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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

**[TD 9571]**

**RIN 1545- BJ84**

## Allocation and Apportionment of Interest Expense

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

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary regulations that provide guidance regarding the allocation and apportionment of interest expense. These temporary regulations provide guidance concerning the allocation and apportionment of interest expense by corporations owning a 10 percent or greater interest in a partnership, as well as the allocation and apportionment of interest expense using the fair market value method. These temporary regulations also update the interest allocation regulations to conform to the statutory changes made by section 216 of the legislation commonly referred to as the Education Jobs and Medicaid Assistance Act (EJMAA), enacted on August 10, 2010, affecting the affiliation of certain foreign corporations for purposes of section 864(e). These regulations affect taxpayers that allocate and apportion interest expense. The text of these temporary regulations also serves as the text of the proposed regulations (REG–113903–10) set forth in the notice of proposed rulemaking on this subject published elsewhere in this issue of the **Federal Register**.

**DATES:** *Effective Date:* These regulations are effective on January 17, 2012.

*Applicability Dates:* For dates of applicability, see §§ 1.861–9T(k) and 1.861–11T(h).

**FOR FURTHER INFORMATION CONTACT:** Jeffrey L. Parry, (202) 622–3850 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

### Background and Explanation of Provisions

*I. Interest Expense Allocation by Partners*

Section 1.861–9T(e) provides rules governing the apportionment of interest expense by a partner in a partnership. In general, § 1.861–9T(e) adopts an aggregate, or look-through, approach to apportioning a partner's distributive share of interest expense incurred by the partnership. Section 1.861–9T(e)(1) provides the general rule that a partner's distributive share of the interest expense of a partnership is considered related to all income-producing activities and assets of the partner. Similarly, § 1.861–9T(e)(2) requires that a corporate partner whose direct or indirect interest in the partnership is 10 percent or more apportion its distributive share of partnership interest expense by reference to the partner's assets, including the partner's pro rata share of the partnership's assets.

By contrast, limited partners (whether individual or corporate) and corporate general partners with a less-than-10-percent partnership interest are excepted from aggregate treatment. Under § 1.861–9T(e)(4)(i), such partners must directly allocate their distributive share of partnership interest expense to their distributive share of partnership gross income. In addition, for purposes of allocating other interest expense incurred directly by such a partner, § 1.861–9T(e)(4)(ii) provides that the relevant asset is the partner's interest in the partnership, and not the partner's share of the partnership assets. This approach for such minority partners avoids the potential administrative burden that an aggregate approach would impose on such minority partners.

These temporary regulations revise § 1.861–9T(e)(2) to clarify that a corporate partner with a 10 percent or greater interest in a partnership must allocate its direct interest expense to all of its assets, including its proportionate share of partnership assets. The IRS and the Treasury Department believe that an aggregate approach for corporate partners with a 10 percent or greater interest in the partnership is appropriate and consistent with the aggregate approach applicable to apportioning such partner's distributive share of interest expense incurred by the partnership.

These temporary regulations also revise § 1.861–9T(e)(2) to provide that when a corporate partner with a 10 percent or greater interest in a partnership uses the tax book value or alternative tax book value method, and therefore must use the partnership's inside basis in its assets when allocating interest expense, the partnership's inside basis includes any section 734(b) adjustments and any section 743(b) adjustments of the corporate partner for this purpose. Section 1.861–9T(e)(3) is also revised to provide a similar rule for individual partners who are general partners or limited partners with a 10 percent or greater interest in the partnership.

*II. Fair Market Value Method*

Section 864(e)(2) requires that the allocation and apportionment of interest expense be made on the basis of assets and not gross income (the asset method). Under the asset method, interest expense is apportioned between (or among) statutory and residual groupings of gross income in proportion to the average total values of assets within each such grouping for the taxable year. For this purpose, taxpayers may elect to value assets based on their fair market value (the FMV method), tax book value, or alternative tax book value. §§ 1.861–8T(c)(2) and 1.861–9(i).

The temporary regulations set forth a multi-step methodology for determining the fair market value of a taxpayer's assets. Section 1.861–9T(h)(1) provides rules for determining the fair market value of the taxpayer's intangible assets. First, the taxpayer determines the aggregate value of assets that it and its subsidiaries own (Step 1); second, the taxpayer values its tangible assets, excluding any stock or indebtedness in a related person (Step 2); and third, it subtracts the amount determined in Step 2 from the amount determined in Step 1 to arrive at total intangible asset value (Step 3). The intangible assets owned by the taxpayer are then apportioned among the taxpayer's affiliates under § 1.861–9T(h)(2) on the basis of net income (Step 4).

Once a taxpayer has determined the fair market value of its intangible assets, those assets must be characterized as

provided in § 1.861–9T(h)(3) (Step 5). Finally, the rules of § 1.861–9T(h)(4) apply to determine the value of stock in a related person held by the taxpayer (or by another person related to the taxpayer) (Step 6). Under those rules, § 1.861–9T(h)(4) states that the value of such stock is equal to the sum of the following amounts, less the taxpayer's pro rata share of liabilities of such related person: (i) The intangible assets apportioned to the related person in Step 4, above; (ii) the tangible assets (as determined in Step 2) held by the related person; and (iii) the total value of stock held in all other related persons held by the related person.

The IRS and the Treasury Department have become aware that certain taxpayers are taking the position that the language of Step 2 of the FMV method, which requires related party debt to be excluded as an asset as part of the process for determining total intangible asset value, means that such debt also is not treated as an asset in the hands of the taxpayer for the broader purpose of applying the asset method. In addition, for purposes of valuing the stock in related persons under Step 6, some taxpayers are taking the position that those rules exclude related party debt as an asset (because of the reference in § 1.861–9T(h)(4) to § 1.861–9T(h)(1)(ii)), but permit reduction of the value of the stock of the related person obligor by the amount of the related party debt as a liability (because the language of § 1.861–9T(h)(4)(ii) does not limit the reduction for liabilities to unrelated party liabilities).

The IRS and the Treasury Department believe that interpreting the regulations to require that the related party debt be taken into account as a liability for purposes of valuing stock in the related person without also treating the related party debt as an asset in the creditor's hands distorts the relative values of assets assigned to each statutory grouping. This result is contrary to the general principles of the § 1.861–9 regulations, which are based on the concept that interest expense must be apportioned on the basis of the value of all assets. Accordingly, these temporary regulations amend § 1.861–9T(h)(4) to reflect the fact that related party debt is an asset that must be taken into account whether held by the taxpayer or a related person.

These temporary regulations first revise § 1.861–9T(h)(4) by adding a new paragraph § 1.861–9T(h)(4)(i) to provide for the valuation of related party debt. Prior to its revision by these temporary regulations, § 1.861–9T(h)(4) provided for the valuation of the stock of a related person, but the regulations did not provide any explanation of how the related party debt is to be valued. As revised by these temporary regulations, § 1.861–9T(h)(4)(i) provides that a related party debt obligation held by a taxpayer or another person related to the taxpayer has a value equal to the amount of the liability of the obligor related person. These temporary regulations also revise § 1.861–9T(h)(4) by providing that the value of stock in a related person includes the taxpayer's pro rata share of related party debt held by the related person. Finally, these temporary regulations provide a new example illustrating the changes made to § 1.861–9T(h)(4).

These amendments make clear that related party debt is an asset in the hands of the creditor for purposes of applying the asset method and is included in the valuation of stock of a related person. Very broadly, these changes ensure that both the receivable and the payable sides of related party debt are included for valuation purposes under the FMV method, and that the value of each side is determined in a consistent manner. No inference is intended regarding the interpretation of prior regulations as a result of these modifications.

*III. Affiliated Groups*

The interest expense of each member of an affiliated group is allocated and apportioned as if all members of such group were a single corporation. Section 864(e)(1). Prior to its amendment by the EJMAA, section 864(e)(5)(A) defined the term ''affiliated group'' by reference to the rules under section 1504 for determining whether corporations are eligible to file consolidated returns. The section 1504 rules generally exclude foreign corporations from an affiliated group. Section 1.861–11T(d)(6)(ii) provides that certain foreign corporations are nevertheless treated as affiliated corporations for purposes of allocating and apportioning interest expense if (1) at least 80 percent of either the vote or value of the corporation's outstanding stock is owned directly or indirectly by members of an affiliated group, and (2) more than 50 percent of the corporation's gross income for the taxable year is effectively connected with the conduct of a trade or business in the United States (effectively connected income).

In the case of a foreign corporation that is treated as an affiliated corporation for interest allocation and apportionment purposes, § 1.861–11T(d)(6)(ii) provides that the percentage of assets and income that is taken into account for purposes of applying the affiliated group interest apportionment rules depends on the percentage of the corporation's gross income that is effectively connected income. If 80 percent or more of the foreign corporation's gross income is effectively connected income, then all of the corporation's assets and interest expense are taken into account. If, instead, between 50 percent and 80 percent of the foreign corporation's gross income is effectively connected income, then only the corporation's assets that generate effectively connected income and a percentage of its interest expense equal to the percentage of its assets that generate effectively connected income are taken into account.

Section 864(e)(5)(A), as amended by the EJMAA, provides that a foreign corporation will be treated as a member of an affiliated group for interest allocation and apportionment purposes if (1) more than 50 percent of the gross income of such foreign corporation for the taxable year is effectively connected income, and (2) at least 80 percent of either the vote or value of all outstanding stock of such foreign corporation is owned directly or indirectly by members of the affiliated group. In such event, all of the qualifying foreign corporation's assets and interest expense are taken into account for purposes of applying the affiliated group interest apportionment rules. These temporary regulations revise § 1.861–11T(d)(6) to reflect these statutory changes.

**Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f), these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

**Drafting Information**

The principal author of these regulations is Jeffrey L. Parry of the Office of Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Amendments to the Regulations**

Accordingly, 26 CFR part 1 is amended as follows:

## PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

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

■ **Par. 2.** Section 1.861–9T is amended by:

■ 1. Revising the first two sentences of paragraph (e)(2), the fifth sentence of (e)(3), and paragraph (h)(4);

■ 2. Adding four sentences before the last sentence of paragraph (k); and

■ 3. Adding paragraph (l).

The revisions and additions read as follows:

**§ 1.861–9T Allocation and apportionment of interest expense (temporary).**

* * * * *

(e) * * *

(2) *Corporate partners whose interest in the partnership is 10 percent or more.* A corporate partner shall apportion its interest expense (including the partner's distributive share of partnership interest expense) by reference to the partner's assets, including the partner's pro rata share of partnership assets, under the rules of paragraph (f) of this section if the corporate partner's direct and indirect interest in the partnership (as determined under the attribution rules of section 318) is 10 percent or more. A corporation using the tax book value method or alternative tax book value method of apportionment shall use the partnership's inside basis in its assets, including adjustments under sections 734(b) and 743(b), if any, and adjusted to the extent required under § 1.861–10T(d)(2). * * *

(3) *Individual partners who are general partners or who are limited partners with an interest in the partnership of 10 percent or more.* * * * An individual using the tax book value or alternative tax book value method of apportionment shall use the partnership's inside basis in its assets, including adjustments under sections 734(b) and 743(b), if any, and adjusted to the extent required under § 1.861–10T(d)(2). * * *

* * * * *

(h) * * *

(4) *Valuing related party debt and stock in related persons*—(i) *Related party debt.* For purposes of this section, the value of a debt obligation of a related person held by the taxpayer or another person related to the taxpayer equals the amount of the liability of the obligor related person.

(ii) *Stock in related persons.* The value of stock in a related person held by the taxpayer or by another person related to the taxpayer equals the sum of the following amounts reduced by the taxpayer's pro rata share of liabilities of such related person:

(A) The portion of the value of intangible assets of the taxpayer and related persons that is apportioned to such related person under paragraph (h)(2) of this section;

(B) The taxpayer's pro rata share of tangible assets held by the related person (as determined under paragraph (h)(1)(ii) of this section);

(C) The taxpayer's pro rata share of debt obligations of any related person held by the related person (as valued under paragraph (h)(4)(i) of this section); and

(D) The total value of stock in all related persons held by the related person as determined under this paragraph (h)(4).

*(iii) Example.* (A) *Facts.* USP, a domestic corporation, wholly owns CFC1 and owns 80% of CFC2, both foreign corporations. The aggregate trading value of USP's stock traded on established securities markets at the end of Year 1 is $700 and the amount of USP's liabilities to unrelated persons at the end of Year 1 is $400. Neither CFC1 nor CFC2 has liabilities to unrelated persons at the end of Year 1. USP owns plant and equipment valued at $500, CFC1 owns plant and equipment valued at $400, and CFC2 owns plant and equipment valued at $250. The value of these assets has been determined using generally accepted valuation techniques, as required by § 1.861–9T(h)(1)(ii). There is an outstanding loan from CFC2 to CFC1 in an amount of $100. There is also an outstanding loan from USP to CFC1 in an amount of $200.

(B) *Valuation of group assets.* Pursuant to § 1.861–9T(h)(1)(i), the aggregate value of USP's assets is $1100 (the $700 trading value of USP's stock increased by $400 of USP's liabilities to unrelated persons).

(C) *Valuation of tangible assets.* Pursuant to § 1.861–9T(h)(1)(ii), the value of USP's tangible assets and pro rata share of assets held by CFC1 and CFC2 is $1100 (the plant and equipment held directly by USP, valued at $500, plus USP's 100% pro rata share of the plant and equipment held by CFC1 valued at $400 and USP's 80% pro rata share of the plant and equipment held by CFC 2 valued at $200 (80% of $250)).

(D) *Computation of intangible asset value.* Pursuant to § 1.861–9T(h)(1)(iii), the value of the intangible assets of USP, CFC1, and CFC2 is $0 (total aggregate group asset value ($1100) determined in paragraph (B) less total tangible asset value ($1100) determined in paragraph (C)). Because the intangible asset value is zero, the provisions of § 1.861–9T(h)(2) and (3) relating to the apportionment and characterization of intangible assets do not apply.

(E) *Valuing related party debt obligations.* Pursuant to § 1.861–9T(h)(4)(i), the value of the debt obligation of CFC1 held by CFC2 is equal to the amount of the liability, $100. The value of the debt obligation of CFC1 held by USP is equal to the amount of the liability, $200.

(F) *Valuing the stock of CFC1 and CFC2.* Pursuant to § 1.861–9T(h)(4)(ii), the value of the stock of CFC2 held by USP is $280 (USP's 80% pro rata share of tangible assets of CFC2 included in paragraph (C) ($200) plus USP's 80% pro rata share of the debt obligation of CFC1 held by CFC2 valued in paragraph (E) ($80). The value of the stock of CFC1 held by USP is $100 (USP's 100% pro rata share of tangible assets of CFC1 included in paragraph (C) ($400) less USP's 100% pro rata share of the liabilities of CFC1 to USP and CFC2 ($300)).

* * * * *

(k) * * * Paragraphs (e)(2) and (3) apply to taxable years beginning after January 17, 2012. See 26 CFR 1.861–9T(e)(2) and (3) (revised as of April 1, 2011) for rules applicable to taxable years beginning on or before January 17, 2012. Paragraph (h)(4) applies to taxable years ending on or after January 17, 2012. See 26 CFR 1.861–9T(h)(4) (revised as of April 1, 2011) for rules applicable to taxable years ending before January 17, 2012. * * *

(l) *Expiration date.* The applicability of paragraphs (e)(2), (h)(1)(iv), and (h)(4) expires on January 13, 2015.

■ **Par. 4.** Sec 1.861–11T is amended by revising paragraphs (d)(6)(ii) and (h) and adding paragraph (i) to read as follows:

**§ 1.861–11T Special rules for allocating and apportioning interest expense of an affiliated group of corporations (temporary).**

* * * * *

(6) * * *

(ii) Any foreign corporation if more than 50 percent of the gross income of such foreign corporation for the taxable year is effectively connected with the conduct of a trade or business within the United States and at least 80 percent of either the vote or value of all outstanding stock of such foreign corporation is owned directly or indirectly by members of the affiliated group (determined with regard to this sentence).

* * * * *

(h) *Effective/applicability date.* In general, the rules of this section apply for taxable years beginning after December 31, 1986. Paragraph (d)(6)(ii) applies to taxable years beginning after August 10, 2010. See 26 CFR 1.861–11T(d)(6)(ii) (revised as of April 1, 2010) for rules applicable to taxable years beginning on or before August 10, 2010.

(i) *Expiration date.* The applicability of paragraphs (d)(1) and (6) expires on January 13, 2015.

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

Approved: December 6, 2011.

**Emily S. McMahon,**

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

[FR Doc. 2012–597 Filed 1–13–12; 8:45 am]

**BILLING CODE 4830–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R09–OAR–2011–0789; FRL–9615–5]**

## Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

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

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing approval of revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on September 14, 2011 and concern volatile organic compound (VOC) emissions from confined animal facilities (CAFs) and biosolids, animal manure, and poultry litter operations. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** *Effective Date:* This rule is effective on February 16, 2012.

**ADDRESSES:** EPA has established docket number EPA–R09–OAR–2011–0789 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. 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:** Nancy Levin, EPA Region IX, (415) 972–3848, *levin.nancy@epa.gov*.

**SUPPLEMENTARY INFORMATION:** Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. Proposed Action
II. Public Comments and EPA Responses
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### I. Proposed Action

On September 14, 2011 (76 FR 56706), EPA proposed to approve the following rules into the California SIP.

| Local agency | Rule No. | Rule title | Adopted | Submitted |
|---|---|---|---|---|
| SJVUAPCD | 4570 | Confined Animal Facilities | 10/21/10 | 4/05/11 |
| SJVUAPCD | 4565 | Biosolids, Animal Manure, and Poultry Litter Operations | 3/15/07 | 8/24/07 |

We proposed to approve these rules because we determined that they complied with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation, including recommendations for future rule improvements.

### II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we did not receive comments on Rule 4565, and received comments on Rule 4570 from one party: Brent Newell, Center on Race, Poverty & the Environment (CRPE); letter dated and received October 14, 2011. The comments and our responses are summarized below.

*Comment #1:* CRPE argues that Rule 4570's menu approach does not comply with RACT because the rule allows operators to choose among options that are not mutually exclusive and thus fails to require all economically and technologically feasible reductions.

*Response to Comment #1:* A menu approach can be consistent with RACT and may be a reasonable regulatory approach for agricultural sources where there is variability among operations. The Ninth Circuit Court of Appeals has twice upheld EPA's approval of menu-based rules regulating emissions of particulate matter from agricultural sources.[1] Although Rule 4570 regulates VOCs, not particulate matter, these cases are instructive on the question of whether a menu approach can comply with RACT.

In upholding EPA's approval of Arizona's AgBMP Rule as meeting the standard for Best Available Control Measures (BACM), as required by CAA section 189(b)(1)(B), the Ninth Circuit stated:

> Petitioners do not challenge any particular practice adopted as BACM. [footnote omitted] Rather, petitioners contend that there is no reason why Arizona could not require farmers to implement more than one control measure in each category. Petitioners point out that because, in one sense, Arizona has already found these measures to be ''feasible,'' more than one measure must be implemented. As a matter of theory, petitioners are, of course, correct. Intuitively, it seems obvious to say that if one measure per category is good, two or more would be better. Petitioners' argument proves too much, however. By petitioners' logic, if two are better than one, three are better than two, and so forth. We have little doubt that if Arizona required all of these measures, it would achieve greater reductions than under its present plan.
>
> Petitioners' argument would be compelling if the Act required a state to reduce its emissions to the maximum extent possible, regardless of cost. EPA, however, has concluded that ''best available control measures'' means the maximum degree of emissions reduction of PM–10 and PM–10 precursors from a source * * * which is determined on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, to be achievable for such source through application of production processes and available methods, systems, and techniques for control of each such pollutant. Addendum, 59 Fed.Reg. at 42,010. Petitioners do not challenge this longstanding interpretation of the Act, and we cannot say that the interpretation is impermissible. See Alaska Dep't of Envtl. Conservation, 540 U.S. 461, 124 S.Ct. at 1001; cf. 42 U.S.C. § 7479(3) (similarly defining the term ''best available control technology'' for purposes of the Prevention of Significant Deterioration program).[2]

Regarding SJVUAPCD Rule 4550, the court ruled that a menu-based approach can meet the requirements of CAA 179(d)(2), which requires ''additional measures as the Administrator may reasonably prescribe, including all

[1] *See Vigil* v. *Leavitt,* 381 F.3d 826 (9th Cir. 2004) (upholding EPA's approval of the Arizona Ag BMP rule, Arizona Administrative Code (A.A.C.) R18–2–610 and R18–2–611); *Latino Issues Forum* v. *EPA,* 558 F.3d 936 (9th Cir. 2009) (upholding EPA's approval of SJVUAPCD Rule 4550).

[2] *Vigil,* 381 F.3d at 836.

measures that can be feasibly implemented in the area * * * ''. As the court noted:

Petitioners argue that, under § 7509(d)(2), the District was required to implement all feasible measures to control PM–10 emissions without delay, because the San Joaquin Valley had failed to meet its attainment deadlines. Petitioners contend that allowing agricultural operators to choose one control option (among many) from each of a few categories fails to meet the ''all feasible measures'' standard * * *

The EPA offers an alternative reading of § 7509(d)(2). The EPA argues that the section provides that submitted revisions must contain additional measures, but that the only additional measures required are those the Administrator reasonably may choose to prescribe. The measures that the Administrator may reasonably prescribe, the EPA asserts, include all measures that can be feasibly implemented in the area in light of technological achievability, costs, and economic, health, and environmental effects * * *

Because § 7509(d)(2) is ambiguous and the EPA's statutory interpretation is reasonable, we hold that the EPA acted lawfully by not requiring implementation of ''all feasible measures'' into Rule 4550.

Similar to the Ninth Circuit's decisions regarding CAA sections 189(b)(1)(B) and 179(d)(2), a menu-based approach can be consistent with CAA section 182(b)(2)'s RACT requirements. EPA has long interpreted RACT to encompass considerations of cost and feasibility.[3] A menu approach that allows regulated entities to select among various control measures may be compatible with RACT and warranted in response to significant variability within the regulated source category. While CAFs may have less variability than crop-land activities subject to the rules discussed above, SJVUAPCD's Staff Report for Rule 4570 described the District's findings of variability in this industry.[4]

Also, SJVUAPCD's revisions to Rule 4570 included changes that now make many mitigation measures mandatory, rather than optional as under the previous version of Rule 4570, in effect narrowing the range of options in the menus.[5] In general, we believe Rule 4570 requires mandatory measures wherever possible, and the amount of flexibility provided by the menu approach is appropriate to the degree of variability among CAF operations.

*Comment #2:* CRPE claims that the District underestimated emissions from Total Mixed Rations (TMR) to support its claim that requiring an enclosed barn with a biofilter is not a cost-effective measure. CRPE claims that the Staff Report's calculations of exposed surface area at dairies are based on reports from dairy industry representatives. CRPE asserts that this data should be collected based on measurements taken by District or EPA staff, not regulated entities. CRPE claims that there are no data in the record demonstrating the methodology of estimating, or confirming the accuracy of, the total area of TMR exposure in feedlanes. It states that Howard[6] estimates the exposed TMR area for a 1,200 cow dairy to be 1,650 square meters, whereas the District's staff report emission estimates are based on a feed area of 225 square meters for a dairy greater than 1,000 cows. CRPE claims that the District underestimated emissions for TMR by assuming 0.658 square meters of feed area per cow, whereas Howard estimates emissions at 1.375 square meters per cow. CRPE argues that EPA should disapprove the RACT demonstration because the District's cost-effectiveness calculation overstates per-ton reduction costs.

*Response #2:* The District and EPA do not have the resources to directly take field measurements of all parameters relevant to all regulatory matters, and must often consider information compiled by industry and other organizations. Although Howard estimates TMR emissions based upon 1.375 square meters of exposed surface per cow, the District's assumption of 0.658 square meters of exposed TMR per cow is corroborated by observations in several research studies.[7] Measurements taken by Dr. Charles Schmidt in 2004, 2005, and 2008 include a range of 0.472–0.608 square meters of exposed TMR per total cows, and a range of 0.641–0.893 square meters of exposed TMR per milk cows. Studies by Dr. Charles Krauter also assume an exposed surface area that is less than 1.375 square meters per cow.[8] Given this range, it is reasonable for the District to assume 0.658 square meters of exposed TMR per cow. Moreover, the District has clarified that its reference to 225 square meters of exposed surface area in Table 10 in Appendix B of the Staff Report for Rule 4570 refers to the estimated exposed surface area of the face of the silage pile, not to TMR.[9] Howard assumes only 90 square meters for the open face of the silage pile,[10] so in this case, SJVUAPCD was actually considerably more conservative.

*Comment #3:* CRPE asserts that SJVUAPCD's estimated emission reductions from Rule 4570 are unsubstantiated and should not be claimed until solid science establishes their validity. CRPE objects to emission reduction estimates based on an assumed control efficiency of 10%. CRPE also asserts that EPA approval of Rule 4570 is arbitrary and capricious because reductions from default assumptions lack supporting evidence.

