. The consensus agreement signatories recommended specific energy conservation standards for residential furnaces and central air conditioners and heat pumps 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 published a direct final rule establishing energy conservation standards for residential furnaces, central air conditioners, and heat pumps 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 of the EPCA requirements for promulgation of energy conservation standards; the current standards for residential furnaces, central air conditioners, and heat pumps; the history of the standards rulemakings establishing such standards; and information on the test procedures used to measure the energy efficiency of residential furnaces, central air conditioners, and heat pumps. 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 the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In determining whether a standard is economically justified, 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 significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

DOE considered the impacts of standards at each trial standard level (TSL), beginning with the maximum technologically feasible (max-tech) 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

[2] DOE Docket No. EERE–2009–BT–STD–0022, Comment 1.3.001; DOE Docket No. EERE–2008–BT–STD–0006, Comment 47.

economically justified and saves a significant amount of energy.

To aid the reader as DOE discusses the benefits and/or burdens of each TSL, 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 an amended 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.

*1. Benefits and Burdens of TSLs Considered for Residential Furnace, Central Air Conditioner, and Heat Pump Energy Efficiency*

Table II.1 through Table II.5 present summaries of the quantitative impacts estimated for each TSL for residential furnace, central air conditioner, and heat pump energy efficiency. The efficiency levels contained in each TSL are described in section V.A of the direct final rule.

TABLE II.1—SUMMARY OF RESULTS FOR RESIDENTIAL FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP ENERGY EFFICIENCY TSLS: NATIONAL IMPACTS

| Category | TSL 1 | TSL 2 | TSL 3 | TSL 4 | TSL 5 | TSL 6 | TSL 7 |
|---|---|---|---|---|---|---|---|
| National Energy Savings (quads) | 0.18 | 2.32 to 2.91 | 2.97 to 3.84 | 3.20 to 4.22 | 3.89 | 5.91 | 19.18. |
| **NPV of Consumer Benefits (2009$ billion)** | | | | | | | |
| 3% discount rate | 0.76 | 10.61 to 11.56 | 13.35 to 15.29 | 14.73 to 17.55 | 15.69 | 8.18 | (45.12). |
| 7% discount rate | 0.23 | 2.60 to 2.41 | 3.36 to 3.36 | 3.93 to 4.21 | 3.47 | (2.56) | (44.98). |
| **Cumulative Emissions Reduction** | | | | | | | |
| $CO_2$ (million metric tons) | 15.2 | 62.8 to 61.2 | 971.1 to 113 | 105 to 134 | 116 | 200 | 772. |
| $NO_X$ (thousand tons) | 12.3 | 55.5 to 56.7 | 83.1 to 98.5 | 90.1 to 117 | 102 | 168 | 640. |
| Hg (tons) | 0.022 | 0.011 to (0.012) | 0.086 to 0.059 | 0.097 to 0.071 | 0.059 | 0.270 | 1.160. |
| **Value of Emissions Reductions** | | | | | | | |
| $CO_2$ (2009$ billion)* | 0.065 to 1.013 | 0.320 to 5.49 | 0.496 to 9.58 | 0.530 to 11.03 | 0.596 to 9.90 | 0.987 to 16.21 | 3.93 to 65.09. |
| $NO_X$—3% discount rate (2009$ million). | 3.4 to 35.3 | 17.9 to 188 | 26.4 to 322 | 28.5 to 380 | 32.3 to 332 | 52.2 to 536 | 203 to 2082. |
| $NO_X$—7% discount rate (2009$ million). | 1.7 to 17.0 | 6.8 to 72.3 | 10.3 to 126 | 11.9 to 160 | 12.7 to 131 | 21.2 to 218 | 79.8 to 820. |
| Generation Capacity Reduction (GW)**. | 0.397 | 0.646 to 1.12 | 3.61 to 3.53 | 3.81 to 3.69 | 3.56 | 10.5 | 35.6. |
| **Employment Impacts** | | | | | | | |
| Changes in Domestic Production Workers in 2016 (thousands). | 0.1 to (16.9) | 0.3 to (16.9) | 0.6 to (16.9) | 0.8 to (16.9) | 1 to (16.9) | 1.1 to (16.9) | 1.2 to (16.9). |
| Indirect Domestic Jobs (thousands)** | 0.5 | 2.7 | 6.1 | 6.3 | 6.3 | 18.5 | 81.4. |

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 2045.

TABLE II.2—SUMMARY OF RESULTS FOR RESIDENTIAL FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP ENERGY EFFICIENCY TSLS: MANUFACTURER IMPACTS

| Category | TSL 1 | TSL 2 | TSL 3 | TSL 4 | TSL 5 | TSL 6 | TSL 7 |
|---|---|---|---|---|---|---|---|
| **Manufacturer Impacts** | | | | | | | |
| Change in Industry NPV (2009$ million). | 8 to 33 | (324) to (498) | (428) to (729) | (478) to (900) | (508) to (915) | (680) to (1873) | (1530) to (3820). |
| Industry NPV (% change) | 0.4 to 0.1 | (3.8) to (5.9) | (5.0) to (8.6) | (5.6) to (10.6) | (6.0) to (10.8) | (8.0) to (22.0) | (18.0) to (45.0). |

Parentheses indicate negative (−) values.

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**Table II.3. Summary of Results for Residential Furnace, Central Air Conditioner, and Heat Pump Energy Efficiency TSLs: Consumer LCC Savings and Payback Period**

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Non-Weatherized Gas Furnaces | n/a | | | | | | |
| North | | 215 | 155 | 155 | 323 | 323 | 198 |
| South | | n/a | n/a | n/a | n/a | n/a | (181) |
| Mobile Home Gas Furnaces | n/a | | | | | | |
| North | | n/a | 419 | 419 | 585 | 585 | 585 |
| South | | n/a | n/a | n/a | n/a | n/a | 391 |
| Oil-Fired Furnaces | n/a | n/a | 15 | 15 | (18) | (18) | 272 |
| Split-System Air Conditioners (coil-only) | 55 | | | | | | |
| Rest of Country | | (8) | n/a | n/a | n/a | (26) | (1,343) |
| Hot-Humid | | 86 | 93 | 93 | 93 | (303) | (797) |
| Hot-Dry | | 104 | 107 | 107 | 107 | (468) | (1,182) |
| Split-System Air Conditioners (blower-coil) | 46 | | | | | | |
| Rest of Country | | (18) | n/a | n/a | n/a | (30) | (903) |
| Hot-Humid | | 77 | 89 | 89 | 89 | 177 | (130) |
| Hot-Dry | | 90 | 101 | 101 | 101 | 196 | (311) |
| Split-System Heat Pumps | 71 | | | | | | |
| Rest of Country | | 5 | 4 | 4 | 4 | (89) | (604) |
| Hot-Humid | | 82 | 102 | 102 | 102 | 137 | 103 |
| Hot-Dry | | 148 | 175 | 175 | 175 | 274 | 477 |
| Single-Package Air Conditioners | n/a | n/a | 37 | 37 | 37 | (68) | (492) |
| Single-Package Heat Pumps | n/a | n/a | 104 | 104 | 104 | 15 | (363) |
| SDHV Air Conditioners | n/a | | | | | | |
| Rest of Country | | n/a | n/a | n/a | n/a | (202) | (294) |
| Hot-Humid | | n/a | n/a | n/a | n/a | (14) | (25) |
| Hot-Dry | | n/a | n/a | n/a | n/a | (65) | (106) |
| **Median Payback Period** (years) | | | | | | | |
| Non-Weatherized Gas Furnaces | n/a | | | | | | |
| North | | 7.7 | 10.1 | 10.1 | 9.4 | 9.4 | 17.1 |
| South | | n/a | n/a | n/a | n/a | n/a | 28.9 |
| Mobile Home Gas Furnaces | n/a | | | | | | |
| North | | n/a | 10.7 | 10.7 | 11.5 | 11.5 | 11.5 |
| South | | n/a | n/a | n/a | n/a | n/a | 13 |
| Oil-Fired Furnaces | n/a | n/a | 1.0 | 1.0 | 19.8 | 19.8 | 18.2 |
| Split-System Air Conditioners (coil-only) | 9 | | | | | | |
| Rest of Country | | 23 | n/a | n/a | n/a | 33 | 100 |
| Hot-Humid | | 6 | 7 | 7 | 7 | 34 | 47 |
| Hot-Dry | | 8 | 10 | 10 | 10 | 49 | 71 |
| Split-System Air Conditioners (blower-coil) | 11 | | | | | | |
| Rest of Country | | 26 | n/a | n/a | n/a | 28 | 100 |
| Hot-Humid | | 7 | 8 | 8 | 8 | 8 | 21 |
| Hot-Dry | | 10 | 11 | 11 | 11 | 11 | 31 |
| Split-System Heat Pumps | 7 | | | | | | |
| Rest of Country | | 13 | 13 | 13 | 13 | 20 | 33 |
| Hot-Humid | | 6 | 6 | 6 | 6 | 7 | 13 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Hot-Dry | | 5 | 5 | 5 | 5 | 5 | 9 |
| Single-Package Air Conditioners | n/a | n/a | 15 | 15 | 15 | 24 | 46 |
| Single-Package Heat Pumps | n/a | n/a | 8 | 8 | 8 | 14 | 21 |
| SDHV Air Conditioners | n/a | | | | | | |
| Rest of Country | | n/a | n/a | n/a | n/a | 74 | 75 |
| Hot-Humid | | n/a | n/a | n/a | n/a | 18 | 17 |
| Hot-Dry | | n/a | n/a | n/a | n/a | 26 | 23 |

* TSL 1 does not include regional standards.

** Calculation of LCC savings or payback period is not applicable (n/a) in some cases because no consumers are impacted at some of the TSLs. A negative value (indicated by parentheses) means an increase in LCC by the amount indicated.

**Table II.4. Summary of Results for Residential Furnace, Central Air Conditioner, and Heat Pump Energy Efficiency TSLs: Distribution of Consumer LCC Impacts (Central Air Conditioners and Heat Pumps)**

| Category | TSL 1 | TSL 2 | TSL 3 | TSL 4 | TSL 5 | TSL 6 | TSL 7 |
|---|---|---|---|---|---|---|---|
| **Distribution of Consumer LCC Impacts** | | | | | | | |
| Split-System Air Conditioners (coil-only) | | | | | | | |
| Rest of Country | | | | | | | |
| Net Cost (%) | 11* | 17 | 0 | 0 | 0 | 57 | 99 |
| No Impact (%) | 75* | 75 | 100 | 100 | 100 | 27 | 0 |
| Net Benefit (%) | 14* | 8 | 0 | 0 | 0 | 16 | 1 |
| Hot-Humid | | | | | | | |
| Net Cost (%) | | 7 | 26 | 26 | 26 | 72 | 90 |
| No Impact (%) | | 75 | 27 | 27 | 27 | 16 | 0 |
| Net Benefit (%) | | 18 | 47 | 47 | 47 | 12 | 10 |
| Hot-Dry | | | | | | | |
| Net Cost (%) | | 11 | 37 | 37 | 37 | 75 | 91 |
| No Impact (%) | | 75 | 27 | 27 | 27 | 16 | 0 |
| Net Benefit (%) | | 14 | 36 | 36 | 36 | 10 | 9 |
| Split-System Air Conditioners (blower-coil) | | | | | | | |
| Rest of Country | | | | | | | |
| Net Cost (%) | 9* | 14 | 0 | 0 | 0 | 43 | 96 |
| No Impact (%) | 82* | 82 | 100 | 100 | 100 | 45 | 1 |
| Net Benefit (%) | 9* | 4 | 0 | 0 | 0 | 12 | 3 |
| Hot-Humid | | | | | | | |
| Net Cost (%) | | 6 | 21 | 21 | 21 | 24 | 70 |
| No Impact (%) | | 82 | 45 | 45 | 45 | 37 | 1 |
| Net Benefit (%) | | 12 | 34 | 34 | 34 | 39 | 29 |
| Hot-Dry | | | | | | | |
| Net Cost (%) | | 9 | 28 | 28 | 28 | 33 | 76 |
| No Impact (%) | | 82 | 45 | 45 | 45 | 37 | 1 |
| Net Benefit (%) | | 9 | 27 | 27 | 27 | 30 | 23 |
| Split-System Heat Pumps | | | | | | | |
| Rest of Country | | | | | | | |
| Net Cost (%) | 5* | 9 | 35 | 35 | 35 | 58 | 87 |
| No Impact (%) | 86* | 86 | 45 | 45 | 45 | 23 | 0 |
| Net Benefit (%) | 9* | 5 | 20 | 20 | 20 | 19 | 13 |
| Hot-Humid | | | | | | | |
| Net Cost (%) | | 4 | 17 | 17 | 17 | 29 | 60 |
| No Impact (%) | | 86 | 45 | 45 | 45 | 23 | 0 |
| Net Benefit (%) | | 10 | 38 | 38 | 38 | 48 | 40 |
| Hot-Dry | | | | | | | |
| Net Cost (%) | | 4 | 15 | 15 | 15 | 25 | 51 |
| No Impact (%) | | 86 | 45 | 45 | 45 | 23 | 0 |
| Net Benefit (%) | | 11 | 40 | 40 | 40 | 52 | 49 |
| Single-Package Air Conditioners (Nation) | | | | | | | |
| Net Cost (%) | 0* | 0 | 50 | 50 | 50 | 72 | 84 |
| No Impact (%) | 100* | 100 | 17 | 17 | 17 | 1 | 0 |
| Net Benefit (%) | 0* | 0 | 33 | 33 | 33 | 27 | 16 |

| Category | TSL 1 | TSL 2 | TSL 3 | TSL 4 | TSL 5 | TSL 6 | TSL 7 |
|---|---|---|---|---|---|---|---|
| Single-Package Heat Pumps (Nation) | | | | | | | |
| Net Cost (%) | 0* | 0 | 29 | 29 | 29 | 63 | 79 |
| No Impact (%) | 100* | 100 | 36 | 36 | 36 | 2 | 0 |
| Net Benefit (%) | 0* | 0 | 35 | 35 | 35 | 35 | 21 |
| SDHV Air Conditioners | | | | | | | |
| Rest of Country | | | | | | | |
| Net Cost (%) | 0* | 0 | 0 | 0 | 0 | 95 | 92 |
| No Impact (%) | 100* | 100 | 100 | 100 | 100 | 0 | 0 |
| Net Benefit (%) | 0* | 0 | 0 | 0 | 0 | 5 | 8 |
| Hot-Humid | | | | | | | |
| Net Cost (%) | | 0 | 0 | 0 | 0 | 68 | 67 |
| No Impact (%) | | 100 | 100 | 100 | 100 | 0 | 0 |
| Net Benefit (%) | | 0 | 0 | 0 | 0 | 32 | 33 |
| Hot-Dry | | | | | | | |
| Net Cost (%) | | 0 | 0 | 0 | 0 | 74 | 74 |
| No Impact (%) | | 100 | 100 | 100 | 100 | 0 | 0 |
| Net Benefit (%) | | 0 | 0 | 0 | 0 | 26 | 26 |

* Results refer to Nation for TSL 1.

**Table II.5 Summary of Results for Residential Furnace, Central Air Conditioner, and Heat Pump Energy Efficiency TSLs: Distribution of Consumer LCC Impacts (Furnaces)**

| Category | TSL 1 | TSL 2 | TSL 3 | TSL 4 | TSL 5 | TSL 6 | TSL 7 |
|---|---|---|---|---|---|---|---|
| **Distribution of Consumer LCC Impacts** | | | | | | | |
| Non-Weatherized Gas Furnaces | | | | | | | |
| North | | | | | | | |
| Net Cost (%) | 0* | 11 | 10 | 10 | 23 | 23 | 59 |
| No Impact (%) | 100* | 56 | 71 | 71 | 23 | 23 | 1 |
| Net Benefit (%) | 0* | 33 | 19 | 19 | 54 | 54 | 41 |
| South | | | | | | | |
| Net Cost (%) | | 0 | 0 | 0 | 0 | 0 | 72 |
| No Impact (%) | | 100 | 100 | 100 | 100 | 100 | 0 |
| Net Benefit (%) | | 0 | 0 | 0 | 0 | 0 | 27 |
| Mobile Home Gas Furnaces | | | | | | | |
| North | | | | | | | |
| Net Cost (%) | 0* | 0 | 44 | 44 | 46 | 46 | 46 |
| No Impact (%) | 100* | 100 | 10 | 10 | 8 | 8 | 8 |
| Net Benefit (%) | 0* | 0 | 47 | 47 | 46 | 46 | 46 |
| South | | | | | | | |
| Net Cost (%) | | 0 | 0 | 0 | 0 | 0 | 51 |
| No Impact (%) | | 100 | 100 | 100 | 100 | 100 | 4 |
| Net Benefit (%) | | 0 | 0 | 0 | 0 | 0 | 45 |
| Oil-Fired Furnaces (Nation) | | | | | | | |
| Net Cost (%) | 0 | 0 | 10 | 10 | 35 | 35 | 51 |
| No Impact (%) | 100 | 100 | 58 | 58 | 33 | 33 | 1 |
| Net Benefit (%) | 0 | 0 | 32 | 32 | 33 | 33 | 48 |

* Results refer to Nation for TSL 1.

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DOE first considered TSL 7, which represents the max-tech efficiency levels. TSL 7 would save 19.18 quads of energy, an amount DOE considers significant. Under TSL 7, the NPV of consumer benefit would be −$44.98 billion, using a discount rate of 7 percent, and −$45.12 billion, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 7 are 772 Mt of $CO_2$, 640 thousand tons of $NO_X$, and 1.160 ton of Hg. The estimated monetary value of the cumulative $CO_2$ emissions reductions at TSL 7 ranges from $3.93 billion to $65.1 billion. Total generating capacity in 2045 is estimated to decrease by 35.6 GW under TSL 7.

At TSL 7, the average LCC impact is a savings (LCC decrease) of $198 for non-weatherized gas furnaces in the northern region and a cost (LCC increase) of $181 in the southern region; a savings of $585 for mobile home gas furnaces in the northern region and a savings of $391 in the southern region; and a savings of $272 for oil-fired furnaces.

For split-system air conditioners (coil-only), the average consumer LCC impact is a cost of $1,343 in the rest of country, a cost of $797 in the hot-humid region, and a cost of $1,182 in the hot-dry region. For split-system air conditioners (blower-coil), the average LCC impact is a cost of $903 in the rest of country, a cost of $130 in the hot-humid region, and a cost of $311 in the hot-dry region.

For split-system heat pumps, the average LCC impact is a cost of $604 in the rest of country, a savings of $103 in the hot-humid region, and a savings of $477 in the hot-dry region. For single-package air conditioners, the average LCC impact is a cost of $492. For single-package heat pumps, the average LCC impact is a cost of $363. For SDHV air conditioners, the average LCC impact is a cost of $294 in the rest of country, a cost of $25 in the hot-humid region, and a cost of $106 in the hot-dry region.

At TSL 7, the median payback period for non-weatherized gas furnaces is 17.1 years in the northern region and 28.9 years in the southern region; 11.5 years for mobile home gas furnaces in the northern region and 13 years in the southern region; and 18.2 years for oil-fired furnaces.

For split-system air conditioners (coil-only), the median payback period is 100 years in the rest of country, 47 years in the hot-humid region, and 71 years in the hot-dry region. For split-system air conditioners (blower-coil), the median payback period is 100 years in the rest of country, 21 years in the hot-humid region, and 31 years in the hot-dry region. For split-system heat pumps, the median payback period is 33 years in the rest of country, 13 years in the hot-humid region, and 9 years in the hot-dry region. For single-package air conditioners, the median payback period is 46 years. For single-package heat pumps, the median payback period is 21 years. For SDHV air conditioners, the median payback period is 75 years in the rest of country, 17 years in the hot-humid region, and 23 years in the hot-dry region.

At TSL 7, the fraction of consumers experiencing an LCC benefit is 41 percent for non-weatherized gas furnaces in the northern region and 27 percent in the southern region; 46 percent for mobile home gas furnaces in the northern region and 45 percent in the southern region; and 48 percent for oil-fired furnaces.

For split-system air conditioners (coil-only), the fraction of consumers experiencing an LCC benefit at TSL 7 is 1 percent in the rest of country, 10 percent in the hot-humid region, and 9 percent in the hot-dry region. For split-system air conditioners (blower-coil), the fraction of consumers experiencing an LCC benefit is 3 percent in the rest of country, 29 percent in the hot-humid region, and 23 percent in the hot-dry region. For split-system heat pumps, the fraction of consumers experiencing an LCC benefit is 13 percent in the rest of country, 40 percent in the hot-humid region, and 49 percent in the hot-dry region. For single-package air conditioners, the fraction of consumers experiencing an LCC benefit is 16 percent. For single-package heat pumps, the fraction of consumers experiencing an LCC benefit is 21 percent. For SDHV air conditioners, the fraction of consumers experiencing an LCC benefit is 8 percent in the rest of country, 33 percent in the hot-humid region, and 26 percent in the hot-dry region.

At TSL 7, the fraction of consumers experiencing an LCC cost is 59 percent for non-weatherized gas furnaces in the northern region and 72 percent in the southern region; 46 percent for mobile home gas furnaces in the northern region and 51 percent in the southern region; and 51 percent for oil-fired furnaces.

For split-system air conditioners (coil-only), the fraction of consumers experiencing an LCC cost is 99 percent in the rest of country, 90 percent in the hot-humid region, and 91 percent in the hot-dry region. For split-system air conditioners (blower-coil), the fraction of consumers experiencing an LCC cost is 96 percent in the rest of country, 70 percent in the hot-humid region, and 76 percent in the hot-dry region. For split-system heat pumps, the fraction of consumers experiencing an LCC cost is 87 percent in the rest of country, 60 percent in the hot-humid region, and 51 percent in the hot-dry region. For single-package air conditioners, the fraction of consumers experiencing an LCC cost is 84 percent. For single-package heat pumps, the fraction of consumers experiencing an LCC cost is 79 percent. For SDHV air conditioners, the fraction of consumers experiencing an LCC cost is 92 percent in the rest of country, 67 percent in the hot-humid region, and 74 percent in the hot-dry region.

At TSL 7, the projected change in INPV ranges from a decrease of $1,530 million to a decrease of $3,820 million. At TSL 7, 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 7 could result in a net loss of 45.0 percent in INPV to furnace, central air conditioner, and heat pump manufacturers.

The Secretary preliminarily concludes that at TSL 7 for furnace, central air conditioner, and heat pump energy efficiency, 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 very large reduction in INPV for the manufacturers. Consequently, the Secretary has concluded that TSL 7 is not economically justified.

DOE then considered TSL 6. TSL 6 would save 5.91 quads of energy, an amount DOE considers significant. Under TSL 6, the NPV of consumer benefit would be −$2.56 billion, using a discount rate of 7 percent, and $8.18 billion, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 6 are 200 Mt of $CO_2$, 168 thousand tons of $NO_X$, and 0.270 ton of Hg. The estimated monetary value of the cumulative $CO_2$ emissions reductions at TSL 6 ranges from $0.987 billion to $16.2 billion. Total generating capacity in 2045 is estimated to decrease by 10.5 GW under TSL 6.

At TSL 6, the average LCC impact is a savings (LCC decrease) of $323 for non-weatherized gas furnaces in the northern region and not applicable in the south, a savings of $585 for mobile home gas furnaces in the northern region and not applicable in the south, and a cost of $18 for oil-fired furnaces.

For split-system air conditioners (coil-only), the average LCC impact is a cost of $26 in the rest of country, a cost of $303 in the hot-humid region, and a cost of $468 in the hot-dry region. For split-system air conditioners (blower-coil), the average LCC impact is a cost of $30 in the rest of country, a savings of $177 in the hot-humid region, and a savings of $196 in the hot-dry region. For split-system heat pumps, the average LCC impact is a cost of $89 in the rest of country, a savings of $137 in the hot-humid region, and a savings of $274 in the hot-dry region. For single-package air conditioners, the average LCC impact is a cost of $68. For single-package heat pumps the average LCC impact is a savings of $15. For SDHV air conditioners, the average LCC impact is a cost of $202 in the rest of country, a cost of $14 in the hot-humid region, and a cost of $65 in the hot-dry region.

At TSL 6, the median payback period is 9.4 years for non-weatherized gas furnaces in the northern region and not applicable in the south; 11.5 years for mobile home gas furnaces in the northern region and not applicable in the south; and 19.8 years for oil-fired furnaces.

For split-system air conditioners (coil-only), the median payback period is 33 years in the rest of country, 34 years in the hot-humid region, and 49 years in the hot-dry region. For split-system air conditioners (blower-coil), the median payback period is 28 years in the rest of

country, 8 years in the hot-humid region, and 11 years in the hot-dry region. For split-system heat pumps, the median payback period is 20 years in the rest of country, 7 years in the hot-humid region, and 5 years in the hot-dry region. For single-package air conditioners, the median payback period is 24 years. For single-package heat pumps, the median payback period is 14 years. For SDHV air conditioners, the median payback period is 74 years in the rest of country, 18 years in the hot-humid region, and 26 years in the hot-dry region.

At TSL 6, the fraction of consumers experiencing an LCC benefit is 54 percent for non-weatherized gas furnaces in the northern region and 0 percent in the south; 46 percent for mobile home gas furnaces in the northern region and 0 percent in the south; and 33 percent for oil-fired furnaces.

For split-system air conditioners (coil-only), the fraction of consumers experiencing an LCC benefit is 16 percent in the rest of country, 12 percent in the hot-humid region, and 9 percent in the hot-dry region. For split-system air conditioners (blower-coil), the fraction of consumers experiencing an LCC benefit is 12 percent in the rest of country, 39 percent in the hot-humid region, and 31 percent in the hot-dry region. For split-system heat pumps, the fraction of consumers experiencing an LCC benefit is 19 percent in the rest of country, 48 percent in the hot-humid region, and 52 percent in the hot-dry region. For single-package air conditioners, the fraction of consumers experiencing an LCC benefit is 27 percent. For single-package heat pumps, the fraction of consumers experiencing an LCC benefit is 35 percent. For SDHV air conditioners, the fraction of consumers experiencing an LCC benefit is 5 percent in the rest of country, 32 percent in the hot-humid region, and 26 percent in the hot-dry region.

At TSL 6, the fraction of consumers experiencing an LCC cost is 23 percent for non-weatherized gas furnaces in the northern region and 0 percent in the south; 46 percent for mobile home gas furnaces in the northern region and 0 percent in the south; and 35 percent for oil-fired furnaces.

For split-system air conditioners (coil-only), the fraction of consumers experiencing an LCC cost is 56 percent in the rest of country, 73 percent in the hot-humid region, and 75 percent in the hot-dry region. For split-system air conditioners (blower-coil), the fraction of consumers experiencing an LCC cost is 43 percent in the rest of country, 25 percent in the hot-humid region, and 33 percent in the hot-dry region. For split-system heat pumps, the fraction of consumers experiencing an LCC cost is 58 percent in the rest of country, 29 percent in the hot-humid region, and 25 percent in the hot-dry region. For single-package air conditioners, the fraction of consumers experiencing an LCC cost is 72 percent. For single-package heat pumps, the fraction of consumers experiencing an LCC cost is 63 percent. For SDHV air conditioners, the fraction of consumers experiencing an LCC cost is 95 percent in the rest of country, 68 percent in the hot-humid region, and 74 percent in the hot-dry region.

At TSL 6, the projected change in INPV ranges from a decrease of $680 million to a decrease of $1,873 million. At TSL 6, 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 6 could result in a net loss of 22.0 percent in INPV to furnace, central air conditioner, and heat pump manufacturers.

The Secretary preliminarily concludes that at TSL 6 for furnace and central air conditioner and heat pump energy efficiency, 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 increases in installed product cost, and the capital 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.

As discussed in the direct final rule published elsewhere in today's **Federal Register**, DOE calculated a range of results for national energy savings and NPV of consumer benefit under TSL 4. Because the range of results for TSL 4 overlaps with the results for TSL 5, and because TSLs 4 and 5 are similar in many aspects, DOE discusses the benefits and burdens of TSLs 4 and 5 together below.

TSL 5 would save 3.98 quads of energy, an amount DOE considers significant. TSL 4 would save 3.20 to 4.22 quads of energy, an amount DOE considers significant. Under TSL 5, the NPV of consumer benefit would be $3.47 billion, using a discount rate of 7 percent, and $15.69 billion, using a discount rate of 3 percent. Under TSL 4, the NPV of consumer benefit would be $3.93 billion to $4.21 billion, using a discount rate of 7 percent, and $14.73 billion to $17.55 billion, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 5 are 116 Mt of $CO_2$, 102 thousand tons of $NO_X$, and 0.059 ton of Hg. The cumulative emissions reductions at TSL 4 are 105 to 134 Mt of $CO_2$, 90.1 to 117 thousand tons of $NO_X$, and 0.097 to 0.071 [3] ton of Hg. The estimated monetary value of the cumulative $CO_2$ emissions reductions at TSL 5 ranges from $0.596 billion to $9.90 billion. The estimated monetary value of the cumulative $CO_2$ emissions reductions at TSL 4 ranges from $0.530 billion to $11.0 billion. Total generating capacity in 2045 is estimated to decrease by 3.56 GW under TSL 5, and by 3.81 to 3.69 GW under TSL 4.

At TSL 5, the average LCC impact is a savings (LCC decrease) of $323 for non-weatherized gas furnaces in the northern region and not applicable in the south; a savings of $585 for mobile home gas furnaces in the northern region and not applicable in the south; and a cost of $18 for oil-fired furnaces. At TSL 4, the average LCC impact is a savings of $155 for non-weatherized gas furnaces in the northern region and not applicable in the south, a savings of $419 for mobile home gas furnaces in the northern region and not applicable in the south, and a savings of $15 for oil-fired furnaces.

For central air conditioners and heat pumps, the average LCC impacts for TSL 5 and TSL 4 are the same. For split-system air conditioners (coil-only), the average LCC impact is not applicable in the rest of country, but is a savings of $93 in the hot-humid region, and a savings of $107 in the hot-dry region. For split-system air conditioners (blower-coil), the average LCC impact is not applicable in the rest of country, but is a savings of $89 in the hot-humid region, and a savings of $101 in the hot-dry region. For split-system heat pumps, the average LCC impact is a savings of $4 in the rest of country, a savings of $102 in the hot-humid region, and a savings of $175 in the hot-dry region. For single-package air conditioners, the average LCC impact is a cost of $37. For single-package heat pumps, the average

[3] DOE presents ranges of values throughout the document when analyzing multiple scenarios. For consistency, DOE presents the ranges in order of a first scenario followed by a second scenario, and then maintains the same order of scenarios when presenting results throughout the document, regardless of whether the values are arranged in order of lowest to highest. In certain cases in this document when DOE presents a range of impacts, the results do not go from a lower value to a higher value (as would normally be expected) because DOE presents the values in a manner that they are consistent with the presentation of the rest of the results for those scenarios.

LCC impact is a cost of $104. For SDHV air conditioners, the average LCC impact is not applicable for all regions.

At TSL 5, the median payback period is 9.4 years for non-weatherized gas furnaces in the northern region and not applicable in the south, 11.5 years for mobile home gas furnaces in the northern region and not applicable in the south, and 19.8 years for oil-fired furnaces. At TSL 4, the median payback period is 10.1 years for non-weatherized gas furnaces in the northern region and not applicable in the south, 10.7 years for mobile home gas furnaces in the northern region and not applicable in the south, and 1.0 year for oil-fired furnaces.

For central air conditioners and heat pumps, the median payback periods for TSL 5 and TSL 4 are the same. For split-system air conditioners (coil-only), the median payback period is not applicable in the rest of country, 7 years in the hot-humid region, and 10 years in the hot-dry region. For split-system air conditioners (blower-coil), the median payback period is not applicable in the rest of country, 8 years in the hot-humid region, and 11 years in the hot-dry region. For split-system heat pumps, the median payback period is 13 years in the rest of country, 6 years in the hot-humid region, and 5 years in the hot-dry region. For single-package air conditioners, the median payback period is 15 years. For single-package heat pumps, the median payback period is 8 years. For SDHV air conditioners, the median payback period is not applicable in all regions.

At TSL 5, the fraction of consumers experiencing an LCC benefit is 54 percent for non-weatherized gas furnaces in the northern region and 0 percent in the south, 46 percent for mobile home gas furnaces in the northern region and 0 percent in the south, and 33 percent for oil-fired furnaces. At TSL 4, the fraction of consumers experiencing an LCC benefit is 19 percent for non-weatherized gas furnaces in the northern region and 0 percent in the south, 47 percent for mobile home gas furnaces in the northern region and 0 percent in the south, and 32 percent for oil-fired furnaces.

For central air conditioners and heat pumps, at TSL 5 and at TSL 4, the fraction of consumers experiencing an LCC benefit is the same. For split-system air conditioners (coil-only), the fraction of consumers experiencing an LCC benefit is 0 percent in the rest of country, 46 percent in the hot-humid region, and 36 percent in the hot-dry region. For split-system air conditioners (blower-coil), the fraction of consumers experiencing an LCC benefit is 0 percent in the rest of country, 34 percent in the hot-humid region, and 27 percent in the hot-dry region. For split-system heat pumps, the fraction of consumers experiencing an LCC benefit is 20 percent in the rest of country, 38 percent in the hot-humid region, and 40 percent in the hot-dry region. For single-package air conditioners, the fraction of consumers experiencing an LCC benefit is 33 percent. For single-package heat pumps, the fraction of consumers experiencing an LCC benefit is 35 percent. For SDHV air conditioners, no consumers experience an LCC benefit in any of the regions.

At TSL 5, the fraction of consumers experiencing an LCC cost is 23 percent for non-weatherized gas furnaces in the northern region and 0 percent in the south, 46 percent for mobile home gas furnaces in the northern region and 0 percent in the south, and 35 percent for oil-fired furnaces. At TSL 4, the fraction of consumers experiencing an LCC cost is 10 percent for non-weatherized gas furnaces in the northern region and 0 percent in the south, 44 percent for mobile home gas furnaces in the northern region and 0 percent in the south, and 10 percent for oil-fired furnaces.

For central air conditioners and heat pumps, at TSL 5 and at TSL 4, the fraction of consumers experiencing an LCC cost is the same. For split-system air conditioners (coil-only), the fraction of consumers experiencing an LCC cost is 0 percent in the rest of country, 26 percent in the hot-humid region, and 37 percent in the hot-dry region. For split-system air conditioners (blower-coil), the fraction of consumers experiencing an LCC cost is 0 percent in the rest of country, 21 percent in the hot-humid region, and 28 percent in the hot-dry region. For split-system heat pumps, the fraction of consumers experiencing an LCC cost is 35 percent in the rest of country, 17 percent in the hot-humid region, and 15 percent in the hot-dry region. For single-package air conditioners, the fraction of consumers experiencing an LCC cost is 37 percent. For single-package heat pumps, the fraction of consumers experiencing an LCC cost is 29 percent. For SDHV air conditioners, no consumers experience an LCC cost in any of the regions.

At TSL 5, the projected change in INPV ranges from a decrease of $508 million to a decrease of $915 million. At TSL 5, 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 5 could result in a net loss of 10.8 percent in INPV to furnace, central air conditioner, and heat pump manufacturers. At TSL 4, the projected change in INPV ranges from a net loss of $478 million to a net loss of $900 million. 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 10.6 percent in INPV to furnace, central air conditioner, and heat pump manufacturers.

The Secretary preliminarily concludes that at TSL 5 for furnace and central air conditioner and heat pump energy efficiency, 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 are outweighed by the economic burden on some consumers due to large increases in installed 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 5 is not economically justified.

The Secretary preliminarily concludes that at TSL 4 for furnace and central air conditioner and heat pump energy efficiency, 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 outweigh the economic burden on some consumers due to increases in installed cost, and the capital conversion costs and profit margin impacts that could result in a moderate reduction in INPV for the manufacturers. TSL 4 may yield greater cumulative energy savings than TSL 5, and also a higher NPV of consumer benefits at both 3-percent and 7-percent discount rates.

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. In the present case,

one outcome of the consensus agreement was a recommendation to accelerate the compliance dates for these products, which would have the effect of producing additional energy savings at an earlier date. 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 furnaces RAP and the preliminary TSD for central air conditioners and heat pumps, and the benefits and burdens of TSL 4, the Secretary has tentatively concluded that this trial standard level offers the maximum improvement in efficiency that is technologically feasible and economically justified, and will result in significant conservation of energy. Therefore, DOE today adopts TSL 4 for furnaces and central air conditioners and heat pumps. Today's amended energy conservation standards for furnaces, central air conditioners, and heat pumps, expressed in terms of minimum energy efficiency, are shown in Table II.6.