*Response to Comment #3:* EPA's proposed approval of Rule 4570 does not depend on the amount or accuracy of the emission reductions expected from the rule's implementation. As explained in our proposal, the basis for our action is whether the rule meets the statutory and regulatory requirements for RACT. Nonetheless, EPA believes that the District used the best information available at the time it adopted Rule 4570 and applied that information reasonably to estimate emission reductions. The District explained, for example, its conservative approach in estimating emission reductions for many of the mitigation measures at 10%.[11]

CRPE made a similar comment regarding EPA's proposed action on the

[3] *See,* 74 FR 53761 (Sept. 17, 1979) (''EPA has defined RACT as: The lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.''); *see also,* Memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management to Regional Administrators, Regions I–X, on ''Guidance for Determining Acceptability of SIP Regulations in Non-Attainment Areas,'' section 1.a (December 9, 1975), reprinted in (1976) 7 Environmental Reporter, Current Developments (BNA) 1210.

[4] SJVUAPCD Final Staff Report for Revised Proposed Amendments to Rule 4570 (Confined Animal Facilities), Oct. 21, 2010, (''SJVUAPCD Staff Report for Rule 4570, Oct. 21, 2010''), at 15.

[5] For instance, the Phase I Dairy Feed menu, Table 3.1.A., which duplicates requirements in the previous version of the rule, allows CAF owners and operators to select 4 measures from 8 options; under the revised requirements, the Phase II Dairy feed menu, Table 4.1.A, mandates 4 specific measures and then requires owners and operators to select one additional measure from 4 options. Similarly, the Phase I Dairy Corral menu, Table 3.1.E., allows CAF owners and operators to select 6 measures from 13 options, whereas the Phase II menu, Table 4.1.E., mandates 6 specific measures and then requires owners and operators to select one additional measure from 4 options.

[6] Howard, *et. al.,* Reactive Organic Gas Emissions From Livestock Feed Contribute Significantly To Ozone Production In Central California, Environmental Science & Technology, 2010; 44 (7) at 2313).

[7] See November 10, 2011 email communication from Ramon Norman, SJVUAPCD, to Sona Chilingaryan and Nancy Levin, EPA.

[8] Krauter, Dairy Operations: An Evaluation and Comparison of Baseline and Potential Mitigation Practices for Emissions Reductions in the San Joaquin Valley, Final Report, May 1, 2009, California Air Resources Board Contract No. 04–343 Project administered as CSU Fresno Foundation Project #37411.

[9] See November 23, 2011 email communication from Sheraz Gill, SJVUAPCD, to Sona Chilingaryan and Nancy Levin, EPA.

[10] Howard, pg 2313.

[11] SJVUAPCD Staff Report for Rule 4570, Oct. 21, 2010, App. B, at B–11.

2009 version of Rule 4570, and specifically in regards to reductions attributed to Menu option A.1, feeding animals according to National Research Council (NRC) Guidelines.[12] In response, we noted that the District's emission reduction estimate was based on several research studies showing that changes in animals' diets reduce VOC emissions and that the 10% reduction was at the low end of the range of effectiveness seen in this research.[13] We also noted that CRPE raised this issue in State court litigation on Rule 4570, and the court ruled in favor of the District.[14] The District's emission reductions analysis for the 2010 version of the Rule relies on the same research as the 2009 version of the rule. While the District has made reasonable assumptions using the currently available science, we expect the District to continue revising emission estimates and control strategies as more research becomes available. In fact, we note that this rule revision is, in large part, a response to new research showing silage to be a greater source of VOCs than previously thought when requirements for previous versions of the rule were written.

*Comment #4:* CRPE claims that many of the emission control measures listed in Rule 4570's menus are standard operating procedure for dairies and that, in many cases, dairies will be able to comply with Rule 4570 without making any changes. CRPE gives two examples. In its first example, CRPE argues that reductions will often be counted for a dairy that complies with measure 4.1(A)(1) by feeding its cows according to NRC guidelines even though it is not possible to determine if the dairy was already following the guidelines. CRPE also claims there is no evidence that feeding cows according to NRC guidelines reduces VOCs. In its second example, CRPE states that measure 4.1(A)(2) requires TMR to be within three feet of a feedlane fence and argues that there is no evidence that standard industry practice allows feed to go beyond three feet or that dairy operators do not already ''push up'' the feed to ensure that the cows can actually reach it. CRPE further argues that dairies already have an incentive to not allow expensive feed to lie beyond the reach of the cows. CRPE also claims that the measure assumes that cows are not continually consuming the feed, thereby exposing previously covered feed containing VOC to air flow and evaporation. CRPE further notes that the baseline emissions inventory measures emissions from feed in the feedlane at 3½ feet, and that District staff contend that this six inch reduction would reduce the surface area and the flux rate of the feed significantly; however, CRPE argues that the District's method does not yield a decrease in flux rate, only exposed surface area.

*Response to Comment #4:* As explained in response to Comment #3, EPA's proposed approval of Rule 4570 does not depend on the amount of emission reductions. Nonetheless, SJVUAPCD believes and we concur that Rule 4570 will significantly reduce emissions. Simply because a menu option is commonly used does not mean that every facility uses it or uses it consistently.

CRPE raised a similar argument in response to our action on the 2009 version of Rule 4570.[15] We also received a similar comment from another commenter in response to our 2005 proposal to approve SJVAPCD Rule 4550, Conservation Management Practices (CMP) for agricultural sources of PM–10. The commenter claimed that the emission reductions estimated to be achieved by Rule 4550 were inaccurate and inflated because the estimate double-counted emission reductions already being achieved from practices already in common use by growers. In response, we explained, ''it was understood that some agricultural sites may have been employing practices not required by regulation at that time, and that these existing practices may not have been accounted for in the emission inventory. Rule 4550 makes these practices mandatory and federally enforceable, allowing the District to take credit for the emission reductions * * *.''[16]

Regarding the first example, as we note above in our response to comment #3, the District's emission reduction estimate for feeding based on NRC guidelines was based on several research studies showing that changes in animals' diets reduce VOC emissions and that the 10% reduction was at the low end of the range of effectiveness seen in this research.

Regarding the second example, during past site visits, SJVUAPCD staff has observed feed lying more than three feet away from cows at dairies.[17] EPA staff has also seen feed lying more than three feet away from the feedlane fence during site visits. Although there is financial incentive for dairies to contain expensive feed close to the cows, dairies respond to this incentive in varied degrees. It is reasonable to assume that including this measure in Rule 4570 will increase implementation of this activity. As for CRPE's statement that cows continuously expose the feed containing VOCs to air flow and evaporation, we note that recent research indicates that TMR will emit VOCs only in the first few hours after exposure to oxygen.[18] The District's staff report only claims that reductions in the surface area of the feed will reduce emissions, not that reductions in the surface area of the feed will reduce the flux rate.[19] Based on the research available to date, it is reasonable to conclude that reductions in the surface area of the feed exposed to air flow will reduce emissions.

*Comment #5:* CRPE comments that approval of Rule 4570 is arbitrary and capricious because Rule 4570 is unenforceable. CRPE comments that EPA has not presented facts or analysis to support its conclusion that Rule 4570 is enforceable.

*Response #5:* As stated in its TSD, EPA found that Rule 4570 was sufficiently clear and contained adequate monitoring, recordkeeping and other provisions to determine compliance with the rule.[20] We provide further elaboration on that finding here.

Consistent with CAA section 110(a) and relevant guidance, we reviewed Rule 4570 as we review other SIP submitted rules, to ensure that the rule language makes clear who must do what by when. EPA notes that it did evaluate the enforceability of Rule 4570 according to the criteria in the policy documents identified in our proposal, in particular, ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 24, 1988 (the Bluebook), ''Guidance Document for Correcting Common VOC and Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook), and ''Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency.'' EPA found that Rule 4570 sets forth clear standards as well as adequate recordkeeping and monitoring and therefore meets the

[12] August 31, 2009 Letter from Brent Newell, Center on Race, Poverty and the Environment, to Frances Wicher and Andrew Steckel, EPA.

[13] 75 FR 10435, March 8, 2010.

[14] *Association of Irritated Residents* v. *SJVAPCD* (2008) 168 Cal. App. 4th 535, 553–554.

[15] August 31, 2009 Letter from Brent Newell, Center on Race, Poverty and the Environment, to Frances Wicher and Andrew Steckel, EPA.

[16] 71 FR 7683, February 14, 2006.

[17] See December 5, 2011 email communication from Sheraz Gill, SJVUAPCD, to Sona Chilingaryan and Nancy Levin, EPA.

[18] F. Montes *et al.,* Temperature and Air Velocity Effects on Ethanol Emission from Corn Silage with the Characteristics of an Exposed Silo Face, Atmospheric Environment 44 (2010) 1987–1995.

[19] SJVUAPCD Staff Report for Rule 4570, Oct. 21, 2010, App. B, at 11.

[20] EPA Region 9 Technical Support Document (''TSD'') for Rule 4570, Aug. 2011 at 3.

general criteria for enforceability imposed by the CAA and relevant guidance and regulations.

National policy and precedent for implementing CAA section 110(a)'s enforceability requirement emphasizes that SIP requirements must be clear. See, for example, ''Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency,'' summary of enforceability criteria (''Your review should ensure that the rules in question are clearly worded and explicit in their applicability to the regulated sources,'') [21] and conclusion (''SIP revisions should be written clearly, with explicit language to implement their intent.'') [22]

EPA notes that the commenter did not identify any particular requirement that it believes to be lacking in clarity or specificity. In fact, Rule 4570 contains specific standards throughout its provisions. For example, the rule's applicability provision, Section 2.0, is unambiguously presented as, ''The provisions of this rule shall apply to any Confined Animal Facility.'' The rule's compliance time frame is also clearly set out in Section 8.0. Rule 4570's provisions imposing more particular requirements are also clearly set forth. For example, the Phase II Dairy silage menu, Table 4.1 B., requires owners and operators to select among mitigation measures that contain specific standards for the thickness of the tarps that cover the silage piles; the density of the silage piles themselves; and for managing the exposure of the silage piles. Similarly, the Phase II Dairy free stall barn menu, Table 4.1 D., requires owners and operators to select among mitigation measures that specify the width of paving for feedlanes, the frequency for clearing the feedlanes, and the type of allowable bedding materials. These are but a few examples of the specific standards set forth throughout Rule 4570.

Moreover, the record associated with the development of Rule 4570 shows efforts made by EPA and the District to ensure clarity in Rule 4570. For example, in a comment letter provided by EPA to the District regarding EPA's review of a draft version of Rule 4570, EPA recommended to the District that it revise three Phase II menus for dairies by adding definitions for at least six terms and including a specific frequency for vacuuming manure from freestall barns.[23] In addition, EPA's TSD contains detailed references to various standards embedded in the rule, further evidence that we carefully considered the clarity and specificity of Rule 4570's standards and requirements. For example, EPA's TSD notes that the 2009 version of Rule 4570 has one menu generally for poultry facilities, while the current rule has two menus more specifically tailored to layer facilities (Table 4.5) and broiler, duck or turkey facilities (Table 4.6).[24] EPA's TSD also describes the removal of an option from dairy and feedlot menus regarding the installation of floats in water troughs because the District determined that the measure was already standard industry practice.[25]

In addition to the rule's clarity and specificity, EPA considered the rule's other enforcement-related provisions. For example, sections 5.1.3 and 8.1 require each CAF owner/operator to submit, by April 21, 2011, an application for a construction or operating permit that includes a facility emission mitigation plan identifying the mitigation measures selected for the facility. Section 5.1.6 requires the District to act on complete applications within 6 months of receipt and to list the approved mitigation measures as permit conditions. Section 5.1.2 also specifies that initial permits to construct and operate for large CAFs will be subject to a 30-day public comment period.

In addition, sections 7.0–7.9 contain various recordkeeping requirements, including: Section 7.2.1, which requires owners and operators to maintain copies of all facility permits; section 7.2.2, which requires owners and operators to maintain quarterly records of the number of animals of each species and production group; and, section 7.2.3, which contains a broad requirement for owners and operators to ''maintain records sufficient to demonstrate compliance with all applicable mitigation measures.'' In addition, sections 7.3–7.8 contain specific recordkeeping requirements for various mitigation measures [26] and section 7.9 requires CAF owners and operators to maintain records for a minimum of 5 years. In addition, sections 7.10 and 7.11 impose source testing requirements and relevant test methods.

*Comment #6:* CRPE alleges that Rule 4570's recordkeeping provisions are inadequate to assure sufficient public access to documents that demonstrate compliance with applicable mitigation measures. Specifically, the commenter states that the rule's requirement that owners and operators provide records to the APCO and EPA upon request is not sufficient because it does not ''mandate that records * * * be made available to the public.'' The commenter claims that, as a result, the public could be denied access to records by entities ''claiming that they are proprietary, confidential business information, or otherwise not disclosable under the various exemptions in open records laws.'' CRPE expresses the concern that Rule 4570's lack of a ''guarantee'' of public access to all records demonstrating compliance means that the District and/or EPA could withhold documents from the public on the ground that Rule 4570 ''trumps'' inconsistent state law or conflicts with FOIA.

*Response #6:* The Freedom of Information Act (''FOIA''), 5 U.S.C. 552, requires the federal government, including agencies such as EPA, to provide records to the public upon request.[27] In addition, EPA has its own regulations that apply to its implementation of FOIA.[28] As noted by the commenter, FOIA does include various exemptions, including an exemption for ''trade secrets and commercial or financial information obtained from a person and privileged or confidential. Id. at § 552(b)(7). The FOIA regulations specify the procedures by which regulated entities may claim information to be confidential or trade secret and the process for the review of such claims.[29] EPA's regulations also specify that ''emissions data'' does not qualify as confidential information.[30] These statutory and regulatory provisions and exemptions would apply to records in EPA's possession regardless of whether Rule 4570 explicitly required records to be made available to the public. The fact that local Rule 4570 does not expressly provide the public with access to CAF records cannot ''trump'' federal law in FOIA. Moreover, it would be inconsistent with these established statutory and regulatory provisions to withhold our approval of Rule 4570 for the reason suggested by the commenter. Few if any State requirements approved by EPA mandate that records be made available to the public as requested by

[21] Memorandum from Potter, Adams & Blake, EPA, September 23, 1987, p. 3.

[22] *Id.* at 4.

[23] Letter from Andrew Steckel, Chief, Rules Office EPA Region 9 to George Heinen, SJVUAPCD, July 20, 2010.

[24] EPA Region 9 TSD for Rule 4570, Aug. 2011 at 6.

[25] *Id.* at 4.

[26] For example, section 7.3, ''Records for Feed and Silage Mitigation Measures,'' and section 7.5, ''Records for Freestall/Corral/Animal Housing'' set forth detailed recordkeeping requirements for those specific work practice requirements.

[27] California has an analogous statute, the Public Records Act, Cal. Govt. Code §§ 6250–6276.48.

[28] 40 CFR part 2, and regulations specific to the CAA at 40 CFR 2.301 *et seq.*

[29] 40 CFR part 2, Subpart B (40 CFR 2.201–2.215).

[30] 40 CFR 2.301(e).

the commenter. Rule 4570, by requiring records be made available to regulatory agencies, is consistent with the vast majority of the thousands of SIP requirements approved by EPA over the last 40 years, and we are aware of nothing in the CAA that conflicts with this practice.

*Comment #7:* CRPE alleges two specific deficiencies in Rule 4570's monitoring provisions: (1) Even though Rule 4570 has a general provision for maintaining records sufficient to demonstrate compliance, there is no specific monitoring associated with the requirement to push TMR within three feet of a feedlane fence; and (2) monitoring of lagoons is left to the discretion of the APCO and EPA.

*Response #7:* Although there is not a specific provision requiring recordkeeping for pushing TMR within three feet of a feedlane fence, as the commenter notes, section 7.2.3 of Rule 4570 requires that CAF owners and operators ''maintain records sufficient to demonstrate compliance with all applicable mitigation measures.'' In addition, the District has developed an example Dairy Compliance Checklist that provides compliance guidance.[31] The Checklist asks dairies to have a check mark for every day that feed is pushed within three feet of the feedlane fence within two hours of placing the feed in the feedlane.

With respect to the commenter's concern regarding discretion in the monitoring of lagoons (section 6.1), EPA notes that the ''discretion'' is reasonably limited in scope. Rule 4570 section 6.1 specifies that lagoons must be monitored ''at least once every calendar quarter, with at least 30 days between monitoring tests.'' Although section 6.1 does not specify the parameters that must be monitored, this issue is addressed by other provisions within the rule. For example, sections 5.1.3 and 5.1.5 require implementation of emission mitigation plans, which must be included as permit conditions in the CAF's operating and construction permits. For owners and operators implementing lagoons as a mitigation measure, section 6.1 contemplates that these plans and permits will identify the parameters approved by the District and EPA. Furthermore, owners and operators using lagoons as mitigation measures must also comply with source testing requirements set forth in sections 7.10.2—7.10.6.

*Comment #8:* CRPE alleges that Rule 4570 is deficient because it does not require operators to affirm the truth of records under penalty of perjury, nor does it require operators to report violations to the District or EPA.

*Response #8:* The commenter has not provided and EPA is not aware of any federal rule, regulation or policy that would impose such requirements as a condition of SIP approval. As explained above, EPA evaluated the enforceability of Rule 4570 according to the authorities and guidelines identified in our proposal and found that Rule 4570 meets the general criteria for enforceability imposed by the CAA and relevant guidance and regulations. EPA also notes that CAA section 113(c)(2) provides that any person who knowingly makes a ''false material statement'' or ''omits material information from * * * any * * * application, record, report, plan or other document'' required by the Act may be subject to criminal fines or by imprisonment or both. This provision will apply to records required by Rule 4570 upon the effective date of our approval of the rule into the California SIP.

## III. EPA Action

No comments were submitted that change our assessment that the submitted rules comply with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving these rules into the California SIP. This action permanently terminates all CAA sanction and FIP implications of our January 14, 2010 (75 FR 2079) limited disapproval of Rule 4570.

## IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act 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 Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. 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 Clean Air Act; and
- Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 19, 2012. Filing a petition for reconsideration by the Administrator of this final rule does

[31] See SJVUAPCD Dairy Compliance Checklist.

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 52**

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

Dated: December 13, 2011.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

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

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

## Subpart F—California

■ 2. Section 52.220, is amended by adding paragraphs (c)(351)(i)(C)(*7*) and (388)(i)(B)(*5*) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(351) * * *

(i) * * *

(C) * * *

(*7*) Rule 4565, ''Biosolids, Animal Manure, and Poultry Litter Operations'', adopted on March 15, 2007.

* * * * *

(388) * * *

(i) * * *

(B) * * *

(*5*) Rule 4570, ''Confined Animal Facilities'', amended on October 21, 2010.

* * * * *

[FR Doc. 2012–582 Filed 1–13–12; 8:45 am]

BILLING CODE P

# Proposed Rules

Federal Register
Vol. 77, No. 10
Tuesday, January 17, 2012

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

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2012–0017; Directorate Identifier 2011–CE–039–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; DG Flugzeugbau GmbH Gliders

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for DG Flugzeugbau GmbH Models DG–500 Elan Orion, DG–500 Elan Trainer, DG–500/20 Elan, DG–500/22 Elan, DG–500M, and DG–500MB gliders. This proposed 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 damage to the bulkhead of the glider's center of gravity (CG) tow hook that, if not detected and corrected, may lead to failure of the fiberglass structure during a winch launch. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by March 2, 2012.

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

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

For service information identified in this proposed AD, contact DG–Flugzeugbau GmbH, Otto-Lilienthal-Weg 2, 76646 Bruchsal, Federal Republic of Germany; telephone: +49 (0) 7251 3020140, fax: +49 (0) 7251 3020149; email: *dirks@dg-flugzeugbau.de;* Internet: *www.dg-flugzeugbau.de.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0017; Directorate Identifier 2011–CE–039–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

### Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No.: 2011–0209, dated October 26, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Occurrence of damage of the bulkhead of CG tow hook and its glued joints to fuselage shell was reported.
>
> Investigation concluded that this damage may occur after wheel up landing.
>
> Damage of bulkheads for CG tow hook of the sailplane or powered sailplane, if not detected and corrected, may lead to failure of glass fibre structure during a winch launch.
>
> DG–Flugzeugbau GmbH developed and published Technical Note (TN) No 500/04 with the associated Working Instruction No 1 to detect and correct damaged CG tow hook bulkhead and its glued joints.
>
> For the above-mentioned reasons, this AD requires a one-time inspection of the CG tow hook and its reinforcement.

The MCAI requires you to inspect the CG tow hook bulkhead for damage and reinforce the bulkhead. You may obtain further information by examining the MCAI in the AD docket.

### Relevant Service Information

DG Flugzeugbau GmbH has issued TN No 500/4, dated August 30, 2011; and Working Instruction No. 1, dated August 30, 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 the Proposed AD

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

**Costs of Compliance**

We estimate that this proposed AD will affect 16 products of U.S. registry. We also estimate that it would take about 5 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $1,030 per product.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $23,280 or $1,455 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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

(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.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. The FAA amends § 39.13 by adding the following new AD:

**DG Flugzeugbau GmbH:** Docket No. FAA–2012–0017; Directorate Identifier 2011–CE–039–AD.

**(a) Comments Due Date**

We must receive comments by March 2, 2012.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to DG Flugzeugbau GmbH Models DG–500 Elan Orion, DG–500 Elan Trainer, DG–500/20 Elan, DG–500/22 Elan, DG–500M, and DG–500MB gliders, all serial numbers (S/N), certificated in any category.

**(d) Subject**

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

**(e) Reason**

This proposed AD was prompted by damage to the bulkhead of the glider's center of gravity (CG) tow hook that, if not detected and corrected, may lead to failure of the fiberglass structure during a winch launch. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

**(f) Actions and Compliance**

Unless already done, do the following actions:

(1) *For all gliders:* Within 30 days after the effective date of this AD, inspect the bulkhead of the CG tow hook and the bulkhead's glued joints for damage following DG Flugzeugbau GmbH TN No 500/4, dated August 30, 2011; and DG Flugzeugbau Working Instruction No. 1, dated August 30, 2011.

(2) *For all gliders:* If you find damage during the inspection required by paragraph (f)(1) of this AD, before further flight, reinforce the bulkhead of the CG tow hook following DG Flugzeugbau GmbH TN No 500/4, dated August 30, 2011; and DG Flugzeugbau Working Instruction No. 1, dated August 30, 2011.

(3) *For all gliders:* Unless already done as required by paragraph (f)(2) of this AD, within 5 months after the effective date of this AD, reinforce the bulkhead of the CG tow hook following DG Flugzeugbau GmbH TN No 500/4, dated August 30, 2011; and DG Flugzeugbau Working Instruction No. 1, dated August 30, 2011.

(4) *For gliders with S/N 5E1 through S/N 5E23:* While doing the modification required by paragraph (f)(2) or (f)(3) of this AD, install a new adapted tow hook access cover following DG Flugzeugbau GmbH TN No 500/4, dated August 30, 2011; and DG Flugzeugbau Working Instruction No. 1, dated August 30, 2011.

(5) *For all gliders:* Although the EASA MCAI and DG Flugzeugbau GmbH TN No 500/4, dated August 30, 2011, allow the inspection required by paragraph (f)(1) of this AD to be done by a pilot-owner, the U.S. regulatory system requires all actions of this AD to be done by a certified mechanic.

**(g) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

**(h) Related Information**

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2011–0209, dated

October 26, 2011; DG Flugzeugbau GmbH TN No 500/4, dated August 30, 2011; and DG Flugzeugbau Working Instruction No. 1, dated August 30, 2011, for related information. For service information related to this AD, contact DG–Flugzeugbau GmbH, Otto-Lilienthal-Weg 2, 76646 Bruchsal, Federal Republic of Germany; telephone: +49 (0) 7251 3020140, fax: +49 (0) 7251 3020149; email: *dirks@dg-flugzeugbau.de;* Internet: *www.dg-flugzeugbau.de.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri on January 10, 2012.

**John Colomy,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2012–744 Filed 1–13–12; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2011–1342; Directorate Identifier 2011–CE–038–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; DG Flugzeugbau GmbH Sailplanes

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

**ACTION:** Supplemental notice of proposed rulemaking (NPRM); extension of the comment period.

**SUMMARY:** We are revising an earlier NPRM for DG Flugzeugbau GmbH DG–500 Elan series sailplanes and Models DG–500M and DG–500MB powered sailplanes. This proposed 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 incorrect re-installation of the rear cockpit securing rope for the headrest of the rear seat during maintenance, which could cause the rear seat to interfere with the control stick of the sailplane. We are issuing this proposed AD to require actions to correct the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by March 2, 2012.

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

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

For service information identified in this proposed AD, DG Flugzeugbau GmbH, Otto-Lilienthal-Weg 2, 76646 Bruchsal, Federal Republic of Germany; telephone: +49 (0) 7251 3020140; fax: +49 (0) 7251 3020149; Internet: *http://www.dg-flugzeugbau.de/tech-mitteilungen-e.html;* email: *dirks@dg-flugzeugbau.de.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

**Examining the AD Docket**

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

**FOR FURTHER INFORMATION CONTACT:** Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–1342; Directorate Identifier 2011–CE–038–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed 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 proposed AD.

**Discussion**

We proposed to amend 14 CFR part 39 with an earlier NPRM for the specified products, which was published in the **Federal Register** on December 7, 2011 (76 FR 76330). That earlier NPRM proposed to require actions intended to address the unsafe condition for the products listed above.

Since that NPRM (76 FR 76330, December 7, 2011) was issued, we determined that all affected Model DG–500 Elan sailplanes were not included in the Applicability section.

**Relevant Service Information**

DG Flugzeugbau GmbH has issued Technical Note No. 500/05, dated September 19, 2011, and Working Instruction No. 1 for TN348/20, Issue 3, dated September 13, 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 the Proposed AD**

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

Certain changes described above expand the scope of the earlier NPRM (76 FR 76330, December 7, 2011). As a result, we have determined that it is necessary to extend the comment period to provide additional opportunity for the public to comment on the proposed AD.

**Costs of Compliance**

We estimate that this proposed AD will affect 16 products of U.S. registry. We also estimate that it would take about 2.5 work-hours per product to comply with the basic requirements of this proposed AD. The average labor

rate is $85 per work-hour. Required parts would cost about $1,088 per product.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $20,808, or $1,300.50 per product.

In addition, we estimate that any necessary follow-on actions would take about 0.5 work-hour, for a cost of $42.50 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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

*For the reasons discussed above, I certify this proposed regulation:*

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

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

(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.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. The FAA amends § 39.13 by adding the following new AD:

**DG Flugzeugbau GmbH:** Docket No. Docket No. FAA–2011–1342; Directorate Identifier 2011–CE–038–AD.

**(a) Comments Due Date**

We must receive comments by March 2, 2012.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to DG Flugzeugbau GmbH Models DG–500 Elan Orion, DG–500 Elan Trainer, DG–500/20 Elan, and DG–500/22 Elan sailplanes and Models DG–500M and DG–500MB powered sailplanes, all serial numbers, that are:

(i) Equipped with a headrest on the rear seat; and

(ii) Certificated in any category.

**(d) Subject**

Air Transport Association of America (ATA) Code 25: Equipment/Furnishing.

**(e) Reason**

This AD was prompted by 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 incorrect re-installation of the rear cockpit securing rope for the headrest of the rear seat during maintenance. We are issuing this AD to correct the length of the rear cockpit headrest securing rope, which if too long, could cause the rear seat to interfere with the control stick of the sailplane and could result in loss of control of the sailplane.

**(f) Actions and Compliance**

Unless already done, do the following actions:

(1) Within the next 30 days after the effective date of this AD, inspect the rear cockpit headrest securing rope to determine the length. Do the inspection as specified in Instruction No. 2 of DG Flugzeugbau GmbH Technical Note No. 500/05, dated September 19, 2011.

(i) If the length of the rear cockpit headrest securing rope is more than 450 millimeters (mm) or less than 400 mm, before further flight, adjust the length of the rear cockpit headrest securing rope to a length between 400 mm and 450 mm as shown in Sketch 2 of DG Flugzeugbau GmbH Working Instruction No. 1 for TN348/20, Issue 3, dated September 13, 2011. After doing the adjustment, do the action required in paragraph (f)(2) of this AD.

(ii) If the length of the rear cockpit headrest securing rope is between 400 mm and 450 mm, do the action required in paragraph (f)(2) of this AD.

(2) Within 3 months after the effective date of this AD, replace the rear cockpit headrest securing rope with a rear cockpit headrest securing rope with a snap hook. Do the replacement following DG Flugzeugbau GmbH Working Instruction No. 1 for TN348/20, Issue 3, dated September 13, 2011, as specified in Instruction No. 3 of DG Flugzeugbau GmbH Technical Note No. 500/05, dated September 19, 2011.

(3) Replacement of the rear cockpit headrest securing rope with a rear cockpit headrest securing rope with a snap hook done before the effective date of this AD following DG Flugzeugbau GmbH Working Instruction No. 1 for TN348/20, Issue 2, is considered acceptable for compliance with paragraph (f)(2) of this AD.

(4) Although the European Aviation Safety Agency (EASA) MCAI and DG Flugzeugbau GmbH Technical Note No. 500/05, dated September 19, 2011, allows the inspection required in paragraph (f)(1) of this AD to be done by a pilot-owner, the U.S. regulatory system requires all actions required by this AD be done by a certified mechanic.

**(g) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.* Before using any approved AMOC on any sailplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current

valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Avenue SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

**(h) Related Information**

Refer to MCAI EASA AD No.: 2011–0191, dated September 30, 2011; DG Flugzeugbau GmbH Technical Note No. 500/05, dated September 19, 2011; and DG Flugzeugbau GmbH Working Instruction No. 1 for TN348/20, Issue 3, dated September 13, 2011, for related information. For service information related to this AD, contact DG Flugzeugbau GmbH, Otto-Lilienthal-Weg 2, 76646 Bruchsal, Federal Republic of Germany; telephone: +49 (0) 7251 3020140; fax: +49 (0) 7251 3020149; Internet: *http://www.dg-flugzeugbau.de/tech-mitteilungen-e.html;* email: *dirks@dg-flugzeugbau.de.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on January 10, 2012.

**John Colomy,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2012–745 Filed 1–13–12; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2011–0018; Directorate Identifier 2011–CE–042–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Pilatus Aircraft Ltd. Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for Pilatus Aircraft Ltd. Models PC–6, PC–6–H1, PC–6–H2, PC–6/350, PC–6/350–H1, PC–6/350–H2, PC–6/A, PC–6/A–H1, PC–6/A–H2, PC–6/B–H2, PC–6/B1–H2, PC–6/B2–H2, PC–6/B2–H4, PC–6/C–H2, and PC–6/C1–H2 airplanes. This proposed 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 loose elevator and rudder hinge bolts caused by incorrect torquing and locking of the bolts could lead to in-flight failure of the elevator or rudder attachment. If not corrected, this failure could result in loss of control of the airplane. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by March 2, 2012.

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

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

For service information identified in this proposed AD, contact PILATUS AIRCRAFT LTD., Customer Liaison Manager, CH–6371 STANS, Switzerland; telephone: +41 (0) 41 619 65 80; fax: +41 (0) 41 619 65 76; Internet: *http://www.pilatus-aircraft.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–0018; Directorate Identifier 2011–CE–042–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

### Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No. 2011–0230, dated December 9, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> A case of loss of elevator and rudder hinge bolts on a PC–6 aeroplane has been reported.
>
> The results of the investigations indicate that the elevator and rudder hinge bolt loss are suspected to have been caused by an incorrect torque and locking of the bolts.
>
> This condition, if not detected and corrected, could lead to in-flight failure of the elevator or rudder attachment, possibly resulting in loss of control of the aeroplane.
>
> For the reasons described above, this AD requires the installation of a new locking screw and the modification of the installation of the hinge bolt.

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

### Relevant Service Information

Pilatus Aircraft Ltd. has issued PC–6 Service Bulletin No. 55–001, Rev. No. 1, dated November 25, 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 the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation

in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

**Costs of Compliance**

We estimate that this proposed AD will affect 50 products of U.S. registry. We also estimate that it would take about 5 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $100 per product.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $26,250, or $525 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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

(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.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. The FAA amends § 39.13 by adding the following new AD:

**Pilatus Aircraft Ltd.:** Docket No. FAA–2011–0018; Directorate Identifier 2011–CE–042–AD.

**(a) Comments Due Date**

We must receive comments by March 2, 2012.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Pilatus Aircraft Ltd. Models PC–6, PC–6–Hl, PC–6–H2, PC–6/350, PC–6/350–Hl, PC–6/350–H2, PC–6/A, PC–6/A–Hl, PC–6/A–H2, PC–6/B–H2, PC–6/Bl-H2, PC–6/B2–H2, PC–6/B2–H4, PC–6/C–H2, and PC–6/Cl-H2 airplanes, all manufacturer serial numbers (MSN), and MSN 2001 through 2092, certificated in any category. These airplanes are also identified as Fairchild Republic Company PC–6 airplanes, Fairchild Industries PC–6 airplanes, Fairchild Heli Porter PC–6 airplanes, or Fairchild-Hiller Corporation PC–6 airplanes.

**(d) Subject**

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

**(e) Reason**

This AD was prompted by loose elevator and rudder hinge bolts caused by incorrect torquing and locking of the bolts. We are issuing this AD to prevent in-flight failure of the elevator or rudder attachment, which could result in loss of control of the airplane.

**(f) Actions and Compliance**

Unless already done, do the following actions:

(1) *For airplanes that have not been modified before the effective date of this AD following Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 55–001 at initial issue,* within 2 months after the effective date of this AD, install new elevator and rudder hinge bolt locking screws and modify the installation of the hinge bolt following the Accomplishment Instructions in Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 55–001, Rev. No. 1, dated November 25, 2011.

(2) *For airplanes that have been modified before the effective date of this* AD following Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 55–001 at initial issue, within 6 months after the effective date of this AD, install new elevator and rudder hinge bolt locking screws following the Accomplishment Instruction of Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 55–001, Rev. No. 1, dated November 25, 2011.

**(g) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: doug.rudolph@faa.gov. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

**(h) Related Information**

Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2011–0230, dated December 9, 2011, and Pilatus Aircraft Ltd.

PC–6 Service Bulletin No. 55–001, Rev. No. 1, dated November 25, 2011, for related information. For service information related to this AD, contact PILATUS AIRCRAFT LTD., Customer Liaison Manager, CH–6371 STANS, Switzerland; telephone: +41 (0) 41 619 65 80; fax: +41 (0) 41 619 65 76; Internet: *http://www.pilatus-aircraft.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri on January 10, 2012.

**John Colomy,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2012–746 Filed 1–13–12; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[REG–113903–10]**

**RIN 1545–BJ59**

## Allocation and Apportionment of Interest Expense

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

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

**SUMMARY:** In the Rules and Regulations section in this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide guidance relating to the allocation and apportionment of interest expense. The temporary regulations provide guidance concerning the allocation and apportionment of interest expense by corporations owning a 10 percent or greater interest in a partnership, as well as the allocation and apportionment of interest expense using the fair market value asset method. The temporary regulations also update the interest allocation regulations to conform to the changes made to the applicable law by the legislation commonly referred to as the Education Jobs and Medicaid Assistance Act (EJMAA), enacted on August 10, 2010 (Pub. L. 111–226, 124 Stat. 2389 (2010)), which affect corporations owning certain foreign corporations engaged in the conduct of a trade or business in the United States. The text of those temporary regulations published in this issue of the **Federal Register** also serves as the text of these proposed regulations. This document also provides a notice of public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by March 13, 2012. Outlines of topics to be discussed at the public hearing scheduled for April 3, 2012, at 10 a.m. must be received by March 13, 2012.

**ADDRESSES:** Send submissions to CC:PA:LPD:PR (REG–113903–10), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–113903–10), Courier's desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20044, or sent electronically, via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–113903–10). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Jeffrey L. Parry, (202) 622–3850; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing Oluwfunmilayo Taylor (202) 622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** contain amendments to the Income Tax Regulations (26 CFR part 1) which provide rules under section 861 relating to the affiliation of certain foreign corporations for purposes of section 864, the allocation and apportionment of interest expense by corporations owning a 10 percent or greater interest in a partnership, and the allocation and apportionment of interest expense using the fair market value method. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations. The regulations affect taxpayers that allocate and apportion interest expense under section 864.

### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f), these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and the Treasury Department request comments on all aspects of the proposed rules. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 3, 2012, in the IRS auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments by March 13, 2012, and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by March 13, 2012. A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

### Drafting Information

The principal author of these regulations is Jeffrey L. Parry of the Office of Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

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

**Par. 2.** In § 1.861–9, paragraphs (e)(2), (e)(3), (h)(4), and (k) are revised to read as follows:

**§ 1.861–9 Allocation and apportionment of interest expense**

* * * * *

(e) * * *

(2) and (3) [The text of the proposed amendments to § 1.861–9(e)(2) and § 1.861–9(e)(3) is the same as the text of § 1.861–9T(e)(2) and § 1.861–9T(e)(3) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(h) * * *

(4) [The text of the proposed amendment to § 1.861–9(h)(4) is the same as the text of § 1.861–9T(h)(4) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(k) [The text of the proposed amendment to § 1.861–9(k) is the same as the text of § 1.861–9T(k) published elsewhere in this issue of the **Federal Register**.]

**Par. 3.** In § 1.861–11, paragraphs (d)(6)(ii) and (h) are revised to read as follows:

**§ 1.861–11 Special rules for allocating and apportioning interest expense of an affiliated group of corporations.**

* * * * *

(d) * * *

(6)(ii) [The text of proposed § 1.861–11(d)(6)(ii) is the same as the text of § 1.861–11T(d)(6)(ii) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(h) [The text of the proposed amendment to § 1.861–11(h) is the same as the text of § 1.861–11T(h) published elsewhere in this issue of the **Federal Register**.]

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 2012–595 Filed 1–13–12; 8:45 am]

**BILLING CODE 4830–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 73**

**[MB Docket No. 11–207; RM–11517, RM–11518; DA 11–2058]**

## Radio Broadcasting Services; Ehrenberg, First Mesa, Kachina Village, Wickenburg, and Williams, AZ; and Application of Univision Radio License Corporation, KHOV–FM, Wickenburg, AZ

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on two mutually exclusive proposals that were previously being considered in MB Docket No. 08–85. That proceeding was terminated without considering these proposals. The first proposal, RM–11517, filed by Rocket Radio, Inc., proposes the allotment of FM Channel 287C2 at Williams, Arizona, as the community's second local service; the substitution of Channel 228C2 for vacant Channel 286C2 at Ehrenberg, Arizona; and the substitution of Channel 281C for vacant Channel 247C at First Mesa, Arizona. Additionally, to facilitate the Williams allotment, we issue an Order to Show Cause to Univision Radio License Corporation as to why its license for Station KHOV–FM, Wickenburg, Arizona, should not be changed from Channel 287C2 to Channel 286C2; and to Grenax Broadcasting II, LLC as to why its license for Station KBTK(FM), Kachina Village, Arizona, should not be modified from Channel 286C2 to Channel 246C2. *See* **SUPPLEMENTARY INFORMATION.**

**DATES:** Comments must be filed on or before February 20, 2012, and reply comments on or before March 6, 2012.

**ADDRESSES:** Secretary, Federal Communications Commission, 445 Twelfth Street SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Erwin G. Krasnow, Esq., Garvey Schubert Barer, 1000 Potomac Street NW., Fifth Floor, Flour Mill Building, Washington, DC 20007–3501 (Counsel to Rocket Radio, Inc.); and Scott R. Flick, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street NW., Washington, DC 20037–1128 (Counsel to Univision Radio License Corporation).

**FOR FURTHER INFORMATION CONTACT:** Rolanda F. Smith or Andrew J. Rhodes, Media Bureau, (202) 418–2054.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MB Docket No.11–207, adopted December 21, 2011, and released December 23, 2011. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1 (800) 378–3160 or via email *www.BCPIWEB.com.*

The second proposal, RM–11518, involves a petition for rule making and hybrid application, filed by Univision Radio License Corporation, licensee of Station KHOV–FM, Wickenburg, Arizona. The application requests the upgrade of Station KHOV–FM, Wickenburg, from Channel 287C2 to Channel 286C0. *See* File No. BPH–20080915AFP. To accommodate this proposal, Univision Radio License Corporation filed a petition for rule making proposing the same channel substitutions for the vacant allotments at Ehrenberg and First Mesa as proposed in the first proposal. Additionally, we issue an Order to Show Cause to Grenax Broadcasting II, LLC for the same involuntary channel to Station KBTX(FM), Kachina Village, Arizona, to facilitate the Wickenburg proposal.

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed 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).

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

Federal Communications Commission.

**Nazifa Sawez,**

*Assistant Chief, Audio Division, Media Bureau.*

**Proposed Rule**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

## PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336, and 339.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended at Ehrenberg by removing Channel 286C2 and adding Channel 228C2 in its place; at First Mesa by removing Channel 247C and adding Channel 281C and by adding Williams, Channel 287C2.

[FR Doc. 2012–709 Filed 1–13–12; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MB Docket No. 11–206; RM–11634; DA 11–2062]**

### Radio Broadcasting Services; Pike Road, AL

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making filed by Alatron Corporation, Inc., proposing the allotment of Channel 228A at Pike Road, Alabama, as its second local service. A staff engineering analysis indicates that Channel 228A can be allotted to Pike Road consistent with the minimum distance separation requirements of the Rules with a site restriction 4.8 kilometers (3 miles) south of the community. The reference coordinates are 32–14–29 NL and 86–06–40 WL.

**DATES:** Comments must be filed on or before February 20, 2012, and reply comments on or before March 6, 2012.

**ADDRESSES:** Secretary, Federal Communications Commission, 445 Twelfth Street SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Robert E. Williams, President, Alatron Corporation, Inc., P.O. Box 110, Clanton, Alabama 35046.

**FOR FURTHER INFORMATION CONTACT:** Rolanda F. Smith, Media Bureau, (202) 418–2054.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 11–206, adopted December 22, 2011, and released December 23, 2011. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1-(800) 378–3160 or via email *www.BCPIWEB.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed 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).

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio.

Federal Communications Commission.

**Nazifa Sawez,**

*Assistant Chief, Audio Division, Media Bureau.*

**Proposed Rule**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

## PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336, and 339.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by adding Pike Road, Channel No. 228A.

[FR Doc. 2012–715 Filed 1–13–12; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MB Docket No. 08–85; RM–11427, RM–11517, RM–11518, RM–11519; DA 11–2059]**

### Radio Broadcasting Services; Ehrenberg, First Mesa, Kachina Village, Wickenburg, and Williams, AZ, and Needles, CA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; dismissal.

**SUMMARY:** The Audio Division dismisses a Petition for Rule Making filed by Michael Cusinato proposing the allotment of FM Channel 287B1 at Needles, California, as the community's fourth local transmission service, because no comments were received expressing an interest in the proposed allotment. *See* **SUPPLEMENTARY INFORMATION.**

**ADDRESSES:** Secretary, Federal Communications Commission, 445 Twelfth Street SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Rolanda F. Smith or Andrew J. Rhodes, Media Bureau, (202) 418–2054.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order,* MB Docket No. 08–85, adopted December 21, 2011, and released December 23, 2011. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–(800) 378–3160 or via email *www.BCPIWEB.com.* The Commission

will not send a copy of this *Report and Order* pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because this proceeding is terminated without the adoption of any rules.

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed 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).

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Although the *Public Notice* accepted two separate petitions for rule making as counterproposals in this proceeding, the *Report and Order* finds that these related proposals should not be considered as counterproposals because they are not mutually exclusive with the Needles allotment proposed in the *Notice of Proposed Rule Making* in this proceeding. *See Public Notice,* Report No. 2883, March 10, 2009. Instead we will consider these proposals filed by Rocket Radio, Inc. (RM–11517) and Univision Radio License Corporation (RM–11518), which are mutually exclusive with each other, in a separate FM rule making proceeding in MB Docket No. 11–207. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio.

Federal Communications Commission.

**Nazifa Sawez,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 2012–717 Filed 1–13–12; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**[Docket No. FWS–R8–ES–2010–0070; MO92210–0–0009]**

**RIN 1018–AX10**

## Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat and Taxonomic Revision for the Pacific Coast Population of the Western Snowy Plover

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce the reopening of the public comment period on the March 22, 2011, proposed revised designation of critical habitat for the Pacific Coast population of the western snowy plover (Pacific Coast WSP) (*Charadrius alexandrinus nivosus*) under the Endangered Species Act of 1973, as amended (Act). We are also recognizing the recent change to the taxonomy of the currently threatened taxon in which the species was split into two distinct species. We also announce the availability of a draft economic analysis (DEA) of the proposed revised designation of critical habitat for Pacific Coast WSP and an amended required determinations section of the proposal and reopening of the comment period to allow all interested parties an opportunity to comment simultaneously on the revised proposed rule, the associated DEA, and the amended required determinations section. We are also seeking comment on additional proposed revisions to Unit CA 46 in Orange County, California. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

**DATES:** We will consider comments received on or before February 16, 2012. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

**ADDRESSES:** You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Search for Docket No. FWS–R8–ES–2010–0070, which is the docket number for this rulemaking.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2010–0070; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

**FOR FURTHER INFORMATION CONTACT:** Nancy Finley, Field Supervisor or Jim Watkins, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service, Arcata Fish and Wildlife Office, 1655 Heindon Road, Arcata, CA 95521; telephone (707) 822–7201; facsimile (707) 822–8411. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

**Public Comments**

We will accept written comments and information during this reopened comment period on our proposed revised designation of critical habitat for the Pacific Coast WSP that was published in the **Federal Register** on March 22, 2011 (76 FR 16046), our DEA of the proposed revised designation, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not revise the designation of ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

(a) Areas that provide habitat for the Pacific Coast WSP that we did not discuss in the proposed revised critical habitat rule, and

(b) Areas within the geographical area occupied by the species at the time of listing that contain elements of the physical or biological features essential to the conservation of the species which may require special management considerations or protection and that we should include in the designation, and reason(s) why.

(3) Specific information on our proposed revised designation of back-dune systems and other habitats in an attempt to offset the anticipated effects of sea-level rise associated with climate change.

(4) Specific information on the Pacific Coast WSP, habitat conditions, and the presence of physical or biological features essential to the conservation of the species at any of the critical habitat units proposed in this revised rule (see Critical Habitat Units section and previous rules (64 FR 68508, December 7, 1999; 70 FR 56970, September 29, 2005; 76 FR 16046, March 22, 2011)).

(5) How the proposed revised critical habitat boundaries could be refined to more closely circumscribe the areas

identified as containing the features essential to the species' conservation or how we mapped the water's edge and whether any alternative methods could be used to better determine the critical habitat boundaries.

(6) Any foreseeable economic, national security, or other relevant impacts that may result from designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas from the proposed revised designation that are subject to these impacts.

(7) Any information regarding the areas exempted from the proposed revised rule or whether any specific areas being proposed as revised critical habitat should be excluded under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any particular area outweigh the benefits of including that area under section 4(b)(2) of the Act, including Tribal lands, within the proposed revised designation.

(8) Information on any quantifiable economic costs or benefits of the proposed revised designation of critical habitat.

(9) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed revised critical habitat.

(10) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

(11) Information on the extent to which the description of economic impacts in the DEA is complete and accurate.

(12) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the DEA, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed revised critical habitat designation.

If you submitted comments or information on the proposed rule (76 FR 16046) during the initial comment period from March 22, 2011, to May 23, 2011, please do not resubmit them. We have incorporated them into the public record, and we will fully consider them in the preparation of our final determination. Our final determination concerning revised critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning the proposed rule or DEA by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule and DEA, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R8–ES–2010–0070, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Arcata Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule and the DEA on the Internet at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2010–0070, or by mail from the Arcata Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

## Background

It is our intent to discuss only those topics directly relevant to the taxonomic name change and designation of critical habitat for Pacific Coast WSP in this document. For more background information concerning the Pacific Coast WSP, refer to the proposed revised designation of critical habitat published in the **Federal Register** on March 22, 2011 (76 FR 16046). For more information on the Pacific Coast WSP or its habitat, refer to the final listing rule published in the **Federal Register** on March 5, 1993 (58 FR 12864), which is available online at *http://www.regulations.gov* (at Docket Number FWS–R8–ES–2010–0070) or the Recovery Plan for the Pacific Coast WSP (Service 2007), which is online at *http://ecos.fws.gov* or from the Arcata Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

*Previous Federal Actions*

On March 22, 2011, we published a proposed rule to revise the designation of critical habitat for the Pacific Coast WSP (76 FR 16046). We proposed to designate approximately 28,261 acres (ac) (11,436 hectares (ha)) in 68 units located in Washington, Oregon, and California as critical habitat. That proposal opened a 60-day comment period, ending May 23, 2011. In this document we are proposing to revise the boundaries to Unit CA 46 based on new information (see Changes to Proposed Revised Critical Habitat below). We will submit for publication in the **Federal Register** a final critical habitat designation for the Pacific Coast WSP on or before June 12, 2012.

*Taxonomic and Nomenclatural Changes Affecting Charadrius alexandrinus nivosus*

We are making a technical correction to the List of Endangered and Threatened Wildlife at 50 CFR 17.11(h) to reflect our acceptance of a taxonomic and nomenclatural change of western snowy plover to *Charadrius nivosus nivosus* from *C. alexandrinus nivosus.* We listed the Pacific Coast WSP as threatened under the then-recognized name of *Charadrius alexandrinus nivosus* (58 FR 12864; March 5, 1993), which is a subspecies of the Eurasian Kentish plover (*Charadrius alexandrinus* (Linnaeus 1758)). We accepted this taxonomy and have used this name in all Service documents up to and including our proposed revision to the critical habitat for the Pacific Coast WSP (76 FR 16046; March 22, 2011).