TABLE II.6—PROPOSED STANDARDS FOR RESIDENTIAL FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP ENERGY EFFICIENCY

| Product class | Proposed national standard levels | Proposed northern region ** standard levels |
|---|---|---|
| **Residential Furnaces** * | | |
| Non-weatherized gas | AFUE = 80% | AFUE = 90%. |
| Mobile home gas | AFUE = 80% | AFUE = 90%. |
| Non-weatherized oil-fired | AFUE = 83% | AFUE = 83%. |
| Weatherized gas | AFUE = 81% | AFUE = 81%. |
| Mobile home oil-fired ‡‡ | AFUE = 75% | AFUE = 75%. |
| Weatherized oil-fired ‡‡ | AFUE = 78% | AFUE = 78%. |
| Electric ‡‡ | AFUE = 78% | AFUE = 78%. |

**Central Air Conditioners and Heat Pumps** †

| Product Class | Proposed national standard levels | Proposed southeastern (hot-humid) region † †standard levels | Proposed southwestern (hot-dry) region ‡ standard levels |
|---|---|---|---|
| Split-system air conditioners | SEER = 13 | SEER = 14 | SEER = 14<br>EER = 12.2 (for units with a rated cooling capacity less than 45,000 Btu/h) EER = 11.7 (for units with a rated cooling capacity equal to or greater than 45,000 Btu/h). |
| Split-system heat pumps | SEER = 14<br>HSPF = 8.2 | SEER = 14<br>HSPF = 8.2 | SEER = 14.<br>HSPF = 8.2. |
| Single-package air conditioners | SEER = 14 | SEER = 14 | SEER = 14<br>EER = 11.0. |
| Single-package heat pumps | SEER = 14<br>HSPF = 8.0 | SEER = 14<br>HSPF = 8.0 | SEER = 14.<br>HSPF = 8.0. |
| Small-duct, high-velocity systems | SEER = 13<br>HSPF = 7.7 | SEER = 13<br>HSPF = 7.7 | SEER = 13.<br>HSPF = 7.7. |
| Space-constrained products—air conditioners ‡‡ | SEER = 12 | SEER = 12 | SEER = 12. |
| Space-constrained products—heat pumps ‡‡ | SEER = 12<br>HSPF = 7.4 | SEER = 12<br>HSPF = 7.4 | SEER = 12.<br>HSPF = 7.4. |

* AFUE is Annual Fuel Utilization Efficiency.

** The Northern region for furnaces contains the following States: Alaska, Colorado, Connecticut, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.

† SEER is Seasonal Energy Efficiency Ratio; EER is Energy Efficiency Ratio; HSPF is Heating Seasonal Performance Factor; and Btu/h is British Thermal Units per hour.

† † The Southeastern region for central air conditioners and heat pumps contains the following States: Alabama, Arkansas, Delaware, Florida, Georgia, Hawaii, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia, and the District of Columbia.

‡ The Southwestern region for central air conditioners and heat pumps contains the States of Arizona, California, Nevada, and New Mexico.

‡‡ DOE is not proposing to amend the energy conservation standards for these product classes in this NOPR.

*2. Benefits and Burdens of TSLs Considered for Residential Furnace, Central Air Conditioner, and Heat Pump Standby Mode and Off Mode Power*

Table II.7 through Table II.9 present a summary of the quantitative impacts estimated for each TSL considered for furnace, central air conditioner, and heat pump standby mode and off mode power. The efficiency levels contained in each TSL are described in section V.A of the direct final rule.

TABLE II.7—SUMMARY OF RESULTS FOR RESIDENTIAL FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP STANDBY MODE AND OFF MODE POWER TSLS: NATIONAL IMPACTS

| Category | TSL 1 | TSL 2 | TSL 3 |
|---|---|---|---|
| National Energy Savings (quads) | 0.153 | 0.160 | 0.186. |
| **NPV of Consumer Benefits (2009$ billion)** | | | |
| 3% discount rate | 1.14 | 1.18 | 1.01. |
| 7% discount rate | 0.371 | 0.373 | 0.235. |
| **Cumulative Emissions Reduction** | | | |
| $CO_2$ (million metric tons) | 8.23 | 8.73 | 10.1. |
| $NO_X$ (thousand tons) | 6.60 | 7.00 | 8.11. |
| Hg (ton) | 0.056 | 0.072 | 0.079. |
| **Value of Cumulative Emissions Reduction** | | | |
| $CO_2$ (2009$ million)* | 41.7 to 694 | 44.3 to 738 | 51.7 to 862. |
| $NO_X$ – 3% discount rate (2009$ million) | 2.07 to 21.3 | 2.20 to 22.6 | 2.56 to 26.3. |
| $NO_X$ – 7% discount rate (2009$ million) | 0.793 to 8.15 | 0.841 to 8.65 | 0.975 to 10.0. |
| Generation Capacity Reduction (GW)** | 0.103 | 0.110 | 0.127. |
| **Employment Impacts** | | | |
| Total Potential Change in Domestic Production Workers in 2016 (thousands). | negligible | negligible | negligible. |
| Indirect Domestic Jobs (thousands)** | 0.80 | 0.86 | 1.02. |

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 2045.

TABLE II.8—SUMMARY OF RESULTS FOR RESIDENTIAL FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP STANDBY MODE AND OFF MODE POWER TSLS: MANUFACTURER AND CONSUMER IMPACTS

| Category | TSL 1 | TSL 2 | TSL 3 |
|---|---|---|---|
| **Manufacturer Impacts** | | | |
| Change in Industry NPV (2009$ million) | 4 to (253) | 5 to (253) | 23 to (255). |
| Industry NPV (% change) | 0.05 to (2.91) | 0.06 to (2.91) | 0.26 to (2.93). |
| **Consumer Mean LCC Savings* (2009$)** | | | |
| Non-Weatherized Gas Furnaces | 2 | 2 | 0. |
| Mobile Home Gas Furnaces | 0 | 0 | (1). |
| Oil-Fired Furnaces | 1 | 1 | 1. |
| Electric Furnaces | 0 | 0 | (1). |
| Split-System Air Conditioners (coil-only) | 84 | 84 | 84. |
| Split-System Air Conditioners (blower-coil) | 84 | 40 | 35. |
| Split-System Heat Pumps | 9 | 9 | (1). |
| Single-Package Air Conditioners | 84 | 41 | 36. |
| Single-Package Heat Pumps | 9 | 9 | (1). |
| SDHV Air Conditioners | 84 | 37 | 32. |
| Space-Constrained Air Conditioners | 84 | 42 | 37. |
| Space-Constrained Heat Pumps | 9 | 9 | (1). |
| **Consumer Median PBP (years)** | | | |
| Non-Weatherized Gas Furnaces | 11 | 11 | 16. |
| Mobile Home Gas Furnaces | 12 | 12 | 18. |
| Oil-Fired Furnaces | 8 | 8 | 12. |
| Electric Furnaces | 10 | 10 | 16. |
| Split-System Air Conditioners (coil-only) | 1 | 1 | 1. |
| Split-System Air Conditioners (blower-coil) | 1 | 6 | 7. |
| Split-System Heat Pumps | 4 | 4 | 5. |
| Single-Package Air Conditioners | 1 | 6 | 7. |
| Single-Package Heat Pumps | 4 | 4 | 5. |
| SDHV Air Conditioners | 1 | 7 | 7. |
| Space-Constrained Air Conditioners | 1 | 6 | 7. |
| Space-Constrained Heat Pumps | 4 | 4 | 5. |

* Parentheses indicate negative (–) values. For LCCs, a negative value means an increase in LCC by the amount indicated.

TABLE II.9—SUMMARY OF RESULTS FOR RESIDENTIAL FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP STANDBY MODE AND OFF MODE POWER TSLS: DISTRIBUTION OF CONSUMER IMPACTS

| Category | TSL 1 | TSL 2 | TSL 3 |
|---|---|---|---|
| **Distribution of Consumer LCC Impacts** | | | |
| *Non-Weatherized Gas Furnaces* | | | |
| Net Cost (%) | 9 | 9 | 17 |
| No Impact (%) | 72 | 72 | 72 |
| Net Benefit (%) | 18 | 18 | 11 |
| *Mobile Home Gas Furnaces* | | | |
| Net Cost (%) | 6 | 6 | 8 |
| No Impact (%) | 91 | 91 | 91 |
| Net Benefit (%) | 4 | 4 | 2 |
| *Oil-Fired Furnaces* | | | |
| Net Cost (%) | 1 | 1 | 4 |
| No Impact (%) | 91 | 91 | 91 |
| Net Benefit (%) | 8 | 8 | 6 |
| *Electric Furnaces* | | | |
| Net Cost (%) | 4 | 4 | 7 |
| No Impact (%) | 90 | 90 | 90 |
| Net Benefit (%) | 5 | 5 | 3 |
| *Split-System Air Conditioners (coil-only)* | | | |
| Net Cost (%) | 0 | 0 | 0 |
| No Impact (%) | 94 | 94 | 94 |
| Net Benefit (%) | 6 | 6 | 6 |
| *Split-System Air Conditioners (blower-coil)* | | | |
| Net Cost (%) | 0 | 3 | 3 |
| No Impact (%) | 94 | 91 | 91 |
| Net Benefit (%) | 6 | 6 | 6 |
| *Split-System Heat Pumps* | | | |
| Net Cost (%) | 0 | 0 | 19 |
| No Impact (%) | 67 | 67 | 57 |
| Net Benefit (%) | 33 | 33 | 24 |
| *Single-Package Air Conditioners* | | | |
| Net Cost (%) | 0 | 3 | 3 |
| No Impact (%) | 94 | 91 | 91 |
| Net Benefit (%) | 6 | 6 | 6 |
| *Single-Package Heat Pumps* | | | |
| Net Cost (%) | 0 | 0 | 19 |
| No Impact (%) | 66 | 66 | 57 |
| Net Benefit (%) | 34 | 34 | 24 |
| *SDHV Air Conditioners* | | | |
| Net Cost (%) | 0 | 3 | 3 |
| No Impact (%) | 94 | 91 | 91 |
| Net Benefit (%) | 6 | 6 | 6 |
| *Space-Constrained Air Conditioners* | | | |
| Net Cost (%) | 0 | 3 | 3 |
| No Impact (%) | 94 | 91 | 91 |
| Net Benefit (%) | 6 | 6 | 6 |
| *Space-Constrained Heat Pumps* | | | |
| Net Cost (%) | 0 | 0 | 19 |
| No Impact (%) | 67 | 67 | 58 |
| Net Benefit (%) | 33 | 33 | 23 |

Values in the table are rounded off, and, thus, sums may not equal 100 percent in all cases.

DOE first considered TSL 3, which represents the max-tech efficiency levels. TSL 3 would save 0.186 quads of energy, an amount DOE considers significant. Under TSL 3, the NPV of consumer benefit would be $0.235 billion, using a discount rate of 7 percent, and $1.01 billion, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 3 are 10.1 Mt of $CO_2$, 8.11 thousand tons of $NO_X$, and 0.079 ton of Hg. The estimated monetary value of the cumulative $CO_2$ emissions reductions at TSL 3 ranges from $51.7 million to $862 million. Total generating capacity in 2045 is estimated to decrease by 0.127 GW under TSL 3.

At TSL 3, the average LCC impact is a cost (LCC increase) of $0 for non-weatherized gas furnaces, a cost of $1 for mobile home gas furnaces, a savings of $1 for oil-fired furnaces, and a cost of $1 for electric furnaces. For split-system air conditioners (coil-only), the average LCC impact is a savings (LCC decrease) of $84. For split-system air conditioners (blower-coil), the average LCC impact is a savings of $35. For split-system heat pumps, the average LCC impact is a cost of $1. For single-package air conditioners, the average LCC impact is a savings of $36. For single-package heat pumps, the average LCC impact is a cost of $1. For SDHV air conditioners, the average LCC impact is a savings of $32. For space-constrained air conditioners, the average LCC impact is a savings of $37. For space-constrained heat pumps, the average LCC impact is a cost of $1.

At TSL 3, the median payback period is 16 years for non-weatherized gas furnaces; 18 years for mobile home gas furnaces; 12 years for oil-fired furnaces; and 16 years for electric furnaces. For

split-system air conditioners (coil-only), the median payback period is 1 year. For split-system air conditioners (blower-coil), the median payback period is 7 years. For split-system heat pumps, the median payback period is 5 years. For single-package air conditioners, the median payback period is 7 years. For single-package heat pumps, the median payback period is 5 years. For SDHV air conditioners, the median payback period is 7 years. For space-constrained air conditioners, the median payback period is 7 years. For space-constrained heat pumps, the median payback period is 5 years.

At TSL 3, the fraction of consumers experiencing an LCC benefit is 11 percent for non-weatherized gas furnaces, 2 percent for mobile home gas furnaces, 6 percent for oil-fired furnaces, and 3 percent for electric furnaces. For split-system air conditioners (coil-only), the fraction of consumers experiencing an LCC benefit is 6 percent. For split-system air conditioners (blower-coil), the fraction of consumers experiencing an LCC benefit is 6 percent. For split-system heat pumps, the fraction of consumers experiencing an LCC benefit is 24 percent. For single-package air conditioners, the fraction of consumers experiencing an LCC benefit is 6 percent. For single-package heat pumps, the fraction of consumers experiencing an LCC benefit is 24 percent. For SDHV air conditioners, the fraction of consumers experiencing an LCC benefit is 6 percent. For space-constrained air conditioners, the fraction of consumers experiencing an LCC benefit is 6 percent. For space-constrained heat pumps, the fraction of consumers experiencing an LCC benefit is 23 percent.

At TSL 3, the fraction of consumers experiencing an LCC cost is 17 percent for non-weatherized gas furnaces, 8 percent for mobile home gas furnaces, 4 percent for oil-fired furnaces, and 7 percent for electric furnaces. For split-system air conditioners (coil-only), the fraction of consumers experiencing an LCC cost is 0 percent. For split-system air conditioners (blower-coil), the fraction of consumers experiencing an LCC cost is 3 percent. For split-system heat pumps, the fraction of consumers experiencing an LCC cost is 19 percent. For single-package air conditioners, the fraction of consumers experiencing an LCC cost is 3 percent. For single-package heat pumps, the fraction of consumers experiencing an LCC cost is 19 percent. For SDHV air conditioners, the fraction of consumers experiencing an LCC cost is 3 percent. For space-constrained air conditioners, the fraction of consumers experiencing an LCC cost is 3 percent. For space-constrained heat pumps, the fraction of consumers experiencing an LCC cost is 19 percent.

At TSL 3, the projected change in INPV ranges from an increase of $23 million to a decrease of $255 million. The model anticipates impacts on INPV to range from 0.26 percent to −2.93 percent. In general, the cost of standby mode and off mode features is not expected to significantly affect manufacturer profit margins for furnace, central air conditioner, and heat pump products.

The Secretary preliminarily concludes that at TSL 3 for furnace and central air conditioner and heat pump standby mode and off mode power, the benefits of energy savings, positive NPV of consumer benefits at 3-percent discount rate, 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 at 7 percent and the economic burden on some consumers due to the increases in product cost. Of the consumers of furnaces and heat pumps who would be impacted, many more would be burdened by standards at TSL 3 than would benefit. Consequently, the Secretary has tentatively concluded that TSL 3 is not economically justified.

DOE then considered TSL 2. TSL 2 would save 0.16 quads of energy, an amount DOE considers significant. Under TSL 2, the NPV of consumer benefit would be $0.373 billion, using a discount rate of 7 percent, and $1.18 billion, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 2 are 8.73 Mt of $CO_2$, 7.00 thousand tons of $NO_X$, and 0.072 tons of Hg. The estimated monetary value of the cumulative $CO_2$ emissions reductions at TSL 2 ranges from $44.3 million to $738 million. Total generating capacity in 2045 is estimated to decrease by 0.11 GW under TSL 2.

At TSL 2, the average LCC impact is a savings (LCC decrease) of $2 for non-weatherized gas furnaces, a savings of $0 for mobile home gas furnaces, a savings of $1 for oil-fired furnaces, and a savings of $0 for electric furnaces. For split-system air conditioners (coil-only), the average LCC impact is a savings of $84. For split-system air conditioners (blower-coil), the average LCC impact is a savings of $40. For split-system heat pumps, the average LCC impact is a savings of $9. For single-package air conditioners, the average LCC impact is a savings of $41. For single-package heat pumps, the average LCC impact is a savings of $9. For SDHV air conditioners, the average LCC impact is a savings of $37. For space-constrained air conditioners, the average LCC impact is a savings of $42. For space-constrained heat pumps, the average LCC impact is a savings of $9.

At TSL 2, the median payback period is 11 years for non-weatherized gas furnaces; 12 years for mobile home gas furnaces; 8 years for oil-fired furnaces; and 10 years for electric furnaces. For split-system air conditioners (coil-only), the median payback period is 1 year. For split-system air conditioners (blower-coil), the median payback period is 6 years. For split-system heat pumps, the median payback period is 4 years. For single-package air conditioners, the median payback period is 6 years. For single-package heat pumps, the median payback period is 4 years. For SDHV air conditioners, the median payback period is 7 years. For space-constrained air conditioners, the median payback period is 6 years. For space-constrained heat pumps, the median payback period is 4 years.

At TSL 2, the fraction of consumers experiencing an LCC benefit is 18 percent for non-weatherized gas furnaces, 4 percent for mobile home gas furnaces, 8 percent for oil-fired furnaces, and 5 percent for electric furnaces. For split-system air conditioners (coil-only), the fraction of consumers experiencing an LCC benefit is 6 percent. For split-system air conditioners (blower-coil), the fraction of consumers experiencing an LCC benefit is 6 percent. For split-system heat pumps, the fraction of consumers experiencing an LCC benefit is 33 percent. For single-package air conditioners, the fraction of consumers experiencing an LCC benefit is 6 percent. For single-package heat pumps, the fraction of consumers experiencing an LCC benefit is 34 percent. For SDHV air conditioners, the fraction of consumers experiencing an LCC benefit is 6 percent. For space-constrained air conditioners, the fraction of consumers experiencing an LCC benefit is 6 percent. For space-constrained heat pumps, the fraction of consumers experiencing an LCC benefit is 33 percent.

At TSL 2, the fraction of consumers experiencing an LCC cost is 9 percent for non-weatherized gas furnaces, 6 percent for mobile home gas furnaces, 1 percent for oil-fired furnaces, and 4 percent for electric furnaces. For split-system air conditioners (coil-only), the fraction of consumers experiencing an LCC cost is 0 percent. For split-system air conditioners (blower-coil), the fraction of consumers experiencing an

LCC cost is 3 percent. For split-system heat pumps, the fraction of consumers experiencing an LCC cost is 0 percent. For single-package air conditioners, the fraction of consumers experiencing an LCC cost is 3 percent. For single-package heat pumps, the fraction of consumers experiencing an LCC cost is 0 percent. For SDHV air conditioners, the fraction of consumers experiencing an LCC cost is 3 percent. For space-constrained air conditioners, the fraction of consumers experiencing an LCC cost is 3 percent. For space-constrained heat pumps, the fraction of consumers experiencing an LCC cost is 0 percent.

At TSL 2, the projected change in INPV ranges from an increase of $5 million to a decrease of $253 million. The modeled impacts on INPV range from 0.06 percent to −2.91 percent. In general, the incremental cost of standby mode and off mode features are not expected to significantly affect INPV for the furnace, central air conditioner, and heat pump industry at this level.

The Secretary preliminarily concludes that at TSL 2 for furnace, central air conditioner, and heat pump standby mode and off mode power, the benefits of energy savings, positive NPV of consumer benefits at both 7-percent and 3-percent discount rates, generating capacity reductions, emission reductions, and the estimated monetary value of the $CO_2$ emissions reductions would outweigh the economic burden on a small fraction of consumers due to the increases in product cost. With the exception of consumers of mobile home gas furnaces (whose mean LCC impact is zero), the majority of the consumers that would be affected by standards at TSL 2 would see an LCC benefit. Consequently, the Secretary has tentatively concluded that TSL 2 is economically justified.

After considering the analysis and the benefits and burdens of TSL 2, the Secretary has preliminarily concluded that this trial standard level would offer the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy. Therefore, DOE is proposing TSL 2 for furnace, central air conditioner, and heat pump standby mode and off mode. The proposed energy conservation standards for standby mode and off mode, expressed as maximum power in watts, are shown in Table II.10.

TABLE II.10—PROPOSED STANDARDS FOR RESIDENTIAL FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP STANDBY MODE AND OFF MODE *

| Product class | Proposed standby mode and off mode standard levels |
|---|---|
| **Residential Furnaces** ** | |
| Non-Weatherized Gas | $P_{W,SB}$ = 10 watts.<br>$P_{W,OFF}$ = 10 watts. |
| Mobile Home Gas | $P_{W,SB}$ = 10 watts.<br>$P_{W,OFF}$ = 10 watts. |
| Non-Weatherized Oil-Fired | $P_{W,SB}$ = 11 watts.<br>$P_{W,OFF}$ = 11 watts. |
| Mobile Home Oil-Fired | $P_{W,SB}$ = 11 watts.<br>$P_{W,OFF}$ = 11 watts. |
| Electric | $P_{W,SB}$ = 10 watts.<br>$P_{W,OFF}$ = 10 watts. |
| **Product class** | **Proposed off mode standard levels** †† |
| **Central Air Conditioners and Heat Pumps** † | |
| Split-system air conditioners | $P_{W,OFF}$ = 30 watts. |
| Split-system heat pumps | $P_{W,OFF}$ = 33 watts. |
| Single-package air conditioners | $P_{W,OFF}$ = 30 watts. |
| Single-package heat pumps | $P_{W,OFF}$ = 33 watts. |
| Small-duct, high-velocity systems | $P_{W,OFF}$ = 30 watts. |
| Space-constrained air conditioners | $P_{W,OFF}$ = 30 watts. |
| Space-constrained heat pumps | $P_{W,OFF}$ = 33 watts. |

* $P_{W,SB}$ is standby mode electrical power consumption, and $P_{W,OFF}$ is off mode electrical power consumption for furnaces.
** Standby mode and off mode energy consumption for weatherized gas and oil-fired furnaces is regulated as a part of single-package air conditioners and heat pumps, as discussed in detail in the direct final rule published elsewhere in today's **Federal Register**.
† $P_{W,OFF}$ is off mode electrical power consumption for central air conditioners and heat pumps.
†† DOE is not proposing to adopt a separate standby mode standard level for central air conditioners and heat pumps, because standby mode power consumption for these products is already regulated by SEER and HSPF.

*3. Annualized Benefits and Costs of Proposed Standards for Residential Furnace, Central Air Conditioner, and Heat Pump Energy Efficiency*

The benefits and costs of the proposed standards can also be expressed in terms of annualized values over the analysis period. 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.[4] The value of the

[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

Continued

$CO_2$ 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 Federal 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 2013–2045 for furnaces and 2015–2045 for central air conditioners and heat pumps. 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.

Estimates of annualized benefits and costs of the proposed standards for residential furnace, central air conditioner, and heat pump energy efficiency are shown in Table II.11. Using a 7-percent discount rate and the SCC value of $22.1/ton in 2010 (in 2009$), the cost of the energy efficiency standards in today's direct final rule is $527 million to $773 million per year in increased equipment installed costs, while the annualized benefits are $837 million to $1106 million per year in reduced equipment operating costs, $140 million to $178 million in $CO_2$ reductions, and $5.3 million to $6.9 million in reduced $NO_X$ emissions. In this case, the net benefit amounts to $456 million to $517 million per year. Using a 3-percent discount rate and the SCC value of $22.1/metric ton in 2010 (in 2009$), the cost of the energy efficiency standards in today's direct final rule is $566 million to $825 million per year in increased equipment installed costs, while the benefits are $1289 million to $1686 million per year in reduced operating costs, $140 million to $178 million in $CO_2$ reductions, and $7.9 million to $10.2 million in reduced $NO_X$ emissions. In this case, the net benefit amounts to $871 million to $1049 million per year.

TABLE II.11—ANNUALIZED BENEFITS AND COSTS OF PROPOSED STANDARDS FOR RESIDENTIAL FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP ENERGY EFFICIENCY (TSL 4)

| | Discount rate | Monetized (million 2009$/year) | | |
|---|---|---|---|---|
| | | Primary estimate * | Low estimate * | High estimate * |
| **Benefits** | | | | |
| Operating Cost Savings | 7% | 837 to 1,106 | 723 to 959 | 955 to 1,258. |
| | 3% | 1,289 to 1,686 | 1,083 to 1,422 | 1,493 to 1,948. |
| $CO_2$ Reduction at $4.9/t ** | 5% | 34 to 43 | 34 to 43 | 34 to 43. |
| $CO_2$ Reduction at $22.1/t ** | 3% | 140 to 178 | 141 to 178 | 140 to 178. |
| $CO_2$ Reduction at $36.3/t ** | 2.5% | 224 to 284 | 225 to 285 | 224 to 284. |
| $CO_2$ Reduction at $67.1/t ** | 3% | 427 to 541 | 428 to 543 | 427 to 541. |
| $NO_X$ Reduction at $2,519/ton ** | 7% | 5.3 to 6.9 | 5.3 to 7.0 | 5.3 to 6.9. |
| | 3% | 7.9 to 10.2 | 7.9 to 10.3 | 7.9 to 10.2. |
| Total † | 7% plus $CO_2$ range | 876 to 1,653 | 762 to 1,509 | 994 to 1,805. |
| | 7% | 983 to 1,290 | 869 to 1,144 | 1,100 to 1,442. |
| | 3% | 1,437 to 1,874 | 1,232 to 1,611 | 1,641 to 2,136. |
| | 3% plus $CO_2$ range | 1,330 to 2,237 | 1,125 to 1,975 | 1,535 to 2,499. |
| **Costs** | | | | |
| Incremental Product Costs | 7% | 527 to 773 | 574 to 840 | 555 to 819. |
| | 3% | 566 to 825 | 630 to 916 | 599 to 876. |
| **Net Benefits/Costs** | | | | |
| Total † | 7% plus $CO_2$ range | 349 to 880 | 188 to 669 | 438 to 986. |
| | 7% | 456 to 517 | 295 to 305 | 545 to 623. |
| | 3% | 871 to 1,049 | 601 to 695 | 1,042 to 1,260. |
| | 3% plus $CO_2$ range | 764 to 1,412 | 494 to 1,059 | 935 to 1,623. |

* 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% 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% and 7% cases are derived using the SCC value calculated at a 3% 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.

benefits except for the value of $CO_2$ reductions. For the latter, DOE used a range of discount rates, as shown in Table II.11. From the present value, DOE then calculated the fixed annual payment over a 32-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.

*4. Annualized Benefits and Costs of Proposed Standards for Residential Furnace, Central Air Conditioner, and Heat Pump Standby Mode and Off Mode Power*

As explained above, the benefits and costs of the proposed standards for standby mode and off mode power 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 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.

Estimates of annualized benefits and costs of the proposed standards for residential furnace, central air conditioner, and heat pump standby mode and off mode power are shown in Table II.12. Using a 7-percent discount rate and the SCC value of $22.1/ton in 2010 (in 2009$), the cost of the standby mode and off mode standards in this proposed rule is $16.4 million per year in increased equipment costs, while the annualized benefits are $46.5 million per year in reduced equipment operating costs, $12.4 million in $CO_2$ reductions, and $0.4 million in reduced $NO_X$ emissions. In this case, the net benefit amounts to $42.8 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 standby mode and off mode standards in this proposed rule is $19.1 million per year in increased equipment costs, while the benefits are $79.3 million per year in reduced operating costs, $12.4 million in $CO_2$ reductions, and $0.6 million in reduced $NO_X$ emissions. In this case, the net benefit amounts to $73.2 million per year.

TABLE II.12—ANNUALIZED BENEFITS AND COSTS OF PROPOSED STANDARDS FOR RESIDENTIAL FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP STANDBY MODE AND OFF MODE POWER (TSL 2)

| | Discount rate | Monetized (million 2009$/year) | | |
|---|---|---|---|---|
| | | Primary estimate * | Low estimate * | High estimate * |
| **Benefits** | | | | |
| Operating Cost Savings | 7% | 46.5 | 40.4 | 52.8. |
| | 3% | 79.3 | 67.9 | 90.8. |
| $CO_2$ Reduction at $4.9/t** | 5% | 2.9 | 2.9 | 2.9. |
| $CO_2$ Reduction at $22.1/t** | 3% | 12.4 | 12.4 | 12.4. |
| $CO_2$ Reduction at $36.3/t** | 2.5% | 19.9 | 19.9 | 19.9. |
| $CO_2$ Reduction at $67.1/t** | 3% | 37.6 | 37.6 | 37.6. |
| $NO_X$ Reduction at $2,519/ton** | 7% | 0.4 | 0.4 | 0.4. |
| | 3% | 0.6 | 0.6 | 0.6. |
| Total † | 7% plus $CO_2$ range | 49.7 to 84.5 | 43.6 to 78.4 | 56.1 to 90.8. |
| | 7% | 59.2 | 53.1 | 65.5. |
| | 3% | 92.3 | 80.9 | 103.8. |
| | 3% plus $CO_2$ range | 82.8 to 117.5 | 71.4 to 106.2 | 94.3 to 129.1. |
| **Costs** | | | | |
| Incremental Product Costs | 7% | 16.4 | 15.2 | 17.7. |
| | 3% | 19.1 | 17.6 | 20.6. |
| **Net Benefits/Costs** | | | | |
| Total † | 7% plus $CO_2$ range | 33.3 to 68.1 | 28.5 to 63.2 | 38.4 to 73.1. |
| | 7% | 42.8 | 38.0 | 47.9. |
| | 3% | 73.2 | 63.3 | 83.2. |
| | 3% plus $CO_2$ range | 63.7 to 98.4 | 53.8 to 88.5 | 73.7 to 108.5. |

* 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.

**&thnsp;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% 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% and 7% cases are derived using the SCC value calculated at a 3% 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 Web site 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 e-mail, 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, Imports, Intergovernmental relations, Reporting and recordkeeping requirements, and Small businesses.

Issued in Washington, DC on June 6, 2011.

**Henry Kelly,**

*Acting Assistant Secretary, Energy Efficiency and Renewable Energy.*

For the reasons set forth in the preamble, DOE proposes to amend part 430 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, to read as set forth below:

## PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

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

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

2. Section 430.23 is amended by:

a. Redesignating paragraphs (m)(4), (m)(5), and (n)(5) as paragraphs (m)(5), (m)(6), and (n)(6), respectively;

b. Adding new paragraphs (m)(4) and (n)(5); and

c. Revising paragraph (n)(2).

The additions and revision read as follows:

### § 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(m) * * *

(4) The average off mode power consumption for central air conditioners and central air conditioning heat pumps shall be determined according to appendix M of this subpart. Round the average off mode power consumption to the nearest watt.

* * * * *

(n) * * *

(2) The annual fuel utilization efficiency for furnaces, expressed in

percent, is the ratio of the annual fuel output of useful energy delivered to the heated space to the annual fuel energy input to the furnace determined according to section 10.1 of appendix N of this subpart for gas and oil furnaces and determined in accordance with section 11.1 of the American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ANSI/ASHRAE) Standard 103–1993 (incorporated by reference, see § 430.3) for electric furnaces. Round the annual fuel utilization efficiency to the nearest whole percentage point.

* * * * *

(5) The average standby mode and off mode electrical power consumption for furnaces shall be determined according to section 8.6 of appendix N of this subpart. Round the average standby mode and off mode electrical power consumption to the nearest watt.

* * * * *

3. Appendix M to subpart B of part 430 is amended by adding a note after the heading that reads as follows:

## Appendix M to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Central Air Conditioners and Heat Pumps

**Note:** The procedures and calculations that refer to off mode energy consumption (*i.e.,* sections 3.13 and 4.2.8 of this appendix M) need not be performed to determine compliance with energy conservation standards for central air conditioners and heat pumps at this time. However, any representation related to standby mode and off mode energy consumption of these products made after corresponding revisions to the central air conditioners and heat pumps test procedure must be based upon results generated under this test procedure, consistent with the requirements of 42 U.S.C. 6293(c)(2). For residential central air conditioners and heat pumps manufactured on or after January 1, 2015, compliance with the applicable provisions of this test procedure is required in order to determine compliance with energy conservation standards.

* * * * *

4. Appendix N to subpart B of part 430 is amended by:

a. Removing all references to ''$P_{OFF}$'' and adding in their place ''$P_{W,OFF}$'' in sections 8.6.2, 9.0, and 10.9;

b. Removing all references to ''$P_{SB}$'' and adding in their place ''$P_{W,SB}$'' in sections 8.6.1, 8.6.2, 9.0, and 10.9; and

c. Revising the note after the heading.

The revision reads as follows:

## Appendix N to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Furnaces and Boilers

**Note:** The procedures and calculations that refer to off mode energy consumption (*i.e.,* sections 8.6 and 10.9 of this appendix N) need not be performed to determine compliance with energy conservation standards for furnaces and boilers at this time. However, any representation related to standby mode and off mode energy consumption of these products made after April 18, 2011 must be based upon results generated under this test procedure, consistent with the requirements of 42 U.S.C. 6293(c)(2). For furnaces manufactured on or after May 1, 2013, compliance with the applicable provisions of this test procedure is required in order to determine compliance with energy conservation standards. For boilers, the statute requires that after July 1, 2010, any adopted energy conservation standard shall address standby mode and off mode energy consumption for these products, and upon the compliance date for such standards, compliance with the applicable provisions of this test procedure will be required.

* * * * *

5. Section 430.32 is amended by:

a. Revising paragraph (c)(2);

c. Adding paragraphs (c)(3), (c)(4), (c)(5), (c)(6);

d. Revising paragraphs (e)(1)(i) and (e)(1)(ii); and

d. Adding paragraphs (e)(1)(iii), and (e)(1)(iv).

The additions and revisions read as follows:

### § 430.32 Energy and water conservation standards and their effective dates.

* * * * *

(c) * * *

(2) Central air conditioners and central air conditioning heat pumps manufactured on or after January 23, 2006, and before January 1, 2015, shall have Seasonal Energy Efficiency Ratio and Heating Seasonal Performance Factor no less than:

| Product class | Seasonal energy efficiency ratio (SEER) | Heating seasonal performance factor (HSPF) |
|---|---|---|
| (i) Split-system air conditioners | 13 | ..... |
| (ii) Split-system heat pumps | 13 | 7.7 |
| (iii) Single-package air conditioners | 13 | ..... |
| (iv) Single-package heat pumps | 13 | 7.7 |
| (v)(A) Through-the-wall air conditioners and heat pumps—split system [1] | 10.9 | 7.1 |
| (v)(B) Through-the-wall air conditioners and heat pumps—single package [1] | 10.6 | 7.0 |
| (vi) Small-duct, high-velocity systems | 13 | 7.7 |
| (vii)(A) Space-constrained products—air conditioners | 12 | ..... |
| (vii)(B) Space-constrained products—heat pumps | 12 | 7.4 |

[1] The ''through-the-wall air conditioners and heat pump—split system'' and ''through-the-wall air conditioner and heat pump—single package'' product classes only applied to products manufactured prior to January 23, 2010. Products manufactured as of that date must be assigned to one of the remaining product classes listed in this table. The product class assignment depends on the product's characteristics. Product class definitions can be found in 10 CFR 430.2 and 10 CFR part 430, subpart B, appendix M. DOE believes that most, if not all, of the historically characterized ''through-the-wall'' products will be assigned to one of the space-constrained product classes.

(3) Central air conditioners and central air conditioning heat pumps manufactured on or after January 1, 2015, shall have a Seasonal Energy Efficiency Ratio and Heating Seasonal Performance Factor not less than:

| Product class [1] | Seasonal energy efficiency ratio (SEER) | Heating seasonal performance factor (HSPF) |
|---|---|---|
| (i) Split-system air conditioners | 13 | ..... |
| (ii) Split-system heat pumps | 14 | 8.2 |
| (iii) Single-package air conditioners | 14 | ..... |

| Product class [1] | Seasonal energy efficiency ratio (SEER) | Heating seasonal performance factor (HSPF) |
|---|---|---|
| (iv) Single-package heat pumps | 14 | 8.0 |
| (v) Small-duct, high-velocity systems | 13 | 7.7 |
| (vi)(A) Space-constrained products—air conditioners | 12 | ..... |
| (vii)(B) Space-constrained products—heat pumps | 12 | 7.4 |

[1] The ''through-the-wall air conditioners and heat pump—split system'' and ''through-the-wall air conditioner and heat pump—single package'' product classes only applied to products manufactured prior to January 23, 2010. Products manufactured as of that date must be assigned to one of the remaining product classes listed in this table. The product class assignment depends on the product's characteristics. Product class definitions can be found in 10 CFR 430.2 and 10 CFR part 430, subpart B, appendix M. DOE believes that most, if not all, of the historically characterized ''through-the-wall'' products will be assigned to one of the space-constrained product classes.

(4) In addition to meeting the applicable requirements in paragraph (c)(3) of this section, products in product class (i) of that paragraph (*i.e.,* split-system air conditioners) that are manufactured on or after January 1, 2015, and installed in the States of Alabama, Arkansas, Delaware, Florida, Georgia, Hawaii, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, or Virginia, or in the District of Columbia, shall have a Seasonal Energy Efficiency Ratio not less than 14.

(5) In addition to meeting the applicable requirements in paragraph (c)(3) of this section, products in product classes (i) and (iii) of paragraph (c)(3) (*i.e.,* split-system air conditioners and single-package air conditioners) that are manufactured on or after January 1, 2015, and installed in the States of Arizona, California, Nevada, or New Mexico shall have a Seasonal Energy Efficiency Ratio not less than 14 and have an Energy Efficiency Ratio (at a standard rating of 95 °F dry bulb outdoor temperature) not less than the following:

| Product class | Energy efficiency ratio (EER) |
|---|---|
| (i) Split-system rated cooling capacity less than 45,000 Btu/hr | 12.2 |
| (ii) Split-system rated cooling capacity equal to or greater than 45,000 Btu/hr | 11.7 |
| (iii) Single-package systems | 11.0 |

(6) Central air conditioners and central air conditioning heat pumps manufactured on or after January 1, 2015, shall have an average off mode electrical power consumption not more than the following:

| Product class | Average off mode power consumption $P_{W,OFF}$ (watts) |
|---|---|
| (i) Split-system air conditioners | 30 |
| (ii) Split-system heat pumps | 33 |
| (iii) Single-package air conditioners | 30 |
| (iv) Single-package heat pumps | 33 |
| (v) Small-duct, high-velocity systems | 30 |
| (vi) Space-constrained air conditioners | 30 |
| (vii) Space-constrained heat pumps | 33 |

* * * * *

(e) * * *

(1) * * *

(i) The Annual Fuel Utilization Efficiency (AFUE) of residential furnaces shall not be less than the following for non-weatherized furnaces manufactured before May 1, 2013, and weatherized furnaces manufactured before January 1, 2015:

| Product class | AFUE (percent) [1] |
|---|---|
| (A) Furnaces (excluding classes noted below) | 78 |
| (B) Mobile Home furnaces | 75 |
| (C) Small furnaces (other than those designed solely for installation in mobile homes) having an input rate of less than 45,000 Btu/hr | |
| (1) Weatherized (outdoor) | 78 |
| (2) Non-weatherized (indoor) | 78 |

[1] Annual Fuel Utilization Efficiency, as determined in § 430.23(n)(2) of this part.