In 2009, Clemens Küpper (Department of Biology and Biochemistry, University of Bath, Bath, UK); Tamás Székely (Department of Biology and Biochemistry, University of Bath, Bath, UK); and Terry Burke (Department of Animal and Plant Sciences, University of Sheffield, Sheffield, UK), submitted a proposal to the American Ornithologist's Union (AOU)—the recognized body on ornithological naming and scientific nomenclature (AOU 2010A, pp. 145–146). The proposal presented information to split the Kentish plover from the snowy plover and adopt Kentish plover for Palaearctic populations (zoogeographical region consisting of Europe, Africa north of the Sahara, and most of Asia north of the Himalayas) and change the scientific name of the snowy plover in Central and North America to *Charadrius nivosus* (Cassin 1858) with three subspecies: *C. nivosus nivosus* (currently *C. alexandrinus*

*nivosus*) (range to include all of the continental United States and portions of Mexico), *C. nivosus tenuirostris* (currently *C. alexandrinus nivosus*) (range to include Cuba, Puerto Rico, the Caribbean and the Yucatan Peninsula) and *C. nivosus occidentalis* (currently *C. alexandrinus occidentalis*) (range to include South America). The proposal cited genetic, morphological, and behavioral differences between *C. alexandrinus* and *C. nivosus* (Funk *et al.* 2007; Küpper *et al.* 2009). The proposal was adopted by the AOU (AOU 2010B, pp. 1–5; Chesser *et al.* 2011, pp. 603–604). We are within this proposed rule accepting the taxonomic change for the Pacific Coast WSP and recognize the listed entity as *C. nivosus nivosus* and will make changes to the Code of Federal Regulations in the final designation (see Proposed Regulation Promulgation section). We also make the necessary changes to the historical range of *C. nivosus nivosus* at 50 CFR 17.11(h) to include the entire continental United States. These technical corrections do not affect the description, distribution, or listing status of the Pacific Coast WSP. However, the complete range of *C. nivosus nivosus* now includes the Florida occurrences of the subspecies.

*Critical Habitat*

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection; and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. If the proposed revised rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies funding, authorizing, permitting, or proposing actions affecting critical habitat must consult with us on the effects of their actions, under section 7(a)(2) of the Act.

**Consideration of Impacts Under Section 4(b)(2) of the Act**

Section 4(b)(2) of the Act requires that the Secretary shall designate and revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, the impact on national security, and any other relevant impact of specifying any particular area as critical habitat. The Secretary of the Interior may exclude an area from critical habitat if he determines that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species, and any benefits that may result from designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. In the case of the Pacific Coast WSP, the benefits of critical habitat include public awareness of the presence of the Pacific Coast WSP and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for Pacific Coast WSP due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken, authorized, or otherwise permitted by Federal agencies.

The final decision on whether to exclude any areas will be based on the best scientific and commercial data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a DEA concerning the proposed revised critical habitat designation, which is available for review and comment (see **ADDRESSES** section).

*Draft Economic Analysis*

The purpose of the DEA is to identify and analyze the potential economic impacts associated with the proposed revised critical habitat designation for the Pacific Coast WSP. The DEA separates conservation measures into two distinct categories according to ''without critical habitat'' and ''with critical habitat'' scenarios. The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections otherwise afforded to the Pacific Coast WSP (*e.g.,* under the Federal listing and other Federal, State, and local regulations). The ''with critical habitat'' scenario describes the incremental impacts specifically due to designation of critical habitat for the species. In other words, these incremental conservation measures and associated economic impacts would not occur but for the designation. Conservation measures implemented under the baseline (without critical habitat) scenario are described qualitatively within the DEA, but economic impacts associated with these measures are not quantified. Economic impacts are only quantified for conservation measures implemented specifically due to the designation of critical habitat (*i.e.,* incremental impacts). In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs; these are the costs we may consider in the final designation of critical habitat when weighing the benefits of inclusion and exclusion of particular areas under section 4(b)(2) of the Act. For a further description of the methodology of the analysis, see Chapter 2, ''Framework for the Analysis,'' of the DEA (Industrial Economics Incorporated (IEc) 2011).

The DEA evaluates the potential economic impacts associated with the proposed revised designation of critical habitat for the Pacific Coast WSP. The analysis focuses on reasonably foreseeable incremental impacts of the critical habitat designation, or those impacts not expected to occur absent critical habitat designation. Forecasted impacts are based on the planning periods for potentially affected projects and look out over a 20-year time horizon (through 2031). The DEA considers economic impacts of Pacific Coast WSP conservation efforts on the following activities: (1) Recreation; (2) development; (3) gravel mining; (4) military activities; and (5) habitat and species management.

Due to strong existing protections (include symbolic fencing, nest exclosures, signage, driving restrictions, and mechanized beach cleaning restrictions) for the Pacific Coast WSP, the direct incremental impacts quantified in the DEA are limited to the administrative cost of considering adverse modification during section 7 consultation with the Service as well as the additional effort necessary to include analysis of critical habitat in three future Habitat Conservation Plans

and one Integrated Natural Resources Management Plan (INRMP) for Vandenberg Air Force Base (VAFB). These incremental impacts of the proposed revised critical habitat designation over the 20-year timeframe (2012 through 2031) are estimated to be $261,000 ($24,700 on an annualized basis), assuming a seven percent discount rate. Impacts to military activities represent the greatest percentage of these overall cost estimates—approximately 72 percent. Impacts to development activities represent approximately 17 percent, habitat and species management 6 percent, and mining 4 percent of the overall impacts (percentages do not sum due to rounding). Incremental impacts to recreational activities are not expected due to lack of a Federal nexus compelling section 7 consultation with the Service and significant protection already provided by existing regulations and programs (IEc 2011, pp. 4–9–4–12).

The analysis also identifies three activities that may experience indirect incremental impacts of the proposed revised critical habitat designation: Recreation at Oceano Dunes State Vehicular Recreation Area (SVRA) (Unit CA 31), development of the Sterling/McDonald site (Unit CA 22), and development of the Security National Guaranty (SNG) site (Unit CA 22). Indirect impacts resulting from future litigation or increased scrutiny from State agencies may include prohibiting off-highway-vehicle use at Oceano Dunes SVRA and denial of development permits for the Sterling/McDonald and SNG sites. Due to uncertainty surrounding the likelihood and extent of such indirect impacts, the data necessary to quantify these impacts are unavailable. Therefore, these indirect incremental impacts are discussed qualitatively in the DEA (IEc 2011, p. 4–2).

Vandenberg Air Force Base INRMP

In the March 22, 2011, proposed revised designation of critical habitat (76 FR 16046), we did not consider Vandenberg Air Force Base for exemption under section 4(a)(3) of the Act because they had not yet completed a Service-approved INRMP. On April 14, 2011, VAFB completed and we approved the INRMP for VAFB as part of the requirements of the Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) (for a full discussion of the Sikes Act, see the Exemptions section of the March 22, 2011, proposed revision to critical habitat (76 FR 16046)). The VAFB INRMP provides for the conservation, management, and stewardship of the natural resources found on the base. The INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Because the INRMP was not finalized and approved prior to the March 22, 2011, proposed revised critical habitat designation for the Pacific Coast WSP (76 FR 16046), we did not exempt these areas prior to their proposal. We will review the INRMP and will determine in our final designation of critical habitat if the plan provides a benefit to the Pacific Coast WSP in those areas covered by the INRMP that we had determined to be essential to and for the conservation of the Pacific Coast WSP. If it does, we will exempt those areas covered by the INRMP from the final designation under the requirements of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) and section 4(a)(3)(B)(i) of the Act.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed revised designation, the changes contained in this NOA, and our amended required determinations. We may revise the proposed revised designation or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

**Changes to Proposed Revised Critical Habitat**

In this document, we are making revisions to the proposed revised critical habitat as identified and described in the proposed rule that we published in the **Federal Register** on March 22, 2011 (76 FR 16046) and are seeking comment on the revisions. The changes occur in what was proposed as subunits CA 46A–D (Bolsa Chica Ecological Reserve) and subunit CA 46E (Bolsa Chica State Beach) of Unit CA 46. We are also adding one subunit (subunit CA 46F) to Unit CA 46. During the public comment period for the March 22, 2011, proposed revised critical habitat (76 FR 16046), we received comments from a species expert indicating that we should reevaluate the proposed boundaries at the Bolsa Chica Ecological Reserve because certain areas included in Unit CA 46 are not utilized for nesting or foraging by the Pacific Coast WSP, whereas other areas that were not included in proposed revised critical habitat within Bolsa Chica Ecological Reserve are used for nesting and foraging (P. Knapp, pers. comm. 2011).

We also received comments and new information from California State Parks and a species expert indicating that we should reevaluate the proposed boundaries of subunit CA 46E at Bolsa Chica State Beach because the area no longer contains the physical or biological features essential to the conservation of the species, and is no longer being used for wintering by the Pacific Coast WSP and has not been used in the last 4 years (D. Prior, California State Parks, pers. comm. 2011; P. Knapp, pers. comm. 2011). The information provided indicated that areas north of the proposal in subunit CA 46E at Bolsa Chica State Beach are being used by the Pacific Coast WSP as a wintering habitat and that we should reevaluate the proposed boundaries of beach areas in Unit CA 46 (Prior, pers. comm. 2011; Knapp, pers. comm. 2011). We have reviewed the new information and have determined it appropriate to adjust our proposed revised designation of Unit CA 46.

The purpose of the revisions described below is to better delineate the areas that meet the definition of critical habitat for the Pacific Coast WSP and to ensure that all areas proposed are consistent with the criteria outlined in the proposed revised rule (see ''Criteria Used To Identify Critical Habitat'' section in the proposed revised critical habitat designation (76 FR 16046; March 22, 2011)). The areas added to the proposed unit are within the geographical area that was occupied by the species at the time it was listed and contain the physical or biological features essential to the conservation of the species. A revised map is included in the Proposed Regulation Promulgation section of this document. Below, we briefly describe the changes made to Unit CA 46. As a result of these revisions, the naming convention for the subunits CA 46A–E will change and an additional subunit (CA 46F) will be added. Also as a result of these revisions, the total area proposed for designation as critical habitat in Unit CA 46 is 568 ac (230 ha), an increase of 50 ac (20 ha). The change increases the total amount of proposed revised critical habitat to 30,497 ac (12,342 ha) (see Table 3 below).

*Changes to Critical Habitat Unit Descriptions*

Unit CA 46: Bolsa Chica State Beach and Bolsa Chica Ecological Reserve

Through this notice, we propose to exchange the naming conventions between subunits CA 46A and 46E so that the Bolsa Chica State Beach will now be part of subunit CA 46A and the Bolsa Chica Ecological Reserve will include subunits CA 46B–F. As revised here, the subunits in Bolsa Chica State Beach and Bolsa Chica Ecological Reserve are located east of the Pacific Coast Highway, in Orange County, California. As a result of this revision, the total area proposed for designation as critical habitat at Bolsa Chica State Beach (now designated as subunit CA 46A) is 93 ac (38 ha); and the total area for the Bolsa Chica Ecological Reserve subunits (now designated as subunits CA 46B–46F) is 475 ac (192 ha). These subunits are entirely owned by the State of California.

Bolsa Chica Ecological Reserve contains significant nesting and foraging areas. This location supported 47 breeding adult Pacific Coast WSP in 2009 (Knapp and Peterson 2009, p. 8). All subunits at Bolsa Chica Ecological Reserve were occupied at the time of listing and are currently occupied and annually support one of the largest breeding populations of Pacific Coast WSP in the region. The Recovery Plan for Pacific Coast WSP states that this location contributes to the conservation goal for the region by providing a management potential of 70 breeding birds (Service 2007, Appendix B). This location also supported an average wintering flock of 14 Pacific Coast WSP from 2003 through 2010 (Service unpublished data). In the proposed revised rule, we incorrectly stated that this reserve is an abandoned oil field. This reserve is in fact an active oil field that underwent significant reconstruction and restoration between 2004 and 2006, including the addition of three new nest sites and a new ocean inlet that allows the water level to rise and fall resembling the irregular semi-diurnal tidal range of southern California's ocean waters (Knapp and Peterson 2009, p. 1). Including these occupied areas for breeding, foraging, and dispersal is consistent with our criteria used to identify critical habitat, as outlined in the proposed rule (76 FR 16046; March 22, 2011). No changes were made to subunits CA 46B or CA 46D. Please see the proposed revised critical habitat for a description of these subunits (76 FR 16046; March 22, 2011).

Subunit CA 46A: Bolsa Chica State Beach

Through this notice, the proposed revised designation's subunit CA 46E is renamed as subunit CA 46A. After further analysis and review of comments received on the proposed revised designation, we have adjusted the boundary of the 8 ac (3 ha) of beach that was included in the proposed rule because the area no longer contains the physical or biological features essential to the conservation of the species, and has not supported Pacific Coast WSP for the past 4 years (Prior, pers. comm. 2011). The subunit as revised here consists of sandy beach habitat north of the critical habitat unit proposed in March 2011, and extends to just south of the Sunset Beach area near Warner Avenue adjacent to the Bolsa Chica Ecological Reserve. As a result of the revision reflected here, the area proposed for designation as critical habitat in subunit CA 46A is 93 ac (38 ha), an increase of 85 ac (35 ha) from what was proposed for Bolsa Chica State Beach in the proposed revised designation. This subunit is owned entirely by the State of California. The revised subunit CA 46A was occupied at the time of listing and is currently occupied and contains the physical or biological features that are essential to the conservation of the species, including a wide sandy beach with occasional surf-cast wrack supporting small invertebrates for foraging, and because it supports an average wintering flock of 27 Pacific Coast WSP (Service unpublished data 2003–2010) in a location with high-quality breeding habitat. Subunit CA 46A may require special management considerations or protection to address threats from recreational disturbance and beach raking as discussed for this subunit in the March 2011 proposed revised rule. Additionally, adding occupied areas for wintering, foraging, and dispersal is consistent with our criteria used to identify critical habitat, as outlined in the proposed revised rule (76 FR 16046; March 22, 2011).

Unit CA46: Bolsa Chica Ecological Reserve; Subunits CA 46C, 46E, 46F

Subunit CA 46C

We revised subunit CA 46C to include additional areas containing the physical or biological features essential to the conservation of the species for breeding, foraging, and dispersal that were not captured in the proposed revised rule. This addition is based on information received during the public comment period that indicates that these areas include year-round foraging habitat in extensive mudflats and additional nesting areas for Pacific Coast WSP to expand into. This unit was occupied at the time of listing. This location contains the physical and biological features essential to the conservation of the species, including tidally influenced estuarine mud flats supporting small invertebrates, and seasonally dry ponds that provide nesting and foraging habitat for Pacific Coast WSP. As a result of this revision, the area proposed for designation as critical habitat in subunit CA 46C is 222 ac (90 ha), an increase of 201 ac (81 ha) from the proposed rule. This location contains tidally influenced estuarine mud flats supporting small invertebrates, and seasonally dry ponds and nesting islands that provide nesting and foraging habitat for Pacific Coast WSP. The physical or biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from vegetation encroachment in nesting and foraging areas and predation of chicks and eggs.

Subunit CA 46E

Here, we rename the Bolsa Chica Ecological Reserve areas that were proposed as subunit CA 46A in the proposed revised rule to subunit CA 46E and remove the areas that do not contain the physical or biological features essential to the conservation of the species. This area was occupied at the time of listing. This revised subunit CA 46E is reduced in size to more accurately represent the nesting and foraging areas used by Pacific Coast WSP. We removed almost all of the Muted Tidal Basin area from subunit 46E because this area does not contain the physical or biological features essential to the conservation of Pacific Coast WSP. We have adjusted the boundary in the Future Full Tidal Basin to represent areas used for nesting and foraging. As a result of this revision, the area proposed for designation as critical habitat in subunit CA 46E is 247 ac (100 ha), a decrease of 237 ac (96 ha) from what was proposed as subunit CA 46A in the proposed rule. This revised location contains tidally influenced estuarine mud flats supporting small invertebrates, and seasonally dry ponds and nesting islands that provide nesting and foraging habitat for Pacific Coast WSP. The physical or biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from vegetation encroachment in nesting and

foraging areas and predation of chicks and eggs.

Subunit 46F

We add one subunit (CA 46F) to represent the single nesting and foraging area utilized by Pacific Coast WSP in the Muted Tidal Basin (Nest Site 2). This area was occupied at the time of listing and contains the physical or biological features essential to the conservation of the species. This location contains tidally influenced estuarine mud flats supporting small invertebrates, and seasonally dry ponds and nesting islands that provide nesting and foraging habitat for Pacific Coast WSP. The physical or biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from vegetation encroachment in nesting and foraging areas and predation of chicks and eggs. As a result of this addition, the area proposed for designation as critical habitat in subunit CA 46F is 2 ac (1 ha).

In addition to the unit changes outlined above, we are also correcting land ownership acreage numbers identified in Table 3 of the March 22, 2011, proposed revised rule (76 FR 16046). The corrected Table 3 with changes to Unit CA–46 is below. Also, in the proposed revised rule we incorrectly stated that no Department of Defense lands were within the proposed revised designation. Approximately 1,084 ac (439 ha) have been identified on VAFB in units CA–32 and CA–33. On April 14, 2011, we approved the INRMP for VAFB and have determined that the plan provides a benefit to the species for which critical habitat is proposed for designation. We have now reviewed and approved the VAFB INRMP and will recommend that the Secretary exempt the areas determined to be essential to and for the conservation of the Pacific Coast WSP from the final designation under the requirements of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) and section 4(a)(3)(B)(i) of the Act.

TABLE 3—PROPOSED REVISED CRITICAL HABITAT FOR THE PACIFIC COAST WSP SHOWING FEDERAL, STATE, TRIBAL, AND OTHER (PRIVATE AND LOCAL GOVERNMENT) LAND OWNERSHIP

| Unit number | Unit name | Total | | Federal | | Tribal | | State | | Other | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | ac | ha | ac | ha | ac | ha | ac | ha | ac | ha |
| Washington: | | | | | | | | | | | |
| WA 1 | Copalis Spit | 407 | 165 | 0 | 0 | 0 | 0 | 407 | 165 | 0 | 0 |
| WA 2 | Damon Point | 673 | 272 | 0 | 0 | 0 | 0 | 648 | 262 | 25 | 10 |
| WA 3A | Midway Beach | 697 | 282 | 0 | 0 | 0 | 0 | 697 | 282 | 0 | 0 |
| WA 3B* | Shoalwater/Graveyard | 1,121 | 454 | 0 | 0 | 336 | 136 | 505 | 204 | 280 | 113 |
| Unit WA–3 Totals | | 1,818 | 736 | 0 | 0 | 336 | 136 | 1,202 | 486 | 280 | 113 |
| WA 4A | Leadbetter Spit | 2,463 | 997 | 2,026 | 820 | 0 | 0 | 437 | 177 | 0 | 0 |
| WA 4B | Gunpowder Sands Island | 904 | 366 | 904 | 366 | 0 | 0 | 0 | 0 | 0 | 0 |
| Unit WA–4 Totals | | 3,367 | 1,363 | 2,930 | 1,186 | 0 | 0 | 437 | 177 | 0 | 0 |
| WASHINGTON STATE TOTALS. | | 6,265 | 2,535 | 2,930 | 1,186 | 336 | 136 | 2,694 | 1,090 | 305 | 123 |
| Oregon: | | | | | | | | | | | |
| OR 1 | Columbia River Spit | 169 | 68 | 169 | 68 | 0 | 0 | 0 | 0 | 0 | 0 |
| OR 2 | Necanicum River Spit | 211 | 85 | 0 | 0 | 0 | 0 | 161 | 65 | 50 | 20 |
| OR 3 | Nehalem River Spit | 299 | 121 | 0 | 0 | 0 | 0 | 299 | 121 | 0 | 0 |
| OR 4 | Bayocean Spit | 367 | 149 | 279 | 113 | 0 | 0 | 0 | 0 | 88 | 36 |
| OR 5 | Netarts Spit | 541 | 219 | 0 | 0 | 0 | 0 | 541 | 219 | 0 | 0 |
| OR 6 | Sand Lake South | 200 | 81 | 0 | 0 | 0 | 0 | 0 | 0 | 200 | 81 |
| OR 7 | Sutton/Baker Beaches | 372 | 151 | 372 | 151 | 0 | 0 | 0 | 0 | 0 | 0 |
| OR 8A | Siltcoos Breach | 15 | 6 | 15 | 6 | 0 | 0 | 0 | 0 | 0 | 0 |
| OR 8B | Siltcoos River Spit | 241 | 98 | 241 | 98 | 0 | 0 | 0 | 0 | 0 | 0 |
| OR 8C | Dunes Overlook Tahkenitch Creek Spit. | 716 | 290 | 716 | 290 | 0 | 0 | 0 | 0 | 0 | 0 |
| OR 8D | North Umpqua River Spit | 236 | 96 | 151 | 61 | 0 | 0 | 85 | 34 | 0 | 0 |
| Unit OR–8 Totals | | 1,208 | 489 | 1,123 | 454 | 0 | 0 | 85 | 34 | 0 | 0 |
| OR 9 | Tenmile Creek Spit | 244 | 99 | 244 | 99 | 0 | 0 | 0 | 0 | 0 | 0 |
| OR 10 | Coos Bay North Spit | 308 | 125 | 308 | 125 | 0 | 0 | 0 | 0 | 0 | 0 |
| OR 11 | Bandon to New River | 1,016 | 411 | 459 | 186 | 0 | 0 | 267 | 108 | 290 | 117 |
| OR 12* | Elk River Spit | 167 | 68 | 0 | 0 | 0 | 0 | 0 | 0 | 167 | 68 |
| OR 13 | Euchre Creek | 116 | 47 | 0 | 0 | 0 | 0 | 0 | 0 | 116 | 47 |
| OREGON STATE TOTALS. | | 5,218 | 2,112 | 2,954 | 1,195 | 0 | 0 | 1,353 | 548 | 911 | 369 |
| California: | | | | | | | | | | | |
| CA 1 | Lake Earl | 74 | 30 | 0 | 0 | 0 | 0 | 22 | 9 | 52 | 21 |
| CA 2 | Gold Bluffs Beach | 235 | 95 | 0 | 0 | 0 | 0 | 235 | 95 | 0 | 0 |
| CA 3A | Humboldt Lagoons—Stone Lagoon. | 55 | 22 | 0 | 0 | 0 | 0 | 55 | 22 | 0 | 0 |
| CA 3B | Humboldt Lagoons—Big Lagoon. | 271 | 110 | 0 | 0 | 0 | 0 | 270 | 109 | <1 | <1 |
| Unit CA–3 Totals | | 326 | 132 | 0 | 0 | 0 | 0 | 325 | 132 | 0 | 0 |
| CA 4A | Clam Beach/Little River | 340 | 138 | 0 | 0 | 0 | 0 | 226 | 91 | 114 | 46 |
| CA 4B | Mad River | 456 | 185 | 0 | 0 | 0 | 0 | 149 | 60 | 307 | 124 |
| Unit CA–4 Totals | | 796 | 322 | 0 | 0 | 0 | 0 | 375 | 152 | 421 | 170 |

TABLE 3—PROPOSED REVISED CRITICAL HABITAT FOR THE PACIFIC COAST WSP SHOWING FEDERAL, STATE, TRIBAL, AND OTHER (PRIVATE AND LOCAL GOVERNMENT) LAND OWNERSHIP—Continued

| Unit number | Unit name | Total | | Federal | | Tribal | | State | | Other | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | ac | ha | ac | ha | ac | ha | ac | ha | ac | ha |
| CA 5A | Humboldt Bay South Spit | 577 | 234 | 20 | 8 | 0 | 0 | 541 | 219 | 16 | 6 |
| CA 5B | Eel River North Spit/Beach | 467 | 189 | 0 | 0 | 0 | 0 | 460 | 186 | 7 | 3 |
| CA 5C | Eel River South Spit/Beach | 340 | 138 | 0 | 0 | 0 | 0 | 176 | 71 | 164 | 66 |
| Unit CA–5 Totals | | 1,384 | 560 | 20 | 8 | 0 | 0 | 1,177 | 476 | 187 | 76 |
| CA 6 | Eel River Gravel Bars | 2,699 | 1,092 | 0 | 0 | 0 | 0 | 591 | 239 | 2,108 | 853 |
| CA 7 | MacKerricher Beach | 1,176 | 476 | 0 | 0 | 0 | 0 | 1,102 | 446 | 74 | 30 |
| CA 8 | Manchester Beach | 482 | 195 | 68 | 28 | 0 | 0 | 402 | 163 | 12 | 5 |
| CA 9 | Dillon Beach | 39 | 16 | 0 | 0 | 0 | 0 | 0 | 0 | 39 | 16 |
| CA 10A | Pt Reyes | 460 | 186 | 460 | 186 | 0 | 0 | 0 | 0 | 0 | 0 |
| CA 10B | Limantour | 156 | 63 | 156 | 63 | 0 | 0 | 0 | 0 | 0 | 0 |
| Unit CA–10 Totals | | 616 | 249 | 616 | 249 | 0 | 0 | 0 | 0 | 0 | 0 |
| CA 11 | Napa | 618 | 250 | 0 | 0 | 0 | 0 | 618 | 250 | 0 | 0 |
| CA 12 | Hayward | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 |
| CA 13A | Eden Landing | 237 | 96 | 0 | 0 | 0 | 0 | 228 | 92 | 8 | 3 |
| CA 13B | Eden Landing | 171 | 69 | 0 | 0 | 0 | 0 | 171 | 69 | 0 | 0 |
| CA 13C | Eden Landing | 609 | 246 | 0 | 0 | 0 | 0 | 602 | 244 | 7 | 3 |
| Unit CA–13 Totals | | 1,017 | 412 | 0 | 0 | 0 | 0 | 1,001 | 405 | 15 | 6 |
| CA 14 | Ravenswood | 89 | 36 | 0 | 0 | 0 | 0 | 0 | 0 | 89 | 36 |
| CA 15 | Warm Springs | 169 | 68 | 169 | 68 | 0 | 0 | 0 | 0 | 0 | 0 |
| CA 16 | Half Moon Bay | 36 | 15 | 0 | 0 | 0 | 0 | 36 | 15 | 0 | 0 |
| CA 17 | Waddell Creek Beach | 25 | 10 | 0 | 0 | 0 | 0 | 19 | 8 | 7 | 3 |
| CA 18 | Scott Creek Beach | 23 | 9 | 0 | 0 | 0 | 0 | 15 | 6 | 8 | 3 |
| CA 19 | Wilder Creek Beach | 15 | 6 | 0 | 0 | 0 | 0 | 15 | 6 | 0 | 0 |
| CA 20 | Jetty Road to Aptos | 400 | 162 | 0 | 0 | 0 | 0 | 370 | 150 | 30 | 12 |
| CA 21 | Elkhorn Slough Mudflats | 281 | 114 | 0 | 0 | 0 | 0 | 281 | 114 | 0 | 0 |
| CA 22 | Monterey to Moss Landing | 971 | 393 | 424 | 172 | 0 | 0 | 286 | 116 | 261 | 106 |
| CA 23 | Point Sur Beach | 72 | 29 | 0 | 0 | 0 | 0 | 38 | 15 | 34 | 14 |
| CA 24 | San Carpoforo Creek | 24 | 10 | 4 | 2 | 0 | 0 | 18 | 7 | 3 | 1 |
| CA 25 | Arroyo Laguna Creek | 28 | 11 | 0 | 0 | 0 | 0 | 18 | 7 | 10 | 4 |
| CA 26 | San Simeon State Beach | 24 | 10 | 0 | 0 | 0 | 0 | 24 | 10 | 0 | 0 |
| CA 27 | Villa Creek Beach | 20 | 8 | 0 | 0 | 0 | 0 | 20 | 8 | 0 | 0 |
| CA 28 | Toro Creek | 34 | 14 | 0 | 0 | 0 | 0 | 11 | 4 | 23 | 9 |
| CA 29 | Atascadero Beach/Morro Strand SB. | 214 | 87 | 0 | 0 | 0 | 0 | 65 | 26 | 149 | 60 |
| CA 30 | Morro Bay Beach | 1,078 | 436 | 0 | 0 | 0 | 0 | 949 | 384 | 129 | 52 |
| CA 31 | Pismo Beach/Nipomo Dunes | 1,655 | 670 | 242 | 98 | 0 | 0 | 553 | 224 | 860 | 348 |
| CA 32 | Vandenberg North | 711 | 288 | 711 | 288 | 0 | 0 | 0 | 0 | 0 | 0 |
| CA 33 | Vandenberg South | 424 | 172 | 374 | 151 | 0 | 0 | 0 | 0 | 50 | 20 |
| CA 34 | Devereaux Beach | 52 | 21 | 0 | 0 | 0 | 0 | 43 | 17 | 9 | 4 |
| CA 35 | Santa Barbara Beaches | 65 | 26 | 0 | 0 | 0 | 0 | 30 | 12 | 35 | 14 |
| CA 36 | Santa Rosa Island Beaches | 586 | 237 | 586 | 237 | 0 | 0 | 0 | 0 | 0 | 0 |
| CA 37 | San Buenaventura Beach | 69 | 28 | 0 | 0 | 0 | 0 | 69 | 28 | 0 | 0 |
| CA 38 | Mandalay to Santa Clara River | 671 | 272 | 0 | 0 | 0 | 0 | 458 | 185 | 213 | 86 |
| CA 39 | Ormond Beach | 319 | 129 | 0 | 0 | 0 | 0 | 159 | 64 | 160 | 65 |
| CA 43 | Zuma Beach | 73 | 30 | 0 | 0 | 0 | 0 | 1 | 0 | 72 | 29 |
| CA 44 | Malibu Beach | 13 | 5 | 0 | 0 | 0 | 0 | 13 | 5 | 0 | 0 |
| CA 45A | Santa Monica Beach | 48 | 19 | 0 | 0 | 0 | 0 | 29 | 12 | 19 | 8 |
| CA 45B | Dockweiler North | 34 | 14 | 0 | 0 | 0 | 0 | 34 | 14 | 0 | 0 |
| CA 45C | Dockweiler South | 65 | 26 | 0 | 0 | 0 | 0 | 54 | 22 | 11 | 4 |
| CA 45D | Hermosa State Beach | 27 | 11 | 0 | 0 | 0 | 0 | 8 | 3 | 19 | 8 |
| Unit CA–45 Totals | | 174 | 70 | 0 | 0 | 0 | 0 | 125 | 51 | 49 | 20 |
| CA 46A | Bolsa Chica State Beach | 93 | 38 | 0 | 0 | 0 | 0 | 93 | 38 | 0 | 0 |
| CA 46B | Bolsa Chica Reserve | 2 | 1 | 0 | 0 | 0 | 0 | 2 | 1 | 0 | 0 |
| CA 46C | Bolsa Chica Reserve | 222 | 90 | 0 | 0 | 0 | 0 | 222 | 90 | 0 | 0 |
| CA 46D | Bolsa Chica Reserve | 2 | 1 | 0 | 0 | 0 | 0 | 2 | 1 | 0 | 0 |
| CA 46E | Bolsa Chica Reserve | 247 | 100 | 0 | 0 | 0 | 0 | 247 | 100 | 0 | 0 |
| CA 46F | Bolsa Chica Reserve | 2 | 1 | 0 | 0 | 0 | 0 | 2 | 1 | 0 | 0 |
| Unit CA–46 Totals | | 568 | 230 | 0 | 0 | 0 | 0 | 568 | 230 | 0 | 0 |
| CA 47 | Santa Ana River Mouth | 19 | 8 | 0 | 0 | 0 | 0 | 18 | 7 | 1 | 0 |
| CA 48 | Balboa Beach | 25 | 10 | 0 | 0 | 0 | 0 | 0 | 0 | 25 | 10 |
| CA 50A | Batiquitos Lagoon | 24 | 10 | 0 | 0 | 0 | 0 | 18 | 7 | 6 | 2 |
| CA 50B | Batiquitos Lagoon | 23 | 9 | 0 | 0 | 0 | 0 | 15 | 6 | 8 | 3 |
| CA 50C | Batiquitos Lagoon | 19 | 8 | 0 | 0 | 0 | 0 | 0 | 0 | 19 | 8 |
| Unit CA–50 Totals | | 66 | 27 | 0 | 0 | 0 | 0 | 33 | 13 | 33 | 13 |
| CA 51A | San Elijo Lagoon Ecological Reserve. | 3 | 1 | 0 | 0 | 0 | 0 | 3 | 1 | 0 | 0 |
| CA 51B | San Elijo Lagoon Ecological Reserve. | 5 | 2 | 0 | 0 | 0 | 0 | 1 | 0 | 4 | 2 |

TABLE 3—PROPOSED REVISED CRITICAL HABITAT FOR THE PACIFIC COAST WSP SHOWING FEDERAL, STATE, TRIBAL, AND OTHER (PRIVATE AND LOCAL GOVERNMENT) LAND OWNERSHIP—Continued

| Unit number | Unit name | Total | | Federal | | Tribal | | State | | Other | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | ac | ha | ac | ha | ac | ha | ac | ha | ac | ha |
| CA 51C | San Elijo Lagoon Ecological Reserve. | 7 | 3 | 0 | 0 | 0 | 0 | 7 | 3 | 0 | 0 |
| Unit CA–51 Totals | | 15 | 6 | 0 | 0 | 0 | 0 | 11 | 4 | 4 | 2 |
| CA 52A | San Dieguito Lagoon | 4 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 4 | 2 |
| CA 52B | San Dieguito Lagoon | 3 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | 1 |
| CA 52C | San Dieguito Lagoon | 4 | 2 | 0 | 0 | 0 | 0 | 4 | 2 | 0 | 0 |
| Unit CA–52 Totals | | 11 | 4 | 0 | 0 | 0 | 0 | 4 | 2 | 7 | 3 |
| CA 53 | Los Penasquitos Lagoon | 32 | 13 | 0 | 0 | 0 | 0 | 32 | 13 | 1 | 0 |
| CA 54A | Fiesta Island | 2 | 1 | 0 | 0 | 0 | 0 | 1 | 0 | 1 | 0 |
| CA 54B | Mariner's Point | 7 | 3 | 0 | 0 | 0 | 0 | 1 | 0 | 6 | 2 |
| CA 54C | South Mission Beach | 38 | 15 | 0 | 0 | 0 | 0 | 8 | 3 | 30 | 12 |
| CA 54D | San Diego River Channel | 51 | 21 | 0 | 0 | 0 | 0 | 38 | 15 | 13 | 5 |
| Unit CA–54 Totals | | 98 | 40 | 0 | 0 | 0 | 0 | 48 | 19 | 50 | 20 |
| CA 55B | Coronado Beach | 74 | 30 | 0 | 0 | 0 | 0 | 74 | 30 | 0 | 0 |
| CA 55E | Sweetwater Marsh National Wildlife Refuge and D Street Fill. | 132 | 53 | 77 | 31 | 0 | 0 | 1 | 0 | 54 | 22 |
| CA 55F | Silver Strand State Beach | 82 | 33 | 74 | 30 | 0 | 0 | 8 | 3 | 0 | 0 |
| CA 55G | Chula Vista Wildlife Reserve | 10 | 4 | 0 | 0 | 0 | 0 | 10 | 4 | 0 | 0 |
| CA 55I | San Diego National Wildlife Refuge, South Bay Unit. | 5 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 5 | 2 |
| CA 55J | Tijuana Estuary and Beach | 150 | 61 | 71 | 29 | 0 | 0 | 58 | 23 | 21 | 8 |
| Unit CA–55 Totals (does not include exempt sub-units). | | 453 | 183 | 222 | 90 | 0 | 0 | 151 | 61 | 80 | 32 |
| CALIFORNIA TOTALS. | | 19,014 | 7,695 | 3,436 | 1,390 | 0 | 0 | 10,279 | 4,160 | 5,301 | 2,145 |
| WASHINGTON, OREGON, CALIFORNIA GRAND TOTALS. | | 30,497 | 12,342 | 9,320 | 3,772 | 336 | 136 | 14,326 | 5,798 | 6,517 | 2,637 |

**Note:** Area sizes may not sum due to rounding.

**Required Determinations—Amended**

In our March 22, 2011, proposed rule (76 FR 16046), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA data to make these determinations. In this document, we affirm the information in our proposed revised rule concerning Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 12630 (Takings), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951). However, based on the DEA data, we are amending our required determination concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

*Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed revised designation, we provide our analysis for determining whether the proposed revised designation would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of our final rulemaking.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities

with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the proposed revised designation of critical habitat for the Pacific Coast WSP would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as development, recreation, habitat management or restoration activities (IEc 2011, p. A–5). In order to determine whether it is appropriate for our agency to certify that this proposed rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the Pacific Coast WSP is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize this proposed revised critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In the DEA, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed revised designation of critical habitat for the Pacific Coast WSP. The Service and the action agency are the only entities with direct compliance costs associated with this proposed revised critical habitat designation, although small entities may participate in section 7 consultation as a third party. It is, therefore, possible that the small entities may spend additional time considering critical habitat during section 7 consultation for the Pacific Coast WSP. The DEA indicates that the incremental impacts potentially incurred by small entities are limited to two private developers working through the Sand City Redevelopment Agency at the Sterling-McDonald site (Unit CA 22) and Security National Guaranty (SNG) (Unit CA 22). The indirect incremental impacts resulting from development of the Sterling-McDonald and the Security National Guaranty (SNG) site (Unit CA 22) result from potential denial of development permits for the Sterling-McDonald and SNG sites by the California Coastal Commission (CCC). Both projects have been in planning for numerous years, and previous applications for development permits from the CCC have been denied due to being in noncompliance with the California Coastal Act of 1976. The projects have been subsequently modified to decrease impacts to coastal resources, and proponents are again seeking CCC approval. Because the project modifications have not yet been reviewed by the CCC, there is still some uncertainty as to whether the projects will be allowed to move forward at this time and thus result in the potential incremental impacts identified in the DEA.

The Sterling-McDonald site plan calls for a 342 unit coastal resort. The project has been in planning since the 1990s and an Environmental Impact Report (EIR) under the California Environmental Quality Act (CEQA) is currently under development on the project's current design. Project proponents expect the EIR to be completed in 2012.

The 39-ac (16-ha) SNG site is also planned for a mixed-use resort and will include up to 341 units. The proposed project has completed an EIR under CEQA and as part of local and State permitting processes, SNG has prepared a detailed habitat protection plan (HPP) for the site. The HPP evaluates and proposes mitigation for potential impacts to biological resources, including the Pacific Coast WSP and its habitat. Two other federally listed species occur at the project site including the endangered Smith's blue butterfly (*Euphilotes enoptes smithi*) (with proposed critical habitat: 42 FR 7972; February 8, 1977) and threatened Monterey spineflower (*Chorizanthe pungens* var. *pungens*) with final critical habitat (73 FR 1525; January 9, 2008). The HPP also includes proposed mitigation for these two species. The HPP has been reviewed by the local jurisdictions and has been subject to public review as part of the CCC hearing process in December 2009. Project proponents anticipate that the CCC will conditionally approve the final resort design on adoption and implementation of the HPP. Final approval of the HPP by CCC is anticipated prior to the issuance of the final revised critical habitat designation for the Pacific Coast WSP.

The process for the CCC to issue permits for coastal development projects involves the development of Local Coastal Programs (LCPs) by cities and counties. LCPs are basic planning tools used by local governments to guide development in the coastal zone, in partnership with the CCC. After an LCP has been certified by the CCC to be in compliance with the Coastal Act requirements, the coastal permitting authority over most new development is transferred to the local government. As of 2008, approximately 72 percent of the LCPs have been certified by the CCC, representing close to 90 percent of the geographic area of the coastal zone. Unit CA–22 for the Pacific Coast WSP falls within the City of Sand City LCP which includes the coastal areas near the City of Sand City south to Bay Avenue in Monterey County, California. Since 2004, when the City of Sand City LCP was approved by the CCC, the City of Sand City issued a total of 107 permits for development projects or other construction activity affecting coastal resources within the LCP (CCC 2010, pp. Part 3 16–17). The two small businesses represent less than 2 percent of the total number of actions permitted regionally by the City of Sand City and certified by the CCC.

Due to the uncertainty of the status of the two projects, the extent of their indirect impacts, and the unavailability of data necessary to quantify impacts, the DEA does not quantify, but qualitatively discusses, these potential indirect impacts (IEc 2011, p. A–5). Please refer to the DEA of the proposed revised critical habitat designation for a more detailed discussion of potential economic impacts.

Our analysis constitutes an evaluation of not only potentially directly affected parties, but those also potentially indirectly affected. Under the RFA and following recent case law, we are only required to evaluate the direct effects of a regulation to determine compliance. Because the regulatory effect of critical habitat is through section 7 of the Act which applies only to Federal agencies, we have determined that only Federal agencies are directly affected by this rulemaking. Other entities, such as small businesses, are only indirectly affected. However, to better understand the potential effects of a designation of

critical habitat, we frequently evaluate the potential impact to those entities that may be indirectly affected, as was the case for this rulemaking. In doing so, we focus on the specific areas being designated as critical habitat and compare the number of small business entities potentially affected in that area with other small business entities in the regional area, versus comparing the entities in the area of designation with entities nationally—which is more commonly done. This results in an estimation of a higher proportion of small businesses potentially affected. In this rulemaking, we calculate that the proportion of small businesses potentially affected is less than 2 percent of those regionally. If we were to calculate that value based on the proportion nationally, then our estimate would be significantly lower than 1 percent.

Following our evaluation of potential effects to small business entities from this rulemaking, we do not believe that the two small businesses or less than 2 percent of the small businesses in the affected sector represents a substantial number. However, we recognize that the potential effects to these small businesses may be significant due to not quantifying the potential economic impacts. We will further evaluate the potential effects to these small businesses as we develop our final rulemaking.

In summary, we have considered whether the proposed revised designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. We have identified two small entities that may be impacted by the proposed revised critical habitat designation. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed revised critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

## Authors

The primary authors of this notice are the staff members of the Arcata Fish and Wildlife Office, Region 8, U.S. Fish and Wildlife Service.

## List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

## Proposed Regulation Promulgation

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be amended at 76 FR 16046, March 22, 2011, as follows:

## PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h), revise the entry for ''Plover, western snowy'' under ''BIRDS'' in the List of Endangered and Threatened Wildlife to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| * | * | * | * | * | * | | * |
| BIRDS | | | | | | | |
| * | * | * | * | * | * | | * |
| Plover, western snowy. | *Charadrius nivosus nivosus*. | U.S.A. (AZ, CA, CO, KS, NM, NV, OK, OR, TX, UT, WA), Mexico. | U.S.A. (CA, OR, WA), Mexico (within 50 miles of Pacific coast). | T | 493 | 17.95(b) | NA |
| * | * | * | * | * | * | | * |

3. Amend § 17.95(b), in the entry for ''Western Snowy Plover (*Charadrius nivosus nivosus*)—Pacific Coast Population'' by redesignating paragraphs (87) through (108) as paragraphs (88) through (109) and revising paragraphs (82) through (86) and adding a new paragraph (87) to read as set forth below:

**§ 17.95 Critical habitat—fish and wildlife.**

* * * * *

(b) *Birds.*

* * * * *

Western Snowy Plover (*Charadrius nivosus nivosus*)—Pacific Coast Population.

* * * * *

(82) Subunit CA 46A: Bolsa Chica State Beach, Orange County, California.

(i) [Reserved for textual description of Subunit CA 46A: Bolsa Chica State Beach, Orange County, California]

(ii) **Note:** Subunit CA 46A: Bolsa Chica Beach, Orange County, California, is depicted on the map in paragraph (87)(ii) of this entry.

(83) Subunit CA 46B: Bolsa Chica Reserve, Orange County, California.

(i) [Reserved for textual description of Subunit CA 46B: Bolsa Chica Reserve, Orange County, California]

(ii) **Note:** Subunit CA 46B: Bolsa Chica Reserve, Orange County, California, is depicted on the map in paragraph (87)(ii) of this entry.

(84) Subunit CA 46C: Bolsa Chica Reserve, Orange County, California.

(i) [Reserved for textual description of Subunit CA 46C: Bolsa Chica Reserve, Orange County, California]

(ii) **Note:** Subunit CA 46C: Bolsa Chica Reserve, Orange County, California, is depicted on the map in paragraph (87)(ii) of this entry.

(85) Subunit CA 46D: Bolsa Chica Reserve, Orange County, California.

(i) [Reserved for textual description of Subunit CA 46D: Bolsa Chica Reserve, Orange County, California]

(ii) **Note:** Subunit CA 46D: Bolsa Chica Reserve, Orange County, California, is depicted on the map in paragraph (87)(ii) of this entry.

(86) Subunit CA 46E: Bolsa Chica Reserve, Orange County, California.

(i) [Reserved for textual description of Subunit CA 46D: Bolsa Chica Reserve, Orange County, California]

(ii) **Note:** Subunit CA 46E: Bolsa Chica Reserve, Orange County, California, is depicted on the map in paragraph (87)(ii) of this entry.

(87) Subunit CA 46F: Bolsa Chica Reserve, Orange County, California.

(i) [Reserved for textual description of Subunit CA 46F: Bolsa Chica Reserve, Orange County, California]

(ii) **Note:** Map of Subunits CA 46A–46F: Bolsa Chica State Beach and Bolsa Chica Reserve, Orange County, California, follows:

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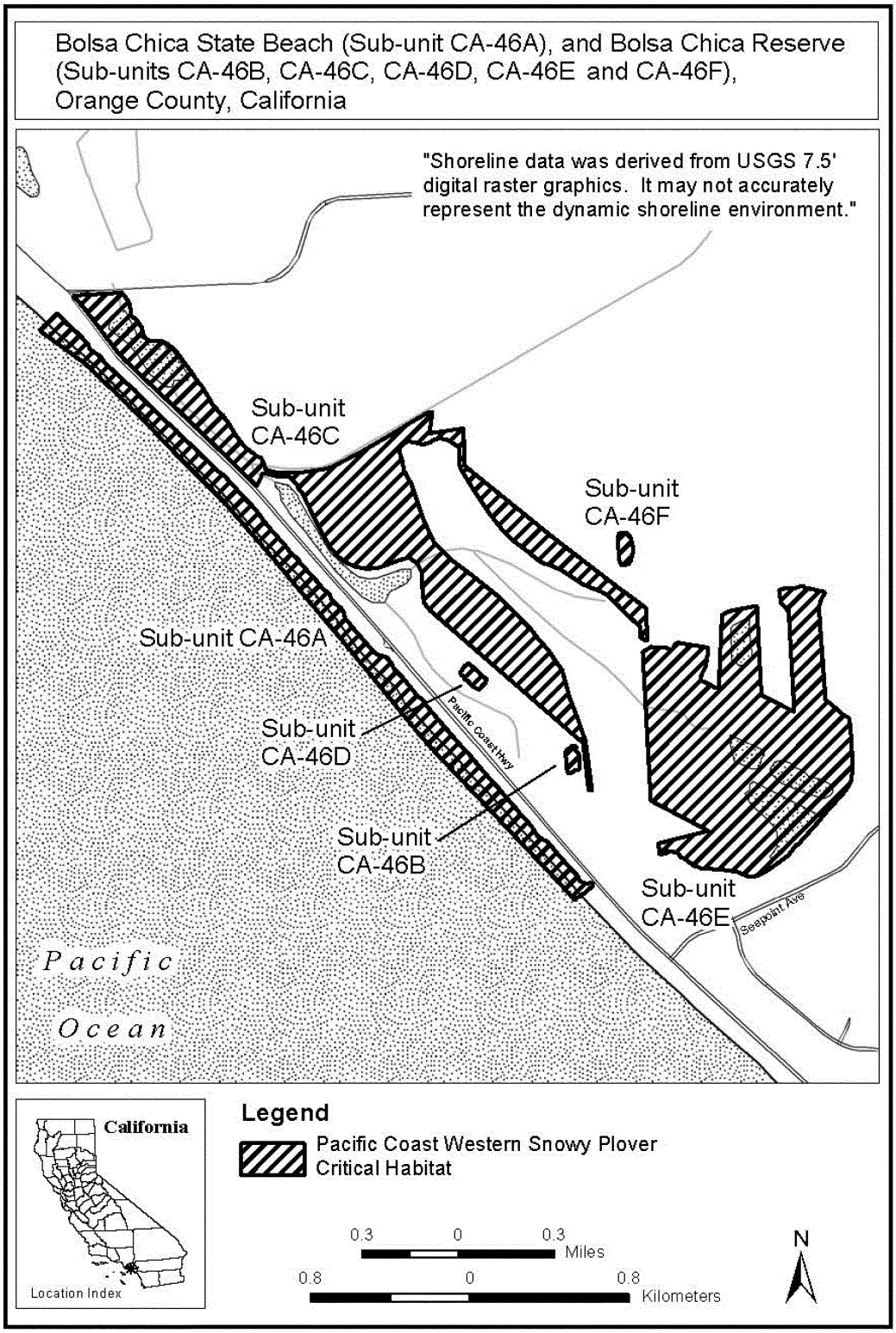

* * * * *

Dated: January 4, 2012.

**Eileen Sobek,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2012–521 Filed 1–13–12; 8:45 am]

**BILLING CODE 4310–55–C**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**[Docket No. FWS–R4–ES–2010–0024; 4500030114]**

**RIN 1018–AW89**

## Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Mississippi Gopher Frog

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Revised proposed rule; reopening of comment period and announcement of public hearing.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce the reopening of the public comment period on our September 27, 2011, revised proposed rule to designate critical habitat for the Mississippi gopher frog (*Rana sevosa*) [=*Rana capito sevosa*] under the Endangered Species Act of 1973, as amended (Act). We are reopening the comment period to announce changes in methodology from the revised proposed rule and to allow all interested parties another opportunity to comment on the revised proposed rule. Comments previously submitted need not be resubmitted and will be fully considered in preparation of the final rule. We will also hold a public informational session and hearing (see **DATES** and **ADDRESSES** sections).

**DATES:** *Written Comments:* We will consider comments received on or before March 2, 2012. Comments must be received by 11:59 p.m. Eastern Time on the closing date.