(ii) The AFUE of residential non-weatherized furnaces manufactured on or after May 1, 2013, and weatherized gas and oil-fired furnaces manufactured on or after January 1, 2015 shall be not less than the following:

| Product class | AFUE (percent) [1] |
|---|---|
| (A) Non-weatherized gas furnaces (not including mobile home furnaces) | 80 |
| (B) Mobile Home gas furnaces | 80 |
| (C) Non-weatherized oil-fired furnaces (not including mobile home furnaces) | 83 |
| (D) Mobile Home oil-fired furnaces | 75 |
| (E) Weatherized gas furnaces | 81 |
| (F) Weatherized oil-fired furnaces | 78 |
| (G) Electric furnaces | 78 |

[1] Annual Fuel Utilization Efficiency, as determined in § 430.23(n)(2) of this part.

(iii) In addition to meeting the applicable requirements in paragraph (e)(1)(ii) of this section, products in product classes (A) and (B) of that paragraph (*i.e.,* residential non-weatherized gas furnaces (including mobile home furnaces)) that are manufactured on or after May 1, 2013, and installed in the States of Alaska, Colorado, Connecticut, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming, shall have an AFUE not less than 90 percent.

(iv) Furnaces manufactured on or after May 1, 2013, shall have an electrical standby mode power consumption ($P_{W,SB}$) and electrical off mode power consumption ($P_{W,OFF}$) not more than the following:

| Product class | Maximum standby mode electrical power consumption, $P_{W,SB}$ (watts) | Maximum off mode electrical power consumption, $P_{W,OFF}$ (watts) |
|---|---|---|
| (A) Non-weatherized gas furnaces (including mobile home furnaces) | 10 | 10 |
| (B) Non-weatherized oil-fired furnaces (including mobile home furnaces) | 11 | 11 |
| (C) Electric furnaces | 10 | 10 |

* * * * *

[FR Doc. 2011–14556 Filed 6–24–11; 8:45 am]

BILLING CODE 6450–01–P

# FEDERAL REGISTER

Vol. 76 Monday,

No. 123 June 27, 2011


Part III

## Securities and Exchange Commission

17 CFR Parts 240 and 249

Broker-Dealer Reports; Proposed Rule

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Parts 240 and 249**

**[Release No. 34–64676; File No. S7–23–11]**

**RIN 3235–AK56**

## Broker-Dealer Reports

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Securities and Exchange Commission (the ''Commission'') is proposing amendments to the broker-dealer financial reporting rule under the Securities Exchange Act of 1934 (the ''Exchange Act''). The first set of amendments would, among other things, update the existing requirements of Exchange Act Rule 17a–5, facilitate the ability of the Public Company Accounting Oversight Board (the ''PCAOB'') to implement oversight of independent public accountants of broker-dealers as required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act''), and eliminate potentially redundant requirements for certain broker-dealers affiliated with, or dually-registered as, investment advisers. The second set of amendments would require broker-dealers that either clear transactions or carry customer accounts to consent to allowing the Commission and designated examining authorities (''DEAs'') to have access to independent public accountants to discuss their findings with respect to annual audits of the broker-dealers and to review related audit documentation. The third set of amendments would enhance the ability of the Commission and examiners of a DEA to oversee broker-dealers' custody practices by requiring broker-dealers to file a new Form Custody.

**DATES:** Comments should be received on or before August 26, 2011.

**ADDRESSES:** Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–23–11 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

*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 S7–23–11. 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/proposed.shtml*). Comments are also 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. 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.

**FOR FURTHER INFORMATION CONTACT:** Michael A. Macchiaroli, Associate Director, at (202) 551–5525; Thomas K. McGowan, Deputy Associate Director, at (202) 551–5521; Randall W. Roy, Assistant Director, at (202) 551–5522; and Mark M. Attar, Branch Chief, at (202) 551–5889, Division of Trading and Markets; or John F. Offenbacher, Senior Associate Chief Accountant, at (202) 551–5300, Office of the Chief Accountant, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–7010.

**SUPPLEMENTARY INFORMATION:** The Commission is requesting public comment on proposed amendments to Exchange Act Rule 17a–5 and proposed Form Custody.

## I. Introduction

The Commission is proposing three sets of amendments to Exchange Act Rule 17a–5—the broker-dealer financial reporting rule.[1] The first set of amendments (collectively, the ''Annual Reporting Amendments'') relates to the requirement that a broker-dealer file annual financial reports with the Commission. The Annual Reporting Amendments are designed to, among other things: (1) Update the existing requirements of Rule 17a–5; (2) facilitate the ability of the PCAOB to implement oversight of independent public accountants of broker-dealers as required by the Dodd-Frank Act;[2] and (3) eliminate potentially redundant requirements for certain broker-dealers affiliated with, or dually-registered as, investment advisers.

The second set of amendments (collectively, the ''Access to Audit Documentation Amendments'') would require broker-dealers that either clear transactions or carry customer accounts to consent to provide the Commission and DEAs with access to independent public accountants to discuss their findings with respect to annual audits of broker-dealers and to review related audit documentation.[3]

The third set of amendments (collectively, the ''Form Custody Amendments'') would enhance the ability of the Commission and examiners of a DEA to oversee broker-dealers' custody practices by requiring broker-dealers to file on a quarterly basis a new Form Custody. Form Custody would elicit information as to whether and how a broker-dealer maintains custody of cash and securities of customers and others.

## II. The Proposed Annual Reporting Amendments

### *A. Background*

Sections 17(a) and (e) of the Exchange Act and Rule 17a–5 together require a broker-dealer to, among other things, file an annual report (an ''Annual Audit Report'') containing audited financial statements, supporting schedules, and supplemental reports, as applicable, with the Commission and the broker-dealer's DEA.[4] The financial statements must be comprised of a statement of financial condition, a statement of income, a statement of cash flows, a statement of changes in stockholders' or partners' or sole proprietor's equity, and a statement of changes in liabilities subordinated to claims of general creditors.[5] The supporting schedules must be comprised of a computation of required and actual net capital under

[1] 17 CFR 240.17a–5 (''Rule 17a–5'').

[2] Public Law 111–203 (Jul. 21, 2010).

[3] PCAOB Auditing Standard 3 defines ''Audit documentation'' as the ''written record of the basis for the auditor's conclusions that provides the support for the auditor's representations, whether those representations are contained in the auditor's report or otherwise. Audit documentation also facilitates the planning, performance, and supervision of the engagement, and is the basis for the review of the quality of the work because it provides the reviewer with written documentation of the evidence supporting the auditor's significant conclusions. Among other things, audit documentation includes records of the planning and performance of the work, the procedures performed, evidence obtained, and conclusions reached by the auditor. Audit documentation also may be referred to as *work papers* or *working papers.''*

[4] *See* 15 U.S.C 78q(a), 15 U.S.C 78q(e), and Rule 17a–5(d).

[5] *See* Rule 17a–5(d)(2).

Exchange Act Rule 15c3–1, and, for broker-dealers that maintain custody of customer funds or securities (''carrying broker-dealers''), a computation of the customer reserve requirement and information relating to the possession or control requirements under Exchange Act Rule 15c3–3.[6] The supplemental reports include: (1) A report of an independent public accountant that is the result of a review of, among other things, the broker-dealer's accounting system, internal accounting control and procedures for safeguarding securities, and practices and procedures in complying with various Commission financial responsibility rules and Regulation T of the Board of Governors of the Federal Reserve System;[7] (2) a report of an independent public accountant provided to, among others, the Securities Investor Protection Corporation (''SIPC'') to help administer the collection of assessments from broker-dealers for purposes of establishing and maintaining its broker-dealer liquidation fund (the ''SIPC Fund'');[8] and (3) for broker-dealers that compute net capital under an alternative model-based standard, a report of an independent public accountant indicating the results of the accountant's review of the internal risk management control system established and documented by the broker-dealer in accordance with Exchange Act Rule 15c3–4.[9]

Paragraph (g) of Rule 17a–5, entitled ''Audit objectives,'' describes the objectives that should be achieved by an independent public accountant in preparing a report for the broker-dealer to file with its Annual Audit Report.[10] For example, the audit is required to be performed in accordance with generally accepted auditing standards (''GAAS'').[11] In addition, paragraph (g)(1) of Rule 17a–5 requires that the audit include a ''review'' and appropriate tests of the broker-dealer's accounting system, internal accounting control and procedures for safeguarding securities for the period since the prior examination date.[12] The paragraph further states that the scope of the audit and review of the accounting system, internal accounting control, and procedures for safeguarding securities shall be sufficient to provide reasonable assurance that any material inadequacies existing in those items, including in the procedures for obtaining and maintaining physical possession and control of all fully paid and excess margin securities, complying with Regulation T, and making the quarterly securities examinations, counts, verifications, and comparisons and recordation of differences required by Exchange Act Rule 17a–13 would be disclosed.[13] Currently, with respect to these requirements, independent public accountants for broker-dealers issue a report describing a ''study'' of these practices and procedures and, if applicable, notification to the Commission of the discovery of any material inadequacies (the ''Study''). The form of the report that describes the Study is specified in an AICPA publication entitled *AICPA Audit & Accounting Guide: Brokers and Dealers in Securities;*[14] however, the form of the report does not specify the level of assurance required to be obtained by the independent public accountant when performing the Study.

Professional auditing standards provide for three levels of attestation engagement by an accountant.[15] Under the highest level of attestation engagement, the accountant obtains ''reasonable assurance'' with respect to the matter that is the subject of the accountant's attestation engagement and provides an opinion. This standard is required with respect to audits and examinations.[16] The second level of attestation engagement is a review, which results in the accountant obtaining a moderate level of assurance with respect to the matter that is the subject of the accountant's attestation engagement. The third type of attestation engagement is one in which the accountant performs agreed-upon procedures, which results in no assurance, but rather a reporting of the accountant's findings after the performance of procedures that have been agreed to by specified parties. Rule 17a–5 currently requires that a broker-dealer engage an independent public accountant to audit the broker-dealer's financial statements. Some of the supporting schedules are also subject to financial statement audit procedures.

Rule 17a–5 also requires that a broker-dealer that is claiming an exemption from the requirements of Rule 15c3–3 file a report with the Commission.[17] Rule 15c3–3(k) sets forth certain conditions that a broker-dealer must meet to be exempt from the rule's requirements. Generally, the broker-dealer would be exempt if it does not hold customer funds or securities, or, if it does, it promptly forwards all funds and securities received. Rule 17a–5 provides that the independent public accountant engaged by the broker-dealer must ''ascertain that the conditions of the exemption were being complied with as of the examination date and that no facts came to the independent public accountant's attention to indicate that the exemption had not been complied with during the period since the independent public accountant's last examination.''[18] This requirement has resulted in independent public accountants providing a statement concerning whether they have ascertained that the broker-dealer was complying with the conditions of the exemption.[19]

Many of the requirements currently contained in Rule 17a–5 have existed since 1975, and, for the most part, have remained substantially unchanged.[20] For example, as noted above, to comply with the requirement of paragraph (g) of Rule 17a–5 to conduct an audit and review of the identified matters, independent public accountants currently issue a report based on a Study. The practice of conducting the Study is relatively unique to broker-dealer audits and, while audit literature at one time referred to the performance of a ''study,'' the performance of a study is no longer included in contemporary audit standards governing the work to be performed by an independent public accountant.

[6] *See* Rule 17a–5(d)(3). *See also* 17 CFR 240.15c3–1 (''Rule 15c3–1'') and 17 CFR 240.15c3–3 (''Rule 15c3–3'').

[7] *See* Rule 17a–5(g). *See also* 12 CFR part 220 *et seq.* (''Regulation T'').

[8] *See* Rule 17a–5(e)(4). These reports will be collectively referred to in this release as the ''SIPC Reports.'' As part of the Annual Reporting Amendments, the Commission is proposing to amend how the SIPC Reports are filed; *see infra* Section II.C.

[9] *See* Rule 17a–5(k); *see also* 17 CFR 240.15c3–4.

[10] *See* Rule 17a–5(g).

[11] Auditing and attestation standards for broker-dealers are currently established by the American Institute of Certified Public Accountants (the ''AICPA'').

[12] *See* Rule 17a–5(g)(1).

[13] *Id. See also* 17 CFR 240.17a–13 (''Rule 17a–13''). The term ''material inadequacy'' is defined in Rule 17a–5(g)(3).

[14] *See* the *AICPA Audit & Accounting Guide: Brokers and Dealers in Securities* (Jul. 2010) (the ''Broker-Dealer Audit Guide'').

[15] Professional auditing standards include both GAAS and standards promulgated by the PCAOB.

[16] This proposing release generally refers to an ''audit'' of a broker-dealer's financial statements and an ''examination'' of the broker-dealer's compliance with a particular rule or implementation of controls designed to achieve compliance with a particular rule.

[17] *See* Rule 17a–5(g)(2).

[18] *Id.*

[19] *See* Broker-Dealer Audit Guide, *supra* note 14 at Section 3.32.

[20] *See Broker-Dealer Reports,* Exchange Act Release No. 11935 (Dec. 17, 1975), 40 FR 59706 (Dec. 30, 1975). In this release, the Commission adopted amendments to Rule 17a–5, which included, among other things, the adoption of the requirement for broker-dealers to file Financial and Operational Combined Uniform Single (or ''FOCUS'') Reports.

In addition, recent legislation and Commission rulemaking have further prompted the need to reexamine the requirements pertaining to the Annual Audit Report. First, Section 982 of the Dodd-Frank Act amended the Sarbanes-Oxley Act of 2002 (the ''Sarbanes-Oxley Act'')[21] to provide the PCAOB with explicit authority to, among other things, establish, subject to Commission approval, auditing and related attestation, quality control, ethics, and independence standards to be used by registered public accounting firms with respect to the preparation and issuance of audit reports to be included in broker-dealer filings with the Commission.[22] The Dodd-Frank Act also authorizes the PCAOB to inspect registered public accounting firms that provide audit reports for broker-dealers and to enforce standards relative to their audits.

Further, in December 2009, the Commission amended Rule 206(4)–2 (the ''IA Custody Rule'') under the Investment Advisers Act of 1940 (the ''Advisers Act''),[23] which governs investment advisers' custody practices.[24] Among other requirements, registered investment advisers that have custody of client funds or securities must maintain those assets at a qualified custodian, such as a bank or broker-dealer.[25] If an investment adviser that also is, for example, a bank, or its related person, serves as a qualified custodian for advisory client funds or securities, the adviser must annually obtain, or receive from its related person, a written internal control report prepared by an independent public accountant registered with, and subject to regular inspection by, the PCAOB. Broker-dealers that also are registered as investment advisers may, acting in their capacity as broker-dealers, maintain client funds and securities as qualified custodians in connection with advisory services provided to clients, and under the IA Custody Rule are required to obtain internal control reports. Broker-dealers acting as qualified custodians also may maintain advisory assets in connection with advisory services provided by related or affiliated investment advisers. In such instances, these broker-dealers are also required to provide internal control reports to their related investment advisers.

For the reasons discussed above, the Commission is proposing amendments to Rule 17a–5. The amendments proposed by the Commission are intended to update the broker-dealer audit requirements and provide for an examination of compliance, and internal control over compliance, with key regulatory requirements that would provide the Commission with greater assurance as to a broker-dealer's compliance with the requirements. In addition, the proposed changes are intended to facilitate the ability of the PCAOB to set standards for, and implement its inspection authority over, broker-dealers' independent public accountants by providing an improved foundation for the PCAOB to establish new broker-dealer audit standards. Moreover, the proposed changes, as they pertain to compliance with requirements concerning the custody of customer funds and securities, are intended to complement and reinforce the regulatory changes effected by the IA Custody Rule. In particular, the Commission preliminarily believes that broker-dealers that also are registered as investment advisers and hold advisory client funds or securities, or that hold funds or securities for related investment advisers, would be able to use the Examination Report described below to satisfy the internal control report requirements under both Rule 17a–5, as it is proposed to be amended, and the IA Custody Rule.

As discussed below, the proposed changes would provide, as to broker-dealers subject to the requirements of Rule 15c3–3, for an examination of compliance, and internal control over compliance, with respect to Rule 15c3–1, Rule 15c3–3, Rule 17a–5, and rules prescribed by DEAs requiring broker-dealers to send account statements to customers (''Account Statement Rules''). Rule 15c3–1 requires broker-dealers to maintain at all times a minimum amount of net liquid assets, or ''net capital.'' Under Rule 15c3–1, broker-dealers must perform two calculations: (1) A computation of required minimum net capital;[26] and (2) a computation of actual net capital.[27]

Rule 15c3–3 imposes two key requirements on carrying broker-dealers. First, each carrying broker-dealer must obtain physical possession or control over customers' fully paid and excess margin securities.[28] ''Control'' means the broker-dealer must hold these securities free of lien in one of several locations specified in the rule (*e.g.,* a bank or clearing agency).[29] Under Rule 15c3–3, the broker-dealer must make a daily determination from its books and records (as of the preceding day) of the quantity of fully paid and excess margin securities in its possession or control and the quantity of fully paid and excess margin securities not in its possession or control.[30] If the amount in the broker-dealer's possession and control is less than the amount indicated as being held for customers on the broker-dealer's books and records, the broker-dealer generally must initiate steps to retrieve customer securities from non-control locations or otherwise obtain possession of them or place them in control locations.[31]

The second key requirement in Rule 15c3–3 is that the carrying broker-dealer must maintain at a bank or banks cash or qualified securities[32] on deposit in a ''Special Reserve Bank Account for the Exclusive Benefit of Customers'' equaling at least the net amount computed by adding customer credit

[21] 17 U.S.C. 7202 *et seq.*

[22] *See* Section 982 of the Dodd-Frank Act.

[23] 17 CFR 275.206(4)–2 (''Rule 206(4)–2'').

[24] *See Custody of Funds or Securities by Investment Advisers,* Advisers Act Release No. 2876 (May 20, 2009), 74 FR 25354 (May 27, 2009) (''IA Custody Proposing Release''); Advisers Act Release No. 2968 (Dec. 30, 2009), 75 FR 1456 (Jan. 11, 2010) (''IA Custody Adopting Release'').

[25] *See* Rule 206(4)–2.

[26] A broker-dealer's required minimum net capital is the greater of a fixed-dollar amount prescribed in Rule 15c3–1, or an amount computed using one of two financial ratios. The first financial ratio generally provides that a broker-dealer shall not permit its aggregate indebtedness to exceed 1500% of its net capital. *See* Rule 15c3–1(a)(1)(i). The second financial ratio provides that a broker-dealer shall not permit its net capital to be less than 2% of aggregate customer debit items. *See* Rule 15c3–1(a)(1)(ii). Customer debit items—computed pursuant to Exhibit A to Rule 15c3–3, which is described below—consist of, among other things, margin loans to customers and securities borrowed to effectuate customer deliveries of securities on short sales.

[27] A broker-dealer computes its actual net capital by first calculating its net worth using United States (''U.S.'') generally accepted accounting principles. Second, qualifying subordinated loans are added to net worth. Third, illiquid assets such as real estate, fixtures, furniture, goodwill, and most unsecured receivables are subtracted from net worth. Illiquid securities also must be deducted. Finally, the broker-dealer must reduce (''haircut'') the market value of the liquid securities it owns by a percentage amount. This ''haircut'' provides a cushion against adverse market movements and other risks faced by the broker-dealer.

[28] *See* Rule 15c3–3(b)(1).

[29] *See* Rule 15c3–3(c).

[30] *See* Rule 15c3–3(d).

[31] *Id.*

[32] The term ''qualified security'' is defined in Rule 15c3–3 to include securities issued by the U.S. or guaranteed by the U.S. with respect to principal and interest. *See* Rule 15c3–3(a)(6).

items (*e.g.,* cash in securities accounts) and subtracting from that amount customer debit items (*e.g.,* margin loans).[33] Rule 15c3–3 is designed to protect customer funds and securities by generally segregating them from the broker-dealer's proprietary business activities. If the carrying broker-dealer fails, customer funds and securities should be readily available for return to customers. The rule requires carrying broker-dealers to compute the customer reserve requirement on a weekly basis, except where customer credit balances do not exceed $1 million (in which case the computation can be performed monthly, although, in this case, the broker-dealer must maintain 105% of the required deposit amount).[34]

Rule 17a–13 requires a broker-dealer that holds securities (proprietary, customer, or both), on a quarterly basis, to examine and count the securities it physically holds, account for the securities that are subject to its control or direction but are not in its physical possession (*e.g.,* securities held at a control location), verify the securities, and compare the results of the count and verification with its records. The broker-dealer must take an operational capital charge under Rule 15c3–1 for all short securities differences (which include securities positions reflected on the broker-dealer's securities record that are not susceptible to either count or confirmation) unresolved after discovery.[35] The differences also must be recorded on the broker-dealer's records.[36]

The Account Statement Rules of DEAs require member broker-dealers to send, at least once every calendar quarter, a statement of account containing a description of any securities positions, money balances, or account activity to each customer whose account had a security position, money balance, or account activity during the period since the last such statement was sent to the customer.[37]

*B. Proposed Audit Reports and Changes to Applicable Auditing Standards*

As part of the Annual Reporting Amendments, the Commission is proposing changes that would revise the reports that broker-dealers file under Rule 17a–5. While the requirement that broker-dealers file a report consisting of the audited financial statements and supporting schedules that are currently required under Rule 17a–5 (the ''Financial Report'') would remain unchanged, carrying broker-dealers would be required to file a new report asserting to compliance with specified rules and related internal controls (the ''Compliance Report''). These broker-dealers also would be required to file a report from their independent public accountants (the ''Examination Report'') that addresses the assertions in the Compliance Report. Broker-dealers that do not hold customer funds or securities would be required to file a report asserting their exemption from the requirements of Rule 15c3–3 (the ''Exemption Report) and a report from their independent public accountants that would be the result of a review of the broker-dealer's assertion that it is exempt from Rule 15c3–3. Finally, the proposed amendments would change the audit standards applicable to broker-dealer audits and compliance examinations from GAAS to standards promulgated by the PCAOB.

To implement these changes, the Commission proposes a number of amendments to Rule 17a–5. The Commission proposes that paragraph (d) of Rule 17a–5 be re-titled from ''Annual filing of audited financial statements'' to ''Annual reports,'' because under the proposed revisions to paragraph (d), broker-dealers would generally be required to file a Financial Report and a Compliance Report or an Exemption Report with the Commission.[38] Paragraph (d)(1) of Rule 17a–5 would be amended to set forth the general requirement for broker-dealers to file annual financial reports with the Commission. These reports would include: (1) A ''Financial Report'' as described in paragraph (d)(2), which would consist of the audited financial statements and supporting schedules that broker-dealers are currently required to file with the Commission;[39] (2) a Compliance Report as described in paragraph (d)(3) unless the broker-dealer is exempt from the provisions of Rule 15c3–3,[40] or an Exemption Report as described in paragraph (d)(4) if the broker-dealer claims an exemption from the provisions of Rule 15c3–3;[41] and (3) reports prepared by the independent public accountant pursuant to the engagement provisions in paragraph (g), unless the broker-dealer is exempt from the requirement to either file the annual audit report or engage an independent public accountant pursuant to paragraphs (d)(1) and (e)(1) of Rule 17a–5.[42] The proposed requirements for the Compliance Report and Exemption Report are described in greater detail below.

1. Compliance Report

Under the proposed amendments to paragraph (d) of Rule 17a–5, each carrying broker-dealer would be required annually to file a Compliance

[33] *See* Rule 15c3–3(e).

[34] *See* Rule 15c3–3(e)(3).

[35] *See* Rule 15c3–1(c)(2)(v).

[36] *See* Rule 17a–3(a)(4)(vi).

[37] For example, NASD Rule 2340 requires broker-dealers that are members of FINRA that conduct a general securities business to send account statements to customers at least quarterly. The current FINRA rulebook consists of: (1) FINRA rules; (2) NASD rules; and (3) rules incorporated from the NYSE (''Incorporated NYSE Rules'') (together, the NASD rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE. The FINRA rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information *see* FINRA's *Information Notice,* Mar. 12, 2008 (Rulebook Consolidation Process). If a broker-dealer's DEA is the Chicago Board Options Exchange (the ''CBOE''), the broker-dealer would be subject to CBOE's account statement rule, CBOE Rule 9.12.

[38] Paragraph (d) of Rule 17a–5, currently titled ''Annual filing of audited financial statements,'' is being renamed to reflect that the Commission will now require broker-dealers to file two reports with the Commission (*i.e.,* a Financial Report and a Compliance Report, or a Financial Report and an Exemption Report).

[39] Proposed paragraph (d)(1)(i)(A) of Rule 17a–5. *See also* Rule 17a–5(d)(2), which lists the requirements to be included in the Financial Report and would continue to do so because the Commission is not proposing any amendment to the financial statements and supporting schedules required of the broker-dealer. The Commission proposes a technical amendment, to rename the annual audit report to ''Financial Report,'' to reflect that proposed paragraph (d)(2) relates to the financial audit requirements.

[40] Proposed paragraph (d)(1)(i)(B)(1) of Rule 17a–5.

[41] Proposed paragraph (d)(1)(i)(B)(2) of Rule 17a–5.

[42] Proposed paragraph (d)(1)(i)(C) of Rule 17a–5. Specifically, Rule 17a–5(d)(1)(ii) states that ''a broker or dealer succeeding to and continuing the business of another broker or dealer need not file a report * * * if the predecessor broker or dealer has filed a report in compliance with [Rule 17a–5(d)] * * *.'' Rule 17a–5(d)(1)(iii) contains an exemption for broker-dealers from filing an annual audit report if the broker-dealer is a member of a national securities exchange and ''has transacted a business in securities solely with or for other members of a national securities exchange, and has not carried any margin account, credit balance or security for any person who is defined as a 'customer' in paragraph (c)(4) of [Rule 17a–5].'' Rule 17a–5(e)(1) provides that for certain broker-dealers, the financial statements that must be filed pursuant to Rule 17a–5(d) need not be audited. The exceptions in paragraphs (e)(1)(A)–(B) of Rule 17a–5 are applicable when either: (1) The broker-dealer's securities business has been limited to acting as broker (agent) for an issuer in soliciting subscriptions for securities of the issuer and the broker has promptly transmitted to the issuer all funds and promptly delivered to the subscriber all securities received in connection with the issuance, and the broker has not otherwise held funds or securities for or owed money or securities to customers; or (2) the broker-dealer's securities business has been limited to buying and selling evidences of indebtedness secured by mortgage, deed or trust, or other lien upon real estate or leasehold interests, and the broker-dealer has not carried any margin account, credit balance or security for any securities customer.

Report containing a statement and assertions concerning compliance, and internal control over compliance, with specified rules. Specifically, the Compliance Report would include a statement as to whether the broker-dealer has established and maintained a system of internal control to provide the broker-dealer with reasonable assurance [43] that any instances of material non-compliance with Rule 15c3–1, Rule 15c3–3, Rule 17a–13, or the Account Statement Rule (collectively, the ''Financial Responsibility Rules'') will be prevented or detected on a timely basis. The Compliance Report is intended to enhance a broker-dealer's focus on compliance with the specified rules and provide a foundation for the proposed ''Compliance Examination'' described below in Section II.B.2 of this release.[44]

In addition, the Compliance Report would include the following three assertions by the broker-dealer: (1) Whether the broker-dealer was in compliance in all material respects with the Financial Responsibility Rules as of its fiscal year-end; [45] (2) whether the information used to assert compliance with the Financial Responsibility Rules was derived from the books and records of the broker-dealer; [46] and (3) whether internal control over compliance with the Financial Responsibility Rules was effective during the most recent fiscal year such that there were no instances of material weakness.[47] Further, the Compliance Report would be required to contain a description of each identified instance of material non-compliance and each identified material weakness in internal control over compliance with the specified rules.[48]

Rule 17a–5(g) currently requires that the audit include a review of compliance with and controls pertaining to Rule 15c3–1, Rule 15c3–3, and Rule 17a–13. As described above, these rules contain important baseline protections concerning broker-dealer capital adequacy and the protection of customer funds and securities, and the Commission preliminarily believes that it is important that they be addressed in any annual report of a carrying broker-dealer. The proposed Compliance Report would not cover Regulation T, which is currently addressed in existing Rule 17a–5(g)(1)(iii). The Commission believes that the inclusion of Regulation T in the scope of the Compliance Report would not be necessary given the broker-dealer's assertion in the Compliance Report of its compliance with Rule 15c3–1. In particular, a broker-dealer's failure to comply with Regulation T, which governs broker-dealers' extensions of credit on securities, could require a broker-dealer to reduce its net capital by the amount of any deficit in customer unsecured and partly secured accounts after calls for margin.[49]

The Commission also is proposing to require that the Compliance Report include a statement and three assertions concerning the Account Statement Rule. The Account Statement rule provides a key safeguard for customers by ensuring that they receive on a regular basis information concerning securities positions and other assets held in their accounts. Customers can use that information to identify discrepancies and monitor the performance of their accounts. The Commission believes that, taken together, the objectives of the Compliance Report are consistent with the control objectives of the internal control report required under the IA Custody Rule.[50]

The assertions contained in the Compliance Report would pertain to compliance at year-end and also over the course of a fiscal quarter, depending on the particular requirement.[51] The proposed assertions with respect to compliance with Rules 15c3–1 and 15c3–3 would relate to compliance as of the broker-dealer's fiscal year-end. The assertions as to compliance with Rule 17a–13 and the Account Statement Rule also would be made as of the broker-dealer's fiscal year-end. However, because these rules impose obligations on a quarterly basis (the broker-dealer must conduct the quarterly count of securities and must send statements to all customers at least once during each quarter, but not necessarily on the last day of the quarter), to be able to make the assertions in the Compliance Report, the broker-dealer would need to determine that it had satisfied the requirements over the course of the fiscal quarter immediately preceding the broker-dealer's fiscal year-end. In contrast, the broker-dealer's assertions related to the effectiveness of internal control over compliance with the Financial Responsibility Rules would not pertain to a fixed point in time, but instead would cover the entire fiscal year. The proposed time periods related to internal control over compliance would be consistent with those in the IA Custody Rule.[52]

The Commission preliminarily believes that broker-dealers would be able to make assertions regarding both compliance and the effectiveness of internal control over compliance with the Financial Responsibility Rules. The Commission is *not* proposing that effectiveness of internal control over financial reporting be included as one of the assertions made by the broker-dealer in the Compliance Report.[53] The Commission preliminarily believes that the Compliance Report should focus on oversight of custody arrangements and protection of customer assets, and therefore, should be focused on compliance with the Financial Responsibility Rules.

The proposed amendments to Rule 17a–5 would provide that a broker-dealer could not assert compliance with the Financial Responsibility Rules, as of its most recent fiscal year-end, if it identifies one or more instances of material non-compliance.[54] Instead, the broker-dealer would need to identify and describe any instance of material non-compliance, as of its most recent fiscal year-end, in the Compliance Report.[55] Rule 17a–5 presently requires that independent public accountants include any instances of material inadequacies in their reports based on the Study.[56] The term ''material

[43] Exchange Act Section 13(b)(7) defines ''reasonable assurance'' and ''reasonable detail'' as ''such level of detail and degree of assurance as would satisfy prudent officials in the conduct of their own affairs.'' 15 U.S.C. 78m(b)(7). The Commission has long held that ''reasonableness'' is not an ''absolute standard of exactitude for corporate records.'' *See Foreign Corrupt Practices Act of 1977*, Exchange Act Release No. 17500 (Jan. 29, 1981), 46 FR 11544, 11546 (Feb. 9, 1981). These concepts differ from the concept of ''reasonable assurance'' in an audit context.

[44] The Compliance Examination is discussed below in Section II.B.2 of this release. As is discussed in Section II.B.2, the Commission does not propose the statement in the Compliance Report to be included within the scope of the Compliance Examination.

[45] *See* proposed paragraph (d)(3)(i)(B)(1) of Rule 17a–5.

[46] *See* proposed paragraph (d)(3)(i)(B)(2) of Rule 17a–5.

[47] *See* proposed paragraph (d)(3)(i)(B)(3) of Rule 17a–5.

[48] *See* proposed paragraph (d)(3)(i)(C) of Rule 17a–5.

[49] *See* Rule 15c3–1(c)(2)(iv)(B).

[50] *See* Section II.B.4 of this release for a discussion of the IA Custody Rule and the control objectives required under the IA Custody Rule.

[51] The broker-dealer is required to be in compliance with the Financial Responsibility Rules at all times. The assertions made by the broker-dealer for purposes of the Compliance Report are as of a point in time to facilitate the independent public accountant's attestation to the broker-dealer's assertions.

[52] *See* Rule 206(4)–2(a)(6).

[53] For example, the Commission is not proposing an assessment of internal control over financial reporting similar to the assessment required under Section 404 of the Sarbanes-Oxley Act for issuers.

[54] *See* proposed paragraph (d)(3)(ii) of Rule 17a–5. The Commission notes that reporting on material non-compliance is discussed, for example, in AT § 601 of the PCAOB's Interim Attestation Standards; *see PCAOB Attestation Standard § 601*.

[55] *See* proposed paragraph (d)(3)(ii) of Rule 17a–5.

[56] *See* Rule 17a–5(g).

inadequacies,'' however, is not defined in existing auditing literature. The Commission is proposing to remove the reference to ''material inadequacies'' in Rule 17a–5 and replace it, for purposes of reporting on the broker-dealer's compliance, with a reference to ''material non-compliance.'' Further, the Commission is proposing to define an instance of material non-compliance, in new paragraph (d)(3)(ii) of Rule 17a–5, as a failure by the broker-dealer to comply with any of the requirements of the Financial Responsibility Rules in all material respects. The Commission preliminarily believes that any failure by the broker-dealer to perform any of the procedures enumerated in the Financial Responsibility Rules would be an instance of non-compliance; therefore, the broker-dealer should evaluate any such failure to determine whether it is material.

When determining whether an instance of non-compliance is material, the Commission preliminarily believes that the broker-dealer should consider all relevant factors including but not limited to: (1) The nature of the compliance requirements, which may or may not be quantifiable in monetary terms; (2) the nature and frequency of non-compliance identified; and (3) qualitative considerations.[57] The Commission also preliminarily believes that some deficiencies would necessarily constitute instances of material non-compliance. For example, failing to maintain the required minimum amount of net capital as required under Rule 15c3–1, or failing to maintain the minimum deposit requirement in a special reserve bank account for the exclusive benefit of customers under Rule 15c3–3,[58] would be instances of material non-compliance. These two instances of material non-compliance would not, however, represent all possible instances of material non-compliance with respect to Rules 15c3–1 and 15c3–3.

The Commission is proposing several conforming amendments to Rule 17a–5 to incorporate the proposed use of the term ''material non-compliance.'' The Commission proposes to amend paragraph (c)(5) of Rule 17a–5, which requires broker-dealers to send Statements of Financial Condition to customers twice per year. Paragraph (c) of Rule 17a–5 provides that a broker-dealer can make these statements available through its Internet Web site in lieu of sending the statements to the customers in paper form.[59] However, paragraph (c)(5)(vi) of Rule 17a–5 prohibits broker-dealers from making the statements available online, in lieu of sending statements to customers in paper form, if the broker-dealer was required by paragraph (e) of Rule 17a–11 to give notice of a material inadequacy. The Commission is proposing to delete the reference to the term ''material inadequacy'' and amend paragraph (c)(5)(vi) of Rule 17a–5 to provide that the broker-dealer may make the customer statements available online, in lieu of sending statements to customers in paper form, provided its financial statements receive an unqualified opinion from the independent public accountant and neither the broker-dealer nor the independent public accountant identifies a material weakness or an instance of material non-compliance pursuant to proposed new paragraph (g) of Rule 17a–5, described below.

The proposed amendments to Rule 17a–5 also would provide that a broker-dealer could not assert that its internal control over compliance with the Financial Responsibility Rules during the fiscal year was effective if one or more material weaknesses exist with respect to internal control over compliance.[60] The Commission preliminarily believes that a broker-dealer's internal control over compliance with the Financial Responsibility Rules would not be effective if a material weakness exists, given the meaning of the term ''material weakness'' as described below. Consequently, if one or more material weaknesses exist, the broker-dealer would need to describe in the Compliance Report each material weakness identified during the fiscal year.[61] This would provide the Commission with notice of the nature of any weakness and allow the Commission and DEA examination staff to ascertain how the broker-dealer addressed each weakness.