*Public informational session and public hearing:* We will hold a public informational session from 6 p.m. to 7 p.m., followed by a public hearing from 7 p.m. to 9 p.m., on January 31, 2012, in Gulfport, Mississippi.

**ADDRESSES:** *Written Comments:* You may submit comments by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* In the box that reads ''Enter Keyword or ID,'' enter the Docket number for this proposed rule, which is FWS–R4–ES–2010–0024. Then, click on the search button. Please ensure that you have found the correct rulemaking before submitting your comment.

• *U.S. mail or hand delivery:* Public Comments Processing, Attn: Docket No. FWS–R4–ES–2010–0024; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

### Public Informational Session and Public Hearing

The public informational session and hearing will be held at Gulfport High School (auditorium), 100 Perry Street, Gulfport, Mississippi 39507.

People needing reasonable accommodations in order to attend and participate in the public hearing should contact Stephen Ricks, Mississippi Ecological Services Field Office, at (601) 321–1122, as soon as possible (see **FOR FURTHER INFORMATION CONTACT**). In order to allow sufficient time to process requests, please call no later than one week before the hearing date (see **DATES**).

**FOR FURTHER INFORMATION CONTACT:** Stephen Ricks, Field Supervisor, U.S. Fish and Wildlife Service, Mississippi Ecological Services Field Office, 6578 Dogwood View Parkway, Jackson, MS 39213; by telephone (601) 321–1122; facsimile (505) 346–2542. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

### Background

It is our intent to discuss only those topics directly relevant to the revised proposed rule to designate critical habitat for the Mississippi gopher frog in this document.

On September 27, 2011, we published a revised proposed rule (76 FR 59774) to designate critical habitat for the Mississippi gopher frog, and announced the availability of the draft economic analysis (DEA) for the revised proposed critical habitat designation. For a description of previous Federal actions concerning the Mississippi gopher frog, please refer to the revised proposed rule. In response to comments we received during the public comment period that opened on September 27, 2011 and closed on November 28, 2011, we have decided to allow the public more time to submit comments and to hold an informational session and public hearing (as described above), and to modify the revised proposed rule as described below.

### Changes From the Revised Proposed Rule

As the starting point for delineating Mississippi gopher frog critical habitat in our revised proposed rule (76 FR 59774), we used the median value of all data available to us on maximum distance movements of gopher frogs between their breeding ponds and upland habitats. However, in that revised proposed rule, we stated we used the mean value instead of the median. Of the two peer reviewers that commented during the comment period that closed on November 28, 2011, on whether the median or the mean of the maximum movement distances is most appropriate to use in the critical habitat delineation, one reviewer preferred the median and the other preferred the mean.

Determining the optimum value to use in calculating the amount of habitat necessary for Mississippi gopher frog conservation is difficult, in part because the data were collected from different States, in studies with different objectives, and in habitat of differing quality. The maximum distance gopher frogs moved varied considerably among studies. At the low end of the range is a value of 240 meters (m) (787 feet (ft)) from one Mississippi gopher frog study, and at the upper end of the range is 3,500 m (11,483 ft) for a gopher frog study in North Carolina.

At the suggestion of one peer reviewer, we amended our methodology by combining all movement data from different studies conducted at the same site (Richter *et al.* 2001 and Tupy and Pechmann 2011, combined; Roznik 2007, Roznik and Johnson 2009a, and Roznik *et al.* 2009, combined) and discarding one field observation (Carr 1940) that did not provide specific data on breeding pond or upland habitat use. Based on the peer review comments we received and our further review of available data, we have determined the maximum movement distance values to be those provided in the table below. We continue to believe that the median, rather than the mean, is a more appropriate value to use in the delineation of critical habitat due to the skewed distribution of the data, and accordingly identified the median of the values in the table.

Table 1. Movement of gopher frogs between wetland and upland sites*. Distance data represent the maximum straight line distance between the middle (except where noted) of a breeding pond and upland burrow sites for each gopher frog study. The gopher

frog species in each study is *Rana capito* unless otherwise stated. Median value of distances = 571 m (1,873 ft).

| | Distance | Citation | Number Frogs in study |
|---|---|---|---|
| 1 | 299 m (981 ft) | Richter *et al.* 2001 [*Rana sevosa*]; Tupy and Pechmann 2011 [*Rana sevosa*]. | 29 |
| 2 | 300 m (984 ft) | Phillips 1995/Rostal 1999 [distance from pond edge]** | 7 |
| 3 | 525 m (1,722 ft) | Neufeldt and Birkhead 2001 | 12 |
| 4 | 571 m (1,873 ft) | Blihovde 2006 | 9 |
| 5 | 862 m (2,828 ft) | Roznik 2007 *(observation); Roznik and Johnson 2009a; Roznik *et al.* 2009. | 43 |
| 6 | 2,000 m (6,562 ft) | Franz *et al.* 1988* (observation)** [distance from pond edge] | 1 |
| 7 | 3,500 m (11,483 ft) | Humphries and Sisson 2010 | 9 |

*Telemetry data unless otherwise noted.
**Distance recorded from pond edge, rather than the middle of the pond.

As a result of the changes described above, we propose to amend the value used in constructing the area of critical habitat around a breeding pond from 600 m (1,969 ft) to 571 m (1,873 ft). As set forth in the revised proposed rule, this value would be increased by 50 m (164 ft) to provide a buffer to minimize the edge effects of the surrounding land use. Therefore, we are providing notice to the public that we are revising our proposed critical habitat delineation around the ponds by using a radius of 621 m (2,037 ft), rather than the 650 m (2,133 ft) used in our September 27, 2011, revised proposed rule (76 FR 59774). Given the limited amount of data available to us on the movements of gopher frogs, we are requesting submission of any additional data not already in our possession and are also requesting comments on our revised methodology as described above. Because the changes described above will result in very minor changes to the mapping of the units, we have not revised the maps for this document. However, the revised maps will be available for closer inspection at the field office, on *http://www.regulations.gov,* and at the upcoming public hearing.

If we finalize the rule using the methodology described above, we would designate approximately 2,646 hectares (ha) (6,538 acres (ac)) as critical habitat for the Mississippi gopher frog in 12 units, 3 of which are divided into 2 subunits each. This would be a reduction of 193 ha (477 ac) from the September 27, 2011, revised proposed rule (2,839 ha (7,015 ac)). The critical habitat would be located within St. Tammany Parish, Louisiana, and Forrest, Harrison, Jackson, and Perry Counties, Mississippi. The final decision on whether to designate the critical habitat, as proposed, will be based on the best scientific data available, including information obtained during the comment period reopened by this document and at the upcoming public informational session and public hearing (see **DATES** and **ADDRESSES**).

## Public Comments

We will accept written comments and information during this reopened comment period for the revised proposed rule to designate critical habitat for the Mississippi gopher frog that was published in the **Federal Register** on September 27, 2011 (76 FR 59774), as revised by this document. We intend that any final action resulting from this revised proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned government agencies, the scientific community, industry, or other interested parties concerning this revised proposed rule. Verbal testimony or written comments may also be presented during the public hearing. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(2) Specific information on:

(a) The amount and distribution of Mississippi gopher frog habitat;

(b) What areas, that were occupied at the time of listing (or are currently occupied) and that contain features essential to the conservation of the species, should be included in the designation and why;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(d) What areas not occupied at the time of listing are essential for the conservation of the species and why.

(3) Land-use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Information on the projected and reasonably likely impacts of climate change on the Mississippi gopher frog and proposed critical habitat.

(5) Any probable economic, national security, or other relevant impacts of designating any area (especially Unit 1 in St. Tammany Parish, Louisiana) that may be included in the final designation; in particular, we seek information on any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts.

(6) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(7) Whether we could improve or modify our approach to designation of critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

(8) The appropriateness of the taxonomic name change of the Mississippi gopher frog from *Rana capito sevosa* to *Rana sevosa.*

(9) The appropriateness of the methodology used for delineating the proposed critical habitat (including any

data that might help further refine these areas).

If you previously submitted comments or information on the revised proposed rule, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determination. Our final determination will take into consideration all written comments and public testimony from the public hearing mentioned above.

You may submit your comments and materials concerning the revised proposed rule by one of the methods listed in the **ADDRESSES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* If you provide personal identifying information, such as your street address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the revised proposed rule, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R4–ES–2010–0024, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Mississippi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the revised proposed rule on the Internet at *http://www.regulations.gov* at Docket Number FWS–R4–ES–2010–0024, or by mail from the Mississippi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

## Author

The primary author of this notice is the Mississippi Ecological Services Field Office, Region 4, U.S. Fish and Wildlife Service.

## Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 9, 2012.

**Eileen Sobeck,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2012–662 Filed 1–13–12; 8:45 am]

**BILLING CODE 4310–55–P**

# Notices

Federal Register
Vol. 77, No. 10
Tuesday, January 17, 2012

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.

## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### Adoption of Recommendations

**AGENCY:** Administrative Conference of the United States.

**ACTION:** Notice.

**SUMMARY:** The Administrative Conference of the United States adopted four recommendations at its Fifty-fifth Plenary Session. The appended recommendations address incorporation by reference, international regulatory cooperation, the Federal Advisory Committee Act, and agency innovations in e-rulemaking.

**FOR FURTHER INFORMATION CONTACT:** For Recommendations 2011–5 and 2011–8, Emily Schleicher Bremer, Attorney Advisor, and for Recommendations 2011–6 and 2011–7, Reeve T. Bull, Attorney Advisor. For all four recommendations the address and phone number is: Administrative Conference of the United States, Suite 706 South, 1120 20th Street NW., Washington, DC 20036; Telephone (202) 480–2080.

**SUPPLEMENTARY INFORMATION:** The Administrative Conference Act, 5 U.S.C. 591–596, established the Administrative Conference of the United States. The Conference studies the efficiency, adequacy, and fairness of the administrative procedures used by Federal agencies and makes recommendations for improvements to agencies, the President, Congress, and the Judicial Conference of the United States (5 U.S.C. 594(1)). For further information about the Conference and its activities, see *http://www.acus.gov.*

At its Fifty-fifth Plenary Session, held December 8–9, 2011, the Assembly of the Conference adopted four recommendations. Recommendation 2011–5, ''Incorporation by Reference,'' addresses legal and policy issues related to agencies' incorporation by reference in the Code of Federal Regulations of standards or other materials that have been published elsewhere. Agencies have promulgated thousands of regulations that incorporate by reference standards published elsewhere. The practice raises common issues that individual agencies deal with differently. The recommendation consolidates the dispersed knowledge of affected agencies, identifies best practices, and recommends ways to improve the process.

Recommendation 2011–6, ''International Regulatory Cooperation,'' addresses how U.S. regulators can interact with foreign authorities to accomplish their domestic regulatory missions and eliminate unnecessary non-tariff barriers to trade. The project updates Administrative Conference Recommendation 91–1, ''Federal Agency Cooperation with Foreign Government Regulators.'' The recommendation includes proposals for enhanced cooperation and information gathering, more efficient deployment of limited resources, and better information exchanges.

Recommendation 2011–7, ''The Federal Advisory Committee Act—Issues and Proposed Reforms,'' addresses the issue of whether the Federal Advisory Committee Act (''FACA'') is functioning effectively and efficiently almost 40 years after its enactment. The recommendation offers three sets of proposed revisions to the existing FACA regime to make the law more relevant in light of agency experience with FACA and 21st century technologies. Specifically, the recommendation includes proposals designed to clarify the scope of FACA and its implementing regulations, alleviate certain procedural burdens associated with the existing regime, and promote ''best practices'' aimed at enhancing the transparency and objectivity of the advisory committee process.

Recommendation 2011–8, ''Agency Innovations in E-Rulemaking,'' addresses how Federal agency rulemaking can be improved by better use of Internet-based technologies. The recommendation proposes ways agencies can make rulemaking information, including open dockets, comment policies, and materials from completed rulemakings, more accessible electronically. The recommendation also addresses the issue of improving e-rulemaking participation by those who have historically faced barriers to access, including non-English speakers, users of low-bandwidth Internet connections, and individuals with disabilities.

The Appendix (below) sets forth the full text of these four recommendations. The Conference will transmit them to affected agencies and to appropriate committees of the United States Congress. The recommendations are not binding, so the relevant agencies, the Congress, and the courts will make decisions on their implementation.

The Conference based these recommendations on research reports that it has posted at: *http://www.acus.gov/events/55th-plenary-session/.* A video of the Plenary Session is available at the same Web address, and a transcript of the Plenary Session will be posted once it is available.

Dated: January 10, 2012.

**Paul R. Verkuil,**

*Chairman.*

## APPENDIX—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### Administrative Conference Recommendation 2011–5

### Incorporation by Reference

### Adopted December 8, 2011

Incorporation by reference allows agencies to comply with the requirement of publishing rules in the **Federal Register** to be codified in the Code of Federal Regulations (CFR) by referring to material published elsewhere.[1] The practice is first and foremost intended to—and in fact does—substantially reduce the size of the CFR. But it also furthers important, substantive regulatory policies, enabling agencies to draw on the expertise and resources of private sector standard developers to serve the public interest. Incorporation by reference allows agencies to give effect to a strong federal policy, embodied in the National Technology Transfer and Advancement Act of 1995 and OMB Circular A–119, in favor of agency use of voluntary consensus standards.[2] This

[1] *See* 5 U.S.C. 552(a)(1); 1 CFR 51.1–51.11.

[2] *See* National Technology Transfer and Advancement Act of 1995, Public Law 104–113 (1996); Office of Mgmt. & Budget, Exec. Office of the President, OMB Circular A–119, Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities (1998); see also Administrative Conference of the United States, Recommendation 78–4, *Federal Agency Interaction with Private Standard-Setting Organizations in*

Continued

federal policy benefits the public, private industry, and standard developers.

The Conference has conducted a study of agency experience with the practice of incorporation by reference, including the use of voluntary consensus standards. The study focused on three issues agencies frequently confront when incorporating by reference: (1) Ensuring materials incorporated by reference are reasonably available to regulated and other interested parties; (2) updating regulations that incorporate by reference; and (3) navigating procedural requirements and resolving drafting difficulties when incorporating by reference. Agencies have used a variety of approaches to address these issues within the constraints of federal law and regulatory policy. This recommendation identifies and encourages those approaches that have proven most successful.

*Availability of Incorporated Materials.* Ensuring that regulated and other interested parties have reasonable access to incorporated materials is perhaps the greatest challenge agencies face when incorporating by reference. When the relevant material is copyrighted—as is often the case with voluntary consensus standards—access issues are particularly problematic. There is some ambiguity in current law regarding the continuing scope of copyright protection for materials incorporated into regulations,[3] as well as the question of what uses of such materials might constitute ''fair use'' under section 107 of the Copyright Act.[4] Efforts to increase transparency of incorporated materials may conflict with copyright law and with federal policies recognizing the significant value of the public-private partnership in standards.

This recommendation does not attempt to resolve the questions of copyright law applicable to materials incorporated by reference into federal regulations. Rather, the recommendation encourages agencies to take steps to promote the availability of incorporated materials within the framework of existing law. This effort is consistent with the National Science and Technology Council's acknowledgment that ''the text of standards and associated documents should be available to all interested parties on a reasonable basis, which may include monetary compensation where appropriate.'' [5] The Conference's research reveals that some agencies have successfully worked with copyright owners to further the goals of both transparency and public-private collaboration. Some agencies have, for example, secured permission to make a read-only copy of incorporated material available in the agency's public, electronic docket during the pendency of the rulemaking proceeding relating to the material. In other cases, the copyright owner has made the material publicly available in read-only form on its own Web site. This recommendation encourages agencies to take these or other steps to promote availability of incorporated materials, such as encouraging copyright owners to make incorporated materials available in libraries.

*Updating Regulations.* Updating regulations that incorporate by reference is another challenge. Agencies are legally required to identify the specific version of material incorporated by reference and are prohibited from incorporating material dynamically.[6] When an updated version of the incorporated material becomes available, the regulation must be updated if the agency wants the regulation to incorporate the new version. This can require the agency to engage in notice-and-comment rulemaking, which entails a significant investment of agency resources. For agencies that are statutorily required to provide rulemaking procedures beyond those required by Section 553 of the Administrative Procedure Act (APA), updating may prove to be an immense challenge. Nonetheless, agencies have successfully used a variety of techniques to reduce the time and cost constraints of updating rules. Some agencies have used enforcement discretion or ''equivalency determinations'' to avoid penalizing parties that comply with an updated version of an incorporated standard that the agency finds to be equivalent to or superior to the version still incorporated in the agency's regulations. Other agencies have reduced the burden of updating by tracking forthcoming revisions through participation in standard-development activities.[7] Still others have used direct final rulemaking to reduce the costs of updating an incorporating regulation. The recommendation encourages these time- and cost-saving techniques. This recommendation also proposes a statutory solution that would streamline the administrative process by which agencies can revise their regulations to account for updates to the incorporated material.

*Complying with Procedural Requirements.* Finally, successfully incorporating by reference requires agencies to comply with detailed procedures and to draft regulations carefully. The Office of the Federal Register (OFR) is statutorily charged with approving all incorporations by reference, and has issued regulations and guidance establishing policies and procedures for doing so. Procedural errors can delay the publication of rules that incorporate by reference. Poor drafting may create confusion among regulated parties or produce a rule that does not fulfill the agency's regulatory purpose. The Conference's research revealed that agencies reporting few or no problems in complying with OFR's incorporation by reference procedures followed identifiable best practices that other agencies should consider adopting.

**Recommendation**

*Ensuring Incorporated Materials Are Reasonably Available*

1. Agencies considering incorporating material by reference should ensure that the material will be reasonably available both to regulated and other interested parties.

2. If an agency incorporates by reference material that is not copyrighted or subject to other legal protection, the agency should make that material available electronically in a location where regulated and other interested parties will be able to find it easily.

3. When an agency is considering incorporating copyrighted material by reference, the agency should work with the copyright owner to ensure the material will be reasonably available to regulated and other interested parties both during rulemaking and following promulgation.

(a) Agencies should request owners of copyright in incorporated material to consent to its free publication, and, if such consent is given, make the material available as in paragraph (2), above.

(b) If copyright owners do not consent to free publication of incorporated materials, agencies should work with them and, through the use of technological solutions, low-cost publication, or other appropriate means, promote the availability of the materials while respecting the copyright owner's interest in protecting its intellectual property.

(c) If more than one standard is available to meet the agency's need, it should consider the availability of the standards as one factor in determining which standard to use.

4. In deciding whether to incorporate a particular copyrighted material by reference, and in working with a copyright owner to ensure the material is reasonably available, an agency should consider:

(a) The stage of the regulatory proceedings, because access may be necessary during

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*Health and Safety Regulation,* 44 FR 1,357 (Jan. 5, 1979) (recommending agencies use voluntary consensus standards in health and safety regulation). Circular A–119 defines voluntary consensus standards as those created by private or international organizations whose processes provide attributes of openness, balance, due process, an appeal, and decision making by general agreement (but not necessarily unanimity). *See also* American National Standards Institute, ''ANSI Essential Requirements: Due process requirements for American National Standards'' (2010).

[3] *See, e.g., Veeck* v. *S. Bldg. Code Cong. Int'l, Inc.,* 293 F.3d 791 (5th Cir. 2002) (en banc). This case held that where local law had incorporated a privately developed building code, a private party's posting of the resulting local law did not violate copyright, because the law was in the public domain. *Id.* at 793, 802. However, the court distinguished cases concerning the incorporation by reference of materials ''created by private groups for reasons other than incorporation into law,'' *id.* at 805, leaving some uncertainty as to the rule applicable to many voluntary consensus standards.

[4] *See, e.g.,* Office of Legal Counsel, Dep't of Justice, *Whether and under what Circumstances Government Reproduction of Copyrighted Materials Is a Noninfringing ''Fair Use'' under Section 107 of the Copyright Act of 1976* (1999). This opinion noted that there is no per se rule under which government reproduction of copyrighted materials for governmental use invariably qualifies as fair use, but also noted that such reproduction would in many contexts constitute a noninfringing fair use. The opinion focused on government reproduction for internal government use and did not consider government republication of copyrighted materials.

[5] *See* Subcommittee on Standards, Nat'l Sci. & Tech. Council, Exec. Office of the President, *Federal Engagement in Standards Activities to Address National Priorities: Background and Proposed Recommendations* 11 (Oct. 10, 2011).

[6] *See* 1 CFR 51.1(f); see also Office of Mgmt. & Budget, Exec. Office of the President, OMB Circular A–119, Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities ¶ 6(j) (1998).

[7] *See* Subcommittee on Standards, Nat'l Sci. & Tech. Council, Exec. Office of the President, *Federal Engagement in Standards Activities to Address National Priorities: Background and Proposed Recommendations* (Oct. 10, 2011).

rulemaking to make public participation in the rulemaking process effective;

(b) The need for access to achieve agency policy or to subject the effectiveness of agency programs to public scrutiny;

(c) The cost to regulated and other interested parties to obtain a copy of the material, including the cumulative cost to obtain incorporated material that itself incorporates further materials; and

(d) The types of parties that need access to the incorporated material, and their ability to bear the costs of accessing such materials.

5. When considering incorporating by reference highly technical material, agencies should include in the notice of proposed rulemaking an explanation of the material and how its incorporation by reference will further the agency's regulatory purpose.

**Updating Incorporations by Reference**

6. Agencies should periodically review regulations and make technical amendments (*i.e.,* nonsubstantive amendments that do not require notice and comment) as necessary to ensure that complete and accurate access information [8] is included in all regulations that incorporate by reference. Agencies should ensure that they are notified of all changes to access information.

7. Agencies that regularly incorporate private standards should adopt internal procedures to ensure good communication of emerging revisions to those within the agency charged with making policy decisions and writing rules. Agencies should consider participating in standard-setting activities in order to maintain awareness of emerging revisions.[9]

8. Agencies should not address difficulties with updating by confining incorporations by reference to non-binding guidance documents. If an agency intends to make compliance with extrinsic material mandatory, it should incorporate that material by reference in a legislative rule.

9. In the interests of fairness and transparency, agencies should publish regulations or guidance establishing the policies and principles governing equivalency determinations or guiding this use of enforcement discretion in situations where they have been unable to update incorporations by reference in regulations.

10. For rulemakings subject to Section 553 of the APA, agencies should use direct final rulemaking for noncontroversial updates to incorporations by reference.[10]

11. Congress should consider authorizing agencies to use streamlined procedures to update incorporations by reference. An appropriate statutory solution would:

(a) Provide for interested parties to file a petition for rulemaking that would notify the agency of a revised standard, identify the changes from the incorporated version of the standard, explain why updating would be consistent with the agency's regulatory purpose, and provide information on the costs and benefits of incorporating the revised standard;

(b) Vest the agency with authority to determine whether to act on the petition; and

(c) Authorize agencies to grant the petition by issuing a final rule, without regard to otherwise applicable rulemaking requirements, provided that the agency first:

(1) Publishes a notice of the petition in the **Federal Register**, indicates in that notice what regulations the requested update would affect, and provides for public comment on the petition; and

(2) Finds that updating regulations as requested in the petition is beneficial and consistent with the regulatory purpose of the relevant regulation.

**Navigating Procedural Requirements**

12. Each agency that incorporates by reference should task its Office of the Federal Register (OFR) liaison or another employee with being a point of contact with OFR and maintaining a close working relationship between the two agencies. Such agencies should take advantage of OFR's training opportunities and follow the procedures of its Document Drafting Handbook (DDH).

13. When considering a regulation that would incorporate by reference, agencies should ensure legal counsel or other experts in OFR regulations, DDH, and policy are involved early in the rulemaking process to reduce the potential for delays in publishing rules. Agencies considering incorporating by reference should reach out to OFR staff early in the rulemaking process.

14. OFR should continue and expand upon its efforts to make the process easier through an electronic submission and review process for incorporation by reference requests.

**Improving Drafting Techniques**

15. Agencies should ensure that incorporations by reference support, rather than detract from, the usefulness and readability of the Code of Federal Regulations. Incorporated material may provide detail, but a regulation should, by itself, make the basic concept of the rule understandable without the need for the reader to refer to the incorporated material.

16. Agencies should review the language used in material they are considering incorporating by reference to determine whether it is mandatory or merely advisory or voluntary. Agencies promulgating mandatory regulations should take care to specify in the regulation which portions of the material will be considered mandatory after incorporation.

17. When an agency incorporates a document that references a second (or greater) tier document, the agency should acknowledge and explain the substantive legal effect of the secondarily referenced document(s). OFR should consider amending the DDH to call attention to the potential issue of secondary references. If an agency wants to make a second tier document mandatory, it should ensure that such material is reasonably available both to the regulated community and other interested parties.

18. Agencies should be alert to the possibility that some part of their regulations may inadvertently conflict with a requirement incorporated by reference. When drafting regulations, agencies should avoid or resolve any such conflicts.

**Administrative Conference Recommendation 2011–6**

**International Regulatory Cooperation**

**Adopted December 8, 2011**

In June 1991, the Administrative Conference issued Recommendation 91–1, ''Federal Agency Cooperation with Foreign Government Regulators,'' finding that ''[i]f American administrative agencies could ever afford to engage in regulatory activities without regard to the policies and practices of administrative agencies abroad, the character and pace of world developments suggest that that era has come to a close,'' and recommending practices such as information exchanges and establishment of common regulatory agendas to facilitate regulatory cooperation. While many of the issues identified in that recommendation remain relevant today, the pace of globalization in the past two decades has created new challenges and dynamics since then. Not only have institutions promoting international cooperation become more robust, with relevant developments including the founding of the World Trade Organization and increasing integration amongst the member states of the European Union, but the volume of trade in goods, services, and information across borders has increased dramatically.

Given these developments, the Administrative Conference commissioned a research project to review international regulatory cooperation at United States government agencies today, assess how the 1991 recommendation has been implemented (or not), identify new challenges that have emerged in the past 20 years, and advise how the 1991 recommendation might be updated to guide agencies in improving international coordination today to benefit regulatory goals and competitiveness. This research shows that, since the 1991 recommendation was adopted, the international coordination efforts of agencies have greatly expanded. Yet the need for international coordination has also greatly expanded due to increased trade in goods, services, and information. Incompatible regulatory requirements in different countries persist. Sometimes these regulations are different for non-substantive reasons—regulators share common goals and methods of regulation, but for historical or other reasons, regulations remain inconsistent. Sometimes regulations differ because regulators in different countries do not agree on important substantive issues, such as how to weigh scientific evidence or balance competing priorities. When differences are substantive, they can sometimes be ascribed to countries' asserting national goals such as protecting health,

[8] ''Access information'' informs the public of where it can inspect or obtain a copy of the incorporated material. *See* 1 CFR 51.9(b)(4); Nat'l Archives & Records Admin., **Federal Register** Document Drafting Handbook § 6.4 (Jan. 2011).

[9] *See* Administrative Conference of the United States, Recommendation 78–4, *Federal Agency Interaction with Private Standard-Setting Organizations in Health and Safety Regulation,* 44 FR 1,357 (Jan. 5, 1979).

[10] *See* Administrative Conference of the United States, Recommendation 95–4, *Procedures for Noncontroversial and Expedited Rulemaking,* 60 FR 43,108, 43,112 (June 15, 1995).

safety, or the environment at the levels that they consider appropriate. Other substantive differences, however, may disrupt trade or otherwise operate as de facto protectionist measures. Moreover, even when standards are aligned, different national requirements for conformity assessment, such as testing, certification, inspection, or accreditation, frequently impose their own costs and delays.

The Administrative Conference finds that improved international regulatory cooperation is desirable because it can help United States agencies accomplish their statutory regulatory missions domestically. Indeed, in some areas like regulating the safety of food and drugs, a large proportion of which are imported to the United States, an agency's awareness of and participation in foreign regulatory processes can help to ensure the safety of products reaching United States markets. International regulatory cooperation can also remove non-tariff barriers to trade and exports, promoting global commerce and United States competitiveness. Moreover, these benefits of international regulatory cooperation are not incompatible and can be pursued in unison.

Because of the global nature of the economy, the domestic regulatory mission of many agencies is affected by what happens overseas. For example, imports of food and pharmaceutical products to the United States have greatly increased over the past 20 years, so that the Food and Drug Administration's (FDA) mission of ensuring food, drug, and device safety in the United States is necessarily intertwined with how these products are regulated in their countries of origin. The Consumer Product Safety Commission faces a similar challenge. Pollutants do not respect political boundaries, so the Environmental Protection Agency's success in achieving its mission in the United States can be affected by environmental regulations in other countries. Financial institutions in the United States participate in the global banking system and are exposed to risks in economies all over the world, which requires financial regulators to coordinate globally. And trade in data crosses national boundaries, requiring the Federal Trade Commission to cooperate with other global regulators in policing Internet fraud.

In addition to the impact on regulatory goals such as health, safety, environmental and consumer protection in the United States, inconsistent regulatory regimes can act as barriers to trade. For example, different food labeling requirements between the United States and Europe require producers who distribute food in both markets to produce the same goods in different packaging, depending on the market, which hinders economies of scale and adds cost and delay. Another example is that the United States and Europe have different approaches to regulating the length of tractor-trailers. Though the American design has better fuel economy, American manufacturers cannot export trucks that comply with United States requirements into European markets without significant redesign, thereby creating an unnecessary barrier to trade.

Many agencies successfully engage in international cooperation through a variety of different methods, such as coordination in regulatory promulgation, mutual recognition of inspection and certification regimes, and coordination and information sharing in enforcement. Some agencies have long coordinated effectively, both with respect to domestic and international issues, even when not mandated to do so. Notably, there is evidence that better international cooperation can help agencies more proficiently accomplish their regulatory missions with fewer resources by dividing work, where appropriate, with foreign counterparts and mutually recognizing each others' inspection regimes and laboratory or test results. The FDA believes there is great potential for cost savings and improved health and safety in mutual reliance on the data from clinical trials and manufacturing quality inspection regimes in other countries. For example, the FDA recently concluded a pilot project with European and Australian regulators to inspect manufacturing plants in China and other countries that manufacture active pharmaceutical ingredients. The agencies compared their lists of plants subject to inspection and the resources that each country had available, and where two or more agencies were scheduled to visit the same plant, the agencies agreed on one agency to inspect that plant or to do a joint inspection, and reallocated resources so that they could cover more plants. Building on the success of that pilot, the FDA is now pursuing a similar project with European regulators for site inspections of clinical trials. These cooperative approaches, which show potential for cost savings without diminishing regulatory effectiveness, might be expanded to other agency settings for further cost-saving effects.

However, global regulatory cooperation can be difficult to accomplish. Some agencies claim that they lack statutory authority to account for international effects when making regulatory decisions. Several agency officials, as well as high-level leaders, indicated that international regulatory cooperation was a low priority for certain agency leaders, as it is an issue with little visibility when accomplished successfully. Some agencies indicated that legal restrictions on information sharing can hinder international cooperation. Finally, coordination among some agencies within the United States government is a challenge, and agencies focused on trade and competitiveness, such as the Office of the United States Trade Representative (USTR), are not always aware of the activities of federal regulators.

Twenty years after the adoption of ACUS Recommendation 91–1, agencies increasingly recognize that international regulatory cooperation is an important component of their regulatory missions in today's globally integrated economy. While progress has been made, the scope of the problem leaves more work to be done to eliminate systemic barriers to coordination. The following recommendation restates the parts of the 1991 recommendation that remain valid and relevant and also addresses new considerations, to include promotion of best practices in transparency, mutual reliance, information sharing, and coordination within the United States. Accordingly, the recommendation supersedes Recommendation 91–1.

**Recommendation**

1. Agencies should inform themselves of the existence of foreign authorities [1] whose activities may relate to their missions. Agencies should consider strategies for regulatory cooperation with relevant foreign authorities when appropriate to further the agencies' missions or to promote trade and competitiveness when doing so does not detract from their missions.

2. Agencies should review their legal authorization to cooperate with foreign authorities under their authorizing statutes, bearing in mind obligations under the World Trade Organization Agreement on Technical Barriers to Trade and other relevant treaties adopted by the United States as well as Office of Management and Budget (OMB) guidance. Where legal authorities do not sufficiently permit appropriate international cooperation in regulation and enforcement that would benefit agencies' missions or promote trade and competitiveness without detracting from their missions, agencies should recommend corrective legislation to OMB and Congress. Absent conflict with their legal authority or missions, agencies should give appropriate consideration to the international implications of regulatory activities.

3. When agencies conclude that they have legal authority and the interest in cooperation from foreign authorities, and that cooperation would further agencies' missions or promote trade and competitiveness without detracting from their missions, they should consider various modes of cooperation with those authorities, including but not limited to:

(a) Establishment of common regulatory agendas;

(b) Exchange of information about present and proposed foreign regulation;

(c) Concerted efforts to reduce differences between the agency's rules and those adopted by foreign government regulators where those differences are not justified;

(d) Holding periodic bilateral or multilateral meetings (either in person or by teleconference or video conference) to assess the effectiveness of past cooperative efforts and to chart future ones; and

(e) Mutual recognition of tests, inspections, clinical trials, and certifications of foreign agencies.

4. To deploy limited resources more effectively, agencies should, where appropriate and practicable, identify foreign authorities that maintain high quality and effective standards and practices and identify areas in which the tests, inspections, or certifications by agencies and such foreign agencies overlap. Where appropriate and practicable, agencies should:

(a) Consider dividing responsibility for necessary tests, inspections, and

[1] Throughout this recommendation, the term ''foreign authorities'' includes a range of foreign and international counterparts, including but not limited to foreign government agencies, regional and international bodies, and, where appropriate, standard-setting organizations.

certifications and mutually recognizing their results;

(b) Create joint technical or working groups to conduct joint research and development and to identify common solutions to regulatory problems (for example, through parallel notices of proposed rulemaking);

(c) Establish joint administrative teams to draft common procedures and enforcement and dispute resolution policies; and/or

(d) Document and publish cost savings and regulatory benefits from such mutual arrangements.

5. To assess whether foreign authorities maintain high quality and effective standards and practices, agencies should develop and maintain relationships with foreign counterparts by providing training and technical assistance to foreign authorities and developing employee exchange programs, as resources permit. Agencies should also, as resources permit, review whether foreign or international practices would be appropriate for adoption in the United States.

6. Agencies should engage in exchanges of information with foreign authorities to promote better, evidence-based decision-making. Types of information exchanges can range from formal agreements to share data to informal dialogues among agency staff. To the extent practicable, information exchange should be mutually beneficial and reciprocal. Prior to exchanging information, agencies must reach arrangements with foreign counterparts that will protect confidential information, trade secrets, or other sensitive information.

7. When engaging in regulatory dialogues with foreign authorities, agencies should seek input and participation from interested parties as appropriate, through either formal means such as **Federal Register** notices and requests for comments or informal means such as outreach to regulated industries, consumers, and other stakeholders. Agencies should, where consistent with their statutory authority, missions, and the public interest, consider petitions by private and public interest groups for proposed rulemakings that contemplate the reduction of differences between agency rules and the rules adopted by foreign authorities, where those differences are not justified. While international consultations of the sort described in this recommendation do not usually depart from an agency's standard practices in compliance with applicable procedural statutes, an agency engaged in such consultations should describe those consultations in its notices of proposed rulemaking, rulemaking records, and statements of basis and purpose under the Administrative Procedure Act. Where the objective of aligning American and foreign agency rules has had a significant influence on the shape of the rule, that fact also should be clearly acknowledged.

8. Agencies should promote to foreign authorities the principles that undergird the United States administrative and regulatory process, including, as appropriate:

(a) Transparency, openness and public participation,

(b) Evidence-based and risk-informed regulation,

(c) Cost-benefit analysis,

(d) Consensus-based standard setting,

(e) Accountability under the law,

(f) Clearly defined roles and lines of authority,

(g) Fair and responsive dispute resolution procedures, and

(h) Impartiality.

An agency engaging in international regulatory cooperation should also be alert to the possibility that foreign regulatory bodies may have different regulatory objectives, particularly where a government-owned or controlled enterprise is involved.

9. When engaging with foreign authorities, agencies should, as appropriate, share information and consult with other government agencies having interests that may be affected by the engagement, including but not limited to OMB's Office of Information and Regulatory Affairs (OIRA); the Office of the United States Trade Representative (USTR); and the Departments of Commerce, State, and Defense.[2]

10. The Executive Office of the President should consider creating a high-level interagency working group of agency heads and other senior officials to provide government-wide leadership on, and to evaluate and promote, international regulatory cooperation.

## Administrative Conference Recommendation 2011–7

## The Federal Advisory Committee Act—Issues and Proposed Reforms

**Adopted December 9, 2011**

The Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, governs the process whereby the President or an administrative agency obtains advice from groups that include one or more non-federal employees. It places various limits on the formation of such groups and requires that group meetings be open to public attendance and permit at least a limited degree of public participation. Though Congress has occasionally amended FACA,[1] the original framework of the 1972 Act has essentially remained intact to the present day. Nevertheless, FACA has faced criticism, with some contending that the Act imposes excessive procedural burdens and others arguing that it does not require agencies to do enough to promote openness and transparency. This recommendation offers proposals to Congress, the General Services Administration (GSA), and agencies that use advisory committees, to alleviate certain procedural burdens associated with the existing regime, clarify the scope of the Act, and enhance the transparency and objectivity of the advisory committee process.

*Overview of FACA*

Congress, the President, and administrative agencies each can create advisory committees. Advisory committees are classified as either ''discretionary'' or ''non-discretionary.'' ''Discretionary'' advisory committees include those that an agency forms of its own initiative or in response to a statute authorizing the creation of a committee.[2] ''Non-discretionary'' advisory committees include those formed by the President and those that Congress, by statute, specifically directs the President or an agency to establish.[3]

FACA furthers three major goals. First, the Act promotes transparency and public participation in the advisory committee process, providing for open meetings and permitting interested members of the public to submit written and/or oral comments to advisory committees.[4] Second, the Act seeks to ensure objective advice and limit the influence of special interests on advisory committees by requiring that the membership of an advisory committee ''be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee.''[5] Third, the Act seeks to preserve federal resources by requiring justifications for any new committees and periodic review of existing committees to ensure that they continue to serve a useful purpose.[6]

In order to trigger FACA, an assemblage of individuals must include at least one non-federal employee as well as meet the following requirements: (a) Work as a group, (b) be ''established'' by statute or ''established or utilized'' by the President or an administrative agency, and (c) provide ''advice or recommendations'' to the President or a federal agency.[7] The courts have held that certain types of interactions do not meet this threshold for triggering FACA. Specifically, courts have held that (a) assemblages of persons providing advice to the government individually are not

[2] Agencies should fully comply with 22 CFR 181.4, requiring, among other things, agencies to consult with OIRA before entering into international agreements that require significant regulatory action, and 19 U.S.C. 2541, giving USTR responsibility for establishing mutual arrangements for standards-related activities.

[1] *See, e.g.,* Federal Advisory Committee Act Amendments of 1997, Public Law 105–153, 111 Stat. 2689 (1997) (exempting meetings of the National Academy of Sciences and National Academy of Public Administration from FACA); Unfunded Mandates Reform Act, Public Law 104–4, 109 Stat. 48 (1995) (exempting certain interactions between federal agencies and state, local, and tribal officials from the requirements of FACA).

[2] 41 CFR 102–3.50. There are currently 271 committees established by agencies and 198 committees authorized by statute for a total of 469 discretionary committees. *See* FACA Database, *http://www.fido.gov/facadatabase/rptgovttotals.asp* (last visited October 5, 2011).

[3] 41 CFR 102–3.50. There are currently 556 committees required by statute and 48 committees created by the President for a total of 604 non-discretionary committees. *See* FACA Database, *http://www.fido.gov/facadatabase/rptgovttotals.asp* (last visited October 5, 2011).

[4] 5 U.S.C. App. 2 § 10; House Comm. on Gov't Operations, The Role & Effectiveness of Fed. Advisory Comms., H.R. Rep. No. 91–1731, at 17–21 (1970) (hereinafter ''1970 House Report'').

[5] 5 U.S.C. App. 2 §§ 9(b)(2), (c); 1970 House Report at 19.

[6] 5 U.S.C. App. 2 §§ 7(b), 9(c), 14(a); 1970 House Report at 4, 12, 15–16.

[7] 5 U.S.C. App. 2 § 3(2). Nonetheless, FACA specifically exempts certain meetings that otherwise satisfy these requirements. See supra note 1.

''groups'' subject to FACA,[8] (b) groups formed by private contractors that are not subject to direct management or control by an administrative agency are not ''utilized'' by the agency so as to trigger FACA,[9] (c) subcommittees that report to a parent committee are not subject to FACA's open meeting requirements since the subcommittee does not itself provide ''advice or recommendations'' to the agency,[10] and (d) groups in which the non-government members lack a formal vote or veto over the ''advice or recommendations'' the committee ultimately provides do not implicate FACA.[11]

All advisory committees subject to FACA must comply with a number of procedural requirements.[12] Prior to the committee's commencing its work, an agency creating a discretionary committee must consult with the General Services Administration (GSA) regarding the need for the proposed committee, and all committees must have a charter setting forth the committee's mission.[13] The members selected to serve on the proposed committee must reflect an appropriate balance of the points of view and fields of expertise relevant to the committee's work.[14] FACA only requires that committees achieve balance on factors specifically relevant to the committee's work, but a number of agencies have adopted policies of achieving balance on additional factors. Committee members selected to provide individual expert advice are appointed as ''Special Government Employees'' (SGEs) and must comply with ethics requirements similar to those applicable to regular government employees, whereas members chosen to represent a particular interest group with a stake in the committee's work are appointed as ''representatives'' and are not subject to ethics requirements.[15] Once a committee is formed, the agency must announce any committee meetings in advance in the **Federal Register**, permit interested members of the public to attend such meetings,[16] and receive comments from individuals interested in the committee's work.[17] The public, upon request, must be given access to all documents presented to or prepared for or by the advisory committee.[18] Finally, agencies must re-charter each existing committee every two years and, as part of that process, show that the committee has continued relevance and that the costs of its continued existence do not outweigh the benefits it provides.[19]

Agencies are also subject to Executive Order 12,838, issued by President Clinton in 1993, which required agencies to reduce the number of their discretionary advisory committees by one-third.[20] The Office of Management & Budget then issued Circular A–135, which capped the number of agency discretionary committees at the reduced levels permitted by the Executive Order.[21] Administrative agencies collectively can maintain a total of 534 discretionary advisory committees without exceeding the cap.

In certain instances, agencies may wish to form advisory committees consisting of representatives from different stakeholder communities to negotiate the text of a proposed rule.[22] Congress has specifically authorized this process, known as ''negotiated rulemaking,'' in the Negotiated Rulemaking Act of 1990.[23] In most instances, negotiated rulemaking committees are subject to FACA,[24] except as modified by the Negotiated Rulemaking Act or another statute. The Negotiated Rulemaking Act provides some of the same protections as FACA, requiring that the agency make certain findings regarding the need for a negotiated rulemaking committee[25] and that negotiated rulemaking committees be balanced to include representatives from all relevant stakeholder communities.[26] However, requirements pertaining to notices and openness of meetings stem from FACA rather than from the Negotiated Rulemaking Act.

*Research Methodology*

Both governmental agencies and private groups have criticized the existing FACA regime. Many agencies contend that it is overly cumbersome and limits their ability to obtain outside advice. Numerous private groups have argued that the statute does not adequately promote transparency or preserve a role for the public to participate in the work of committees. Congress has also recently proposed various reforms to FACA that would, as a general matter, extend the scope of the Act and require agencies to undertake various steps to increase transparency in their use of advisory committees.[27] In light of the recent interest expressed in reforming FACA, study of the Act is timely. In order to identify the problems driving these concerns and formulate potential solutions, the Conference undertook an extensive study, seeking input from individuals and groups within and outside of the federal government. The data-gathering effort included: (a) Two separate surveys, with one focusing on agency Committee Management Officers (CMOs), who are responsible for compliance with FACA, and the other focusing on ''clients'' of advisory committees such as agency program officers and general counsel's offices; (b) a workshop with approximately 50 participants, including numerous agency representatives with extensive experience in the use of advisory committees and members of non-governmental organizations that promote government transparency; and (c) dozens of interviews of FACA experts (not limited to CMOs) both within and outside of the federal government.

*Research Results*

The data gathered suggest that FACA and/or its implementation by administrative agencies has given rise to at least three types of problems: (1) Procedural burdens that inhibit the effective use of advisory committees without substantially furthering the policies of the Act; (2) confusion about the scope of the statute that may discourage agencies from using committees or induce them to engage in ''work-arounds'' to avoid triggering its requirements; and (3) agency practices that either undermine or fail to fully promote the transparency and objectivity of the advisory committee process.

The recommendations below propose reforms to address these problems. The first group of recommendations seeks to alleviate barriers and perceived barriers[28] to the government's use of advisory committees by proposing a simplified process by which

[8] *Ass'n of Am. Physicians & Surgeons* v. *Clinton,* 997 F.2d 898, 913 (D.C. Cir. 1993).

[9] *Byrd* v. *United States Envtl. Prot. Agency,* 174 F.3d 239, 246–47 (D.C. Cir. 1999); *Food Chem. News* v. *Young,* 900 F.2d 328, 333 (D.C. Cir. 1990).

[10] *Nat'l Anti-Hunger Coal.* v. *Exec. Comm. of the President's Private Sector Survey of Cost Control,* 711 F.2d 1071, 1075–76 (D.C. Cir. 1983); 41 CFR 102–3.35.

[11] *In re Cheney,* 406 F.3d 723, 728 (D.C. Cir. 2005).

[12] 5 U.S.C. App. 2 § 3(2).

[13] *Id.* §§ 7(c), 9(c); 41 CFR 102–3.60–75.

[14] 5 U.S.C. App. 2 §§ 5(b)(2), (c); 41 CFR 102–3.30(c), 102–3.60(b)(3).

[15] 5 U.S.C. App. 2 §§ 5(b)(3), (c); 18 U.S.C. 202(a); 41 CFR 102–3.105(h); U.S. Office of Government Ethics, Memorandum from J. Jackson Walter, Director of the Office of Government Ethics, to Heads of Departments & Agencies of the Executive Branch regarding Members of Federal Advisory Committees & the Conflict-of-Interest Statutes 3–5 (July 9, 1982).

[16] Under certain circumstances, a committee may close an entire meeting or parts thereof. 5 U.S.C. App. 2 § 10(d); 41 CFR 102–3.155. In recent years, the majority of committee meetings have been either partially or fully closed from public attendance. *See* FACA Database: FY 2010 Government Totals, *http://fido.gov/facadatabase/rptgovttotals.asp* (last visited September 21, 2011) (noting that, thus far in 2011, 71% of committee meetings have been completely closed, 4% partially closed, and 25% fully open).

[17] 5 U.S.C. App. 2 § 10; 41 CFR 102–3.140, 102.3–150.

[18] 5 U.S.C. App. 2 § 10(b); 41 CFR 102–3.170.

[19] 5 U.S.C. App. 2 § 14; 41 CFR 102–3.60. In addition to the re-chartering process, the Administrator of GSA conducts an annual review of existing committees designed to ensure that such committees continue to serve useful purposes and to recommend eliminating any committees that do not, 5 U.S.C. App. 2 § 7(b); 41 CFR 102–3.100(b)(1), and the head of each agency is responsible for eliminating any advisory committee that no longer justifies the expenditure of resources required to perpetuate it, 41 CFR 102–3.30(b), 102–3.105(e).

[20] Exec. Order No. 12,838, 58 FR 8207 (Feb. 10, 1993).

[21] Office of Management & Budget, Circular A–135: Management of Federal Advisory Committees, 59 FR 53856, 53857 (Oct. 26, 1994).

[22] David M. Pritzker & Deborah S. Dalton, Negotiated Rulemaking Sourcebook 1 (Administrative Conference of the U.S. 1995).

[23] Public Law 101–648, 104 Stat. 4969 (1990) (codified at 5 U.S.C. 561 *et seq.*).

[24] 5 U.S.C. 565(a)(1).

[25] *Id.* § 563.

[26] *Id.* §§ 563(a)(2)–(3), 564(a)(3)–(4), 565(a)(1).

[27] H.R. 3124, 112th Cong. § 3(b) (2011).

[28] The Conference's empirical research indicated that the principal sources of delay in the committee formation process are within agencies themselves rather than resulting from delays associated with GSA's review of proposed committee charters. Nevertheless, informed observers were concerned that there exists a widespread perception among agencies that GSA's review of proposed charters constitutes a de facto approval process rather than a consultation requirement, thereby causing some agencies to invest excessive time in drafting committee charters prior to submission to GSA for review.

agencies create advisory committees and select their members and by recommending the removal of the arbitrary cap on the number of advisory committees.[29]

The second set of recommendations seeks to clarify the Act's scope in light of cases interpreting the Act and in anticipation of congressional amendments recently under consideration that might inhibit agencies' use of advisory committees or lead to use of alternative procedures to avoid triggering the Act. One such amendment would require subcommittees to comply with all provisions of FACA other than chartering, including the open meeting requirements.[30] The Conference recommends that if Congress eliminates the subcommittee exemption, then it should codify what is currently a regulatory exemption allowing agencies to conduct preparatory work in closed meetings, without a requirement of advance public notice.[31] The Conference also recommends that GSA clarify the Act's applicability to ''virtual meetings'' conducted via web forum to ensure that agencies are not chilled from using this technique and that Congress clarify the applicability of FACA principles to negotiated rulemaking committees.

The third set of recommendations proposes that both Congress and agencies adopt certain procedures that would enhance the transparency and objectivity of the advisory committee process without imposing onerous procedural or financial burdens on the agencies. These include ''best practices'' related to committee formation and operation (such as posting committee documents online, webcasting committee meetings, and soliciting input on potential committee members) and recommendations related to the classification of committee members for purposes of applying ethics standards.

[29] Though the 469 discretionary advisory committees in existence are currently well short of the 534 discretionary committees authorized, the cap can nevertheless create procedural burdens for agencies and inhibit their ability to obtain needed outside advice. Since GSA allots each agency a specific number of potential discretionary advisory committees, an agency that intends to exceed its individual ceiling must request that GSA adjust that ceiling. Agency officials interviewed as part of the research also indicated that individuals outside of the CMO's office were sometimes unsure of whether the agency was likely to exceed its discretionary committee ceiling and were therefore reluctant to request additional committees.