The Commission is proposing to define the term ''material weakness'' in paragraph (d)(3)(iii) of Rule 17a–5 as a deficiency, or a combination of deficiencies, in internal control over compliance with the Financial Responsibility Rules, such that there is a reasonable possibility that material non-compliance with those provisions will not be prevented or detected on a timely basis. For purposes of this paragraph, a deficiency in internal control over compliance would exist when the design or operation of a control does not allow the broker-dealer, in the normal course of performing its assigned functions, to prevent or detect non-compliance with the Financial Responsibility Rules on a timely basis.[62] The Commission proposes these definitions, in part, because they are based on previous Commission action.[63]

The Commission preliminarily believes that, for purposes of the proposed definition of the term ''material weakness,'' there is a reasonable possibility of an event occurring if it is ''probable'' or ''reasonably possible.'' An event is ''probable'' if the future event or events are likely to occur.[64] An event is ''reasonably possible'' if the chance of the future event or events occurring is more than remote, but less than likely.[65]

The Commission preliminarily believes that an instance of non-compliance that the broker-dealer has determined does not constitute material non-compliance may nonetheless be indicative of a control deficiency that constitutes a material weakness. The broker-dealer's evaluation of whether an instance of non-compliance is material would be based upon the consideration of the specifically identified instance of non-compliance; whereas the broker-

[57] *See, e.g.,* paragraph 36 of *PCAOB Attestation Standard § 601.*

[58] *See* Section 15(c)(3) of the Exchange Act, which provides that no broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security ''in contravention of such rules and regulations as the Commission shall prescribe * * * to provide safeguards with respect to the financial responsibility and related practices of the brokers and dealers including, but not limited to the acceptable custody and use of customers' securities and the carrying and use of customers' deposits or credit balances.'' 15 U.S.C. 78o(c)(3)(A).

[59] Rule 17a–5 requires that the statements be sent to its customers, except if the activities of the broker-dealer are limited to certain enumerated activities or except as provided in paragraph (c)(5), which permits the broker-dealer to instead make the statements available online if certain requirements are met. *See* Rule 17a–5(c)(1) and (c)(5).

[60] *See* proposed paragraph (d)(3)(iii) of Rule 17a–5.

[61] *See* proposed paragraph (d)(3)(i)(C) of Rule 17a–5.

[62] *See* proposed paragraph (d)(3)(iii) of Rule 17a–5.

[63] *See Amendments to Rules Regarding Management's Report on Internal Control Over Financial Reporting,* Exchange Act Release No. 55928 (Jun. 27, 2007), 72 FR 35310 (Jun. 27, 2007). *See also* Exchange Act Rule 12b–2 (17 CFR 240.12b–2) and Rule 1–02 of Regulation S–X (17 CFR 210.1–02), which state that a ''material weakness is a deficiency, or a combination of deficiencies, in internal controls over financial reporting such that there is a reasonable possibility that a material misstatement of the registrant's annual or interim financial statements will not be prevented or detected on a timely basis.''

[64] *See Commission Guidance Regarding Management's Report on Internal Control Over Financial Reporting Under Section 13(a) or 15(d) of the Securities Exchange Act of 1934,* Securities Act of 1933 Release No. 8810 (Jun. 20, 2007), 72 FR 35324 (Jun. 27, 2007), at note 47 and corresponding text.

[65] *Id.*

dealer's conclusions with respect to whether the related control deficiency or deficiencies are material weaknesses would relate to whether it is reasonably possible that the control deficiency or deficiencies could result in material non-compliance. This evaluation would require the broker-dealer to consider not only the specifically identified instance of non-compliance but also any additional possible effect that the control deficiency or deficiencies could have on compliance.

The Commission generally requests comment on the proposed amendments associated with the proposed Compliance Report. In addition, the Commission requests comment on the following questions:

- Should other rules be included in the scope of the Compliance Report, in addition to, or as an alternative to, the Financial Responsibility Rules? If so, which rules? Commenters should explain their choices.
- Should the proposed Compliance Report cover Regulation T?
- Are the proposed assertions appropriate? Are there other assertions that the broker-dealer should make regarding either compliance or internal control over compliance? Why would any additional assertions result in improved reporting to the Commission?
- Would all of the proposed assertions achieve the Commission's goals to, among other things, strengthen broker-dealers' compliance with the Financial Responsibility Rules, and, in turn, improve the financial and operational condition of broker-dealers and the safeguarding of investor assets?
- What additional steps would a broker-dealer likely have to take in order to comply with the proposed requirements and make each additional proposed assertion?
- Are there any practical issues the Commission should consider with respect to the proposal to assert compliance with the Financial Responsibility Rules?
- Is the proposed definition of the term ''material non-compliance'' understandable in the context of broker-dealer audits? What alternative definition could be used? Why would any alternative definition be more appropriate?
- Are the examples of material non-compliance described above appropriate? What other examples of material non-compliance should be specifically identified, if any? Should the Commission include examples of material non-compliance in the text of the rule?
- Is the proposed definition of the term ''material weakness'' understandable in the context of Rule 17a–5? What alternative definition could be used? Why would any alternative definition be more appropriate?
- Is the proposed definition of ''deficiency in internal control over compliance'' understandable in the context of Rule 17a–5? What alternative definition could be used? Why would any alternative definition be more appropriate?

2. Compliance Examination and Examination Report

The Commission proposes to require each carrying broker-dealer to engage an independent public accountant to examine the broker-dealer's assertions in the Compliance Report (''Compliance Examination'') and issue an Examination Report. Under the proposal, following the Compliance Examination, carrying broker-dealers would be required to file the resulting Examination Report of the independent public accountant with the Commission. This Compliance Examination and Examination Report would replace the existing practice that results in the independent public accountant issuing a report based on a Study.

The Commission proposes to amend paragraph (g) of Rule 17a–5 and rename it ''Engagement of independent public accountant.'' As proposed, paragraph (g) would provide that a broker-dealer subject to the requirement to file annual reports pursuant to paragraph (d) would need to engage an independent public accountant to examine or review, as applicable, the reports that are required under that provision. Each carrying broker-dealer would be required to engage its independent public accountant to prepare the Examination Report based on an examination of the assertions contained in the Compliance Report required to be filed pursuant to paragraph (d)(3) of Rule 17a–5.[66] The Examination Report would be required to be prepared in accordance with PCAOB standards.[67]

The proposed changes would not affect existing obligations of broker-dealers or their accountants with respect to financial reporting.[68] Further, the assertions in the Compliance Report would not cover the effectiveness of internal control over financial reporting. Therefore, the independent public accountant would *not* be required in the Examination Report to opine on the effectiveness of the broker-dealer's internal control over financial reporting. However, the accountant's existing obligation to gain an understanding and perform appropriate procedures relative to the broker-dealer's internal control over financial reporting, as a necessary part of the independent public accountant's financial statement audit, would remain unchanged.[69] Further, the Examination Report would pertain solely to the assertions in the Compliance Report and *not* to the broker-dealer's process for arriving at the assertions. Because the report of the independent public accountant required by proposed paragraph (g) of Rule 17a–5 would require the accountant to perform its own independent examination of the related controls and procedures, the Commission preliminarily does not believe that it is necessary for the independent public accountant to provide an opinion with regard to the process that the broker-dealer used to arrive at its conclusions.

The Commission preliminarily intends that the proposed amendments and requirements pertaining to the Examination Report would result in the following fundamental changes to broker-dealer audits. First, broker-dealer examinations would be performed in accordance with PCAOB standards, rather than GAAS, consistent with the Dodd-Frank Act.[70] Second, in connection with their engagement, independent public accountants would be required to provide an opinion concerning the broker-dealer's compliance, and internal control over compliance, with key regulatory requirements. Further, the independent public accountant's report, as it applies to internal control over compliance, would cover the full fiscal year instead of relating to the effectiveness of controls only at year-end. Compliance with the Account Statement Rules would be included as part of the review. These changes are intended to encourage, in connection with broker-dealer audits, greater focus by the auditor on internal control over

[66] *See* proposed paragraph (g)(2)(i) of Rule 17a–5.

[67] *Id.* The Commission preliminarily believes that the independent public accountant's examination would be conducted pursuant to existing *PCAOB Attestation Standards* or other standards established by the PCAOB for such purposes.

[68] The Commission is not proposing to change existing requirements with regard to the broker-dealer's audited financial statements, the computation of required and actual net capital under Rule 15c3–1, or, for carrying broker-dealers, the computation of the customer reserve requirement under Rule 15c3–3. The computation of net capital and the computation of the customer reserve requirement would continue to be subject to audit procedures by the accountant.

[69] *See PCAOB Auditing Standard No. 12, Identifying and Assessing Risks of Material Misstatements* for audits of fiscal years beginning on or after December 15, 2010.

[70] *See* Section 982 of the Dodd-Frank Act.

compliance as it pertains to key regulatory requirements, including, in particular, greater focus on broker-dealer custody practices under the Financial Responsibility Rules. In addition, the Commission intends that the amendments, as they pertain to custody of customer funds and securities, will better align the broker-dealer custody requirements with certain requirements in the IA Custody Rule.[71]

The Commission generally requests comment on the proposed amendments and, in particular, the Compliance Examination and Examination Report provisions. In addition, the Commission requests comment on the following questions:

- Should the Compliance Examination also cover a broker-dealer's statement in the Compliance Report as to whether the broker-dealer has established and maintained a system of internal control to provide the broker-dealer with reasonable assurance that any instances of material non-compliance with the Financial Responsibility Rules will be prevented or detected on a timely basis? If so, why? If not, why not?
- Should the independent public accountant provide an opinion with regard to the process that the broker-dealer used to arrive at its assertions?

3. Notification Requirements

The proposed amendments would require that the independent public accountant notify the Commission within one business day if the accountant determines that an instance of ''material non-compliance'' exists with respect to any of the Financial Responsibility Rules during the course of the examination.[72] This notice requirement would be triggered at the time that the independent public accountant determines that material non-compliance exists, not at the time of completion of the examination. Alerting the Commission to a broker-dealer's material non-compliance with the Financial Responsibility Rules on an expedited basis could enable the Commission to react to the non-compliance more quickly for the protection of investors and others. Currently, Rule 17a–5 requires notification in the event the independent public accountant determines the existence of a ''material inadequacy.'' [73] Specifically, the independent public accountant must call the material inadequacy to the attention of the broker-dealer's chief financial officer, who is then obligated to notify the Commission and the broker-dealer's DEA.

The Commission proposes modifying the notification requirement to replace the term ''material inadequacy'' with ''material non-compliance'' and to require the independent public accountant to notify the Commission directly. Specifically, the Commission proposes to amend paragraph (h) of Rule 17a–5 to provide that upon determining the existence of any material non-compliance during the course of preparing the independent public accountant's reports, the independent public accountant must notify the Commission within one business day of the determination by means of a facsimile transmission or electronic mail, followed by first class mail, and must provide a copy of the notification in the same manner to the principal office of the DEA for the broker-dealer. The Commission preliminarily believes that this change would provide more effective and timely notice of broker-dealer compliance deficiencies, and, as noted above, enable the Commission to react more quickly to protect customers and others adversely affected by those deficiencies. It also would be consistent with current notification requirements applicable to independent public accountants examining investment advisers pursuant to the IA Custody Rule.[74]

The Commission is proposing a conforming amendment to paragraph (e) of Rule 17a–11, which now requires that broker-dealers provide notice to the Commission of the existence of any material inadequacy. The Commission also is proposing two technical amendments to correct certain references to Rule 17a–12 in paragraph (e) of Rule 17a–11.[75] Further, the Commission is proposing to delete paragraph (h)(1) of Rule 17a–5, which relates to the extent and timing of broker-dealer audits, and which would now be superseded by paragraphs (d) and (g).[76] Finally, the Commission is proposing to delete paragraph (j) of Rule 17a–5, which currently requires the filing of an independent public accountant's report describing any material inadequacies concurrent with the annual audit report. This requirement likewise would be superseded by the proposed amendments.

The Commission generally requests comment on the proposed amendments and the notification provisions. In addition, the Commission requests comment on the following questions:

- Would an alternative means to notify the Commission of an instance of material non-compliance be appropriate? If so, what alternative and why?

4. Comparison to the IA Custody Rule

The IA Custody Rule provides that a registered investment adviser is prohibited from having custody of client funds or securities unless a qualified custodian maintains those funds and securities: (1) In a separate account for each client under that client's name; or (2) in accounts that contain only the investment adviser's clients' funds and securities, under the investment adviser's name as agent or trustee for the clients.[77] Under the IA Custody Rule, only banks, certain savings associations, registered broker-dealers, registered futures commission merchants (''FCMs''),[78] and certain foreign financial institutions may act as qualified custodians.[79]

In addition, when an investment adviser or its related person maintains client funds and securities as qualified custodian in connection with advisory services provided to clients, the adviser annually must obtain, or receive from its related person, a written internal control report prepared by an independent public accountant registered with, and subject to regular inspection by, the PCAOB. This report must be supported by the independent public accountant's examination of the qualified custodian's custody controls.[80] The Commission has

[71] *See* Rule 206(4)–2(a)(6)(ii)(A).

[72] *See* proposed paragraph (h) of Rule 17a–5.

[73] *See* Rule 17a–5(h)(2). ''Material inadequacy'' is not a defined term in existing auditing literature.

[74] *See* Rule 206(4)–2(a)(4)(ii).

[75] Specifically, the Commission proposes to amend the references for Rule 17a–12(f)(2) and Rule 17a–12(e)(2) to be Rule 17a–12(i)(2) and Rule 17a–12(h)(2), respectively.

[76] As discussed above, the broker-dealer must assert that it is in compliance in all material respects with the Financial Responsibility Rules as of the fiscal year-end and that its internal controls over compliance were effective throughout the fiscal year. *See* proposed paragraph (d)(3) of Rule 17a–5.

[77] *See* Rule 206(4)–2(a)(1)(i)–(ii).

[78] FCMs are individuals, associations, partnerships, corporations, and trusts that solicit or accept orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any exchange and that accept payment from or extend credit to those whose orders are accepted. *See* the Commodity Futures Trading Commission Glossary available at *http://www.cftc.gov.*

[79] For the complete definition of the term ''qualified custodian,'' *see infra* note 154.

[80] The IA Custody Rule provides that the internal control report must include an opinion of an independent public accountant as to whether controls have been placed in operation as of a specific date, and are suitably designed and are operating effectively to meet control objectives relating to custodial services, including the safeguarding of funds and securities held by either the adviser or its related person on behalf of advisory clients, during the year. The rule also

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issued guidance identifying the control objectives that would need to be included in the scope of the examination.[81]

The control objectives identified in the Commission's guidance on the IA Custody Rule are more general than the specific operational requirements in the Financial Responsibility Rules. These general control objectives are appropriate for purposes of the IA Custody Rule, since this approach allows the different types of qualified custodians (banks, certain savings associations, registered broker-dealers, registered FCMs, and certain foreign financial institutions) to establish controls and procedures that meet the identified control objectives in a manner that reflects differences in business models, regulatory requirements, and other factors. For example, the manner in which an FCM maintains custody of assets[82] differs from that of a bank, and the different entities are subject to different regulations governing their custodial functions.

Broker-dealers that maintain custody of customer funds and securities are subject to specific operational requirements in the Financial Responsibility Rules with respect to handling and accounting for customer assets.[83] The Commission preliminarily believes that the operational requirements of those rules are consistent with the control objectives outlined in the Commission's guidance on the IA Custody Rule. Consequently, the Commission has preliminarily determined that, if the proposed rule amendments are adopted, a broker-dealer subject to the proposed Compliance Examination that also acts as a qualified custodian for itself as an investment adviser or for its related investment advisers under the IA Custody Rule would be able to use the Examination Report to satisfy the reporting requirements under Rule 17a–5 and the IA Custody Rule's internal control report requirement.

The Commission generally requests comment on the comparability of the scope of the internal control report under the IA Custody Rule and the scope of the proposed Compliance Examination under the proposed amendments to Rule 17a–5. In addition, the Commission requests comment on the following question:

- Should the Commission add additional elements to the scope of the proposed Examination Report? Commenters should identify any such elements and discuss the feasibility, benefits and costs of including them as elements in the scope of the proposed Compliance Examination.

5. Proposed Exemption Report

As discussed above, broker-dealers claiming an exemption from Rule 15c3–3 (*i.e.,* non-carrying broker-dealers) are required to have their independent public accountants ''ascertain that the conditions of the exemption were being complied with as of the examination date and that no facts came to the [independent public accountant's] attention to indicate that the exemption had not been complied with during the period since [the independent public accountant's] last examination.''[84] The Commission proposes to amend this requirement by requiring a non-carrying broker-dealer claiming an exemption from Rule 15c3–3 to file a new Exemption Report.[85] This Exemption Report would replace the existing requirement described above.

Specifically, under new paragraph (d)(4) of Rule 17a–5, the Exemption Report would require an assertion by a broker-dealer that it is exempt from the provisions of Rule 15c3–3 because it meets one or more of the conditions set forth in paragraph (k) of Rule 15c3–3 with respect to all of its business activities.[86] In addition, the non-carrying broker-dealer would be required to engage an independent public accountant to review the assertion in the Exemption Report and prepare a report based on that review and in accordance with standards of the PCAOB.[87] If the independent public accountant is aware of any material modifications[88] that should be made to the assertion contained in the Exemption Report, the independent public accountant would be required to disclose them in its report. The Commission preliminarily believes that an example of a discovery that would necessitate a material modification would be a discovery that the broker-dealer failed to promptly forward any customer securities it received.[89]

The Commission preliminarily believes that the independent public accountant would be able to obtain the moderate level of assurance contemplated by the required review[90] through a combination of procedures that the accountant would perform in connection with the financial audit currently required under Rule 17a–5[91] and certain inquiries and other procedures targeted specifically to the exemption asserted by the broker-dealer.

The Commission generally requests comment on the proposed Exemption Report. In addition, the Commission requests comment on the following questions:

requires that the accountant ''verify that the funds and securities are reconciled to a custodian other than [the adviser or its] related person.'' The required controls are not enumerated in the rule, however.

[81] *See Commission Guidance Regarding Independent Public Accountant Engagements Performed Pursuant to Rule 206(4)–2 Under the Investment Advisers Act of 1940,* Advisers Act Release No. 2969 (Dec. 30, 2009), 75 FR 1942 (Jan. 11, 2010). The Commission guidance on the IA Custody Rule provided the following specified objectives: (1) Documentation for the opening and modification of client accounts is received, authenticated, and established completely, accurately, and timely on the applicable system; (2) client transactions, including contributions and withdrawals, are authorized and processed in a complete, accurate, and timely manner; (3) trades are properly authorized, settled, and recorded completely, accurately, and timely in the client account; (4) new securities and changes to securities are authorized and established in a complete, accurate and timely manner; (5) securities income and corporate action transactions are processed to client accounts in a complete, accurate, and timely manner; (6) physical securities are safeguarded from loss or misappropriation; (7) cash and security positions are reconciled completely, accurately and on a timely basis between the custodian and depositories; and (8) account statements reflecting cash and security positions are provided to clients in a complete, accurate and timely manner.

[82] *See* section 4d(a) and (b) of the Commodity Exchange Act (7 U.S.C. 4d); *see also* 17 CFR 1.20 to 1.30.

[83] While Rule 15c3–1 prescribes broker-dealer net capital requirements, it also contains provisions relating to custody. For example, a broker-dealer must take net capital charges for short security differences unresolved after specifically enumerated timeframes. *See* Rule 15c3–1(c)(2)(v)(A).

[84] *See* Rule 17a–5(g)(2).

[85] A non-carrying broker-dealer would file the Exemption Report and corresponding report prepared by its independent public accountant in lieu of the Compliance Report and Examination Report. The Commission notes, however, that under the IA Custody Rule, a non-carrying or ''introducing'' broker-dealer may be a ''qualified custodian.'' In this case, in order to receive an internal control report that would satisfy the IA Custody Rule, the non-carrying broker-dealer would have to be separately examined by an independent public accountant for that purpose.

[86] *See* Rule 15c3–3(k), which sets forth the exemptions to Rule 15c3–3.

[87] *See* proposed paragraph (g)(2)(ii) of Rule 17a–5.

[88] *See* paragraph 90 of *PCAOB Attestation Standard § 101.*

[89] *See* Rule 15c3–3(k)(2)(ii), which provides that an introducing broker-dealer is exempt from the requirements of Rule 15c3–3 if the introducing broker-dealer ''promptly transmits all customer funds and securities to the clearing broker or dealer which carries all of the accounts of such customers * * *''

[90] *See* paragraph 55 of *PCAOB Attestation Standard § 101.*

[91] *See* Rule 17a–5(d). As noted previously, the Commission is not proposing to change the requirement that broker-dealers file annual audited financial statements. Therefore, the Commission preliminarily believes that the independent public accountant can leverage the work related to the financial audit in the course of undertaking its review of the broker-dealer's assertion with respect to the claimed exemption from Rule 15c3–3.

• Are there other types of broker-dealers that would not qualify to file an Exemption Report, but, based on the limited scope of their businesses, should be allowed to file a more limited report than the Compliance Report? If so, please identify the types of broker-dealers and indicate why they should not be required to file Compliance Reports.

• What additional processes and controls might a broker-dealer put in place in order to comply with the new requirements relating to the Exemption Report and to accommodate a review of the report by an independent public accountant?

• Should the Commission require that the assertion made by the broker-dealer with respect to the exemption from Rule 15c3–3 be examined by the accountant (*i.e.,* the independent public accountant issues an opinion based on obtaining reasonable assurance) as opposed to being reviewed (*i.e.,* the independent public accountant issues a report based on obtaining a moderate level of assurance)? Commenters should discuss the feasibility, benefits and costs of such a requirement.

• What additional costs and burdens would a non-carrying broker-dealer incur under the proposal requiring an independent public accountant to review the broker-dealer's claim that it qualifies for an exemption from Rule 15c3–3?

6. Change in Applicable Audit Standards

The Commission is proposing to require that the audit of the Financial Report, the examination of the Compliance Report, and the review of the Exemption Report be performed pursuant to standards established by the PCAOB. The Dodd-Frank Act provided authority to the PCAOB to establish, subject to Commission approval, auditing and related attestation, quality control, ethics, and independence standards to be used by registered public accounting firms with respect to the preparation and issuance of audit reports to be included in broker-dealer filings with the Commission pursuant to Section 17(e) of the Exchange Act.[92] To enable the PCAOB to effectively implement the authority provided to it by the Dodd-Frank Act, the Commission is proposing to amend paragraph (g) of Rule 17a–5 to provide that the independent public accountants' reports required under the rule must be prepared in accordance with the standards of the PCAOB.[93]

In September 2010, the Commission issued interpretive guidance concerning the auditing standards that should be applied by broker-dealer accountants with respect to the current requirements in Rule 17a–5.[94] That guidance stated that references in Commission rules, staff guidance, and in the federal securities laws to GAAS or to specific standards under GAAS, as they relate to non-issuer broker-dealers, should continue to be understood to mean auditing and attestation standards generally accepted in the U.S., in addition to any applicable rules of the Commission.[95]

Because PCAOB auditing standards differ from existing standards governing broker-dealer audits, the proposed change to paragraph (g) would result in a change in the procedures accountants would have to undertake as part of their engagement for audits of broker-dealers. For example, certain audit documentation requirements contained in PCAOB Auditing Standard 3 (*Audit Documentation*) and the engagement quality review requirement in PCAOB Auditing Standard 7 (*Engagement Quality Review*) are not required by GAAS.

The Commission generally requests comment on the proposed change to applicable auditing standards. In addition, the Commission requests comment on the following questions:

• Are there implications to the differences that were identified that the Commission should consider? Are there other differences that exist that would have significant implications to the audits of broker-dealers?

• Should the requirement to be audited in accordance with PCAOB standards be phased in for non-carrying broker-dealers? Why or why not? If so, what time-table should the Commission adopt?

7. Compliance Date and Transition Period

The Commission is proposing to make the Annual Reporting Amendments effective for annual reports filed with the Commission for fiscal years ending on or after December 15, 2011. The Commission is proposing this date to include fiscal years that end on or after December 31, 2011. The Commission preliminarily intends to implement a transition period for carrying broker-dealers required to file Compliance Reports with the Commission with fiscal years ending on or after December 15, 2011 but before September 15, 2012. During this transition period, a carrying broker-dealer's assertion in its Compliance Report as to whether internal control over compliance with the Financial Responsibility Rules was effective would be a point-in-time assertion as of the date of the Compliance Report, rather than covering the broker-dealer's entire fiscal year. The Commission preliminarily believes that the compliance date and transition period set forth above will provide adequate time for broker-dealers to prepare the additional required reports and for independent public accountants to plan and perform the Compliance Examination procedures.

The Commission generally requests comment on the proposed compliance date and transition period. In addition, the Commission requests comment on the following questions:

• Will the proposed compliance date and transition period for the Annual Reporting Amendments provide sufficient time for broker-dealers to prepare the additional reports and for independent public accountants to comply with PCAOB standards? Will it provide sufficient time to plan and perform Compliance Examination procedures? If not, what are the impediments and what would be a more appropriate time frame for implementation?

8. General Solicitation of Comments

The Commission generally requests comment on all aspects of these proposed amendments. In addition, the Commission requests comment on the following questions related to the proposal:

• Certain broker-dealers conducting a limited and specific type of business are not presently required to file an annual audit report.[96] Should the Commission

[92] *See* Section II.A. of this release for a discussion of the PCAOB's new oversight authority under the Dodd-Frank Act.

[93] *See* proposed paragraph (g)(1) of Rule 17a–5.

[94] *See Commission Guidance Regarding Auditing, Attestation, and Related Professional Practice Standards Related to Brokers and Dealers,* Exchange Act Release No. 62991 (Sep. 24, 2010), 75 FR 60616 (Oct. 1, 2010). The Commission also noted in its guidance that it intended to revisit this interpretation in connection with this rulemaking.

[95] *Id.* at 60617.

[96] *See* Rule 17a–5(e)(1)(A) and (B), which provide limited exemptions to broker-dealers from having their financial statements and supporting statements audited by an independent public accountant, so long as specified factors are met (*e.g.,* if the securities business of the broker-dealer has been limited to acting as a broker for an issuer in soliciting subscriptions for securities of such issuer and the broker has promptly transmitted to such issuer all funds and promptly delivered to the subscriber all securities received in connection therewith, and the broker has not otherwise held funds or securities for or owed money or securities to customers, then the broker-dealer does not have to have the financial statements audited by an

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require all broker-dealers to file an annual audit of their financial statements and supporting schedules? Should any of the proposed amendments to Rule 17a–5 applicable to carrying firms be applied to other specific types of broker-dealers? If so, which types of firms and why? What impact would extension of the audit requirement or the proposed amendments relating to non-carrying firms have on small businesses?

*C. Proposed Amendment to the Filing of SIPC Reports*

1. Existing Requirement

SIPC is a non-profit, membership corporation created under the Securities Investor Protection Act of 1970 (''SIPA'').[97] SIPC is designed to protect the custodial function of a broker-dealer in the event it fails financially. For example, SIPC can fund the liquidation of a broker-dealer that cannot wind itself down in an orderly self-liquidation.[98] As part of the liquidation, SIPC can advance up to $500,000 per customer to satisfy claims for securities and cash.[99] However, of the $500,000, only $250,000 can be used to satisfy claims for cash.[100] In order to pay for these liquidations and advances, SIPC maintains the SIPC Fund.[101] The SIPC Fund is established and maintained by collecting assessments from broker-dealers that are required to be members of SIPC.[102] Generally all broker-dealers registered with the Commission under Section 15(b) of the Exchange Act [103] are required to be members of SIPC.[104] However, broker-dealers engaged exclusively in the distribution of mutual fund shares, the sale of variable annuities, the insurance business, the furnishing of investment advice to investment companies or insurance company separate accounts, or whose principal business is conducted outside the U.S. are not required to be members of SIPC.[105]

Under SIPA, SIPC may assess each of its member broker-dealers a fee determined as a percentage of the firm's revenues.[106] There are required percentage assessments that must be made when the SIPC Fund falls below deposited amounts or such other amount as the Commission may determine in the public interest (''the SIPC Fund Target Level'').[107] SIPC can assess broker-dealers a fee based on a greater percentage of their revenues when the SIPC Fund falls below the SIPC Fund Target Level.[108]

In order to assist in the collection of these assessments, SIPC has promulgated two forms that broker-dealers must file with SIPC, as applicable: Form SIPC–3 and Form SIPC–7. Form SIPC–3 is required when a broker-dealer is claiming an exemption from SIPC membership (*i.e.,* when the broker-dealer does not have to pay an assessment). Such a broker-dealer must file Form SIPC–3 each year certifying that the broker-dealer remained qualified for the exemption during the prior year. Form SIPC–7 elicits information from a broker-dealer that is a SIPC member about the broker-dealer's sources of revenue attributable to its securities business. Every broker-dealer that is a member of SIPC must file this form annually.

When SIPC raises SIPC Fund assessments above the minimum assessment provided for in Section 4(d)(1)(c) of SIPA,[109] Rule 17a–5(e)(4) requires a broker-dealer that files Form SIPC–3 or Form SIPC–7 to also file with the Commission, the broker-dealer's DEA, and SIPC a supplemental report (''Supplemental Report'') covered by an opinion of the broker-dealer's independent public accountant that covers the information in the respective form. Among other things, the Supplemental Report also is required to: (1) Include a statement that the broker-dealer qualified for an exclusion from SIPC membership under SIPA during the prior year if exclusion from membership is claimed; and (2) include an independent public accountant's report stating that ''in the accountant's opinion * * * [the broker-dealer's] claim for exclusion from membership was consistent with income reported'' or ''the assessments were determined fairly in accordance with applicable instructions and forms'' (as applicable).[110]

2. Proposed Amendment

Because Forms SIPC–3 and SIPC–7 are used solely by SIPC for purposes of levying its assessments, the Commission preliminarily believes that Supplemental Reports relating to these forms would be more appropriately filed with SIPC and that SIPC, rather than the Commission, should, by rule, prescribe the form of the Supplemental Reports. This would provide SIPC with the discretion to determine the need for and form of a Supplemental Report and the nature and extent of the review by an independent public accountant, if any. The Commission would continue to have a role in establishing the requirements for a Supplemental Report because the Commission must approve SIPC rule proposals.

The Commission proposes to amend Rule 17a–5 to require that broker-dealers continue to file a Supplemental Report with the Commission, the broker-dealer's DEA, and SIPC until the Commission considers and determines to approve any such rule adopted by SIPC. Because, for an interim period, broker-dealers would be required to continue to file their Supplemental Reports with the Commission, the Commission is proposing to update the rule text to conform it to existing professional standards and industry practices. Specifically, the Commission is proposing to amend Rule 17a–5(e)(4) to eliminate the ambiguity that stems from the differing auditing terms used therein by removing all references to ''review'' and ''opinion'' where those terms are used in Rule 17a–5(e)(4).[111] In their place, the Commission proposes to amend paragraph (e)(4) of Rule 17a–5 to provide that Supplemental Reports shall include the independent public accountant's report prepared pursuant to agreed-upon procedures based on the performance of the procedures outlined in current paragraph (e)(4)(iii) of Rule 17a–5, which the Commission is not proposing to change.[112]

The Commission generally requests comment on all aspects of these proposed amendments. In addition, the Commission requests comment on the following questions related to the proposal:

independent public accountant). *See* Rule 17a–5(e)(1)(A).

[97] 15 U.S.C. 78 *et seq.*

[98] 15 U.S.C. 78eee(a)(3).

[99] 15 U.S.C. 78fff–3(a).

[100] 15 U.S.C. 78fff–3(d).

[101] 15 U.S.C. 78ddd.

[102] 15 U.S.C. 78ddd(c).

[103] 15 U.S.C. 78o(b).

[104] 15 U.S.C. 78ccc(a)(2).

[105] 15 U.S.C. 78ccc(a)(2)(A)(i)–(iii).

[106] *See* 15 U.S.C. 78ddd(c)(2). *See also* SIPC Bylaws, Article 6.

[107] Prior to the Lehman Brothers Inc. and Bernard L. Madoff Investment Securities LLC SIPA liquidations, the SIPC Fund was maintained at a target level of not less than $1 billion. Currently, the SIPC Fund Target Level is $2.5 billion. *See* SIPC Bylaws, Article 6, Section 1(a)(1)(A) (specifying the $2.5 billion SIPC Fund Target Level). *See also* Securities Investor Protection Corporation Modernization Task Force, Adequacy of the SIPC Fund (Jun. 2010), at 5 (describing the increase in the SIPC Fund Target Level from $1 billion to $2.5 billion).

[108] SIPC Bylaws, Article 6, Section 1(a).

[109] 15 U.S.C. 78ddd(d)(1)(c).

[110] *See* Rule 17a–5(e)(4).

[111] *See* Rule 17a–5(e)(4), Rule 17a–5(e)(4)(iii), and Rule 17a–5(e)(4)(iii)(F).

[112] *See* Rule 17a–5(e)(4)(iii). The Commission notes that as part of the proposed amendments to this paragraph, the procedures outlined in current paragraph (e)(4)(iii) of Rule 17a–5 would remain, but would be renumbered to be included in paragraph (e)(4)(ii)(C).

• Should the Commission and/or a broker-dealer's DEA continue to receive SIPC Reports relating to assessments, and, if so, for what reasons?

• Should the Commission continue to require that the broker-dealer engage an independent public accountant to perform some level of work with respect to the information contained in the SIPC Reports? If so, should the Commission also specify what type of engagement the broker-dealer must have with its independent public accountant with respect to the information contained in the SIPC Reports? For example, should the Commission require a broker-dealer to engage its independent public accountant to perform a review of the information in the SIPC Reports pursuant to PCAOB standards? Commenters should discuss the feasibility, benefits, and costs of such requirements.

• Should the Commission impose any requirements or limitations on SIPC with respect to its ability to propose rules to have SIPC Reports filed solely with SIPC? If so, what requirements and/or limitations?

## III. The Proposed Access to Audit Documentation Amendments

Pursuant to Section 17(b) of the Exchange Act, broker-dealers are subject to routine inspection and examination by Commission and DEA staff. To facilitate the examination of a broker-dealer that clears transactions or carries customer accounts (a ''clearing broker-dealer''), the Commission is proposing that each clearing broker-dealer be required to consent to permitting its independent public accountant to make available to Commission and DEA examination staff the audit documentation associated with its annual audit reports required under Rule 17a–5 and to discuss findings relating to the audit reports with Commission and DEA examination staff.[113] The Commission preliminarily believes that it is appropriate to limit these requirements to broker-dealers that maintain customer funds and securities or self-custody their proprietary securities because these firms generally have more complex business operations than other broker-dealers. Consequently, having access to audit documentation and the independent public accountants that audit these broker-dealers would be of greater assistance to examiners in performing examinations of these firms, as compared to firms with simpler business models.

The Commission is *not* proposing that the Commission or DEA staff would use any audit documentation they may request, or discuss findings related to the audit reports, for purposes of examining independent public accountants; the PCAOB carries out that function. Rather, the Commission preliminarily intends that any such requests would be made exclusively in connection with conducting a regulatory examination of the clearing broker-dealer.

The Commission preliminarily intends that examiners generally would use any information obtained from audit documentation and discussions with the independent public accountants to establish the scope and focus of a pending examination of a clearing broker-dealer. The Commission preliminarily believes that, in cases in which such information is obtained, it would enhance and improve the efficiency and effectiveness of Commission and DEA examinations of clearing broker-dealers by providing examiners with access to additional relevant information to plan their examinations. This additional relevant information would enable representatives of the Commission and a clearing broker-dealer's DEA to better focus and tailor their examination efforts relating to asset verification and other matters pertinent to customer protection. For example, where an independent public accountant has performed extensive testing of a carrying broker-dealer's custody of funds and securities by confirming holdings at sub-custodians, examiners could focus their efforts on other matters that had not been the subject of prior testing and review.

In connection with these proposals, the Commission is proposing to amend paragraph (f)(2) of Rule 17a–5, which contains the requirement for broker-dealers to file notices with the Commission and their DEAs to designate their independent public accountants, to require that the broker-dealer represent that the engagement of the independent public accountant by the broker-dealer meets the required undertakings of amended paragraph (g).[114] Currently, paragraph (f)(2) of Rule 17a–5 provides that a broker-dealer required to file an annual audit report must file a statement with the Commission and its DEA that it has designated an independent public accountant responsible for performing the annual audit of the broker-dealer, which is called ''Notice pursuant to Rule 17a–5(f)(2)'' (''Notice'').[115] Paragraph (f)(2)(iii) of Rule 17a–5 prescribes the items that are required to be included in the Notice: the name, address, telephone number and registration number of the broker-dealer; the name, address and telephone number of the accounting firm; and the audit date of the broker-dealer for the year covered by the agreement.[116]

The proposed amendments to Rule 17a–5 would require: (1) That the Notice include a statement as to whether the broker-dealer's engagement letter with its independent public accountant is for a single year or is of a continuing nature;[117] (2) a representation that the engagement of the independent public accountant by the broker-dealer meets the required undertakings of paragraph (g);[118] (3) in the case of a clearing broker-dealer, a representation that the broker-dealer agrees to allow representatives of the Commission or the DEA, if requested for purposes of an examination of the broker-dealer, to review the audit documentation associated with the reports of the independent public accountant prepared pursuant to paragraph (g) of Rule 17a–5;[119] and (4) in the case of a clearing broker-dealer, a representation that the broker-dealer agrees to permit the independent public accountant to discuss with representatives of the Commission and the DEA of the broker-dealer, if requested for purposes of an examination of the broker-dealer, the findings associated with the reports of the independent public accountant prepared pursuant to paragraph (g) of Rule 17a–5.[120] Subparagraph (f)(2)(iii) of Rule 17a–5 would provide that a non-clearing broker-dealer is not required to include the third and fourth representations above.[121]

[113] The sole obligation of the broker-dealer under this proposed requirement would be to provide the proposed consent in the manner discussed below. The Commission is not addressing in this release any rights, obligations, or responsibilities of a broker-dealer's independent public accountant with respect to its work papers.

[114] *See* proposed paragraph (f)(2)(ii)(E) of Rule 17a–5.

[115] *See* Rule 17a–5(f)(2).

[116] *See* Rule 17a–5(f)(2)(iii)(A) through (C).

[117] *See* proposed paragraph (f)(2)(ii)(D) of Rule 17a–5. The Commission notes that FINRA currently provides its members with a template for the Rule 17a–5(f)(2) Notice that includes a provision as to whether the engagement is continuing in nature, which is available at *http://www.finra.org/web/groups/industry/@ip/@comp/@regis/documents/industry/p009841.pdf.*

[118] *See* proposed paragraph (f)(2)(ii)(E) of Rule 17a–5.

[119] *See* proposed paragraph (f)(2)(ii)(F) of Rule 17a–5.

[120] *See* proposed paragraph (f)(2)(ii)(G) of Rule 17a–5.

[121] *See* proposed paragraph (f)(2)(iii) of Rule 17a–5, which would provide that a ''broker or dealer who does not carry nor clear transactions nor carry

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The Commission also is proposing several technical changes to paragraph (f)(2) of Rule 17a–5. Specifically, the Commission proposes to amend the language in the preamble of paragraph (f)(2) to streamline the paragraph and to add a reference to the requirements of the Notice. The Commission proposes to delete paragraph (f)(2)(ii), which provides that the agreement can be continuing in nature, because the amended preamble to paragraph (f)(2) captures this concept.

If the Access to Audit Documentation Amendments described above were adopted, Notices on file with the Commission at the time of the effectiveness of the amendment would not be in compliance with the new rules. Accordingly, broker-dealers subject to paragraph (f)(2) would have to file new Notices if the proposals were adopted. However, if the engagement covered by the new Notice was of a continuing nature, no subsequent filing would be required unless the broker-dealer changed independent public accountants.[122]

The Commission generally requests comment on all aspects of these proposed amendments. In addition, the Commission requests comment on the following questions:

- Should the proposed Access to Audit Documentation Amendments apply to all broker-dealers, or additional broker-dealers rather than just clearing broker-dealers?
- Would applying the proposed Access to Audit Documentation Amendments to non-clearing broker-dealers provide any advantages in terms of enhancing the examination of the broker-dealers or gaining efficiencies?
- Are there any other types of broker-dealers whose conduct may pose risks to the investing public that should be subject to the proposed Access to Audit Documentation Amendments?
- Are there additional reasons why examiners should obtain documentation from independent public accountants other than those described above (*i.e.,* to establish the scope and focus of a pending examination of a clearing broker-dealer)? If so, please explain the reasons and the objectives behind the reasons and how the information could be used to achieve those objectives.
- Would any limitations on the ability of examiners to have access to audit documentation or to discuss the findings of the independent public accountant be appropriate? If so, what are those restrictions, why would they be appropriate, and what effect would they have on broker-dealer examinations?
- Should examiners be required to request access to the audit documentation in writing?
- Should the Commission require a broker-dealer to submit a statement consenting to provide access to its independent public accountant and the audit documentation (''statement of consent'') only when it files the ''Notice pursuant to Rule 17a–5(f)(2)''?
- How often should the statement of consent be filed (*e.g.,* on an annual or more frequent basis)?
- Are the proposed representations in the Notice sufficient to provide effective access to the independent public accountant's audit documentation? If not, what additional representations, or what other measures, would be more effective?
- Will the terms of engagement between clearing broker-dealers and their independent public accountants, including compensation terms, be affected by the proposed amendments? What additional costs might this place on clearing broker-dealers? In this respect, would there be a disproportionate impact on smaller clearing broker-dealers?
- What is the risk, if any, that clearing broker-dealers and their current independent public accountants will not be able to agree on mutually-agreeable terms in order to compensate them for additional burdens they may incur as a result of the proposed amendments?

## IV. The Proposed Form Custody Amendments

The Commission has brought numerous enforcement actions against investment advisers and broker-dealers alleging fraudulent conduct that includes misappropriation or other misuse of customer assets.[123] Consequently, the Commission recently took steps to enhance oversight of the custody function of investment advisers,[124] and is now proposing enhancements to the oversight of the custody function of broker-dealers. The Commission is proposing amendments to Rule 17a–5 that are designed to provide greater information regarding the custody function at broker-dealers and their compliance with requirements relating to custody of customer and non-customer assets. Specifically, the Commission is proposing a new form to be filed by broker-dealers—Form Custody—which is designed to elicit information concerning whether a broker-dealer maintains custody of customer and non-customer assets, and, if so, how such assets are maintained.[125] As discussed below, the Commission proposes to require that a broker-dealer file proposed Form Custody with its quarterly FOCUS Report.[126]

Currently, a broker-dealer's FOCUS Report provides the Commission and other regulators (*e.g.,* a broker-dealer's DEA) with information relating to the broker-dealer's financial and operational condition.[127] A broker-dealer's FOCUS Report does not, however, solicit

customer accounts is not required to include the representations in paragraph (e)(ii)(F).''

[122] *See* Rule 17a–5(f)(2)(ii).

[123] *See, e.g., SEC* v. *Donald Anthony Walker Young, et al.,* Litigation Release No. 21006 (Apr. 20, 2009) (complaint alleges registered investment adviser and its principal misappropriated in excess of $23 million, provided false account statements to investors in limited partnership, and provided false custodial statements to limited partnership's introducing broker); *SEC* v. *Isaac I. Ovid, et al,* Litigation Release No. 20998 (Apr. 14, 2009) (complaint alleges that defendants, including registered investment adviser and manager of purported hedge funds, misappropriated in excess of $12 million); *SEC* v. *The Nutmeg Group, LLC, et al.,* Litigation Release No. 20972 (Mar. 25, 2009) (complaint alleges that registered investment adviser misappropriated in excess of $4 million of client assets, failed to maintain client assets with a qualified custodian, and failed to obtain a surprise examination); *SEC* v. *WG Trading Investors, L.P., et al.,* Litigation Release No. 20912 (Feb. 25, 2009) (complaint alleges that registered broker-dealer and affiliated registered adviser orchestrated fraudulent investment scheme, including misappropriating as much as $554 million of the $667 million invested by clients and sending clients misleading account information); *SEC* v. *Stanford International Bank, et al.,* Litigation Release No. 20901 (Feb. 17, 2009) (complaint alleges that affiliated bank, broker-dealer, and advisers colluded with each other in carrying out an $8 billion fraud); *SEC* v. *Bernard L. Madoff, et al.,* Litigation Release No. 20889 (Feb. 9, 2009) (complaint alleges that Madoff and Bernard L. Madoff Investment Securities LLC—a registered investment adviser and registered broker-dealer—committed a $50 billion fraud).

[124] *See, e.g., Custody of Funds or Securities by Investment Advisers,* Advisers Act Release No. 2968 (Dec. 30, 2009), 75 FR 1456 (Jan. 11, 2010).

[125] For purposes of Form Custody, the term ''customer'' means a person that is a ''customer'' for purposes of Rule 15c3–3(a), and a ''non-customer'' means a person other than a ''customer'' as that term is defined in Rule 15c3–3(a). *See* Rule 15c3–3(a) and FINRA's Interpretations of Financial and Operational Rules, Rule 15c3–3, Rule 15c3–3(a)(1)/01, available on FINRA's Internet Web site at *http://www.finra.org/Industry/Regulation/Guidance/FOR/.*

[126] *See* Rule 17a–5(a). FOCUS Reports, filed with the Commission and SROs by broker-dealers, are one of the primary means of monitoring the financial and operational condition of broker-dealers and enforcing the broker-dealer financial responsibility rules. The completed forms are also used to determine which firms are engaged in various securities-related activities, and how economic events and government policies might affect various segments of the securities industry. The FOCUS Report was designed to eliminate overlapping regulatory reports required by various SROs and the Commission and to reduce reporting burdens as much as possible. *See supra* note 20. The Commission notes that FOCUS Reports are, and proposed Form Custody would be, deemed to be confidential pursuant to paragraph (a)(3) of Rule 17a–5.

[127] *See* Form X–17A–5 Schedule I, Part II, Part IIa, Part IIb, and Part III.

detailed information on how a broker-dealer maintains custody of assets. The proposed new form is intended to provide additional information about a broker-dealer's custodial activities. The Commission preliminarily believes that proposed Form Custody could make it easier for examiners to determine whether broker-dealers are in compliance with laws and regulations concerning the custody of assets. If, upon reviewing Form Custody, regulatory authorities became aware of inconsistencies or other red flags in information contained in the form, they could initiate a more detailed and focused analysis of the broker-dealer's custodial activities. Such an analysis may, in turn, identify potential abuses related to customer assets. Moreover, proposed Form Custody could expedite the examination of a broker-dealer's custodial activities and reduce examination costs, as examiners would no longer need to request basic custody-related information already disclosed on the form.

The Commission is proposing that broker-dealers file Form Custody with their quarterly FOCUS Reports. The Commission preliminarily believes that Form Custody would help provide applicable regulators with current information about a broker-dealer's custodial activities and, as described below, would promote compliance with applicable laws and rules. The Commission is proposing that Form Custody be filed on a quarterly basis to ensure that the information disclosed on the form is current and to enable examiners to identify significant recent changes in a broker-dealer's custody practices. For example, examiners could more promptly investigate instances in which a broker-dealer frequently changes the locations where customer securities are held. While a broker-dealer may have valid and lawful reasons for changes in the custody arrangements for its customers' securities, such actions also could suggest improper activity and could cause examiners to make further inquiries.

Proposed Form Custody is comprised of nine line items (each, an ''Item'') that elicit information about a broker-dealer's custodial activities. Several Items contain multiple questions, and a few Items require completion of charts and disclosure of custody-related information specific to the broker-dealer completing the form. Each Item and its subparts are discussed below.

*A. Item 1—Accounts Introduced on a Fully Disclosed Basis*

Item 1.A of Form Custody would elicit information concerning whether the broker-dealer introduces customer accounts to another broker-dealer on a fully disclosed basis by requiring the broker-dealer to check the appropriate ''Yes'' or ''No'' box. Many broker-dealers enter into agreements (''carrying agreements'') with another broker-dealer in which the two firms allocate certain responsibilities with respect to the handling of accounts.[128] These carrying agreements are governed by applicable self-regulatory organization (''SRO'') rules, which require broker-dealers entering into a carrying agreement to allocate certain responsibilities associated with introduced accounts.[129]

Typically, under a carrying agreement, one broker-dealer (the ''introducing broker-dealer'') agrees to act as the customer's account representative (*e.g.,* by providing the customer with account opening documents, ascertaining the customer's investment objectives, and making investment recommendations). The carrying broker-dealer typically agrees to receive and hold the customer's cash and securities, clear transactions, make and retain records relating to the transactions and the receipt and holding of assets, and extend credit to the customer in connection with the customer's securities transactions.

Proposed Item 1.A would elicit information concerning whether the broker-dealer introduces customer accounts to another broker-dealer on a fully disclosed basis, rather than asking whether the broker-dealer is an ''introducing broker-dealer.'' The Commission is proposing the question in this manner because some broker-dealers operate as carrying broker-dealers (*i.e.,* they hold cash and securities) for one group of customers but also introduce the accounts of a second group of customers on a fully disclosed basis to another broker-dealer. For example, a broker-dealer may incur the capital expense and cost of acting as a carrying broker-dealer for certain products (*e.g.,* equities) but not for other products (*e.g.,* options). In this case, the firm operates as a hybrid introducing/carrying broker-dealer by introducing on a fully disclosed basis to a carrying broker-dealer those customers that trade securities the broker-dealer is not equipped to maintain. Broker-dealers also may introduce customer accounts on an omnibus basis, as is discussed in detail in Section IV.B. of this release.

If the broker-dealer answers Item 1.A by checking the ''Yes'' box, the broker-dealer would be required under Item 1.B to identify each broker-dealer to which customer accounts are introduced. As discussed above, the carrying broker-dealer in such an arrangement maintains the cash and securities of the introduced customers. Consequently, Item 1.B would elicit the identity of each broker-dealer obligated to return cash and securities to the introduced customers. Commission and DEA examiners could use this information to confirm the existence of an introducing/carrying relationship and to confirm that the carrying broker-dealer acknowledges its obligation to return the cash and securities belonging to the introduced customers.[130]

The Commission generally requests comment on all aspects of proposed Item 1. In addition, the Commission requests comment on the following questions relating to proposed Items 1.A and 1.B:

- Should the Commission require additional information about accounts introduced to carrying broker-dealers on a fully disclosed basis? If so, what type of information?
- Should the Commission require the broker-dealer to disclose the number of accounts it introduces on a fully disclosed basis?
- Should the Commission require the broker-dealer to disclose the approximate dollar amount of assets held in fully disclosed accounts at the carrying broker-dealer?
- Should the Commission solicit information as to whether a broker-dealer other than the carrying broker-dealer clears transactions that are ultimately maintained by the carrying broker-dealer on a fully disclosed basis?
- Should the Commission require the broker-dealer to identify whether it relies on the carrying broker-dealer or another third party to maintain books and records relating to introduced accounts?

*B. Item 2—Accounts Introduced on an Omnibus Basis*

Item 2.A would elicit information concerning whether the broker-dealer

[128] To be consistent with the definition of the term ''customer'' in Rule 15c3–3, the Commission proposes to define the term ''customer'' in the General Instructions to Form Custody the same. *See* Rule 15c3–3(a)(1).

[129] *See, e.g.,* NYSE Rule 382, NASD Rule 3230, and FINRA Rule 4311.

[130] *See* Letter from Richard G. Ketchum, Director, Division of Market Regulation, Commission, to David Marcus, New York Stock Exchange (Jan. 14, 1985), which states that the customers of introducing broker-dealers are presumed to be customers of the clearing broker-dealer for purposes of the Commission's financial responsibility rules and SIPA.

introduces customer accounts to another broker-dealer on an omnibus basis by requiring the broker-dealer to check the appropriate ''Yes'' or ''No'' box. An omnibus account is an account carried and cleared by another broker-dealer that contains accounts of undisclosed customers on a commingled basis and that are carried individually on the books of the broker-dealer introducing the accounts.[131] Disclosure of this information is important because a broker-dealer that introduces customer accounts to another broker-dealer on an omnibus basis is considered to be a carrying broker-dealer with respect to those accounts under the Commission's broker-dealer financial responsibility rules.[132] Thus, in these arrangements, the broker-dealer introducing the omnibus account to a carrying broker-dealer is obligated to return cash and securities in the account to customers.[133]

If the broker-dealer checks the ''Yes'' box in Item 2.A, it would be required to identify in Item 2.B each broker-dealer to which accounts are introduced on an omnibus basis. Commission and DEA examiners could use this information to confirm whether the cash and securities introduced to the carrying broker-dealer are in fact being held in an omnibus account at the carrying broker-dealer.

The Commission generally requests comment on all aspects of proposed Item 2. In addition, the Commission requests comment on the following questions relating to proposed Items 2.A and 2.B:

- Should the Commission require additional information about accounts introduced to carrying broker-dealers on an omnibus basis? For example, should the Commission require a broker-dealer to provide information about the specific types of products or customers introduced to a carrying broker-dealer on an omnibus basis? What other information about accounts introduced to carrying- broker-dealers on an omnibus basis should the Commission require to be disclosed? Why?
- Should the Commission require a broker-dealer to disclose the number of omnibus accounts it introduces to other broker-dealers? If yes, please explain why. If no, please explain why not.
- Should the Commission require a broker-dealer to disclose the approximate dollar amount of assets held in omnibus accounts at the carrying broker-dealer? If yes, please explain why. If no, please explain why not.
- Should the Commission solicit information as to whether a broker-dealer other than the carrying broker-dealer clears transactions where the securities are ultimately maintained by the carrying broker-dealer on an omnibus basis? If yes, please explain why. If no, please explain why not.

*C. Item 3—Carrying Broker-Dealers*

1. Items 3.A and 3.B

Item 3 elicits information concerning how a carrying broker-dealer holds cash and securities. Item 3 is comprised of five subparts. The first question—Item 3.A—elicits information concerning whether the broker-dealer carries securities accounts for customers by requiring the broker-dealer to check the appropriate ''Yes'' or ''No'' box. As noted above, the proposed General Instructions to Form Custody would specify that the term ''customer'' as used in the Form means a ''customer'' as defined in Rule 15c3–3. The next question—Item 3.B—elicits information concerning whether the broker-dealer carries securities accounts for persons that are not ''customers'' under the definition in Rule 15c3–3. For example, under Rule 15c3–3, persons that are not ''customers'' include an accountholder that is a general partner, director, or principal officer of the carrying broker-dealer and accountholders that are themselves broker-dealers.

2. Item 3.C

Item 3.C requires the broker-dealer to identify in three charts the types of locations where it holds securities and the frequency with which it performs reconciliations between the information on its stock record and information on the records of those locations. The proposed instructions to Item 3.C provide that the broker-dealer must identify the types of locations where it holds securities. The broker-dealer would be required to identify locations that are used at any one time for maintaining customer, non-customer, and proprietary securities. The proposed instructions also require the broker-dealer to specify the locations where the broker-dealer holds securities directly in the name of the broker-dealer (*i.e.,* the broker-dealer should not identify a type of location if the broker-dealer only holds securities at the location through an intermediary). For example, when a broker-dealer is not a member of a securities clearing organization but, instead, accesses the securities processing facilities of the organization by holding securities at an entity that is a member of the organization (*e.g.,* a U.S. bank), the broker-dealer would be required to identify the category of location for which the broker-dealer has a direct custodial relationship (*i.e.,* the U.S. bank), but not the securities clearing organization.

The first chart—set forth in Item 3.C.i—identifies the most common locations where broker-dealers hold securities. Many of the locations identified on the first chart, and described below, are locations deemed to be satisfactory control locations under paragraph (c) of Rule 15c3–3.

The first location identified in the chart is the broker-dealer's vault. As noted above, broker-dealers primarily hold securities in fungible bulk at other institutions. In some cases, however, broker-dealers may physically hold securities certificates (*e.g.,* in the case of restricted securities).

The second location identified in the chart is another U.S. registered broker-dealer. For example, a broker-dealer may hold customers' foreign securities at another U.S. broker-dealer, or may hold securities in an omnibus account at another broker-dealer.

The third and fourth potential locations identified in the chart are the Depository Trust Company (''DTC'') and the Options Clearing Corporation. These are two of the predominant securities clearing organizations in the U.S. and, consequently, are identified by name rather than type.

The fifth potential location identified in the chart is a U.S. bank. Broker-dealers may have arrangements with U.S. banks to receive and hold securities for the accounts of the broker-dealer's customers and non-customers, as well as for the broker-dealer's own account. Obtaining information about a broker-dealer's relationships with U.S. banks could enable examiners to test and confirm the accuracy of the broker-dealer's representations on proposed Form Custody (*i.e.,* that a U.S. bank holds securities for the broker-dealer), and in addition facilitate the collection of information regarding the relationship between the broker-dealer and the bank. For instance, customer fully paid and excess margin securities cannot be pledged as collateral for a loan to the broker-dealer, and customer margin securities may not be commingled with proprietary securities that are pledged as collateral for a bank loan. Form Custody could, for example, lead examiners to seek account statements and documentation governing the broker-dealer's relationship with the U.S. bank to ensure customer fully paid and excess

[131] *See* Broker-Dealer Audit Guide, *supra* note 14.

[132] *See Net Capital Rule,* Exchange Act Release No. 31511 (Nov. 24, 1992); 57 FR 56973 (Dec. 2, 1992), n. 16.

[133] *Id.*

margin securities are not pledged as collateral.

The sixth potential location identified in the chart is the transfer agent of an open-end investment management company registered under the Investment Company Act of 1940 (*i.e.,* a mutual fund). Generally, mutual funds issue securities only in book entry form. This means that the ownership of securities is not reflected on a certificate that can be transferred but rather through a journal entry on the books of the issuer maintained by the issuer's transfer agent. A broker-dealer that holds mutual funds for customers would hold them in the broker-dealer's name on the books of the mutual fund.

The second chart—set forth in Item 3.C.ii—is intended to capture all other types of U.S. locations where a broker-dealer may hold securities that are not specified in the chart included in Item 3.C.i. This could include securities held in book-entry form by the issuer of the securities or the issuer's transfer agent. A broker-dealer that holds securities in such locations would be required to list the types of locations in the spaces provided in the chart and indicate the frequency with which the broker-dealer performs asset reconciliations with those locations.

The third chart—set forth in Item 3.C.iii—pertains to foreign locations where the broker-dealer maintains securities. The Commission is not proposing to list categories of foreign locations because terminology used to identify certain locations may differ by jurisdiction. For example, in some foreign jurisdictions, banks may operate a securities business, making it difficult to classify whether securities are held at a bank or a broker-dealer. A broker-dealer that holds securities in a foreign location would be required to list the types of foreign locations where it maintains securities in the spaces provided in the chart and indicate the frequency with which reconciliations are performed with the location.

3. Items 3.D and 3.E

Items 3.D and 3.E of proposed Form Custody each have three identical subparts that elicit information about the types and amounts of securities and cash the broker-dealer holds, whether those securities are recorded on the broker-dealer's stock record and, if not, why they are not recorded, and where the broker-dealer holds free credit balances. The General Instructions to proposed Form Custody would define ''free credit balances'' as liabilities of a broker-dealer to customers or non-customers which are subject to immediate cash payment to customers or non-customers on demand, whether resulting from sales of securities, dividends, interest, deposits, or otherwise.[134]

The difference between Item 3.D and Item 3.E is that the former would elicit information with respect to securities and free credit balances held for the accounts of customers, whereas the latter would elicit information with respect to securities and free credit balances held for the accounts of persons that are not customers.[135] Accordingly, the form would ask two sets of identical questions to elicit information about each category of accountholder—customer and non-customer.

Proposed Items 3.D.i and 3.E.i would elicit information about the types and dollar amounts of the securities the broker-dealer carries for the accounts of customers and non-customers, respectively. Specifically, for each Item, the broker-dealer would be required to complete information on a chart to the extent applicable. The charts have twelve rows, with each row representing a category of security. The categories are: (1) U.S. Equity Securities; (2) Foreign Equity Securities; (3) U.S. Listed Options; (4) Foreign Listed Options; (5) Domestic Corporate Debt; (6) Foreign Corporate Debt; (7) U.S. Public Finance Debt; (8) Foreign Public Finance Debt; (9) U.S. Government Debt; (10) Foreign Sovereign Debt; (11) U.S. Structured Debt; and (12) Foreign Structured Debt. A thirteenth row is included in each chart to identify any securities not specifically listed in the first twelve rows. The types of securities are categorized this way because the various categories ordinarily are associated with certain types of locations. Thus, as examiners review the form, they could assess whether the types of securities held by the broker-dealer are maintained at locations generally known to hold such securities. If the form indicates that some types of securities are held at a location that is atypical for such securities, the examiner can refine the focus of the examination to ensure customer assets are properly safeguarded.

The charts in Items 3.D.i and 3.E.i each have eight columns. The first column contains boxes for each category of security specified in the Item. The broker-dealer would be required to check the box in each chart for every applicable category of security it holds for the accounts of customers and non-customers, respectively. The second column identifies the category of security. The third through eighth columns represent ranges of dollar values: (1) Up to $50 million; (2) greater than $50 million up to $100 million; (3) greater than $100 million up to $500 million; (4) greater than $500 million up to $1 billion; (5) greater than $1 billion up to $5 billion; and (6) greater than $5 billion. The broker-dealer would be required to check the box in each chart reflecting the approximate dollar value for every category of security the broker-dealer carries for the accounts of customers and non-customers, respectively.

The Commission is proposing dollar ranges for the values of the securities, as opposed to actual values, to ease compliance burdens. The intent is to elicit information about the relative dollar value of securities the broker-dealer holds for customers and non-customers in each category of security. Values would be reported as of the date specified in the broker-dealer's accompanying quarterly FOCUS Report.

Proposed Items 3.D.ii and 3.E.ii would elicit information concerning whether the broker-dealer has recorded all the securities it carries for the accounts of customers and non-customers, respectively, on its stock record by requiring the broker-dealer to check the appropriate ''Yes'' or ''No'' box. If the broker-dealer checks ''No,'' it would be required to explain in the space provided why it has not recorded such securities on its stock record and indicate the type of securities and approximate U.S. dollar market value of such unrecorded securities.

The Commission anticipates that a broker-dealer would answer ''Yes'' in response to Items 3.D.ii and 3.E.ii because the stock record—which a broker-dealer is required to create pursuant to Rule 17a–3—is a record of custody and movements of securities. A long position in the stock record indicates ownership of the security or a right to the possession of the security. Thus, the ''long side'' of the stock record indicates the person to whom the broker-dealer owes the securities. Common examples of ''long side'' positions are securities received from customers (*e.g.,* fully paid or excess margin securities), securities owned by the firm (*i.e.,* securities held in the

[134] This definition is similar to the definition of the term ''free credit balance'' in Rule 15c3–3, except that the definition in the rule is limited to liabilities to ''customers'' whereas the definition in the proposed Form contemplates liabilities to customers and non-customers. *See* Rule 15c3–3(a)(8).

[135] As discussed above, the term ''customer'' on proposed Form Custody would mean a ''customer'' as defined in Rule 15c3–3(a)(1). Broker-dealers may carry securities accounts for ''customers'' as defined in Rule 15c3–3 and for persons that are not customers (such as insiders and other broker-dealers).

broker-dealer's inventory for its own account), securities borrowed, and fails-to-deliver (*i.e.,* securities sold to or through another broker-dealer but not delivered).

A short position in the stock record indicates either the location of the securities or the responsibility of other parties to deliver the securities to the broker-dealer. Every security owned or held by the broker-dealer must be accounted for by its location. Since securities are fungible, the short side of the stock record does not in fact designate where particular securities are located. Rather, it indicates the total amount of securities, on a security-by-security basis, held at each location, which could include, for example, securities depositories. Common short-side stock record locations also include banks (*e.g.,* when a broker-dealer pledges securities to a bank as collateral for a loan), stock loan counterparties (*e.g.,* when a broker-dealer lends securities to another firm as part of a securities lending transaction), and counterparties failing to deliver securities to the broker-dealer (*e.g.,* when the broker-dealer has purchased securities that have not yet been received from the counterparty).

The Commission's goals in proposing this question are twofold. First, the question could elicit the disclosure of the unusual circumstance in which a broker-dealer carries securities for the account of a customer or non-customer but does not reflect them on its stock record. The Commission and other securities regulators could use this information to assess whether the broker-dealer is properly accounting for securities. Second, this question could prompt a broker-dealer to identify, and self-correct, circumstances in which it did not include securities on its stock record as required by Rule 17a–3.

Proposed Items 3.D.iii and 3.E.iii would elicit information as to how the broker-dealer treats free credit balances in securities accounts of customers and non-customers, respectively. The information is elicited through a chart the broker-dealer would be required to complete. The chart in Item 3.D.iii has five rows with each row representing a different process for treating free credit balances. The treatment options (referred to as ''processes'' on the form) would be that free credit balances are: (1) Included in a computation under Rule 15c3–3(e); (2) held in a bank account under Rule 15c3–3(k)(2)(i); (3) swept to a U.S. bank; (4) swept to a U.S. money market fund; and (5) ''other,'' with a space to describe such other treatment. The options are not intended to be mutually exclusive in that a broker-dealer may treat free credit balances in several different ways (*e.g.,* a broker-dealer may be instructed by certain customers to sweep their free credit balances to a bank, and by other customers to sweep their free credit balances to a U.S. money market fund).

A broker-dealer would be required to check the box in the first column of the chart for every process that applies to the broker-dealer's treatment of free credit balances in customer and non-customer accounts, respectively. The first process identified on each chart is that the broker-dealer treats customer and non-customer free credit balances in accordance with the customer reserve computation required under Rule 15c3–3(e). Rule 15c3–3(e) requires a broker-dealer to maintain a special reserve bank account for the exclusive benefit of its customers and maintain deposits in that account (to the extent a deposit is required) in amounts computed in accordance with Exhibit A to Rule 15c3–3.[136] Rule 15c3–3 requires a broker-dealer to comply with these reserve account provisions only with respect to customer-related credit balances. The Commission has, however, proposed amendments to Rule 15c3–3 that would require a broker-dealer to maintain a reserve account and perform a reserve computation for non-customer accountholders that are domestic and foreign broker-dealers.[137]

The second process identified on the chart is that the broker-dealer handles free credit balances by placing funds in a ''bank account under Rule 15c3–3(k)(2)(i).'' Rule 15c3–3(k)(2)(i) prescribes a process by which a broker-dealer can qualify for an exemption from the requirements of Rule 15c3–3. Specifically, the exemption applies to a broker-dealer that does not carry margin accounts, promptly transmits all customer funds and delivers all securities received in connection with its activities, does not otherwise hold funds or securities for, or owe money or securities to, customers and effectuates all financial transactions between the broker-dealer and its customers through one or more bank accounts that are each designated as a ''Special Account for the Exclusive Benefit of Customers of (the name of broker or dealer).'' [138]

The third process identified in the chart—''swept to a U.S. bank''—is included because some broker-dealers engage in ''Bank Sweep Programs.'' Rather than hold customer funds in securities accounts, some broker-dealers require or offer the option to transfer free credit balances in securities accounts to a specific money market fund or interest bearing bank account (''Sweep Programs''). The customer earns dividends on the money market fund or interest on the bank account until such time as the customer chooses to liquidate the position in order to use the cash, for example, to purchase securities.[139] Customers must make a request to the broker-dealer for the return of funds swept from their securities accounts to the bank.

The fourth option identified in the chart is that the broker-dealer sweeps free credit balances into a money market fund as part of a Sweep Program. In most cases when a broker-dealer sweeps free credit balances into a money market fund, the broker-dealer purchases shares in the money market fund, which is registered in the name of the broker-dealer. The money market fund understands that these shares are not proprietary positions of the broker-dealer, and any interest earned on the shares from the money market fund are payable to the customers.

Finally, the fifth option in the chart would cover any other process that is not described in the other options.

The Commission generally requests comment on all aspects of proposed Item 3. In addition, the Commission requests comment on the following questions relating to proposed Item 3:

- Should the Commission identify additional U.S. locations in Item 3.C.i relating to where broker-dealers maintain custody of securities held in the U.S.?
- Should the Commission include separate charts to identify locations where customer, non-customer, and proprietary securities are held?
- Should the charts in Item 3.C solicit information from broker-dealers other than the location where securities are held and reconciliation frequency?
- Should the broker-dealer be required to identify only the types of locations in Items 3.C.i, ii and iii where un-hypothecated securities are located? For example, should the broker-dealer not be required to identify locations where securities are hypothecated in transactions such as stock loans, bank loans and repurchase agreements?

[136] *See* Rule 15c3–3(e) and Rule 15c3–3a.

[137] *See Amendments to Financial Responsibility Rules for Broker-Dealers,* Exchange Act Release No. 55431 (Mar. 9, 2007), 72 FR 12862 (Mar. 19, 2007). *See also* Letter from Michael A. Macchiaroli, Associate Director, Division of Market Regulation, Commission, to Raymond J. Hennessy, Vice President, NYSE, and Thomas Cassella, Vice President, NASD Regulation, Inc. (Nov. 10, 1998).

[138] *See* Rule 15c3–3(k)(2)(i).

[139] *See Amendments to Financial Responsibility Rules for Broker-Dealers,* Exchange Act Release No. 55431 (Mar. 9, 2007), 72 FR 12862 (Mar. 19, 2007) at 12866.

• Should the Commission identify additional categories of securities in the charts specified under Item 3.D and 3.E? For example, are the securities listed on those charts sufficiently comprehensive to cover most, if not all, types of securities carried by broker-dealers?

• Should the Commission require the broker-dealer to provide the identities of all custodians, as opposed to, or in addition to, describing the types of custodians?

• Should the Commission use different dollar ranges in the charts specified in Items 3.D.i and 3.E.i? If so, what ranges?

• Should the Commission require broker-dealers to provide specific dollar amounts, rather than indicating ranges, in Items 3.D.i and 3.E.i?

• Should the Commission require broker-dealers to identify in Items 3.D.iii and 3.E.iii the specific locations where free credit balances are held (*e.g.,* the names of banks and money market funds)?

*D. Item 4—Carrying for Other Broker-Dealers*

Item 4 of proposed Form Custody requires a broker-dealer to disclose whether it acts as a carrying broker-dealer for other broker-dealers. There are two sets of questions in Item 4—Item 4.A.i, ii, and iii and Item 4.B.i, ii, and iii. The first set of questions would elicit information from a broker-dealer as to whether it carries transactions for other broker-dealers on a fully disclosed basis. The second set of questions would elicit information from a broker-dealer as to whether it carries transactions for other broker-dealers on an omnibus basis.

Proposed Items 4.A.i and 4.B.i require a broker-dealer to indicate by checking the appropriate ''Yes'' or ''No'' box whether it carries customer accounts for another broker-dealer on a fully disclosed basis and on an omnibus basis, respectively. Items 4.A.ii and 4.B.ii require a broker-dealer, if applicable, to indicate the number of broker-dealers with which it has an arrangement to carry accounts on a fully disclosed basis and on an omnibus basis, respectively. Items 4.A.iii and 4.B.iii require a broker-dealer, if applicable, to identify any affiliated broker-dealers that introduce accounts to the broker-dealer on a fully disclosed basis and on an omnibus basis, respectively.

The Commission has stated that related person custody arrangements can present higher risks to ''advisory clients'' than maintaining assets with an independent custodian,[140] and the Commission believes the same to be true for broker-dealer clients. Consistent with the definition of the term in other contexts applicable to broker-dealers, including Form BD,[141] the General Instructions for proposed Form Custody would define the term ''affiliate'' as any person who directly or indirectly controls the broker-dealer or any person who is directly or indirectly controlled by or under common control with the broker-dealer. The definition also would specify that ownership of 25% or more of the common stock of the broker-dealer introducing accounts to the broker-dealer submitting the Form Custody is deemed *prima facie* evidence of control; this definition is consistent with the definition used in Form BD.[142]

Item 4 in proposed Form Custody would elicit information about broker-dealers' custodial responsibilities with respect to accounts held for the benefit of *other* broker-dealers, and would require broker-dealers to identify such broker-dealers that are affiliates of the broker-dealer.[143] The Commission believes that this information will be useful for examination purposes and will provide the Commission with an enhanced understanding of, and useful and readily available information relating to, the scope of broker-dealer introducing/carrying relationships and activities, and the custodial practices of broker-dealers involved in such relationships.

The Commission generally requests comment on all aspects of proposed Item 4. In addition, the Commission requests comment on the following questions relating to proposed Item 4:

• The Commission is proposing to require that broker-dealers carrying accounts of other broker-dealers specify on proposed Form Custody the identities of only affiliated broker-dealers that introduce accounts to the carrying broker-dealer. Should the Commission require that broker-dealers carrying accounts of other, unaffiliated, broker-dealers specify on proposed Form Custody the identities of all broker-dealers that introduce accounts to the carrying broker-dealer?

• For purposes of defining the term ''affiliate'' in Item 4, should the Commission use the Form BD definition of the term ''affiliate''? Is there a more appropriate definition? If so, which definition? For example, should ownership by a carrying broker-dealer of 10% or more of the common stock of the introducing broker-dealer qualify such entities as affiliates?

*E. Item 5—Trade Confirmations*

Item 5 of proposed Form Custody would require broker-dealers to disclose whether they send transaction confirmations to customers and other accountholders by checking the appropriate ''Yes'' or ''No'' box. Confirmations are important safeguards that enable customers to monitor transactions that occur in their securities accounts. Timely confirmations would alert customers of unauthorized transactions and would provide customers with an opportunity to object to the transactions.

Exchange Act Rule 10b–10 specifies the information a broker-dealer must disclose to customers on a trade confirmation at or before completion of a securities transaction.[144] Generally, Rule 10b–10 requires a confirmation to include, among other things: (1) The date and time of the transaction and the identity, price, and number of shares or units (or principal amount) of such security purchased or sold by such customer; (2) the broker-dealer's capacity (agent or principal) and its compensation; (3) the source and amount of any third party remuneration it has received or will receive; and (4) other information, both general (*e.g.,* that the broker-dealer is not a SIPC member, if such is the case) and transaction-specific (*e.g.,* certain yield

[140] *See Custody of Funds or Securities by Investment Advisers,* Advisers Act Release No. 2968 (Dec. 30, 2009), 75 FR 1456 at 1462 (Jan. 11, 2010).

[141] Form BD is the uniform application for broker-dealer registration with the Commission. Form BD states that a person is presumed to control a company if, among other things, that person has directly or indirectly the right to vote 25% or more of a class of a voting security or has the power to sell or direct the sale of 25% or more of a class of voting securities, or, in the case of a partnership, the right to receive upon dissolution, or has contributed, 25% or more of the firm's capital.

[142] This definition of the term ''affiliate'' is the same as the definition in Form BD, including the specification that ownership of 25% or more of the common stock is deemed prima facie evidence of control.

[143] Form Custody would not require a broker-dealer to identify unaffiliated broker-dealers for which it carries accounts, though, as discussed above, it would need to indicate that it carries accounts for such broker-dealers. The Commission preliminarily believes that this approach provides the Commission and DEA examiners with access to useful information involving a broker-dealer's custody practices while alleviating potential time and cost burdens associated with completing proposed Form Custody given that some broker-dealers carry accounts for hundreds of unaffiliated broker-dealers. The Commission notes that information about these broker-dealers would be part of the books and records of the carrying broker-dealer. Therefore, an affirmative answer to Item 4 could prompt the Commission and DEA examiners to request information about the identities of the unaffiliated broker-dealers.

[144] 17 CFR 240.10b–10.

information in most transactions involving debt securities).

The information contained on a trade confirmation should reconcile with customer statements and the broker-dealer's journal entries.[145] In this regard, there is a direct link between trade confirmations sent by a broker-dealer and the broker-dealer's custody of customer assets.[146] How a broker-dealer answers Item 5 of proposed Form Custody could assist examiners in focusing their inspection. For example, if a broker-dealer claims that a third-party is responsible for sending trade confirmations, the examiners can confirm with that third-party that it is sending them on behalf of the broker-dealer.

The Commission generally requests comment on all aspects of proposed Item 5. In addition, the Commission requests comment on the following questions relating to proposed Item 5:

- If the broker-dealer answers ''No'' to Item 5.A, what information in addition to the identity of the broker-dealer that sends the confirmations would be useful to elicit in the form? For example, if the broker-dealer is a party to a carrying agreement pursuant to which a carrying broker-dealer agrees to issue trade confirmations for the broker-dealer, should the Commission require the broker-dealer to identify the date the agreement was made with the carrying broker-dealer and/or which SRO approved the carrying agreement?
- If the broker-dealer answers ''Yes'' to Item 5.A, and the broker-dealer has hired a third party service provider to prepare and send trade confirmations on the broker-dealer's behalf, should the broker-dealer be required to disclose the name of the third party service provider?
- Is there any additional information related to trade confirmations that the Commission should request in Item 5?

*F. Item 6—Account Statements*

Item 6 of proposed Form Custody would require broker-dealers to disclose whether they send account statements directly to customers and other accountholders by checking the appropriate ''Yes'' or ''No'' box. Account statements generally are sent to customers and other accountholders on a monthly or quarterly basis and typically set forth the assets held in the investor's securities account as of a specific date and the transactions that occurred in the account during the relevant period. SROs impose requirements on broker-dealers with respect to the statements they must send to their customers.[147] For example, FINRA generally requires any member that conducts a general securities business and also carries customer accounts or holds customer funds or securities, at least once each calendar quarter, to send an account statement to each customer whose account had a security position, money balance, or account activity since the last statement was sent.[148] The account statement must contain a description of any securities positions, money balances, or account activity in the account. In addition, the account statement must include a statement that advises the customer to report promptly any inaccuracy or discrepancy in that person's account to the brokerage firm.[149] The statement also is required to advise the customer that any oral communications made to the broker-dealer regarding inaccuracies or discrepancies should be re-confirmed in writing to further protect the customer's rights, including rights under SIPA.[150]

Like trade confirmations, account statements are important investor safeguards to monitor transactions that occur in an investor's securities account. As noted above, an introducing broker-dealer and clearing broker-dealer that are parties to a carrying agreement may allocate the sending of account statements to the clearing broker-dealer.[151] If the allocation has been made to a broker-dealer other than the broker-dealer completing Form Custody, this would be disclosed on the Form in Item 6.B. Item 6.C would elicit whether the broker-dealer sends account statements to anyone other than the beneficial owner of the account.[152]

The Commission is proposing to require broker-dealers to answer the questions in Item 6 to enhance its understanding of a broker-dealer's relationship with customers, particularly in the context of the broker-dealer's custodial responsibilities. The Commission notes that broker-dealers do not currently disclose to the Commission whether they send account statements directly to customers. Collecting this information on proposed Form Custody would provide examiners with additional background information that could be used to refine the focus of their inspections. Further, the Commission anticipates that examiners would make further inquiries to the extent the Form reveals answers that are inconsistent with industry practice.

A review of Item 6 also may facilitate an examiner's preparation for an inspection. For example, if a broker-dealer indicates on Form Custody that it holds customer accounts and sends account statements to customers, the examiner could prepare a more targeted document request to the broker-dealer. In this regard, an examiner could request customer account statements from the broker-dealer, as well as statements from the custodian(s) of the broker-dealer's customer assets, which would be disclosed in response to Item 3.C. of Form Custody. Examiners could then review and reconcile these documents to verify whether customer assets are held at the custodian(s) identified by the broker-dealer.

The Commission generally requests comment on all aspects of proposed Item 6. In addition, the Commission requests comment on the following questions relating to proposed Item 6:

[145] *See* 17 CFR 240.17a–3(a)(1), which requires the broker-dealer to make ''blotters'' ''(or other records of original entry) containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits. Such records shall show the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered.''

[146] Although broker-dealers may allocate the function of sending confirmations to other broker-dealers or to service providers, the broker-dealer retains the responsibility for sending confirmations. *See New York Stock Exchange, Inc.; Order Approving Proposed Rule Change,* Exchange Act Release No. 18497 (Feb. 19, 1982), 47 FR 8284 (Feb. 25, 1982) at note 2 (''* * * no contractual arrangement for the allocation of functions between an introducing and carrying organization can operate to relieve either organization from their respective responsibilities under the federal securities laws and applicable SRO rules'').

[147] *See* NASD Rule 2340 (Customer Account Statements) and NYSE Rule 409 (Statements of Accounts to Customers).

[148] *See* NASD Rule 2340, which defines a ''general securities member'' as any member that conducts a general securities business and is required to calculate its net capital pursuant to Rule 15c3–1. Additionally, NASD Rule 2340 defines ''account activity'' broadly so that it includes, but is not limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries and/or journal entries relating to securities or funds in the possession or control of the member. *See also* Exchange Act Release No. 54411 (Sept. 7, 2006), 71 FR 54105 (Sept. 13, 2006) (order granting approval of a proposed rule change relating to Rule 2340 concerning customer account statements).

[149] If the customer's account is serviced by both an introducing broker-dealer and a clearing broker-dealer, the statement must inform customers that such reports must be made to both firms. *See* NASD Rule 2340(a).

[150] *Id.*

[151] As with trade confirmations, broker-dealers can allocate the function but not the responsibility; *see supra* note 146.

[152] Generally, the beneficial owner of an account represents the person entitled to the economic benefits of ownership. With respect to securities, the term beneficial owner is defined in Rule 13d–3 under the Exchange Act (17 CFR 240.13d–3).

• If the broker-dealer answers ''No'' to Item 6.A, what information in addition to the identity of the broker-dealer that sends the account statements would be useful to elicit in the form?

• If a broker-dealer sends account statements to persons other than the beneficial owner of the account, should the Commission require the broker-dealer to explain why those persons receive account statements from the broker-dealer?

*G. Item 7—Electronic Access To Account Information*

Item 7 of proposed Form Custody would require broker-dealers to indicate whether they provide customers and other accountholders with electronic access to information about the securities and cash positions in their accounts by checking the appropriate ''Yes'' or ''No'' box. Electronic access to account information can provide investors with an efficient means of monitoring transactions that occur in their securities accounts. This inquiry would inform the Commission as to how readily customers are able to access and review their account information.

The Commission preliminarily believes that electronic access to account information is beneficial to customers, who can more easily monitor the performance of their accounts and perhaps more quickly identify any discrepancies or inaccuracies. The Commission proposes to include this item in proposed Form Custody because it would help to inform examiners as to how readily customers can access and review account information.

The Commission generally requests comment on all aspects of Item 7 to Form Custody. In addition, the Commission requests comment on the following questions related to Item 7:

• If a broker-dealer checks ''Yes'' in response to Item 7, should the Commission require additional disclosure on Form Custody relating to the types of electronic access the broker-dealer provides to customers and other accountholders?

• If a broker-dealer checks ''Yes'' in response to Item 7, should the Commission require broker-dealers to indicate on Form Custody if customers that elect to receive certain account-related communications (*e.g.,* trade confirmations) electronically also are sent copies of those documents via mail or whether they are limited to accessing those documents electronically?

*H. Item 8—Broker-Dealers Registered as Investment Advisers*

Item 8 of proposed Form Custody would elicit information, if applicable, about whether and how the broker-dealer operates as an investment adviser. The first question in proposed Item 8.A would require the broker-dealer to indicate whether it is registered as an investment adviser with the Commission under the Advisers Act or with one or more states pursuant to the laws of a state.[153] If the broker-dealer indicates that it is registered with the Commission under the Advisers Act or pursuant to state law (or both), then it would be required to respond to the remaining questions under proposed Item 8.

Proposed Item 8.B. would require the broker-dealer to disclose the number of clients it has as an investment adviser. This would provide the Commission with information about the scale of the broker-dealer's investment adviser activities.

Proposed Items 8.C would require the broker-dealer to complete a chart, which would consist of six columns, in which the broker-dealer would provide information about the custodians where the assets of the investment adviser clients are held.[154]

In the first column, the broker-dealer would be required to disclose the name of the custodian, and in the second column, the broker-dealer would be required to identify the custodian by either SEC file number or CRD number, as applicable.

The third and fourth columns of the chart would elicit information about the scope of the broker-dealer/investment adviser's authority over the accounts held at the custodian by requiring the broker-dealer/investment adviser to check the appropriate ''Yes'' or ''No'' box. Specifically, in the third column, the broker-dealer/investment adviser would indicate whether it has the authority to effect transactions in the advisory client accounts at the custodian. In the fourth column, the broker-dealer/investment adviser would indicate whether it has the authority to withdraw funds and securities out of the accounts at the custodian.

In the fifth column, the broker-dealer/investment adviser would indicate whether the custodian sends account statements directly to the investment adviser clients. The Commission recently adopted amendments to the IA Custody Rule to require that investment advisers have a reasonable basis, after due inquiry, for believing that qualified custodians of advisory client assets send account statements to the investment advisers' clients. As stated in the release adopting that requirement, the Commission believes that the direct delivery of account statements by qualified custodians will provide greater assurance of the integrity of account statements received by clients.[155]

In the sixth column, the broker-dealer/investment adviser would indicate whether investment adviser client assets are recorded on the broker-dealer's stock record. If the broker-dealer is acting as custodian for such assets, the Commission anticipates that those assets would be recorded on the stock record.

The information solicited in Item 8 differs from the information that would be elicited in Item 3, because Item 3 requires a broker-dealer to provide detailed information about its custodial functions. In contrast, the goal of the information elicited in Item 8 is to assist the Commission and DEA examiners in developing a profile of the firm with respect to its functions as an investment adviser, and not as a custodian.

The Commission generally requests comment on all aspects of proposed Item 8. In addition, the Commission requests comment on the following questions:

• Should the Commission request additional information from dually-registered broker-dealer/investment

[153] Section 203A of the Advisers Act prohibits certain investment advisers from registering with the Commission, based on the advisers' assets under management, among other factors.

[154] Under the IA Custody Rule, it is a ''fraudulent, deceptive, or manipulative act, practice or course of business'' for an investment adviser registered or required to be registered under Section 203 of the Advisers Act to have custody of client funds or securities unless, among other things, a qualified custodian maintains those funds or securities. *See* Rule 206(4)–2. The Commission defines a qualified custodian as: (1) A bank as defined in Section 202(a)(2) of the Advisers Act or savings association as defined in Section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1)) that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act (2 U.S.C. 1811); (2) a broker-dealer registered under Section 15(b)(1) of the Exchange Act holding the client assets in customer accounts; (3) an FCM registered under Section 4f(a) of the Commodity Exchange Act (7 U.S.C. 6f(a)), holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon; and (4) a foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets. *See* Rule 206(4)–2(d)(6). The Commission requires that the qualified custodian maintain client funds and securities: (1) In a separate account for each client under that client's name; or (2) in accounts that contain only the clients' funds and securities, under the investment adviser's name as agent or trustee for the clients. *See* Rule 206(4)–2(a)(1).

[155] *See, e.g., Custody of Funds or Securities by Investment Advisers,* Advisers Act Release No. 2876 (May 20, 2009), 74 FR 25354 (May 27, 2009) (proposing release); Advisers Act Release No. 2968 (Dec. 30, 2009), 75 FR 1456 (Jan. 11, 2010) (adopting release).

advisers in the chart located in Item 8.C? If so, what information should the Commission request?

• Should the Commission require broker-dealer/investment advisers to disclose the type of client assets held by custodians (*e.g.,* fixed income securities or equity securities, *etc.*)?

• Should the Commission amend the charts in Item 8 to require broker-dealer/investment advisers to disclose the dollar amount of assets held at the custodian in ranges?

*I. Item 9—Broker-Dealers Affiliated with Investment Advisers*

Item 9 of Form Custody would elicit information concerning whether the broker-dealer is an affiliate of an investment adviser. For these purposes, an affiliate is any person who directly or indirectly controls the broker-dealer or any person who is directly or indirectly controlled by or under common control with the broker-dealer. Ownership of 25% or more of the common stock of the investment adviser is deemed *prima facie* evidence of control.[156] If the broker-dealer is such an affiliate, Item 9 would also elicit information concerning whether the broker-dealer has custody of client assets of an affiliated investment advisor and, if so, the approximate U.S. dollar market value of the assets.

The Commission generally requests comment on all aspects of proposed Item 9. In addition, the Commission requests comment on the following question related to Item 9:

• Should the Commission define affiliate differently? Should the Commission use a different percentage of ownership for *prima facie* evidence of control?

*J. Proposed Text Amendments To Require the Filing of Form Custody*

The Commission is proposing to add a new paragraph (a)(5) to Rule 17a-5 to implement the Form Custody filing requirement. Specifically, proposed paragraph (a)(5) would provide that ''[e]very broker or dealer subject to this paragraph (a) shall file Form Custody with its designated examining authority within 17 business days after the end of each calendar quarter and within 17 business days after the date selected for the annual reports where said date is other than the end of a calendar quarter. The designated examining authority shall maintain the information obtained through the filing of the Form Custody and transmit such information to the Commission.'' [157] The proposed language, including filing proposed Form Custody within 17 business days after the end of each calendar quarter, is the same as the existing requirements under Rule 17a-5 pertaining to the time frame for broker-dealers to file their FOCUS Reports,[158] and the maintenance of the FOCUS Reports filed with the DEAs.[159]

The Commission generally requests comment on all aspects of proposed new paragraph (a)(5) of Rule 17a–5. In addition, the Commission requests comment on the following question related to proposed new paragraph (a)(5):

• Should the Commission require the proposed Form Custody be filed on a different schedule? If so, what schedule?

*K. General Solicitation of Comments on Form Custody*

In addition to the questions above with respect to the specific Items of Form Custody, the Commission requests comment more generally on the overall approach of the proposal. In addition, the Commission requests comment on the following questions:

• Should the Commission require that the broker-dealer engage an independent public accountant with respect to Form Custody? If so, what level of engagement should be required? For example, should the Form Custody be audited by the independent public accountant?

**V. Additional Amendments to Rule 17a–5**

In addition to the proposed amendments discussed above and their corresponding technical amendments, the Commission proposes several ''clean up'' amendments to Rule 17a-5 that would modernize the rule and delete unnecessary or outdated provisions.

*A. Requirement To File Annual Reports*

The Commission proposes to amend paragraph (d)(6) of Rule 17a–5 to provide that copies of the annual reports shall be provided to all SROs of which the broker-dealer is a member ''unless the self-regulatory organization by rule waives this requirement.'' The Commission proposes this addition because in some cases SROs do not believe it is necessary to receive copies of broker-dealer annual reports, particularly when they are not the broker-dealer's DEA.

The Commission also proposes to amend paragraph (d)(6) of Rule 17a–5 to require broker-dealers to file copies of their annual reports with SIPC. As discussed above, SIPC may be required to fund the liquidation of a broker-dealer that cannot wind itself down in an orderly fashion. As part of the liquidation process, SIPC may be required to advance up to $500,000 per customer to satisfy claims for cash and securities of which $250,000 can be used to satisfy claims for cash.[160] In order to pay for these liquidations and advances, SIPC maintains the SIPC Fund. This SIPC Fund is established and maintained by collecting assessments from broker-dealers that are required to be members of SIPC.[161]

In some cases where SIPC has used the SIPC Fund to liquidate failed broker-dealers and make advances to customers, SIPC has not been able to recover the money advanced because the estate of the failed broker-dealer had insufficient assets.[162] SIPC has sought to recover money damages from auditing firms, but at least one court has held under New York law that SIPC could not maintain a claim because it was not a recipient of the annual audit filing and could not have relied on it.[163] Therefore, if SIPC had received a copy of the annual reports as contemplated under this proposed amendment, SIPC could have brought a claim against the auditing firm. In addition, the filing of annual reports with SIPC could allow it to better monitor industry trends and enhance its knowledge of particular firms.

The Commission generally requests comment on all aspects of these proposed amendments. In addition, the Commission requests comment on the following question related to the proposal:

• Rather than filing the annual reports directly with SIPC, should the Commission propose that the broker-dealers make the reports available to SIPC upon request? If so, why? If no, why not?

*B. Confidentiality of Annual Reports*

The Commission also proposes to update the method in which broker-

[156] *See supra* note 141 and corresponding text which specifies the same ownership percentage on Form BD.

[157] *See* proposed paragraph (a)(5) of Rule 17a-5. The Commission proposes to amend the numbering of the remaining subparagraphs—for example, current paragraph (a)(5) of Rule 17a-5 would be renumbered as paragraph (a)(6) and current paragraph (a)(6) would be renumbered as paragraph (a)(7).

[158] *See* Rule 17a–5(a)(2)(ii).

[159] *See* Rule 17a–5(a)(4).

[160] 15 U.S.C. 78fff–3(a), (d).

[161] 15 U.S.C. 78ddd.

[162] The most recent example of a SIPA liquidation in which SIPC does not expect to recover money advanced to a trustee is the liquidation of Bernard L. Madoff Investment Securities LLC. *SIPC 2010 Annual Report,* p.18, available at *http://www.sipc.org/pdf/2010%20Annual%20Report.pdf.*

[163] *See SIPC* v. *BDO Seidman, LLP,* 746 N.E.2d 1042 (N.Y. 2001).

dealers request that their annual reports be filed with the Commission on a confidential basis. Currently, under paragraph (e)(3) of Rule 17a–5, in order for a broker-dealer to receive confidential treatment for the financial statements it files with the Commission, other than the Statement of Financial Condition, the broker-dealer must bind the Statement of Financial Condition separately from the remaining financial statements and denote the Statement of Financial Condition as ''Public'' and the separate document as ''Confidential.''[164] The wording of this provision has led to confusion, resulting in inquiries to the Commission staff on how broker-dealers can receive confidential treatment for financial statements filed with the Commission under paragraph (e)(3) of Rule 17a–5, and, on occasion, broker-dealers inadvertently making publicly available financial statements intended to be confidential. The Commission proposes that broker-dealers continue to bind separately the Statement of Financial Condition from the remaining pages of the annual reports. In order to provide better clarity as to which part of the annual report is public and which part should be kept confidential, the Commission proposes to require that the broker-dealer stamp each page of the separately bound confidential portion of its annual reports as ''Confidential.''

Paragraph (e)(3) of Rule 17a–5 currently provides that the annual reports, including the confidential portions, shall be available, for example, for official use by any official or employee of the U.S., and national securities exchanges and registered national securities associations of which the person filing is a member. The Commission proposes to amend paragraph (e)(3) of Rule 17a–5 to include the PCAOB as a permitted recipient. The Commission further proposes to amend paragraph (e)(3) of Rule 17a–5 by updating references to the revised rule and reflecting the proposed Annual Audit Reports.

The Commission generally requests comment on all aspects of this proposed amendment. In addition, the Commission requests comment on the following question related to the proposal:

- Would this proposed amendment be the simplest method to request confidentiality treatment, or is there a better alternative?

*C. Removing Obsolete Provisions*

The Commission proposes to delete paragraph (e)(5) of Rule 17a–5 in its entirety because the provisions are now moot. Paragraph (e)(5) of Rule 17a–5 discusses the requirement for broker-dealers to file Form BD–Y2K. Form BD–Y2K elicited information with respect to the broker-dealer's readiness for the year 2000 and any potential problems that could arise with the advent of the new millennium.[165] Form BD–Y2K was required to be filed in April of 1999 and only then.

*D. Classification of Qualified Accountant*

The Commission proposes to amend paragraph (f)(1) of Rule 17a–5, which determines how the Commission classifies a qualified independent public accountant, by adding a sentence to the paragraph stating that the ''accountant must be registered with the Public Company Accounting Oversight Board if required by the Sarbanes-Oxley Act of 2002.'' This is a technical, non-substantive amendment because broker-dealer accountants are already required to be registered with the PCAOB.

*E. Technical Amendments*

The Commission proposes to delete paragraph (b)(6) of Rule 17a–5, which currently provides that a ''copy of the annual audit report shall be filed at the regional office of the Commission for the region in which the broker or dealer has its principal place of business and the principal office of the designated examining authority for said broker or dealer. Two copies of said report shall be filed at the Commission's principal office in Washington, DC. Copies thereof shall be provided to all self-regulatory organizations of which said broker or dealer is a member.'' The Commission proposes to delete this paragraph because it is redundant to the requirement in paragraph (d)(6) of the rule.[166]

For consistency purposes, the Commission proposes to delete references to ''balance sheet'' and replace them with references to ''Statement of Financial Condition.''[167]

The Commission also proposes technical amendments to paragraph (e)(1)(i) of Rule 17a–5. Paragraph (e)(1)(i) provides the exemption for broker-dealers that are not required to engage an independent public accountant to audit their financial statements. The technical amendments that the Commission is proposing include updating references and clarifying the existing language.[168] The Commission also proposes technical amendments to paragraph (e)(1)(ii) of Rule 17a–5, which requires a broker-dealer to include an oath or affirmation related to the claimed exemption from the annual audit requirement. Specifically, the Commission proposes to update references and other non-substantive changes to the text of the paragraph.

Further, the Commission is proposing to amend paragraph (e)(4)(iii)(F) of Rule 17a–5 to correct an inaccurate reference to a form filed in connection with the SIPC Reports. Currently, paragraph (e)(4)(iii)(F) refers to the ''Certificate of Exclusion from Membership'' as Form SIPC–7. The proposed amendments would change the reference in proposed paragraph (e)(4)(iii)(F) from Form SIPC–7 to Form SIPC–3 in proposed paragraph (e)(4)(ii)(C).

In addition, the Commission is proposing to amend paragraphs (f)(1) and (f)(3) of Rule 17a–5. Currently, paragraph (f)(1) of Rule 17a–5 contains the ''Qualification of accountants.'' Specifically, paragraph (f)(1) states that the ''Commission will not recognize any person as a certified public accountant who is not duly registered and in good standing as such under the laws of his place of residence or principal office. The Commission will not recognize any person as a public accountant who is not in good standing and entitled to practice as such under the laws of his place of residence or principal office.''[169] Paragraph (f)(3) of Rule 17a–5 contains the requirement for independence: ''[a]n accountant shall be independent in accordance with the provisions of § 210.2–01(b) and (c) of

[164] The Commission's Web site provides guidance that the public and non-public portions of the financial statements must be clearly segregated and the Facing Page must be appropriately marked. For example, the Facing Page attached to the Statement of Financial Condition should not be marked ''Confidential.'' Further, if the Statement of Financial Condition is not bound separately or placed in a separate package, then, in accordance with Rule 17a–5(e)(3), none of the statements will be accorded confidential treatment. *See* ''Broker-Dealer Notices and Reports'' at *http://www.sec.gov/divisions/marketreg/bdnotices.htm.*

[165] *See Reports to be Made by Certain Brokers and Dealers,* Exchange Act Release No. 40608 (Oct. 28, 1998), 63 FR 59208 (Nov. 3,1998).

[166] As previously discussed, the Commission proposes to amend paragraph (d)(6) of Rule 17a–5 to require that a copy of the annual report be filed with SIPC. Specifically, the Commission proposes that paragraph (d)(6) provide that the annual reports shall ''be filed at the regional office of the Commission for the region in which the broker or dealer has its principal place of business, the Commission's principal office in Washington, DC, and the principal office of the designated examining authority for said broker or dealer and with the Securities Investor Protection Corporation. Copies thereof shall be provided to all self-regulatory organizations of which said broker or dealer is a member, unless the self-regulatory organization by rule waives this requirement.''

[167] *See, e.g.,* Rule 17a–5(c)(2)(i).

[168] *See, e.g.,* proposed Rule 17a–5(e)(1).

[169] *See* Rule 17a–5(f)(1).

this chapter.'' The Commission proposes to delete paragraph (f)(3) and amend (f)(1) to state that ''the independent public accountant must be qualified and independent in accordance with § 210.2–01 of this chapter. In addition, the accountant must be registered with the Public Company Accounting Oversight Board if required by the Sarbanes-Oxley Act of 2002.'' The Commission is proposing this technical amendment to update the definition of an independent public accountant to be consistent with other Commission rules. Furthermore, by citing to § 210.2–01 in its entirety, rather than the provisions of (b) and (c), the text of (f)(1) becomes unnecessary. The Commission is also proposing a conforming amendment to paragraph (f)(4), which contains a notice provision concerning the replacement of the broker-dealer's independent public accountant. Paragraph (f)(4) would be renumbered as (f)(3).

The Commission is proposing to delete paragraph (i)(5) of Rule 17a–5, which provides that the terms ''audit,'' ''accountant's report,'' and ''certified'' ''shall have the meanings given in § 210.1–02 of this chapter.'' The Commission is proposing to delete this paragraph because the terms are defined under existing auditing standards promulgated by the PCAOB.

The Commission is proposing additional technical amendments throughout Rule 17a–5, including changes to consistently use the defined term ''independent public accountant'' [170] and to make the rule gender neutral.[171]

- The Commission generally requests comment on all aspects of the amendments proposed in this Section V.

## VI. Paperwork Reduction Act

The proposed amendments to Rule 17a–5 contain a ''collection of information'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA''). The Commission is submitting the proposed amendments and the proposed new collection to the Office of Management and Budget (''OMB'') for review in accordance with the PRA. An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid control number. The titles for the collections of information are:

(1) Rule 17a–5, Reports to be made by certain brokers and dealers (OMB Control Number 3235–0123);

(2) Rule 17a–11, Notification provisions for brokers and dealers (OMB Control Number 3235–0085); and

(3) Form Custody (a proposed new collection of information).

### *A. Collections of Information Under the Proposed Rule Amendments*

As discussed above, the Commission is proposing three sets of amendments to Rule 17a–5. The first set of proposed amendments, the Annual Reporting Amendments, would: (1) Update the existing requirements of the rule; (2) facilitate the PCAOB with its inspection and oversight authority over broker-dealer independent public accountants; and (3) enable a broker-dealer to use a single report to satisfy the proposed requirements under Rule 17a–5 and the IA Custody Rule's internal control report requirement.

The second set of proposed amendments, the Access to Audit Documentation Amendments, applies only to clearing broker-dealers. The Access to Audit Documentation Amendments are designed to facilitate the communication between a clearing broker-dealer's independent public accountant and representatives of Commission and the DEA. Additionally, the Access to Audit Documentation Amendments are designed to enable representatives of the Commission and the DEA of the clearing broker-dealer, in the scope of their examination of the firm, to have access to the audit documentation related to the examination of the broker-dealer.

The third set of proposed amendments, the Form Custody Amendments, would enhance the information received by the Commission and DEAs with respect to the custody practices of broker-dealers by requiring broker-dealers to file on a quarterly basis a new Form Custody. Proposed Form Custody would elicit information as to whether and how a broker-dealer maintains custody of cash and securities of customers and others.

Each set of proposed amendments has a corresponding paperwork burden, which is addressed below.

### *B. Proposed Use of Information*

As discussed above, the Commission is proposing three sets of amendments to Rule 17a–5. The first set of proposed amendments, the Annual Reporting Amendments, would require a broker-dealer to either file a Compliance Report or an Exemption Report as part of its annual audit requirements under Rule 17a–5. The Compliance Report would be filed by a carrying broker-dealer and contain assertions by the broker-dealer with respect to the Financial Responsibility Rules. The Exemption Report would be filed by a broker-dealer that claims an exemption from Rule 15c3–3 because it does not operate as a carrying broker-dealer and would contain an assertion as to the basis for the claimed exemption. In addition, the broker-dealer would be required to engage an independent public accountant to provide a report addressing the accuracy of the assertions in either the Compliance Report or Exemption Report, as applicable.

The Commission preliminarily believes that the information gathered from the proposed Annual Reporting Amendments would assist the PCAOB in establishing an effective oversight and inspection program over the independent public accountants of broker-dealers, and it would enable broker-dealers that are jointly registered as investment advisers to use a single report to satisfy the proposed requirements under Rule 17a–5 and the IA Custody Rule's internal control report requirement.

The second set of proposed amendments, the Access to Audit Documentation Amendments, would provide the Commission and DEA examiners with access to clearing broker-dealer independent public accountants to discuss the independent public accountants' findings with respect to broker-dealer annual audit reports and to review audit documentation associated with those reports. Specifically, the amendments would require a representation from the clearing broker-dealer that it agrees to permit its independent public accountant to discuss with representatives of the Commission the findings with respect to annual audit reports of broker-dealers and review the related audit documentation. These proposed amendments would provide another tool to Commission and DEA examiners of broker-dealers by providing access to additional relevant information.

The third set of proposed amendments, the Form Custody Amendments, would establish a new Form Custody that the broker-dealer would need to include when filing its quarterly FOCUS Reports. Form Custody would elicit information as to whether and how a broker-dealer maintains custody of cash and securities of customers and others. The Commission preliminarily believes that proposed Form Custody would provide more detailed information about a broker-dealer's custodial activities. Moreover, proposed Form Custody could assist in expediting the

[170] *See, e.g.,* proposed paragraph (f)(4) of Rule 17a–5.

[171] *Id.*

Commission's or DEA's examination of a broker-dealer's custodial activities as examiners would no longer need to request basic custody-related information already disclosed on the form.

*C. Respondents*

The applicability of the proposed amendments discussed in this release depends on how a broker-dealer conducts its business. There are 5,063 broker-dealers registered with the Commission as of year-end 2009. Of the 5,063 registered broker-dealers, 305 broker-dealers are carrying broker-dealers—*i.e.,* broker-dealers that maintain custody of customer funds and/or securities and are required to comply with the customer protection provisions of Rule 15c3–3. The type of report a broker-dealer would be required to file under the proposed Annual Reporting Amendments would be based on whether a broker-dealer is a carrying broker-dealer subject to Rule 15c3–3, or is exempt from Rule 15c3–3. Carrying broker-dealers would be required to file Compliance Reports under the proposed Annual Reporting Amendments. Broker-dealers exempt from Rule 15c3–3 would be required to file Exemption Reports. There are 4,752 broker-dealers that claim exemptions to Rule 15c3–3.[172] The Commission estimates 305 carrying broker-dealer respondents would file the proposed Compliance Report and 4,752 non-carrying broker-dealer respondents would file the proposed Exemption Report under the Annual Reporting Amendments.[173]

The Access to Audit Documentation Amendments would apply to clearing broker-dealers, which, as defined above, includes broker-dealers that clear transactions or carry customer accounts. There are 528 clearing broker-dealers based on year-end 2009 FOCUS Report data, and, accordingly, the Commission estimates that there would be 528 broker-dealer respondents with respect to the Access to Audit Documentation Amendments.[174]

The Commission estimates that there would be approximately 5,057 broker-dealer respondents with respect to the Form Custody Amendments.[175]

Additionally, the Commission estimates that there could be approximately 550 independent public accountants affected by the amendments. This number represents the number of independent public accountants registered with the PCAOB that are engaged to perform broker-dealer audits.

The Commission generally requests comment on all aspects of these estimates. In addition, the Commission requests specific comment on the following items related to these estimates:

- Should the Commission use different estimates for the number of respondents for the Annual Reporting Amendments? If so, what estimates should the Commission use and why? What are the sources of these estimates?
- Should the Commission use different estimates for the number of broker-dealer respondents for the Access to Audit Documentation Amendments? If so, what estimates should the Commission use and why? What are the sources of these estimates?
- Should the Commission use a different estimate of the number of independent public accountants that would be affected by the amendments? If so, what estimate should the Commission use and why? What is the source of this estimate?

Commenters should provide specific data and analysis to support any comments they submit with respect to these estimates with respect to the number of respondents.

*D. Total Annual Recordkeeping and Reporting Burden*

As discussed below, the Commission estimates the total recordkeeping burden resulting from the proposed Rule 17a–5 amendments would be approximately 287,325 hours on an annual basis[176] and 10,214 hours on a one-time basis.[177] The Commission notes that, given the significant variance between the largest broker-dealer and the smallest broker-dealer, the total annual and one-time hour burden estimates described below are averages across all types of broker-dealers expected to be affected by the proposed amendments.

1. Annual Reporting Amendments

a. Financial Reports Filed With the Commission

Currently, broker-dealers are required to file their annual audit report, which, as discussed previously, the Commission proposes to rename as the broker-dealer's ''Financial report'' in Rule 17a–5. The Commission is not proposing any substantive changes to the financial audit; therefore the Commission believes the hour burden for broker-dealers with respect to financial reports would remain the same.[178] As is discussed in Section V.E. of this release, the Commission is proposing to delete paragraph (b)(6) of Rule 17a–5, which currently provides that two copies of a broker-dealer's annual audit report be filed at the Commission's principal office in Washington, DC, because it is redundant with paragraph (d)(6) of Rule 17a–5, which requires that only one copy of a broker-dealer's annual audit report be filed at the Commission's principal office in Washington, DC. By deleting paragraph (b)(6) of Rule 17a–5, only one copy of the annual audit report would need to be filed with the Commission, rather than two, which will result in a slight reduction in broker-dealers' hour burden in providing related papers to the Commission.[179]

The Commission requests comment on all aspects of these proposed burden estimates. Commenters should provide specific data and analysis to support any comments they submit with respect to these burden estimates, if possible.

b. Compliance Report and Examination Report

The Commission proposes to require carrying broker-dealers to file two new reports: (1) The proposed Compliance Report, which is prepared by the carrying broker-dealer; and (2) the Examination Report, which is prepared by the broker-dealer's independent public accountant as a result of its examination of the Compliance

[172] These numbers are based on FOCUS Report data as of year-end 2009. *See supra* note 126 for a description of the FOCUS Report. As discussed in note 126, FOCUS Reports are deemed to be confidential pursuant to paragraph (a)(3) of Rule 17a–5.

[173] There are 4,752 broker-dealers that claim an exemption to Rule 15c3–3.

[174] The clearing broker-dealers would be required to respond to the paperwork burdens associated with the Access to Audit Documentation Amendments, and 528 broker-dealers represent the number of Part II FOCUS filers.

[175] Carrying broker-dealers and non-carrying broker-dealers would be required to file Form Custody; 305 + 4,752 = 5,057.

[176] The total annual hour burden is estimated to be 287,325 hours (18,300 hours for the Compliance Report + 23,760 hours for the Exemption Report + 2,529 hours for copies of the Annual Reports to be filed with SIPC + 242,736 hours for Form Custody).

[177] The total one-time burden is estimated to be 10,114 hours for the revised Notice Designating Accountant (required for the proposed Access to Audit Documentation Amendments) + 100 hours for SIPC forms to be filed with respect to the SIPC proposal.

[178] The Commission notes that the financial audit would be subject to standards promulgated by the PCAOB; however, this would not change the Commission's prescribed reporting burden associated with the financial audit.

[179] As is discussed above in Section V.A. of this release, broker-dealers would be required to file a copy of their annual audit reports with SIPC under proposed paragraph (d)(6) of Rule 17a–5, which would impose an annual hour burden on broker-dealers. This burden is discussed below in Section VI.D.1.d of this release.

Report.[180] Included in the Compliance Report would be a statement that the carrying broker-dealer is responsible for establishing and maintaining a system of internal control to provide the broker-dealer's management with reasonable assurance that there are no instances of material non-compliance with the Financial Responsibility Rules and three assertions. The three assertions would be whether the broker-dealer: (1) Was in compliance with Financial Responsibility Rules as of its most recent fiscal year-end; (2) used information derived, in all periods during the fiscal year, from the broker-dealer's books and records; and (3) had a system of internal control over compliance with these rules that was effective during the most recent fiscal year such that there were no instances of material weakness.

The Commission preliminarily believes that broker-dealers would validate, gather, and review records to enable them to make the assertions in the proposed Compliance Report. The Commission estimates, on average, that broker-dealers would spend an additional 60 hours to perform the validation and evidence gathering.[181] For all carrying broker-dealers, we estimate the annual hour burden to be 18,300 hours.[182]

The Commission requests comment on all aspects of these proposed burden estimates. Commenters should provide specific data and analysis to support any comments they submit with respect to these burden estimates, if possible.

c. Exemption Report

For a non-carrying broker-dealer claiming an exemption from Rule 15c3–3, the proposed Exemption Report would require the broker-dealer to assert that it is exempt from Rule 15c3–3 and identify the provision of the rule that it is relying on to qualify for the exemption. The non-carrying broker-dealer would be required to include this assertion in its Exemption Report to be filed with the Commission. The Commission does not anticipate that this requirement will result in a significant hourly burden because the broker-dealer has been operating under the claimed exemption and is aware of what exemption it will claim on the Exemption Report. Therefore, the hour burden associated with this proposed amendment should be administrative and encompass the drafting and filing of the report. Based on staff experience with broker-dealers filing similar types of reports, the Commission estimates it should take a non-carrying broker-dealer five hours to prepare the Exemption Report and file the Exemption Report and copy of the associated independent public accountant's report with the Commission and applicable securities regulators. Thus, we estimate the annual hour burden for broker-dealers required to file the Exemption Report and associated independent public accountant's report would be 23,760 hours.[183]

The Commission requests comment on all aspects of these proposed burden estimates. Commenters should provide specific data and analysis to support any comments they submit with respect to these burden estimates, if possible.

d. Copies of Annual Reports Filed With SIPC

The Commission is proposing that copies of broker-dealer annual reports (including the Financial Report and either the Compliance Report and corresponding independent public accountant's report based on the Compliance Examination, or the Exemption Report and corresponding independent public accountant's report based on the review of the Exemption Report) be filed with SIPC. The Commission estimates that broker-dealers would incur an administrative cost associated with the additional filing. The Commission estimates that it would take 30 minutes to prepare the additional copies and mail them to SIPC. Therefore, the Commission estimates that there is an annual hour burden of 2,529 with respect to this requirement.[184]

The Commission requests comment on all aspects of these proposed burden estimates. Commenters should provide specific data and analysis to support any comments they submit with respect to these burden estimates, if possible.

e. Notice of Designated Accountant

The Commission proposes amending Rule 17a–5(f)(2) and the Notice of Designated Accountant. As discussed above, the Commission proposes to require broker-dealers to state in their Notice that they have engaged an independent public accountant pursuant to proposed paragraph (g) of Rule 17a–5. Broker-dealers are currently required to file a Notice with the Commission designating the independent public accountant who will be conducting the broker-dealer's annual audit.

The Commission proposes to require that broker-dealers file a revised Notice designating their independent public accountant and containing the proposed new provisions in subparagraphs (D) through (G) to Rule 17a–5(f)(2)(ii), as applicable. As previously discussed, proposed new subparagraph (D) requires the broker-dealer to indicate whether the engagement is for a single year or not. Proposed subparagraph (E) requires the broker-dealer to make a representation that the engagement of the independent public accountant by the broker or dealer meets the required undertakings of paragraph (g).[185] Each clearing broker-dealer is required to make the following representations: (1) That it agrees to allow representatives of the Commission or its DEA, if requested for purposes of an examination of the broker-dealer, to review the audit documentation associated with the reports of the independent public accountant prepared pursuant to paragraph (g) of Rule 17a–5;[186] and (2) to permit the independent public accountant to discuss with representatives of the Commission and the DEA of the broker-dealer, if requested for purposes of an examination of the broker-dealer, the findings associated with the reports of the independent public accountant prepared pursuant to paragraph (g) of Rule 17a–5.[187]

The Commission notes that broker-dealers have previous versions of the Notice containing the current required information that could be used and revised to include the proposed new information. Therefore, the Commission estimates that it would take a broker-dealer approximately two hours to amend its existing Notice and file its new Notice pursuant to the proposed amendments. This estimate includes the time it would take a compliance officer and potentially other personnel to review the revised Notice to ensure that it complies with the proposed

[180] The Compliance Report and Examination Report are discussed in Section II.B.2 of this release.

[181] The Commission's preliminary estimate of 60 hours is an average based on the varying sizes of carrying broker-dealers and is based on staff experience.

[182] 60 hours × 305 carrying broker-dealers = 18,300. *See infra* Economic Analysis Section for a discussion of the external cost estimates associated with the independent public accountant preparing the Examination Report based on an examination of the Compliance Report.

[183] 5 hours × 4,752 non-carrying broker-dealers = 23,760 hours. *See infra* Economic Analysis Section for a discussion of the external costs associated with engaging an independent public accountant to prepare its report based on the review of the broker-dealer's Exemption Report.

[184] 1/2 hour × 5,057 broker-dealers = 2,528.50 hours, which is rounded up to 2,529 hours.

[185] *See* proposed paragraph (f)(2)(ii)(E) of Rule 17a–5.

[186] *See* proposed paragraph (f)(2)(ii)(F) of Rule 17a–5.

[187] *See* proposed paragraph (f)(2)(ii)(G) of Rule 17a–5.

requirements. The Commission notes that the Notice can be continuing in nature and therefore the designation of an independent public accountant can apply to successive audits. Thus, the Commission estimates that the filing of the proposed new Notice would result in a one-time burden for broker-dealers. The Commission further estimates that this would be a one-time hour burden associated with revising and filing the new Notice, which would total 10,114 hours for all broker-dealers.[188]

The Commission requests comment on all aspects of these proposed burden estimates. If possible, commenters should provide specific data and analysis to support any comments they submit with respect to these burden estimates.

f. SIPC Forms

As previously discussed, the Commission proposes to amend Rule 17a–5 to provide that broker-dealers continue to file their required SIPC Forms with the Commission and SIPC unless the Commission takes final action to approve any proposed rule change SIPC may file for Commission consideration to require the filing of the forms solely with SIPC. Because broker-dealers are currently required to file the forms with both the Commission and SIPC, the Commission does not believe there is any change in the hour burden for broker-dealers to comply with this requirement.

However, the Commission notes that SIPC would have to file a proposed and final rule with the Commission, to, as discussed above, require broker-dealers to file the SIPC Forms with SIPC. Based on staff experience with filings related to SRO rule changes, the Commission estimates that it would take, conservatively, 100 hours for SIPC to prepare the filings necessary to require broker-dealers to file the SIPC Forms solely with SIPC. Therefore, the one-time hour burden associated with this requirement is 100 hours. Additionally, the Commission notes that subsequent to the adoption of SIPC's rule, that broker-dealers would benefit from only having to file the reports with one entity.

The Commission requests comment on all aspects of these proposed burden estimates. Commenters should provide specific data and analysis to support any comments they submit with respect to these burden estimates, if possible.

2. Access to Audit Documentation Amendment

The Commission proposes to amend Rule 17a–5 to require broker-dealers to consent to allow representatives of the Commission and DEA to speak with, and review the audit documentation of, their independent public accountants, if requested in connection with a regulatory examination. As previously discussed, the rule proposal would require broker-dealers to amend and file a new Notice. As described above, the Commission calculated the hour burden associated with amending the Notice with respect to the proposed Annual Reporting. The Commission believes the estimated hour burden includes, if applicable, the needed representations associated with the Access to Audit Documentation.

The Commission requests comment on all aspects of these proposed burden estimates. Commenters should provide specific data and analysis to support any comments they submit with respect to these burden estimates, if possible.

3. Proposed Form Custody

The Commission is proposing a new form—Form Custody—that is designed to elicit information about whether and how a broker-dealer maintains custody of customer assets and handles customer cash. As discussed below, a broker-dealer would be required to file Form Custody quarterly and with its annual audit reports. The goal is to create a report that provides information about the custodial activities of broker-dealers that can serve as a starting point for securities regulators to undertake more in depth reviews as they deem appropriate.

As discussed above, the proposed form is comprised of nine line items that elicit information about the broker-dealer's custodial responsibilities and operations. Some of the items contain multiple questions and also require the completion of charts or the disclosure of additional data points in designated spaces on the form.

The Commission preliminarily believes that the hour burden associated with the FOCUS Report provides an appropriate baseline for estimating the hour burden associated with the proposed Form Custody because the FOCUS Report is a broker-dealer report that requires the broker-dealer to provide financial and operational information.[189] Specifically, the Commission believes that the information the broker-dealer uses to compute the required computation related to Rule 15c3–3 in the FOCUS Report can be used in answering the questions contained in the proposed Form Custody. Thus, the Commission bases this estimate on the current hour burden estimate for broker-dealers to complete their FOCUS Reports, and that on average, each broker-dealer would require 12 hours to complete Form Custody.[190] This results in an estimated annual burden of 242,736 hours.[191]

The Commission requests comment on all aspects of these proposed burden estimates. Commenters should provide specific data and analysis to support any comments they submit with respect to these burden estimates, if possible.

4. Technical Amendments to Rule 17a–5 and to Rule 17a–11

The Commission believes that the proposed technical amendments to Rule 17a–5 (*e.g.,* making the rule gender-neutral)[192] would not impose any additional time burden on broker-dealers. Additionally, the Commission's proposed conforming amendment to paragraph (e) of Rule 17a–11 (eliminating a reference to current paragraph (h) of Rule 17a–5 and correcting references) is also technical in nature and should not result in an additional hour burden.

*E. Collection of Information Is Mandatory*

The collection of information obligations imposed by the proposed rule amendments and the proposed new rule would be mandatory for broker-dealers that are registered with the Commission.

*F. Confidentiality*

The Commission notes that a broker-dealer can seek confidential treatment for information filed with the Commission under existing laws and rules governing confidential treatment.[193] The Commission will accord this information confidential treatment to the extent permitted by law.[194]

[188] 2 hours × 5,057 broker-dealers = 10,114.

[189] *See supra* note 126.

[190] The Commission notes that the current PRA hour burden estimate for the FOCUS Report filing is 12 hours. *See* SEC File No. 270–155, 75 FR 8759 (Feb. 25, 2010).

[191] 5,057 × 4 = 20,228 annual responses × 12 hours = 242,736.

[192] *See supra* discussion in Section V. E. for specified technical amendments.

[193] 15 U.S.C. 78o–7(k). A broker-dealer can request that the Commission keep this information confidential. *See* Section 24 of the Exchange Act (15 U.S.C. 78x), 17 CFR 240.24b–2, 17 CFR 200.80 and 17 CFR 200.83.

[194] To the extent that the Commission receives confidential information pursuant to this collection of information, such information would be kept

Continued

*G. Request for Comment*

Pursuant to 44 U.S.C. 3306(c)(2)(B), the Commission requests comment on the proposed collections of information in order to: (1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility; (2) evaluate the accuracy of the Commission's estimates of the burden of the proposed collections of information; (3) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; (4) evaluate whether there are ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and (5) evaluate whether the proposed rule amendments would have any effects on any other collection of information not previously identified in this section.

Persons who desire to submit comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, and refer to File No. S7–23–11. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this document in the **Federal Register**; therefore, comments to OMB are best assured of having full effect if OMB receives them within 30 days of this publication. Requests for the materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–23–11, and be submitted to the Securities and Exchange Commission, Office of Investor Education and Advocacy, 100 F Street, NE., Washington, DC 20549.

## VII. Economic Analysis

The Commission recognizes that there are costs associated with the adoption of the proposed amendments to Rule 17a–5 and proposed Form Custody that are separate from the hour burdens discussed in the Paperwork Reduction Act. Thus, the Commission has identified certain costs and benefits of the proposed rule amendments and requests comment on all aspects of this cost-benefit analysis, including identification and assessment of any costs and benefits not discussed in the analysis.[195] The Commission preliminarily believes that potential costs incurred by a broker-dealer to comply with the proposed rule amendments would depend on its size and the complexity of its business activities. The size and complexity of broker-dealers vary significantly. Therefore, their costs could vary significantly. The Commission is providing estimates on the average cost per broker-dealer taking into consideration the variance in size and complexity of the business activities of broker-dealers. Any costs incurred would also vary depending on whether the broker-dealers carry customer accounts or not. For these reasons, the cost estimates represent the average cost across all broker-dealers.

The Commission seeks comment and data on the benefits identified. The Commission also seeks comment on the accuracy of its cost estimates in each section of this cost-benefit analysis, and requests those commenters to provide data, including identification of statistics relied on by commenters to reach conclusions on cost estimates. Finally, the Commission seeks estimates and views regarding these costs and benefits for particular types of market participants (*e.g.,* broker-dealers, customers of broker-dealers and independent public accountants), as well as any other costs or benefits that may result from these proposed rule amendments and the new proposed Form.

Under Section 3(f) of the Exchange Act,[196] the Commission shall, when engaging in rulemaking that requires the Commission to consider or determine whether an action is necessary or appropriate in the public interest, consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act[197] requires the Commission to consider the anticompetitive effects of any rules the Commission adopts under the Exchange Act. Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Commission has considered the effects of each of the proposed amendments in this release on competition, efficiency and capital formation. The Commission's preliminary view, as discussed in greater detail with respect to each proposed amendment below, is that the proposed rule amendments may promote efficiency, competition, and capital formation and any burden on competition is justified by the benefits.

In considering the effect of the proposed amendments on capital formation, the Commission notes that broker-dealers that lack appropriate custody procedures or internal controls may expose investors to unnecessary risks. For example, if losses are incurred by investors as a result of a broker-dealer's failure to properly safeguard customer assets, investors may lose confidence in broker-dealers, which, in turn, could negatively impact the ability of companies to raise capital through securities issuances underwritten by broker-dealers. A perceived lack of such procedures should be expected to reduce investors' willingness to invest through broker-dealers, and measures, such as these proposed amendments, should thereby enhance capital formation by strengthening the operational controls of broker-dealers with respect to safeguarding customer assets. At the same time, the Commission acknowledges that additional requirements designed to safeguard investor assets could impose a burden on competition by raising compliance costs for broker-dealers.

The Commission generally requests comment on all aspects of this analysis of the burden on competition and promotion of efficiency, competition, and capital formation. Commenters should provide specific data and analysis to support their views.

*A. Annual Reporting Amendments*

1. Benefits

The Commission preliminarily believes that the Annual Reporting Amendments will have a number of benefits. First, the Annual Reporting Amendments would update the existing requirements of Rule 17a–5, which is

confidential, subject to the provisions of the Freedom of Information Act. 5 U.S.C. 552.

[195] For the purposes of this cost/benefit analysis, the Commission is using salary data from the Securities Industry and Financial Markets Association (''SIFMA'') Report on Management and Professional Earnings in the Securities Industry 2009, which provides base salary and bonus information for middle-management and professional positions within the securities industry. The salary costs derived from the report and referenced in this cost benefit section are modified to account for an 1800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. Hereinafter, references to data derived from the report as modified in the manner described above will be cited as *SIFMA's Management & Professional Earnings in the Securities Industry 2009.*

[196] 15 U.S.C. 78c(f).

[197] 15 U.S.C. 78w(a)(2).

used by the Commission to monitor the financial condition of broker-dealers. This will align the text of Rule 17a–5 with current auditing literature. Second, the amendments would facilitate PCAOB inspection and oversight authority over broker-dealer independent public accountants by providing an improved foundation for the PCAOB to establish new broker-dealer audit standards. Third, the Commission preliminarily believes that the Annual Reporting Amendments proposed in this release, if adopted, would create an efficient process for broker-dealers by enabling them to satisfy the proposed requirements under Rule 17a–5 and the IA Custody Rule's internal control report requirement.

Additionally, the Commission preliminarily believes that the proposed Annual Reporting Amendments would strengthen and improve compliance with the Financial Responsibility Rules because it would increase the focus of independent public accountants on the custody practices of broker-dealers. This could help identify broker-dealers that have weak controls for safeguarding investor assets.

The Commission preliminarily believes that the proposed Annual Reporting Amendments, by updating the existing requirements of Rule 17a–5 and requiring reports prepared by independent public accountants that make custody a greater focus of the audit, would strengthen broker-dealer compliance with the Financial Responsibility Rules and, in turn, improve the financial and operational condition of broker-dealers and the safeguarding of investor assets. These improvements could enhance investor trust in the financial markets and thereby potentially have a positive impact on capital formation.

Additionally, the Commission preliminarily believes that the proposed Annual Reporting amendments create regulatory efficiencies for broker-dealers that are also registered as investment advisers because the proposals would potentially eliminate regulatory redundancy by enabling entities subject to the IA Custody Audit Rule and the Compliance Examination to submit a single report with the Commission.

2. Costs

As discussed above, the Commission estimates that there are 305 carrying broker-dealers that would be subject to the Compliance Examination and Report based on data included in FOCUS Reports. The Commission recognizes that the proposed amendments associated with the Compliance Examination would create additional costs incurred by the broker-dealers related to their annual audits. As stated previously, the proposed requirements with respect to the Compliance Examination are based on existing requirements in Rule 17a–5. The Commission is also proposing new requirements for the Compliance Examination that are not currently in Rule 17a–5.[198]

The Commission preliminarily believes that the costs associated with the Compliance Examination would be incremental to the current annual audit costs, because the proposed amendments are based on existing requirements. Consequently, the Commission preliminarily believes that the independent public accountants would be able to build upon existing work to satisfy the new requirements. For example, as discussed above, under existing requirements, the independent public accountant, among other things, must review the accounting system, internal accounting control and procedures for safeguarding securities, including appropriate tests therefore for the period since the prior examination date.[199] The Commission preliminarily estimates that the additional costs incurred by carrying broker-dealers associated with paying their independent public accountants would average $150,000 per firm, per year. The Commission derived this cost estimate from its estimates of the costs associated with the IA Custody Rule.

The Commission estimated that the IA Custody Rule would impose costs of $250,000 per investment adviser.[200] The Commission noted that the cost to prepare an internal control report relating to custody would vary based on the size and services offered by a qualified custodian, but that the average cost for an internal control report was approximately $250,000.[201] The Commission notes that the IA Custody Rule imposed new requirements on investment advisers, and was not based on existing obligations. The Commission preliminarily believes that the costs associated with the Compliance Examination would be incremental to broker-dealers because of the existing work done by the independent public accountants. The Commission preliminarily estimates that the additional costs associated with the Compliance Examination and Examination Report to be, on average, $150,000 per year per broker-dealer. As noted above, the Commission derived this cost estimate from its estimates of the costs associated with the IA Custody Rule.

Therefore the Commission estimates an annual cost associated with this proposal to be $45,750,000 per year.[202]

The Commission estimates that 4,752 non-carrying broker-dealers would be required to file the proposed Exemption Report. As discussed above, this number is based on the number of non-carrying broker-dealers that claim exemptions from Rule 15c3–3.[203] These non-carrying broker-dealers would be required to have an independent public accountant review the claimed assertion (exemption) and prepare a corresponding report that also would be filed with the Commission. The Commission preliminarily believes that an independent public accountant's review of the exemption assertion would add an incremental cost to that incurred by the annual financial audit. As discussed above, independent public accountants engaged by broker-dealers must ''ascertain that the conditions of the exemption were being complied with as of the examination date and that no facts came to [the independent public accountant's] attention to indicate that the exemption had not been complied with during the period since [the independent public accountant's] last examination.'' [204] The Commission therefore estimates that the submission of the Exemption Report and any additional work done by the independent public accountant to conduct the review would result in an incremental increase to the current audit cost of the non-carrying broker-dealer.

The cost for paying the independent public accountant to perform a financial audit of a non-carrying broker-dealer varies depending on the size and amount of net revenues. The Commission's preliminary estimates of

[198] *See supra* discussion in Section II.B.2; the proposed Compliance Examination would result in the following four changes to existing audit work: (1) Use of PCAOB standards; (2) revised reporting requirements for the examination of the broker-dealer's assertions regarding compliance and internal controls over compliance (*i.e.,* expression of an opinion); (3) period of time of reporting on internal controls over compliance (*i.e.,* controls over compliance effective through the year instead of only at year-end); and (4) including the Account Statement Rule as part of the examination.

[199] *See* Section II.A. of this release.

[200] *See* IA Custody Adopting Release at 1478.

[201] *See* IA Custody Adopting Release at note 291 and corresponding text at 1479.

[202] $150,000 × 305 broker-dealers = $45,750,000.

[203] These numbers are based on FOCUS Report data as of year-end 2009. *See supra* notes 172–173.

[204] *See* Rule 17a–5(g)(2). As noted previously, the independent public accountants currently satisfy this requirement by including a statement in the study providing that they have ascertained that the broker-dealer was complying with the conditions of the exemption; *see Broker Dealer Audit Guide supra* note 14 at Section 3.32.

these costs as set forth below are based on staff experience, including communications with broker-dealers, broker-dealer auditors, and auditor industry groups. The Commission preliminarily estimates that the cost for an annual audit for a non-carrying broker-dealer with net revenue of less than $1 million to be $15,000. The Commission preliminarily estimates the average cost for an audit of a non-carrying broker-dealer with net revenue of $1 million to $10 million to be $20,000. The Commission preliminarily estimates the average cost of an audit of a non-carrying broker-dealer with net revenue greater than $10 million and less than $100 million to be $60,000. Finally, the Commission preliminarily estimates the average cost of an audit of a non-carrying broker-dealer with net revenue greater than $100 million to be $300,000. Therefore, the Commission preliminarily estimates the average cost for the financial audit for non-carrying broker-dealers is approximately $30,000.[205] As noted, the Commission believes that the cost of the proposed review would be incremental to costs currently incurred for the financial audit. The Commission estimates that, on average, the additional average cost would be approximately $3,000 for each non-carrying broker-dealer.[206] Therefore, the total annual cost for all non-carrying broker-dealers required to submit Exemption Reports is estimated to be $14,256,000.[207]

The Commission preliminarily believes that the proposed amendments may impose a burden on competition for smaller broker-dealers to the extent that they impose relatively fixed costs, which would represent a higher percentage of net income for smaller broker-dealers. However, the Commission preliminary believes that the incremental costs resulting from the proposed amendments would not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

*B. Access to Audit Documentation Amendments*

1. Benefits

The Commission preliminarily believes that the proposed Access to Audit Documentation Amendments would have a number of benefits. These proposed rules would make it easier for the Commission and DEAs to access information about a clearing broker-dealer's independent public accountant's work and the steps taken by the independent public accountant to audit the broker-dealer's financial statements. In turn, this information would enable the Commission and DEA examiners to more efficiently deploy examination resources.[208] The Commission preliminarily believes that examiners reviewing the audit documentation may tailor the scope of their examinations by identifying areas where extensive audit work was performed by the independent public accountant and focusing their examinations on other areas. Enabling Commission and DEA examination staff to conduct more focused examinations of broker-dealers could, in turn, provide investors with greater protection, as examination resources could be allocated more strategically for their benefit.

2. Costs

The Commission notes that clearing broker-dealers would incur additional costs from the proposed Access to Audit Documentation Amendments by permitting representatives of the Commission and its DEA to discuss with the independent public accountants the findings in their audit reports and to review the audit documentation associated with the audit reports. While the Commission does not anticipate that its representatives would need to discuss findings and review audit documentation with respect to each clearing broker-dealer annually, the Commission's estimate is nevertheless based on the total number of clearing broker-dealers. Further, the Commission assumes that independent public accountants would charge their clearing broker-dealer clients for any time spent with the Commission and DEA representatives discussing the findings associated with the annual audit reports and providing access to the documentation associated with the annual audit reports. The Commission estimates clearing broker-dealers would incur an additional $660,000 per year in annual costs.[209]

The Commission preliminarily believes that the proposed amendments may impose a burden on competition for smaller broker-dealers to the extent that they impose relatively fixed costs, which would represent a higher percentage of net income for smaller broker-dealers. However, the Commission preliminarily believes that the incremental costs resulting from the proposed amendments would not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act, given the investor protection objectives of the proposed amendments.

*C. Proposed Form Custody and Related Requirements*

1. Benefits

The Commission frequently brings enforcement actions against investment advisers and broker-dealers alleging fraudulent conduct, including misappropriation or other misuse of investor assets.[210] The Commission also has brought an enforcement action against the accountant responsible for auditing one of these broker-dealers.[211] In order to enhance protection, the Commission has taken steps to enhance oversight of the custody function of investment advisers[212] and preliminarily believes that the proposal to adopt Form Custody will provide information related to custodial practices of broker-dealers that, in turn, will better protect investors who entrust funds and securities to broker-dealers. Proposed Form Custody would be filed with a broker-dealer's quarterly FOCUS Reports and would elicit information about whether and how the broker-dealer maintains custody of assets. This form would consolidate information about the broker-dealer's custodial responsibility and relationships with other custodians in one report so that the Commission and other securities regulators can have a more comprehensive understanding of the broker-dealer's custody practices and arrangements. Further, the Commission

[205] The average is derived from applying the number of broker-dealers with the given net revenue ranges and multiplying it by the estimated audit costs; for example there are over 2,000 non-carrying broker-dealers with net revenues under $1 million; however there are over 1500 firms with net revenue between $1 million and $10 million and so forth. The Commission preliminarily estimates the average audit cost to be $30,000.

[206] Based on staff experience the Commission believes that the incremental work done to conduct the review represents 10% of the current work done. Therefore the Commission estimates an average additional cost of around $3,000 (10% * $30,000).

[207] $3,000 × 4,752 = $14,256,000.

[208] As discussed previously, the Commission preliminarily believes that where an independent public accountant has performed extensive testing of a carrying broker-dealer's custody of securities and cash by confirming holdings at subcustodians, examiners could focus their efforts on matters that had not been the subject of prior testing and review.

[209] Based on industry sources, the Commission estimates that the hourly cost of an independent public accountant to be $250. With an additional 5 hours per year, the annual hour burden would be 2,640 (528 clearing broker-dealers × 5 hours) for a yearly cost estimate of $660,000 (2,640 hours × $250 per hour).

[210] *See supra* note 123.

[211] *SEC* v. *David G. Friehling, C.P.A., et al.,* Litigation Release No. 20959 (Mar. 18, 2009).

[212] *See supra* note 124.

believes that the additional information made available on the proposed form would aid in the examination of broker-dealers, because the examination staff could use the form as another tool for purposes of prioritizing and planning examinations.

The Commission believes that the proposed Form Custody amendments also could enhance investor confidence. By establishing a discipline under which broker-dealers are required to report to the Commission greater detail as to their custodial functions, investor perception as to the safety of their funds and securities at broker-dealers could improve. This, in turn, could increase the willingness of investors to provide capital for investment through broker-dealers.

2. Costs

The proposed form is comprised of nine line items that elicit information about the broker-dealer's custodial responsibilities and operations. Some of the Items contain multiple questions and also elicit information by requiring charts to be filled out or additional information to be provided in spaces provided.[213]

The cost of compliance will vary given the variation in the size and complexity of the businesses of the brokers and dealers subject to Rule 17a–5. The Commission estimates that, on average, each report would require approximately 12 hours for a broker-dealer to complete.[214] As noted above, the Commission proposes to require that firms file proposed Form Custody on a quarterly basis. Therefore, the Commission estimates that there would be 20,228 annual responses [215] and therefore a total annual hour burden of 242,736 hours.[216] Thus, the Commission anticipates that the annual cost to the industry will be $69,179,760.[217]

The Commission preliminarily believes that the proposed amendments could have a burden on competition because they could increase compliance costs for broker-dealers. However, the Commission preliminarily believes that this proposed amendment would not have a disproportionate effect on smaller broker-dealers. The Commission expects that smaller firms in completing proposed Form Custody will incur fewer associated costs because the information required to be disclosed is less. For example, broker-dealers that introduce customers on a fully disclosed basis and do not have custody of customer funds or assets would leave much of the Form blank.

*C. Request for Comment on Economic Analysis*

The Commission seeks estimates of the costs and benefits identified in this Economic Analysis Section, as well as any costs and benefits not already discussed, which may result from the adoption of the proposed amendments and form.

The Commission also requests comment on the potential costs and benefits of alternatives suggested by commenters. The Commission specifically requests comments with respect to the following:

- With respect to the costs estimates for the proposed Compliance Examination and corresponding Examination Report, is the cost associated with the IA Custody Rule comparable? Is the Commission's estimated cost for the proposed Compliance Examination and Examination Report conservative or too low?
- With respect to the costs estimates for the proposed Compliance Examination, do commenters believe that there could be some cost savings because some respondents would no longer have to engage an independent public accountant to perform the internal control examination required by the IA Custody Rule? If so, how much savings could be generated?
- With respect to the cost estimates for the proposed Exemption Report and review by the independent public accountant, would the amount of additional work for the review by the independent public accountant be greater than estimated by the Commission?
- Are there any additional costs associated with the proposed Access to Audit Documentation Amendments that are not currently contemplated in the Economic Analysis section? Will independent public accountants allocate the costs associated with the proposed Access to Audit Documentation Amendments to broker-dealers?
- With respect to the cost estimates for proposed Form Custody, do commenters believe that broker-dealers will need more than the estimated 12 hours to complete the form? If so, why? Also, please provide an alternative estimate.
- Are there any additional economic effects related to efficiency, capital formation or competition that the Commission has not identified?

The Commission generally requests comment on the competitive or anticompetitive effects as well as efficiency and capital formation effects, of the proposed amendments and form on any market participants if the proposals are adopted. Commenters should provide analysis and empirical data to support their views on the costs and benefits associated with the proposed amendments and form.

## VIII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,'' [218] the Commission must advise OMB whether a proposed regulation constitutes a major rule. Under SBREFA, a rule is ''major'' if it has resulted in, or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- A significant adverse effect on competition, investment, or innovation.

If a rule is ''major,'' its effectiveness will generally be delayed for 60 days pending Congressional review. The Commission requests comment on the potential impact of the proposed rule amendments on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their view to the extent possible.

## IX. Initial Regulatory Flexibility Analysis

The Commission has prepared the following Initial Regulatory Flexibility Analysis (''IRFA''), in accordance with the provisions of the Regulatory Flexibility Act,[219] regarding the proposed rule amendments to Rule 17a–5 under the Exchange Act.

*A. Reasons for the Proposed Action*

The proposed Annual Reporting Amendments are designed to, among other things: (1) Update the existing requirements of Rule 17a-5; (2) facilitate

[213] *See supra* Section IV for discussion of each proposed item of Form Custody.

[214] *See* supra note 190; the Commission's current hour burden associated with a broker-dealer filing a FOCUS Report is 12 hours.

[215] 5,057 firms × 4 times a year = 20,228 total responses.

[216] 20,228 total responses × 12 hours per Form Custody = 242,736.

[217] The Commission anticipates that one or more Financial Reporting Managers, at an average cost of $285 per hour, would be responsible for completion of Form Custody. This $285 per hour figure for a Financial Reporting Manager is based upon information obtained from *SIFMA's Management & Professional Earnings in the Securities Industry 2009* publication, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. Thus, the annual cost burden is estimated to be $69,179,760 (242,736 total hours × $285 per hour).

[218] Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[219] 5 U.S.C. 603.

the ability of the PCAOB to implement oversight of independent public accountants of broker-dealers as required by the Dodd-Frank Act; and (3) eliminate potentially redundant requirements for certain broker-dealers affiliated with, or dually-registered as, investment advisers.

The Commission preliminarily believes the Access to Audit Documentation Amendments would enhance Commission and DEA examinations of broker-dealers by providing examiners with access to additional relevant information, which could improve the efficiency and effectiveness of the examination process. The Commission preliminarily believes that Commission and DEA examiners could use the Access to Audit Documentation Amendments to develop the scope for their examinations of clearing broker-dealers.

Currently, limited information is elicited about the scope of the broker-dealer's custodial function and the manner in which it handles assets of customers and other persons. The Commission, therefore, is proposing Form Custody, which it preliminarily believes would be useful because it provides information about the custodial activities of the broker-dealer that can serve as a starting point for examiners to undertake more in-depth reviews as they deem appropriate.

*B. Objectives*

The objectives of the proposed Form Custody Amendments are to enhance the Commission's oversight of broker-dealers, especially with respect to broker-dealers' custody of assets. As stated previously, the Commission preliminarily believes that proposed Form Custody would provide useful information that is currently not routinely made available to the Commission. In addition, the proposed Access to Audit Documentation Amendments would assist the examination of broker-dealers. Another objective of the proposed Annual Reporting Amendments is, among other things, to update the existing provisions of Rule 17a–5 to align the text of the rule with current auditing literature.

*C. Legal Basis*

Pursuant to the Exchange Act [220] and, particularly, Sections 15(c), 17(a), 17(E) and 23 of the Exchange Act, the Commission is proposing amendments to Rule 17a–5 and new Form Custody.[221]

*D. Small Entities Subject to the Rule*

Paragraph (a) of Rule 0–10 provides that for purposes of the Regulatory Flexibility Act, a small entity ''[w]hen used with reference to a broker or dealer, the Commission has defined the term ''small entity'' to mean a broker or dealer (''small broker-dealer'' that: (1) Had total capital (net worth plus subordinated liabilities of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements, were prepared pursuant to Rule 17a–5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated debt) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this release.'' [222] Currently, based on FOCUS Report data, there are 871 broker-dealers that are classified as ''small'' entities for purposes of the Regulatory Flexibility Act.[223]

*E. Reporting, Recordkeeping, and Other Compliance Requirements*

The Commission proposes three amendments to Rule 17a–5: The (1) Annual Reporting Amendments; (2) Access to Audit Documentation Amendments; and (3) Form Custody Amendments.

The Commission preliminarily believes that the potential impact of the proposals on small broker-dealers would be substantially less than on larger firms. With respect to the Annual Reporting Amendments, small broker-dealers would be subject to the Exemption Report, and not the proposed Compliance Report and Examination.[224] Therefore, small broker-dealers would engage their independent public accountant to review their Exemption Reports and would be subject to the additional costs associated with that review. Additionally, these firms could be required to pay additional fees to their independent public accountant, should the Commission or DEA examiners decide to interview them.

*F. Duplicative, Overlapping, or Conflicting Federal Rules*

The Commission believes that there are no federal rules that duplicate, overlap, or conflict with the proposed rule amendments.

*G. Significant Alternatives*

Pursuant to Section 3(a) of the Regulatory Flexibility Act,[225] the Commission must consider certain types of alternatives, including: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part of the rule, for small entities.

The Commission considered whether it is necessary or appropriate to establish different compliance or reporting requirements or timetables; or clarify, consolidate, or simplify compliance and reporting requirements under the rule for small entities. Because the proposed rule amendments would enhance the Commission's oversight, the Commission preliminarily believes that small entities should be covered by the rule. The Commission also preliminarily believes that it would not be necessary to establish different compliance requirements for small broker-dealers, in that, as discussed previously, the proposed amendments are based in large part on existing compliance requirements in Rule 17a–5. Similarly, the Commission does not believe it would be necessary to establish different compliance requirements for small broker-dealers with respect to Form Custody. The information that would be elicited on the form is designed to allow examiners to obtain an understanding of the custody practices of all types of broker-dealers. Therefore, the Commission preliminarily believes that having inconsistent requirements could undermine the objectives of the proposed requirement.

*H. Request for Comments*

The Commission encourages written comments on matters discussed in this IRFA. In particular, the Commission seeks comment on the number of small entities that would be affected by the proposed rule amendments and whether the effect on small entities would be economically significant. Commenters are asked to describe the nature of any effect and to provide empirical data to support their views.

[220] 15 U.S.C. 78a *et seq.*

[221] 15 U.S.C. 78o.

[222] 17 CFR 240.0–10(c).

[223] *See* 17 CFR 240.0–10(a).

[224] There are no broker-dealers that are carrying firms that satisfy the definition of a ''small'' broker-dealer.

[225] 5 U.S.C. 603(c).

## X. Statutory Authority and Text of the Proposed Amendments

The Commission is proposing amendments to Rule 17a–5 under the Exchange Act pursuant to the authority conferred by the Exchange Act, including Sections 15, 17, 23(a) and 36.[226]

## List of Subjects in 17 CFR Parts 240 and 249

Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

## Text of the Proposed Amendments

For the reasons set out in the preamble, the Commission proposes to amend Title 17, Chapter II, of the Code of Federal Regulations as follows:

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78n–1, 78o, 78o–4, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*, 18 U.S.C. 1350, and 12 U.S.C. 5221(e)(3), unless otherwise noted.

* * * * *

2. Section 240.17a–5 is amended by:

a. In paragraph (a)(2)(ii), in the first sentence, removing the phrase ''annual audit of financial statements where said date is other than a calendar quarter'' and adding in its place ''annual reports where said date is other than the end of a calendar quarter.'';

b. In paragraph (a)(2)(iii), removing the phrase ''the annual audit of financial statements where said date is other than the end of the calendar quarter.'' and adding in its place ''the annual reports where said date is other than the end of a calendar quarter.'';

c. In paragraph (a)(2)(iv), adding the phrase ''(''designated examining authority'')'' after the phrase ''section 17(d) of the Act'';

d. Redesignating paragraphs (a)(5) and (a)(6) as paragraphs (a)(6) and (a)(7);

e. In newly redesignated paragraph (a)(6)(ii)(A), removing the phrase ''(a)(5)(i)'' and adding in its place ''(a)(6)(i)'';

f. Adding new paragraph (a)(5);

g. In paragraph (b)(4), removing the word ''he'' and adding in its place the phrase ''the broker or dealer''.

h. Removing paragraph (b)(6);

i. In paragraph (c)(1)(i), removing the phrase ''his customers'' and adding in its place the phrase ''customers of the introducing broker or dealer'';

j. In paragraph (c)(1)(iii), removing the phrase ''in the manner contemplated by the $2,500 minimum net capital requirement of § 240.15c3–1'' and adding in its place ''and otherwise qualified to maintain net capital of no less than what is required pursuant to § 240.15c3–1(a)(2)(iv)'';

k. In paragraph (c)(2), in the first sentence, removing the phrase ''audited financial statements'' and adding in its place ''financial report'';

l. In paragraph (c)(2)(i) removing the phrase ''balance sheet with appropriate notes prepared in accordance with'' and adding in its place ''Statement of Financial Condition with appropriate notes prepared in accordance with U.S.'';

m. Removing paragraph (c)(2)(iii);

n. Redesignating paragraph (c)(2)(iv) as (c)(2)(iii);

o. In newly redesignated paragraph (c)(2)(iii), removing the phrase ''annual audit report'' and adding in its place ''financial report'';

p. Adding new paragraph (c)(2)(iv);

q. In paragraph (c)(4) removing the word '''customer''' and adding in its place the word ''*customer*'';

r. In paragraphs (c)(5)(ii)(A) and (c)(5)(iii), removing the phrase ''Web site'' and adding in its place ''website'';

s. In paragraph (c)(5)(vi), removing the phrase ''was not required by paragraph (e) of § 240.17a–11 to give notice and transmit a report to the Commission'' and replacing it with ''received an unqualified financial statement audit report pursuant to paragraph (g) of this section and neither the broker or dealer, pursuant to paragraph (d) of this section, or the independent public accountant, pursuant to paragraph (g) of this section, identified a material weakness or instance of material non-compliance'';

t. Revising paragraph (d);

u. In paragraph (e) introductory text, removing the phrase ''financial statements'' and adding in its place ''annual reports'';

v. Revising paragraph (e)(1);

w. In paragraph (e)(2), in the first sentence, adding the word ''financial'' before ''report'';

x. Revising paragraphs (e)(3) and (e)(4);

y. Removing paragraph (e)(5);

z. Revising paragraphs (f), (g), (h), and (i); and

aa. Removing and reserving paragraph (j).

The revisions and additions read as follows:

**§ 240.17a–5 Reports to be made by certain brokers and dealers.**

(a) * * *

(5) Every broker or dealer subject to this paragraph (a) shall file Form Custody (§ 249.1900 of this chapter) with its designated examining authority within 17 business days after the end of each calendar quarter and within 17 business days after the date selected for the annual reports where said date is other than the end of a calendar quarter. The designated examining authority shall maintain the information obtained through the filing of Form Custody and transmit such information to the Commission, at such time as it transmits the applicable part of Form X–17A–5 (§ 249.617 of this chapter) as required in paragraph (a)(4) of this section.

* * * * *

(c) * * *

(2) * * *

(iv) If in connection with the most recent annual report the independent public accountant provided notice to the Commission pursuant to paragraph (h) of this section, there shall be a statement by the broker or dealer that a copy of such notice is currently available for the customer's inspection at the principal office of the Commission in Washington, DC.

* * * * *

(d) *Annual reports.* (1)(i) Every broker or dealer registered pursuant to section 15 of the Act shall file annually, on a calendar or fiscal year basis:

(A) A financial report as described in paragraph (d)(2) of this section;

(B)(*1*) A compliance report as described in paragraph (d)(3) of this section unless the broker or dealer is exempt from the provisions of § 240.15c3–3; or

(*2*) An exemption report described in paragraph (d)(4) of this section if the broker or dealer is exempt from the provisions of § 240.15c3–3; and

(C) For each report filed pursuant to this paragraph (d), a report prepared by an independent public accountant pursuant to the engagement provisions set forth in paragraph (g)(1) of this section, except as provided in paragraphs (d)(1) and (e)(1) of this section.

(ii) The reports required to be filed under this paragraph (d) shall be as of the same fixed or determinable date each year, unless a change is approved in writing by the designated examining authority for the broker or dealer. A copy of such written approval should be sent to the regional office of the Commission for the region in which the broker or dealer has its principal place of business.

[226] 15 U.S.C. 78o, 78q, 78w(a) and 78mm.

(iii) A broker or dealer succeeding to and continuing the business of another broker or dealer need not file the reports under this paragraph (d) as of a date in the fiscal or calendar year in which the succession occurs if the predecessor broker or dealer has filed a report in compliance with this paragraph (d) as of a date in such fiscal or calendar year.

(iv) A broker or dealer that is a member of a national securities exchange and has transacted a business in securities solely with or for other members of a national securities exchange, and has not carried any margin account, credit balance or security for any person who is defined as a *customer* in paragraph (c)(4) of this section, shall not be required to file the reports under this paragraph.

(2) *Financial report.* The financial report shall contain:

(i) A Statement of Financial Condition (in a format and on a basis that is consistent with the total reported on the Statement of Financial Condition contained in Form X–17A–5 (§ 249.617 of this chapter) Part II or IIA), a Statement of Income, a Statement of Cash Flows, a Statement of Changes in Stockholders' or Partners' or Sole Proprietor's Equity, and Statement of Changes in Liabilities Subordinated to Claims of General Creditors. Such statements shall be in a format that is consistent with such statements as contained in Form X–17A–5 Part II or Part IIA. If the Statement of Financial Condition filed in accordance with instructions to Form X–17A–5, Part II or Part IIA, is not consolidated, a summary of financial data, including the assets, liabilities, and net worth or stockholders' equity, for subsidiaries not consolidated in the Part II or Part IIA Statement of Financial Condition as filed by the broker or dealer should be included in the notes to the consolidated statement of financial condition reported on by the independent public accountant.

(ii) Supporting schedules shall include, from Part II or Part IIA of Form X–17A–5 (§ 249.617 of this chapter) a Computation of Net Capital Under § 240.15c3–1, a Computation for Determination of the Reserve Requirements under Exhibit A of § 240.15c3–3 and Information Relating to the Possession or Control Requirements Under § 240.15c3–3 and shall be filed with said report.

(iii) If either the Computation of Net Capital under § 240.15c3–1 or the Computation for Determination of the Reserve Requirements Under Exhibit A of § 240.15c3–3 in the financial report is materially different from the corresponding computation in the most recent Part II or Part IIA of Form X–17A–5 (§ 249.617 of this chapter) filed by the broker or dealer pursuant to paragraph (a) of this section, then the broker or dealer shall include in the financial report a reconciliation, including appropriate explanations, between the computation in the financial report and the computation in the most recent Part II or Part IIA of Form X–17A–5 filed by the broker or dealer. If no material differences exist, a statement so indicating shall be included in the financial report.

(3) *Compliance report.* (i) The compliance report shall contain:

(A) A statement as to whether the broker or dealer has established and maintained a system of internal control to provide the broker or dealer with reasonable assurance that any instances of material non-compliance with §§ 240.15c3–1, 240.15c3–3, and 240.17a–13, and any rule of the designated examining authority of the broker or dealer that requires account statements to be sent to the customers of the broker or dealer (''Account Statement Rule'') will be prevented or detected on a timely basis;

(B) Assertions by the broker or dealer that include:

(*1*) Whether it was in compliance in all material respects with §§ 240.15c3–1, 240.15c3–3, and 240.17a–13, and the Account Statement Rule as of the fiscal year-end;

(*2*) Whether the information used to assert compliance with §§ 240.15c3–1, 240.15c3–3, and 240.17a–13, and the Account Statement Rule was derived from the books and records of the broker or dealer; and

(*3*) Whether the internal control over compliance with §§ 240.15c3–1, 240.15c3–3, and 240.17a–13, and the Account Statement Rule was effective during the most recent fiscal year such that there were no instances of material weakness; and

(C) A description of each identified instance of material non-compliance and each identified material weakness in internal control over compliance with §§ 240.15c3–1, 240.15c3–3, and 240.17a–13, and the Account Statement Rule.

(ii) The broker or dealer is not permitted to conclude that it is in compliance with §§ 240.15c3–1, 240.15c3–3, and 240.17a–13 and the Account Statement Rule if it identifies one or more instances of material non-compliance. For purposes of this paragraph material non-compliance would be a failure by the broker or dealer to comply with the requirements of §§ 240.15c3–1, 240.15c3–3, and 240.17a–13 or the Account Statement Rule in all material respects.

(iii) The broker or dealer is not permitted to conclude that the internal control over compliance with §§ 240.15c3–1, 240.15c3–3, and 240.17a–13, and the Account Statement Rule were effective if there were one or more instances of material weakness in the internal control over compliance. For purposes of this paragraph, an instance of material weakness is defined as a deficiency, or a combination of deficiencies, in internal control over compliance with §§ 240.15c3–1, 240.15c3–3, and 240.17a–13, and the Account Statement Rule, such that there is a reasonable possibility that material non-compliance with §§ 240.15c3–1, 240.15c3–3, and 240.17a–13, or the Account Statement Rule will not be prevented or detected on a timely basis. For purposes of this paragraph a deficiency in internal control over compliance exists when the design or operation of a control does not allow the broker or dealer, in the normal course of performing their assigned functions, to prevent or detect non-compliance with §§ 240.15c3–1, 240.15c3–3, and 240.17a–13, or the Account Statement Rule on a timely basis.

(4) *Exemption report.* The exemption report shall contain an assertion by the broker or dealer that it is exempt from the provisions of § 240.15c3–3 because it meets conditions set forth in § 240.15c3–3(k) and should identify the specific conditions.

(5) The annual reports shall be filed not more than sixty (60) days after the date of the financial statements.

(6) The annual reports shall be filed at the regional office of the Commission for the region in which the broker or dealer has its principal place of business, the Commission's principal office in Washington, DC, and the principal office of the designated examining authority for said broker or dealer and with the Securities Investor Protection Corporation. Copies thereof shall be provided to all self-regulatory organizations of which said broker or dealer is a member, unless the self-regulatory organization by rule waives this requirement.

(e) * * *

(1)(i) The broker or dealer need not engage an independent public accountant to provide the reports required pursuant to paragraph (d) of this section if, since the date of the registration of the broker or dealer pursuant to Section 15 of the Act (15 U.S.C. 78o) or of the previous annual reports filed pursuant to paragraph (d) of this section:

(A) The securities business of such broker or dealer has been limited to acting as broker (agent) for the issuer in soliciting subscriptions for securities of such issuer, said broker has promptly transmitted to such issuer all funds and promptly delivered to the subscriber all securities received in connection therewith, and said broker has not otherwise held funds or securities for or owed money or securities to customers; or

(B) Its securities business has been limited to buying and selling evidences of indebtedness secured by mortgage, deed or trust, or other lien upon real estate or leasehold interests, and said broker or dealer has not carried any margin account, credit balance or security for any securities customer.

* * * * *

(3) The annual reports filed pursuant to paragraph (d) of this section shall be public, except that, if the Statement of Financial Condition in a format that is consistent with Form X–17A–5 (§ 249.617 of this chapter), Part II or Part IIA, is bound separately from the balance of the annual report filed pursuant to paragraph (d)(2) of this section, and each page of the balance of the annual report is stamped confidential, then the balance of the annual report shall be deemed confidential. However, the annual reports, including the confidential portions, shall be available for official use by any official or employee of the U.S. or any State, by national securities exchanges and registered national securities associations of which the person filing such a report is a member, by the PCAOB and by any other person to whom the Commission authorizes disclosure of such information as being in the public interest. Nothing contained in this paragraph shall be deemed to be in derogation of the rules of any registered national securities association or national securities exchange that give to customers of a member broker or dealer the right, upon request to such member broker or dealer, to obtain information relative to its financial condition.

(4)(i) The broker or dealer shall file with the Securities Investor Protection Corporation (''SIPC'') a report on the SIPC annual general assessment reconciliation or exclusion from membership forms that contains such information and is in such format as determined by SIPC by rule and approved by the Commission.

(ii) Until the earlier of two years after the date paragraph (e)(4)(i) of this section is effective or SIPC adopts a rule pursuant to paragraph (e)(4)(i) of this section and the rule is approved by the Commission, the broker or dealer shall file a supplemental report on the status of the membership of the broker or dealer in SIPC if, pursuant to paragraph (d)(1)(i)(C) of this section, the broker or dealer is required to file reports prepared by an independent public accountant. The supplemental report shall include the independent public accountant's report on applying agreed-upon procedures based on the performance of the procedures outlined in paragraph (e)(4)(ii)(C). The supplemental report shall cover the SIPC annual general assessment reconciliation or exclusion from membership forms not previously reported on under this paragraph (e)(4) that were required to be filed on or prior to the date of the reports required by paragraph (d) of this section: Provided, that the broker or dealer need not file the supplemental report on the SIPC annual general assessment reconciliation or exclusion from membership form for any period during which the SIPC assessment is a specified dollar value as provided for in section 4(d)(1)(c) of the Securities Investor Protection Act of 1970, as amended. The supplemental report shall be filed with the regional office of the Commission for the region in which the broker or dealer has its principal place of business, the Commission's principal office in Washington, DC, the principal office of the designated examining authority for the broker or dealer, and the principal office of SIPC. The supplemental report shall include the following:

(A) A schedule of assessment payments showing any overpayments applied and overpayments carried forward including: Payment dates, amounts, and name of SIPC collection agent to whom mailed, or

(B) If exclusion from membership was claimed, a statement that the broker or dealer qualified for exclusion from membership under the Securities Investor Protection Act of 1970, and

(C) *An accountant's report.* The accountant shall be engaged to perform the following procedures:

(*1*) Comparison of listed assessment payments with respective cash disbursements record entries;

(*2*) For all or any portion of a fiscal year ending, comparison of amounts reflected in the annual report as required by paragraph (d) of this section, with amounts reported in the Annual General Assessment Reconciliation (Form SIPC–7);

(*3*) Comparison of adjustments reported in Form SIPC–7 with supporting schedules and working papers supporting adjustments;

(*4*) Proof of the arithmetical accuracy of the calculations reflected in Form SIPC–7 and in the schedules and working papers supporting adjustments; and

(*5*) Comparison of the amount of any overpayment applied with the Form SIPC–7 on which it was computed; or

(*6*) If exclusion from membership is claimed, a comparison of the income or loss reported in the financial report required by paragraph (d) of this section to the Certification of Exclusion from Membership (Form SIPC–3).

(f)(1) *Qualification of accountants.* The independent public accountant must be qualified and independent in accordance with § 210.2–01 of this chapter and, in addition, the independent public accountant must be registered with the Public Company Accounting Oversight Board if required by the Sarbanes-Oxley Act of 2002.

(2) *Designation of accountant.* (i) Every broker or dealer that is required by paragraph (d) of this section to file annual reports shall file no later than December 10 of each year (or 30 calendar days after the effective date of its registration as a broker or dealer, if earlier) a statement as prescribed in paragraph (f)(2)(ii) of this section designating an independent public accountant with the Commission's principal office in Washington, DC, the regional office of the Commission for the region in which its principal place of business is located, and the principal office of the designated examining authority for the broker or dealer. The statement must be dated no later than December 1. If the engagement of the independent public accountant is of a continuing nature, providing for successive engagements, no further filing is required. If the engagement is for a single year, or if the most recent engagement has been terminated or amended, a new statement must be filed by the required date.

(ii) The statement must be headed ''Notice pursuant to Rule 17a–5(f)(2)'' and must contain the following information and representations:

(A) Name, address, telephone number, and registration number of the broker or dealer;

(B) Name, address, and telephone number of the independent public accountant;

(C) The date of the annual reports of the broker or dealer covered by the engagement;

(D) Whether the engagement is for a single year or is of a continuing nature;

(E) A representation that the engagement of the independent public

accountant by the broker or dealer meets the required undertakings of paragraph (g) of this section; and

(F) A representation that the broker or dealer agrees to allow representatives of the Commission or its designating examining authority, if requested for purposes of an examination of the broker or dealer, to review the documentation associated with the reports of the independent public accountant prepared pursuant to paragraph (g) of this section.

(G) A representation that the broker or dealer agrees to permit the independent public accountant to discuss with representatives of the Commission and its designated examining authority, if requested for purposes of an examination of the broker or dealer, the findings associated with the reports of the independent public accountant prepared pursuant to paragraph (g) of this section.

(iii) A broker or dealer that does not carry nor clear transactions nor carry customer accounts is not required to include the representations in paragraphs (e)(2)(ii)(F) and (e)(2)(ii)(G) of this section.

(iv) Any broker or dealer that is exempted from the requirement to file an annual audited report of financial statements shall nevertheless file the notice specified herein indicating the date as of which the unaudited report will be prepared.

(v) Notwithstanding the date of filing specified in paragraph (f)(2)(i) of this section, every broker or dealer shall file the notice provided for in paragraph (f)(2) of this section within 30 days following the effective date of registration as a broker or dealer.

(3) *Replacement of accountant.* A broker or dealer must file a notice that must be received by the Commission's principal office in Washington, DC, the regional office of the Commission for the region in which its principal place of business is located, and the principal office of the designated examining authority for such broker or dealer, not more than 15 business days after:

(i) The broker or dealer has notified the independent public accountant whose reports covered the most recent annual reports filed under paragraph (d) of this section that the independent public accountant's services will not be utilized in future engagements; or

(ii) The broker or dealer has notified an independent public accountant who was engaged to provide reports covering the annual reports to be filed under paragraph (d) of this section that the engagement has been terminated; or

(iii) An independent public accountant has notified the broker or dealer that the independent public accountant would not continue under an engagement to provide reports covering the annual reports to be filed under paragraph (d) of this section; or

(iv) A new independent public accountant has been engaged to provide reports covering the annual reports to be filed under paragraph (d) of this section without any notice of termination having been given to or by the previously engaged independent public accountant.

(v) Such notice must provide:

(A) The date of notification of the termination of the engagement or of the engagement of the new independent public accountant as applicable; and

(B) The details of any issues arising during the 24 months (or the period of the engagement, if less) preceding such termination or new engagement relating to any matter of accounting principles or practices, financial statement disclosure, auditing scope or procedure, or compliance with applicable rules of the Commission, which issues, if not resolved to the satisfaction of the former independent public accountant, would have caused the independent public accountant to make reference to them in the report of the independent public accountant. The issues required to be reported include both those resolved to the former independent public accountant's satisfaction and those not resolved to the former accountant's satisfaction. Issues contemplated by this section are those that occur at the decisionmaking level—i.e., between principal financial officers of the broker or dealer and personnel of the accounting firm responsible for rendering its report. The notice must also state whether the accountant's report covering the annual reports filed under paragraph (d) of this section for any of the past two years contained an adverse opinion or a disclaimer of opinion or was qualified as to uncertainties, audit scope, or accounting principles, and must describe the nature of each such adverse opinion, disclaimer of opinion, or qualification. The broker or dealer must also request the former independent public accountant to furnish the broker or dealer with a letter addressed to the Commission stating whether the independent public accountant agrees with the statements contained in the notice of the broker or dealer and, if not, stating the respects in which independent public accountant does not agree. The broker or dealer must file three copies of the notice and the accountant's letter, one copy of which must be manually signed by the sole proprietor, or a general partner or a duly authorized corporate officer, as appropriate, and by the independent public accountant, respectively.

(g) *Engagement of independent public accountant.* Every broker or dealer required to file the annual reports pursuant to paragraph (d) of this section shall engage an independent public accountant, unless the broker or dealer is subject to the exclusions in paragraphs (d)(1) and (e)(1)(i) of this section. The independent public accountant as part of the engagement must undertake the following, as applicable:

(1) To prepare an independent public accountant's report based on an examination of the financial report required to be filed by the broker or dealer under paragraph (d)(2) of this section in accordance with standards of the Public Company Accounting Oversight Board; and

(2)(i) To prepare an independent public accountant's report based on an examination of the compliance report required to be filed by the broker or dealer under paragraph (d)(3) of this section in accordance with standards of the Public Company Accounting Oversight Board. This examination and the related report would apply to the assertions of the broker or dealer required under paragraph (d)(3) of this section; or

(ii) To prepare an independent public accountant's report based on a review of the exemption report required to be filed by the broker or dealer under paragraph (d)(4) of this section in accordance with standards of the Public Company Accounting Oversight Board.

(h) *Notification of material non-compliance.* Upon determining any material non-compliance exists during the course of preparing the independent public accountant's reports, the independent public accountant must notify the Commission within one business day of the determination by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the Director of the Office of Compliance Inspections and Examinations and provide a copy of such notification in the same manner to the principal office of the designated examining authority for the broker or dealer within one business day of the finding.

(i) *Reports prepared by the independent public accountant.*

(1) *Technical requirements.* The independent public accountant's reports shall:

(i) Be dated;

(ii) Be signed manually;

(iii) Indicate the city and state where issued; and

(iv) Identify without detailed enumeration the items covered by the reports.

(2) *Representations as to the examinations and review.* The accountant's report shall:

(i) State whether the examination or review was made in accordance with standards of the Public Company Accounting Oversight Board;

(ii) Designate any examination and, if applicable, review procedures deemed necessary by the independent public accountant under the circumstances of the particular case that have been omitted, and the reason for their omission.

(iii) Nothing in this section shall be construed to imply authority for the omission of any procedure that independent public accountants would ordinarily employ in the course of an examination or review made for the purpose of expressing the opinions or statement required under this section.

(3) *Opinion to be expressed.* The independent public accountant's reports shall state clearly the opinion of the independent public accountant:

(i) With respect to the financial report and the accounting principles and practices reflected therein and the compliance report; and

(ii) With respect to the financial report, as to the consistency of the application of the accounting principles, or as to any changes in such principles that have a material effect on the financial statements.

(4) *Exceptions.* Any matters to which the independent public accountant takes exception shall be clearly identified, the exception thereto specifically and clearly stated, and, to the extent practicable, the effect of each such exception on any related items contained in the annual reports.

3. Section 240.17a–11 is amended by revising paragraph (e) introductory text to read as follows:

**§ 240.17a–11 Notification provision for brokers and dealers.**

* * * * *

(e) Whenever any broker or dealer discovers, or is notified by an independent public accountant pursuant to § 240.17a-12(i)(2), of the existence of any material inadequacy as defined in § 240.17a-12(h)(2), the broker or dealer shall:

* * * * *

## PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

4. The authority citation for Part 249 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

**Note:** The text of Form Custody does not, and this amendment will not, appear in the Code of Federal Regulations.

5. Add Subpart T and Form Custody (referenced in § 249.1900) to Part 249 to read as follows:

### Subpart T—Form for Broker-Dealers

**§ 249.1900 Form Custody**

BILLING CODE 8011–01–P

This form shall be used for reports of information required by § 240.17a-5 of this chapter.

**UNITED STATES**
**SECURITIES AND EXCHANGE COMMISSION**
**Washington, D.C. 20549**

**FORM CUSTODY**
**For Broker-Dealers**

*(Please read instructions before preparing Form.)*

Name of Broker/Dealer As of (Month/Day/Year)

_8-_____
SEC File No. CRD No.

Address of Principal Place of Business

(No. and Street) (City) (State) (Zip Code)

INSTRUCTIONS

GENERAL INSTRUCTIONS

A. Definitions: for purposes of this Form:

1. "Affiliate" means any person who directly or indirectly controls the broker-dealer or any person who is directly or indirectly controlled by or under common control with the broker-dealer. Ownership of 25% or more of the common stock of an entity is deemed prima facie evidence of control.

2. "Bank" has the same meaning as in 15 U.S.C. 78c(a)(6).

3. "Broker" has the same meaning as in 15 U.S.C. 78c(a)(4).

4. "Dealer" has the same meaning as in 15 U.S.C. 78c(a)(5).

5. "Carrying broker-dealer" means a broker-dealer that holds customer accounts.

6. "Clearing broker-dealer" means a broker-dealer that clears transactions for itself or accounts of other broker-dealers either on a fully disclosed or omnibus basis.

7. "Customer" has the same meaning as in 17 CFR 240.15c3-3(a)(1).

8. "Free credit balance" means any liabilities of a broker-dealer to customers and non customers that are subject to immediate cash payment to customers and non-customers on demand, whether resulting from sales of securities, dividends, interest, deposits, or otherwise, excluding, however, funds in commodity accounts that are segregated in accordance with the Commodity Exchange Act or in a similar manner.

9. "Money Market Fund" means any security issued by an investment company registered under section 8 of the Investment Company Act of 1940 that is considered a money market fund under Investment Company Act Rule 2a-7.

10. "Omnibus account" means an account carried and cleared by another broker-dealer and containing accounts of undisclosed customers on a commingled basis that are carried individually on the books of the broker-dealer introducing the accounts.

11. "Structured debt" means any security or money market instrument issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction. Structured debt is a broad category of financial instrument and includes, but is not limited to, asset-backed securities such as residential mortgage-backed securities ("RMBS") and other types of structured debt instruments such as collateralized debt obligations ("CDOs"), including synthetic and hybrid CDOs, or collateralized loan obligations ("CLOs").

INSTRUCTIONS FOR SPECIFIC LINE ITEMS

Item 1.A Answer the question by checking the appropriate box. A broker-dealer must check "Yes" if it introduces any customer accounts to another broker-dealer on a fully disclosed basis. A broker-dealer that carries customer accounts and/or introduces customer accounts on an omnibus basis must check "Yes" if it also introduces one or more customer accounts to another broker-dealer on a fully disclosed basis.

Item 1.B Item 1.B applies to broker-dealers that introduce customer accounts on a fully disclosed basis to one or more other broker-dealers. If Item 1.B applies, identify each broker-dealer to which customer accounts are introduced on a fully disclosed basis.

Item 2.A Answer the question by checking the appropriate box. A broker-dealer must check "Yes" if it introduces any customer accounts to another broker-dealer on an omnibus basis. A broker-dealer that carries customer accounts (other than those introduced on an omnibus basis) and/or introduces customer accounts on a fully disclosed basis must check "Yes" if it also introduces one or more customer accounts to another broker-dealer on an omnibus basis.

Item 2.B Item 2.B applies to broker-dealers that introduce accounts on an omnibus basis to one or more other broker-dealers. If Item 2.B applies, identify each broker-dealer to which customer accounts are introduced on an omnibus basis.

Item 3.A Answer the question by checking the appropriate box. A broker-dealer that introduces customer accounts to another broker-dealer on an omnibus basis is a carrying broker-dealer with respect to those accounts under the Commission's broker-dealer financial responsibility rules. If those accounts are the only accounts carried by the broker-dealer, check "No" in Item 3.A, as those accounts are addressed in Items 2.A and 2.B.

Item 3.B Answer the question by checking the appropriate box. Answer "Yes" if accounts are carried by the broker-dealer for persons that are not "customers" as that term is defined in Rule 15c3-3 under the Securities Exchange Act of 1934. Examples of persons that are not customers of a broker-dealer include general partners, directors, or principal officers – such as the president, executive vice presidents, treasurer, secretary or any person performing similar functions – of the broker-dealer and accountholders that are themselves broker-dealers (unless such broker-dealer accountholders are required to be treated as customers under Rule 15c3-3).

Item 3.C Identify the types of locations where the broker-dealer holds securities. Only identify types of locations where the broker-dealer holds securities directly in the name of the broker-dealer (*i.e.*, do not identify a type of location if the broker-dealer only holds securities at the location through an intermediary). The information required by Items 3.C.i-iii is intended to identify all locations used by the broker-dealer to hold securities listed on the broker-dealer's stock record, and to elicit information concerning the frequency with which the broker-dealer performs reconciliations between the information on its stock record and information about the securities provided by the location. In Item 3.C.i, check all applicable boxes, and in Items 3.C.i-iii provide all applicable information as specified for each Item.

| | |
|---|---|
| Item 3.D | Answer the questions in Items 3.D.i-iii by checking appropriate boxes and entering appropriate financial information, where applicable, and by providing explanations as requested. In Item 3.D.i, check "Other" if a type of security carried by the broker-dealer for customers is not listed on the chart, and for each category of security, indicate by checking the approximate box the approximate U.S. dollar market value of the securities. |
| Item 3.E | Answer the questions in Items 3.E.i-iii by checking appropriate boxes and entering appropriate financial information, where applicable, and providing explanations as requested. In Item 3.E.i, check "Other" if a type of security carried by the broker-dealer for persons that are not customers is not listed on the chart, and for each category of security, indicate by checking the appropriate box the approximate U.S. dollar market value of the securities. |
| Item 4 | Answer the questions in Items 4.A.i-iii and 4.B.i-iii by checking appropriate boxes and, if applicable, providing requested information. |
| Item 5 | Answer the questions in Items 5.A. and 5.B. by checking the appropriate box and, if applicable, providing requested information. |
| Item 6 | Answer the questions by checking the appropriate boxes and, if applicable, providing requested information. |
| Item 7 | Answer the question by checking the appropriate box. |
| Item 8 | Answer the questions in Item 8 by checking appropriate boxes and, if applicable, providing requested information. |
| Item 9 | Answer the questions in Item 9 by checking appropriate boxes and, if applicable, providing requested information. |

**Item 1.** **A**. Does the broker-dealer introduce customer accounts on a fully disclosed basis to another broker-dealer? Yes ☐ No ☐

**B**. If the answer to question 1.A is "yes," identify below the broker-dealer(s) (by name and SEC No. and CRD No.) to which the customer accounts are introduced on a fully disclosed basis:

_____

_____

_____

**Item 2.** **A.** Does the broker-dealer introduce customer accounts to another broker-dealer on an omnibus basis? Yes ☐ No ☐

**B.** If the answer to question 2.A is "yes," identify below the broker-dealer(s) (by name and SEC No. and CRD No.) to which the accounts are introduced on an omnibus basis:

_____

_____

_____

**Item 3.** **A.** Does the broker-dealer carry securities accounts (*i.e.*, accounts that are not introduced on a fully disclosed basis to another broker-dealer) for customers?
Yes ☐ No ☐

**B.** Does the broker-dealer carry securities accounts (*i.e.*, accounts that are not introduced on a fully disclosed basis to any other broker-dealer) for non-customers? Yes ☐ No ☐

**C.** Location of Securities

**i.** Indicate in the chart below the types of U.S. locations used by the broker-dealer to hold securities that it carries by checking each box in the first column that applies. For each type of location selected, indicate in the third column the frequency (*e.g.*, daily, weekly, monthly, quarterly, semi-annually, annually) with which the broker-dealer performs a reconciliation between the information on its stock record and information about the securities provided by the location:

| | **Location** | **Reconciliation Frequency** |
|---|---|---|
| ☐ | **The broker-dealer's vault** | |
| ☐ | **U.S. broker-dealer(s)** | |
| ☐ | **The Depository Trust Company** | |
| ☐ | **The Options Clearing Corporation** | |
| ☐ | **U.S. bank(s)** | |
| ☐ | **Transfer Agents of Mutual fund(s) under the Investment Company Act** | |

**ii.** Indicate in the chart below the types of U.S. locations not identified in Item 3.C.i used by the broker-dealer to hold securities that it carries by describing the type of entity in the first column. For each type of location, indicate in the second column the frequency (*e.g.*, daily, weekly, monthly, quarterly, semi-annually, annually) with which the broker-dealer performs a reconciliation between the information on its stock record and information about the securities provided by location:

| **Other Types of U.S. Locations** | **Reconciliation Frequency** |
|---|---|
| | |
| | |
| | |
| | |
| | |

**iii.** Indicate in the chart below the types of foreign locations used by the broker-dealer to hold securities that it carries by describing the type of location in the first column. For each type of location indicate in the second column the frequency (*e.g.*, daily, weekly, monthly, quarterly, semi-annually, annually) with which the broker-dealer performs a reconciliation between the information on its stock record and information about the securities provided by the location:

| Non-U.S. Locations | Reconciliation Frequency |
|---|---|
| | |
| | |
| | |
| | |
| | |
| | |

**D.** Securities and Cash Carried for the Accounts of Customers

**i.** Indicate by checking the appropriate boxes on the chart below the types of securities and provide the approximate U.S. dollar market value of such securities carried by the broker-dealer for the accounts of customers:

| | Type of Securities | Up to $50 million | Greater than $50 million up to $100 million | Greater than $100 million up to $500 million | Greater than $500 million up to $1 billion | Greater than $1 billion up to $5 billion | Greater than $5 billion |
|---|---|---|---|---|---|---|---|
| ☐ | U.S. Equity Securities | | | | | | |
| ☐ | Foreign Equity Securities | | | | | | |
| ☐ | U.S. Listed Options | | | | | | |
| ☐ | Foreign Listed Options | | | | | | |
| ☐ | Domestic Corporate Debt | | | | | | |
| ☐ | Foreign Corporate Debt | | | | | | |
| ☐ | U.S. Public Finance Debt | | | | | | |
| ☐ | Foreign Public Finance Debt | | | | | | |
| ☐ | U.S. Government Debt | | | | | | |
| ☐ | Foreign Sovereign Debt | | | | | | |
| ☐ | U.S. Structured Debt | | | | | | |
| ☐ | Foreign Structured Debt | | | | | | |
| ☐ | Other | | | | | | |
| | | | | | | | |

**ii.** Has the broker-dealer recorded all securities it carries for the accounts of customers on its stock record? Yes ☐ No ☐

If the answer is "no," explain in the space provided why the broker-dealer has not recorded such securities on its stock record and provide the approximate U.S. dollar market value of such unrecorded securities:

_____

_____

_____

**iii.** Indicate in the chart below each process used by the broker-dealer with respect to free credit balances in accounts it carries for customers by checking all the boxes that apply and providing applicable information:

| | Process |
|---|---|
| ☐ | Included in a computation under Rule 15c3-3(e) |
| ☐ | Held in a bank account under Rule 15c3-3(k)(2)(i) |
| ☐ | Swept to a U.S. bank |
| ☐ | Swept to a U.S. money market fund |
| ☐ | Other (Briefly describe in the space provided below) |

**E.** Securities and Cash Carried for the Accounts of Non-customers

**i.** Indicate by checking the appropriate boxes on the chart below the types of securities and provide the approximate U.S. dollar market value of such securities carried by the broker-dealer for the accounts of non-customers:

| | Type of Securities | Up to $50 million | Greater than $50 million up to $100 million | Greater than $100 million up to $500 million | Greater than $500 million up to $1 billion | Greater than $1 billion up to $5 billion | Greater than $5 billion |
|---|---|---|---|---|---|---|---|
| ☐ | **U.S. Equity Securities** | | | | | | |
| ☐ | **Foreign Equity Securities** | | | | | | |
| ☐ | **U.S. Listed Options** | | | | | | |
| ☐ | **Foreign Listed Options** | | | | | | |
| ☐ | **Domestic Corporate Debt** | | | | | | |
| ☐ | **Foreign Corporate Debt** | | | | | | |
| ☐ | **U.S. Public Finance Debt** | | | | | | |
| ☐ | **Foreign Public Finance Debt** | | | | | | |
| ☐ | **U.S. Government Debt** | | | | | | |
| ☐ | **Foreign Sovereign Debt** | | | | | | |
| ☐ | **U.S. Structured Debt** | | | | | | |
| ☐ | **Foreign Structured Debt** | | | | | | |
| ☐ | **Other** | | | | | | |
| | | | | | | | |

**ii.** Has the broker-dealer recorded all securities it carries for the accounts of non-customers on its stock record? Yes ☐ No ☐

If the answer is "no," explain in the space provided why the broker-dealer has not recorded such securities on its stock record and provide the approximate total U.S. dollar market value of such unrecorded securities:

**iii.** Indicate in the chart below each process used by the broker-dealer with respect to free credit balances in the securities accounts of non-customers by checking all the boxes that apply and providing applicable information:

| | **Process** |
|---|---|
| ☐ | Included in a reserve computation |
| ☐ | Swept to a U.S. bank |
| ☐ | Swept to a U.S. money market fund |
| ☐ | Other (Briefly describe in space provided below) _____ _____ _____ _____ _____ _____ _____ |

**Item 4.** Acting as a Carrying Broker-Dealer for Other Broker-Dealers

**A.** On a fully disclosed basis

**i.** Does the broker-dealer carry customer accounts for another broker-dealer(s) on a fully disclosed basis? Yes ☐ No ☐

**ii.** If the answer to question 4.A.i is "yes," indicate the number of broker-dealers: _____

**iii.** If the answer to question 4.A is "yes," identify any of these broker-dealers that are affiliates of the broker-dealer by name and "SEC File No.":

_____
_____
_____

**B.** On an omnibus basis

**i.** Does the broker-dealer carry customer accounts for another broker-dealer(s) on an omnibus basis? Yes ☐ No ☐

**ii.** If the answer to question 4.B.i is "yes," indicate the number of broker-dealers: _____

**iii.** If the answer to question 4.B.i is "yes," identify any of these broker-dealers that are affiliates of the broker-dealer by name and "SEC File No.":

_____
_____
_____

**Item 5. A.** Does the broker-dealer send trade confirmations directly to customers and other accountholders? Yes ☐ No ☐

**B**. If the answer to question 5.A is "no," who sends the trade confirmations to customers and other accountholders? :_____

**Item 6. A.** Does the broker-dealer send account statements directly to customers and other accountholders? Yes ☐ No ☐

**B.** If the answer to question 6.A is "no," who sends the account statements to customers and other accountholders? :_____

**C.** Does the broker-dealer send account statements to anyone other than the beneficial owner of the account? Yes ☐ No ☐

**Item 7.** Does the broker-dealer provide customers and other accountholders with electronic access to information about the securities and cash positions in their accounts? Yes ☐ No ☐

**Item 8. A.** Is the broker-dealer also registered as an investment adviser:

**i.** With the SEC under the Investment Advisers Act of 1940? Yes ☐ No ☐

**ii.** With one or more U.S. states under the laws of the state? Yes ☐ No ☐

If the answer to question 8.A.i or 8.A.ii is "yes," answer each of the following items:

**B.** Provide the number of investment adviser clients:_____

**C.** Complete the following chart concerning the custodians if any (including, if applicable, the broker-dealer):

**Column 1**: The name of the custodian
**Column 2:** The identity of the custodian by SEC File No. or CRD No.
**Column 3**: Whether the broker-dealer/investment adviser has the authority to effect transactions in these advisory client accounts at the custodian
**Column 4**: Whether the broker-dealer/investment adviser has the authority to withdraw funds and securities out of any accounts at the custodian
**Column 5**: Whether the custodian sends account statements directly to the investment adviser clients
**Column 6**: Whether the investment adviser client assets are recorded on the broker-dealer's stock record

| 1 | 2 | 3 | 4 | 5 | 6 |
|---|---|---|---|---|---|
| | | Yes ☐<br>No ☐ | Yes ☐<br>No ☐ | Yes ☐<br>No ☐ | Yes ☐<br>No ☐ |
| | | Yes ☐<br>No ☐ | Yes ☐<br>No ☐ | Yes ☐<br>No ☐ | Yes ☐<br>No ☐ |
| | | Yes ☐<br>No ☐ | Yes ☐<br>No ☐ | Yes ☐<br>No ☐ | Yes ☐<br>No ☐ |
| | | Yes ☐<br>No ☐ | Yes ☐<br>No ☐ | Yes ☐<br>No ☐ | Yes ☐<br>No ☐ |
| | | Yes ☐<br>No ☐ | Yes ☐<br>No ☐ | Yes ☐<br>No ☐ | Yes ☐<br>No ☐ |
| | | Yes ☐<br>No ☐ | Yes ☐<br>No ☐ | Yes ☐<br>No ☐ | Yes ☐<br>No ☐ |
| | | Yes ☐<br>No ☐ | Yes ☐<br>No ☐ | Yes ☐<br>No ☐ | Yes ☐<br>No ☐ |
| | | Yes ☐ | Yes ☐ | Yes ☐ | Yes ☐ |

| | | | | | |
|---|---|---|---|---|---|
| | | No ☐ | No ☐ | No ☐ | No ☐ |
| | | Yes ☐<br>No ☐ | Yes ☐<br>No ☐ | Yes ☐<br>No ☐ | Yes ☐<br>No ☐ |
| | | Yes ☐<br>No ☐ | Yes ☐<br>No ☐ | Yes ☐<br>No ☐ | Yes ☐<br>No ☐ |

**Item 9. A.** Is the broker-dealer an affiliate of an investment adviser? Yes ☐ No ☐

**B.i**. If the answer to Item 9.A. is "yes," does the broker-dealer have custody of client assets of the adviser? Yes ☐ No ☐

**B.ii.** If the answer to Item 9.B.i is "yes" indicate the approximate U.S. dollar market value of the adviser client assets of which the broker-dealer has custody: ___

By the Commission.

Dated: June 15, 2011.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011–15341 Filed 6–24–11; 8:45 am]

BILLING CODE 8011–01–C

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Vol. 76, No. 123

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