[30] H.R. 3124, 112th Cong. § 3(b) (2011).

[31] Concerns have also been expressed that exemption from FACA of meetings of committees formed by private contractors at agencies' behest, and committees wherein all voting members are federal employees, creates the potential for circumvention of the Act. *See* Reeve T. Bull, *The Federal Advisory Committee Act: Issues & Proposed Reforms* 17–18, 20–21, 40–42 (September 12, 2011). The Conference believes that additional research concerning the extent to which agencies utilize such exemptions and the extent to which their use thereof defeats the policies the Act was intended to serve would be beneficial in determining whether such exemptions should be either eliminated entirely or scaled back so as to apply only in a specific set of circumstances.

**Recommendation**

*Alleviating Procedural Burdens That Inhibit the Effective Use of Advisory Committees*

1. Congress should amend the Federal Advisory Committee Act (''FACA'') and the General Services Administration (''GSA'') should amend its FACA implementing regulations to eliminate any requirement that agencies consult with the Administrator of GSA prior to forming or renewing an advisory committee or implementing a major change to the charter of an existing committee. Specifically, Congress should delete the phrase ''after consultation with the Administrator'' from section 9(a)(2) of FACA, and GSA should eliminate or suitably revise 41 CFR 102–3.60, 102–3.85(a), which currently require such consultation with GSA's Committee Management Secretariat.[32] Agencies should still be required to prepare and file committee charters and should be permitted (but not required) to consult with GSA to obtain advice regarding preparation of the charter or other aspects of committee formation. Agencies should also still be required to file charters as under current law,[33] including filing with GSA for informational purposes and for inclusion in the FACA database. GSA should continue to post all committee charters online.

2. Agencies should identify and prioritize those factors for achieving balance among committee members that are directly relevant to the subject matter and purpose of the committee's work. The committee charter should include a description of the committee's mission and the most relevant balance factors.

3. Whenever Congress creates an advisory committee through legislation, it should indicate its intent as to the mission, estimated duration, budget, and preferred membership balance for the committee. Whenever such committees are exempted from the biennial review process, Congress should provide guidance concerning the intended duration of each such committee or, alternatively, a clear explanation of the committee's mission and a provision that the committee should terminate upon completion of that mission.

4. The President and the Office of Management and Budget should eliminate the cap on the number of discretionary advisory committees established by Executive Order 12,838 and Circular A–135.

**Clarifying the Scope of FACA**

5. Congress should not eliminate the exemption for subcommittees that report to parent committees currently stated in 41 CFR 102–3.35 unless it codifies an exemption providing that members of committees or subcommittees may meet to conduct ''preparatory work'' without complying with the notice and open meeting requirements of the Act. The statutory definition of ''preparatory work'' should be similar to that currently provided in FACA's implementing regulations at 41 CFR 102–3.160(a). Congress and/or GSA should also consider including a clearer list of activities that constitute ''preparatory work'' than that currently contained in the implementing regulations, including activities such as (i) drafting documents for consideration at a committee meeting, (ii) conducting research or preliminary analysis on topics for discussion at a committee meeting, (iii) engaging in pre-decisional deliberations, (iv) choosing meeting topics, and (v) considering future projects for the committee to undertake.

6. GSA should amend section 102–3.140(e) of the FACA implementing regulations to clarify that, in addition to holding teleconferenced or webconferenced meetings, agencies also may host virtual meetings that can occur electronically in writing over the course of days, weeks or months on a moderated, publicly accessible web forum. Agencies with advisory committees should be aware that they have the option of holding committee meetings via such online forums. To the extent they conduct meetings by web forum, agencies should monitor the process and determine whether it is an efficient and transparent means of hosting meetings.

7. Congress should amend the Negotiated Rulemaking Act (5 U.S.C. 561 *et seq.*) to provide that committees engaged in negotiated rulemaking are exempt from FACA but that such committees should be required to announce full committee meetings in advance and open them to public attendance. The amendments should codify existing procedures that allow caucuses or other sub-groups of committee members to meet privately, provided that such caucuses or sub-groups make no final decisions on behalf of the full committee. In the event that Congress does eliminate the FACA exemption applicable to subcommittees of advisory committees, 41 CFR 102–3.35, but does not exempt negotiated rulemaking committees from FACA, it should create a carve-out allowing negotiated rulemaking caucuses or other sub-groups to continue to hold meetings privately so long as they do not make final decisions on behalf of the full committee.

**Enhancing Transparency and Objectivity**

8. Congress and agencies should adopt the following procedures with respect to the ethics requirements applicable to advisory committee members:

(a) In creating statutory advisory committees, Congress should specify the intended classification of committee members for purposes of applying federal ethics laws. Congress should explicitly classify as ''representatives,'' not subject to ethics standards, those members who are selected to represent the perspective or interests of a particular group with a stake in the work of the advisory committee. It should explicitly classify as ''special government employees'' (SGEs), subject to specified federal ethics laws and rules, members who are chosen to provide individual, independent, expert advice.

(b) Congress and individual agencies should prevent misuse of the ''representative'' designation by limiting it to

[32] GSA would continue to offer advice on committee formation and operation to agencies that seek such advice, and its regulations might authorize agencies to obtain advice on committee formation and operation from the Committee Management Secretariat.

[33] 5 U.S.C. App. 2 § 9(c); 41 CFR 102–3.70.

individuals selected to represent some entity or group with a stake in the committee's work and should not apply that designation to persons who, by virtue of their expertise, might be said to ''represent'' a field of study or discipline but do not represent the views of a particular interest group. Such members are more appropriately classified as SGEs.[34]

(c) Agencies that grant conflict of interest waivers under 18 U.S.C. 208(b) should post such waivers on their Web sites without awaiting a public request for releasing them.[35] Agencies should make appropriate provisions for redacting from such waivers information that they may keep confidential pursuant to 18 U.S.C. 208(d)(1).

9. Agencies should post on a committee Web site documents ''which were made available to or prepared for or by each advisory committee'' (*i.e.,* documents that must be made publicly available on request under section 10(b) of FACA) and that reflect the substantive work of the committee. Agencies should attempt to post documents relevant to upcoming meetings (*e.g.,* draft reports, recommendations, or meeting agendas) as early as possible in advance of the meeting to which they relate and other materials that document the events of past meetings (*e.g.,* minutes or transcripts) as quickly after the meeting as possible.

10. Agencies should provide live webcasts of open committee meetings and/or post recordings following such meetings unless the costs are prohibitive. When selecting a webcasting technology, agencies should assess the likely level of public interest in their committees' work, the cost of different technologies (as well as the cost savings such technologies can create), and their available resources.[36]

11. Upon creating a new advisory committee, agencies should announce the committee's mission in the **Federal Register** and/or on the agencies' Web site and invite nominations for potential committee members, from the public, from expert communities with experience in the subject matter of the committee's assignment, and/or from groups especially likely to be affected by the committee's work.

**Administrative Conference Recommendation 2011–8**

**Agency Innovations in E–Rulemaking**

**Adopted December 9, 2011**

The rulemaking function of federal regulatory agencies is typically accomplished today through ''e-rulemaking'': that is, through '' 'the use of digital technologies in the development and implementation of regulations,' before or during the informal rulemaking process, *i.e.,* notice-and-comment rulemaking under the Administrative Procedure Act (APA).'' [1] The Web site *www.regulations.gov* centralizes much e-rulemaking activity throughout the executive branch. This recommendation concerns individual agencies' uses of their own Web sites to promote e-rulemaking and other agency initiatives and activities.

The proliferation of competing demands for communication makes rulemaking only one of the many priorities under consideration when agency officials make decisions about the design and functionality of their Web sites. As a result, there is a risk agencies will make Web site design decisions without giving due consideration to enhancing public participation in rulemaking through the use of electronic media. Indeed, an emerging approach to government Web site design focuses on giving prominence to ''top tasks'' sought by members of the public. However, an exclusive focus on current Web site use or demand may push information about rulemaking, and online opportunities for public commenting on rulemaking, far into the background—simply because the volume of Web site traffic generated by online government services performed by many agencies dwarfs the traffic related to rulemaking. Rulemaking may never be a ''top task'' in terms of the numbers of Web users, but in a democracy, few tasks compare in significance with the ability of government agencies to create binding law backed up with the threat of civil, and even criminal, penalties.

The Conference studied the Web sites and e-rulemaking initiatives of 90 agencies, each of which had reported completing an average of two or more rulemakings during each six-month period covered by the semiannual Unified Regulatory Agenda in 2009–2010. The study reveals that individual agencies have used Web sites in innovative ways to promote e-rulemaking. For example, agencies have developed portions of their own Web sites to support rulemaking efforts. Some agencies have specialized Web pages that allow users to submit and view comments on all of the agency's open rulemakings, or to view information on the status of their priority rulemakings. Links from some agency home pages make rulemaking information easy to locate. Other agencies have innovated by using social media to get the public involved in the rulemaking process from the earliest stages. These social media tools include blogs, Facebook, Twitter, IdeaScale, and other online discussion platforms.

Agency innovations can improve the availability of information and engage the public in rulemaking activities, often at no great cost to the government. A cost-effective technique to improve the availability of rulemaking information on individual agency Web sites leverages available centralized data sources. An example of this approach is found on the Web sites of many members of Congress, who provide a link on their home page to a page listing all the legislation the member sponsors. The list is not drawn from the Member's own database, but rather extracts information from a THOMAS database of all legislation currently pending in Congress. Regulations.gov makes a similar tool available to agencies, thus enabling them to provide easy access to complete and up-to-date rulemaking information without the necessity of maintaining the underlying database.

Agency innovations can also further well-established policies in favor of broadening access by groups that have historically faced barriers to participating effectively in rulemaking. In 2000, President Clinton issued Executive Order 13166 in an effort ''to improve access to * * * programs and activities for persons who, as a result of national origin, are limited in their English proficiency.'' [2] The Office of Management and Budget's policy on agency Web sites reminds agencies that they are ''required to provide appropriate access for people with limited English proficiency.'' [3] Similarly, until high-speed Internet access is pervasive across all strata of society, any agency that makes full public access and participation a priority should explore low bandwidth options, while also remembering that some members of the public do not have Internet access at all. In addition, continued vigilance is needed to ensure that agency Web sites and other electronic media will be as accessible to individuals with disabilities as they are to other users. This accessibility may grow even more challenging in the wake of new techniques for organizing a large volume of information on a Web site.

Individual agency Web sites can also be used to address discrete deficiencies in the availability of critical rulemaking information. One such problem is that many

[34] In 2004, the Government Accountability Office issued a report suggesting that a number of agencies had improperly classified individuals possessing expertise in a particular field of study as representatives on the theory that they ''represented'' that discipline. U.S. Gov't Accountability Office, GAO–04–328, Additional Guidance Could Help Agencies Better Ensure Independence & Balance 5 (2004). Since that time, the Office of Government Ethics has issued a number of memoranda to Designated Agency Ethics Officials clarifying the distinction between SGEs and representatives and advising agencies to appoint persons selected to provide independent, expert advice as SGEs. See generally U.S. Office of Government Ethics, Memorandum from Marilyn L. Glynn, General Counsel, to Designated Agency Ethics Officials Regarding Federal Advisory Committee Appointments (Aug. 18, 2005); U.S. Office of Government Ethics, Memorandum to Designated Agency Ethics Officials (July 19, 2004). The Office of Government Ethics also enhanced its examination of agencies' classification of committee members when conducting an ethics program review. United States Office of Government Ethics, Ethics Program Review Guidelines 40–45 (Oct. 2004).

[35] The Office of Government Ethics has issued guidance describing the type of information that a waiver should contain. U.S. Office of Government Ethics, Memorandum from Robert I. Cusick, Director, to Designated Agency Ethics Officials Regarding Waivers under 18 U.S.C. 208 (Feb. 23, 2007).

[36] GSA has negotiated government-specific terms of service for a number of technology products and maintains these terms for agency use on the web at ''apps.gov''; the site includes several free webcasting programs that agencies should consider using for providing webcasts of committee meetings.

[1] Administrative Conference of the United States, Recommendation 2011–1, Legal Considerations in e-Rulemaking 1 (quoting Cary Coglianese, *E-Rulemaking: Information Technology and the Regulatory Process 2* (2004) (working paper), *http://lsr.nellco.org/upenn_wps/108*).

[2] Exec. Order No. 13166, 65 FR 50121, 50121 (Aug. 11, 2000).

[3] OMB Deputy Director for Management Clay Johnson, Memorandum on Policies for Federal Agency Public Web sites (Dec. 17, 2004), available at *http://www.whitehouse.gov/sites/default/files/omb/memoranda/-fy2005/m05-04.pdf.*

agencies' policies relating to comments [4] cannot be found easily by the public. Even on Web pages dedicated to the submission of comments, a comment policy is not always visible to the user. A second difficulty arises with old rulemaking materials, which need to be preserved for archival, historical, and legal reasons, but are often difficult for users to find and search. A third issue is that agency Web sites are uniformly easy to locate, but do not always include features to ensure that essential information, particularly about rulemaking, is broadly accessible to the public.

The Conference believes that, as a general matter, agencies should continue to improve their Web sites to facilitate public accessibility and engagement so as to achieve the promise of e-rulemaking. This recommendation is intended to broadly encourage agencies to develop and use innovative, cost-effective ways to use individual Web sites to solve some of the discrete problems identified above and generally engage the public in rulemaking.

**Recommendation**

*Increasing the Visibility of Rulemakings*

1. Agencies should design and manage their presence on the Web (including the Web as accessed by mobile devices) with rulemaking participation in mind.[5]

2. Each agency should provide access to a one-stop location, which should be easily reachable from its home page, for all of its pending rulemakings, highlighting those that are currently open for comment. This may take the form of providing pinpoint links to specific information about the agency's rulemakings available on Web sites such as Regulations.gov, RegInfo.gov, **Federal Register** 2.0, and so forth, which would allow the agency to efficiently enable the public to retrieve all available information the federal government has about its ongoing rulemakings.

3. Agencies should consider, in appropriate rulemakings, using social media tools to raise the visibility of rulemakings. When an agency sponsors a social media discussion of a rulemaking, it should provide clear notice as to whether and how it will use the discussion in the rulemaking proceeding.

**Making Comment Policies Easy To Locate**

4. Agencies should display or link to their comment policies in prominent or multiple locations on their Web sites.

**Improving Access to Agency Web Sites**

5. Agencies should continue to improve the accessibility of their Web sites to members of the public.

6. Agencies should take steps to improve access for persons who have faced barriers to effectively participating in rulemaking in the past, including non-English speakers, users of low-bandwidth Internet connections, and individuals with disabilities.

**Ensuring Access to Materials From Completed Rulemakings**

7. Agencies should develop systematic protocols to enable the online storage and retrieval of materials from completed rulemakings. Such protocols should, to the extent feasible, ensure that Web site visitors using out-of-date URLs are automatically redirected to the current location of the material sought.

**Periodically Evaluating Agency Use of the Internet in Rulemaking**

8. Agencies should periodically evaluate their use of the Internet in rulemaking and should continue to innovate and experiment with new and cost-effective ways to engage the public in rulemaking via the Internet.

[FR Doc. 2012–621 Filed 1–13–12; 8:45 am]

**BILLING CODE 6110–01–P**

[4] *See generally* Administrative Conference of the United States, Recommendation 2011–2, Rulemaking Comments (recommending that agencies establish and publish certain policies governing rulemaking comments).

[5] Throughout this recommendation, the term ''rulemaking'' includes, but is not limited to, the following proceedings, providing an agency is seeking or intends to seek public comment on them: planned rulemakings that have appeared in the Unified Agenda, rules at the advanced notice of proposed rulemaking stage, and proposed nonlegislative rules. The recommendation also extends to guidance documents on which an agency is seeking or intends to seek public comment.

## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

### Request for Extension and Revision of a Currently Approved Information Collection

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (PRA), this notice announces the Grain Inspection, Packers and Stockyards Administration's (GIPSA) intention to request that the Office of Management and Budget (OMB) approve a 3-year extension of and revision to a currently approved information collection of a voluntary customer survey concerning the delivery of official inspection, grading, and weighing services authorized under the United States Grain Standards Act and the Agricultural Marketing Act of 1946. This voluntary survey gives customers that are primarily in the grain, oilseed, rice, lentil, dry pea, edible bean, and related agricultural commodity markets an opportunity to provide feedback on the quality of services they receive and provides GIPSA with information on new services that customers wish to receive. Customer feedback assists GIPSA's Federal Grain Inspection Service (FGIS) with enhancing the value of services and service delivery provided by the official inspection, grading, and weighing system.

**DATES:** Written comments must be submitted on or before March 19, 2012.

**ADDRESSES:** We invite you to submit comments on this notice. You may submit comments by any of the following methods:

- *Internet:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail, hand deliver, or courier:* Tess Butler, GIPSA, USDA, 1400 Independence Avenue SW., Room 2530–S, Washington, DC 20250–3604.
- *Fax:* (202) 690–2173.

*Instructions:* All comments should be identified as ''FGIS customer service survey'' and should reference the date and page number of this issue of the **Federal Register**. Information collection package and other documents relating to this action will be available for public inspection in the above office during regular business hours. All comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)). Please call GIPSA's Management and Budget Services Staff at (202) 720–7486 to arrange to inspect documents.

**FOR FURTHER INFORMATION CONTACT:** Idelisse Rodriguez, Program Analyst, Office of the Deputy Administrator, email address: *Idelisse.Rodriguez@usda.gov,* telephone (202) 720–5688.

**SUPPLEMENTARY INFORMATION:** Congress enacted the United States Grain Standards Act (USGSA) (7 U.S.C. 71–87k) and the Agricultural Marketing Act (AMA) (7 U.S.C. 1621–1627) to facilitate the marketing of grain, oilseeds, pulses, rice, and related commodities. These statutes provide for the establishment of standards and terms which accurately and consistently measure the quality of grain and related products, provide for uniform official inspection and weighing, provide regulatory and service responsibilities, and furnish the framework for commodity quality improvement incentives to both domestic and foreign buyers. The GIPSA's Federal Grain Inspection Service (FGIS) establishes policies, guidelines, and regulations to carry out the objectives of the USGSA and the AMA. Regulations appear at 7 CFR 800, 801, and 802 for the USGSA and 7 CFR 868 for the AMA.

The USGSA, with few exceptions, requires official inspection of export grain sold by grade. Official services are provided, upon request, for grain in domestic commerce. The AMA

authorizes similar inspection and weighing services, upon request, for rice, pulses, flour, corn meal, and certain other agricultural products. There are approximately 9,000 current users of the official inspection, grading, and weighing programs. These customers are located nationwide and represent a diverse mixture of small, medium, and large producers, merchandisers, processors, exporters, and other financially interested parties. These customers request official services from an FGIS Field Office; delegated, designated, or cooperating State office; or designated private agency office.

The goal of FGIS and the official inspection, grading, and weighing system is to provide timely, high quality, accurate, consistent, and professional service that facilitates the orderly marketing of grain and related commodities. To accomplish this goal and in accordance with Executive Order 12862, FGIS is seeking feedback from a representative sample of customers to evaluate the services provided by the official inspection, grading, and weighing programs.

*Title:* Survey of Customers of the Official Inspection, Grading, and Weighing Programs (Grain and Related Commodities).

*OMB Number:* 0580–0018.

*Expiration Date of Approval:* November 30, 2012.

*Type of Request:* Extension and revision of a currently approved information collection.

*Abstract:* The collection of information using a voluntary customer service survey will provide a representative sample of paying customers of FGIS and the official inspection, grading, and weighing services an opportunity to evaluate, on a scale of one to five, the timeliness, cost-effectiveness, accuracy, consistency, and usefulness of those services and results, and the professionalism of employees. Customers will also have an opportunity to provide additional comments or indicate what new or existing services they would use if such services were offered or available.

FGIS needs to maintain a formal means of determining customers' expectations or the quality of official services that are delivered. To collect this information, FGIS would continue to distribute, over a 3-year period, an annual voluntary customer service survey to customers requesting official inspection, grading, and weighing services. FGIS would survey a statistically random sample of approximately 1100 customers per year representing the customers' population as a whole. The survey instrument would continue to consist of nine questions only; subsequent survey instruments would be tailored to earlier responses. FGIS would make available to our customers an electronic version of the survey. The information collected from the survey would permit FGIS to gauge customers' satisfaction with existing services, compare results from year to year, and determine what new services customers' desire. The customer service survey consists of one document containing questions about timeliness, cost effectiveness, accuracy, consistency, usefulness of services and results, and the professionalism of employees. Some examples of survey questions include the following: ''I receive results in a timely manner,'' ''Official results are accurate,'' and ''Inspection personnel are knowledgeable.'' These survey questions would be assessed using a one to five rating scale with responses ranging from ''strongly disagree'' to ''strongly agree'' or ''no opinion.'' Customers would also be asked about the products for which they primarily request service, and what percentage of their product is officially inspected. Customers can also provide additional comments or request new or existing services on the survey. Space would be added on the revised survey for the customer to provide its email address should it wish to receive future surveys electronically.

By obtaining information from customers through a voluntary customer service survey, FGIS believes that it will continue to improve services and service delivery of its official inspection, grading, and weighing programs that meets or exceeds customer expectations.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 10 minutes (*i.e.,* 0.167 hours) per response.

*Respondents:* The primary respondents will be a statistically random sample of direct paying customers of FGIS and the official inspection, grading, and weighing programs.

*FY 2012: Estimated Number of Respondents:* 605 (i.e., 1100 total customers times 55% response rate = 605).

*Frequency of Responses:* 1.

*Estimated Annual Burden:* 101 hours. (605 responses times 0.167 hours/response = 101 hours).

*FY 2013: Estimated Number of Respondents:* 616. (*i.e.,* 1100 total customers times 56% response rate = 616).

*Frequency of Responses:* 1.

*Estimated Annual Burden:* 103 hours. (616 responses times 0.167 hours/response = 103 hours).

*FY 2014: Estimated Number of Respondents:* 627 (*i.e.,* 1100 total customers times 57% response rate = 627).

*Frequency of Responses:* 1.

*Estimated Annual Burden:* 105 hours. (627 responses times 0.167 hours/response = 105 hours).

As required by the PRA (44 U.S.C. 3506(c)(2)(A)) and its implementing regulations (5 CFR 1320.8(d)(1)(i)), GIPSA specifically requests comments on: (1) 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) the accuracy of GIPSA's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

**J. Dudley Butler,**

*Administrator, Grain Inspection, Packers and Stockyards Administration.*

[FR Doc. 2012–707 Filed 1–13–12; 8:45 am]

**BILLING CODE 3410–EN–P**

## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

### Request for Extension and Revision of a Currently Approved Information Collection

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces our intention to request a 3-year extension and revision of a currently approved information collection for ''Export Inspection and Weighing Waiver for High Quality Specialty Grain Transported in Containers.''

**DATES:** We will consider comments that we receive by March 19, 2012.

**ADDRESSES:** We invite you to submit comments on this notice by any of the following methods:

- *Internet:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- Mail, hand deliver, or courier to Dexter Thomas, GIPSA, USDA, 1400 Independence Avenue SW., Room 2530–S, Washington, DC 20250–3604.
- Fax to (202) 690–2173.

*Instructions:* All comments should be identified as ''High Quality Specialty Grain Exported in Containers Information Collection,'' and should reference to the date and page number of this issue of the **Federal Register**. The information collection package, public comments, and other documents relating to this action will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)). Please call GIPSA's Management and Budget Services at (202) 720–7486 to arrange a viewing of these documents.

**FOR FURTHER INFORMATION CONTACT:** For information regarding the collection of information activities and the use of the information, contact Candace Hildreth at (202) 720–0203.

**SUPPLEMENTARY INFORMATION:** Congress enacted The United States Grain Standards Act (USGSA) (7 U.S.C. 71–87k) to facilitate the marketing of grain in interstate and foreign commerce. The USGSA, with few exceptions, requires that all grain shipped from the United States must be officially inspected and officially weighed. The USGSA authorizes the Department of Agriculture to waive the mandatory inspection and weighing requirements of the USGSA in circumstances when the objectives of the USGSA would not be impaired.

The Grain Inspection, Packers and Stockyards Administration (GIPSA) amended section 7 CFR 800.18 of the regulations to waive the mandatory inspection and weighing requirements of the USGSA for high quality specialty grain exported in containers. GIPSA established this waiver to facilitate the marketing of high quality specialty grain exported in containers. GIPSA determined that this action was consistent with the objectives of the USGSA and would promote the continuing development of the high quality specialty grain export market.

To ensure that exporters of high quality specialty grain complied with this waiver, GIPSA required exporters to maintain records generated during the normal course of business that pertain to these shipments and make these documents available to GIPSA upon request for review or copying purposes (76 FR 45397). These records shall be maintained for a period of 3 years. This information collection requirement is essential to ensure that exporters who ship high quality specialty grain in containers comply with the waiver provisions. GIPSA does not require exporters of high quality specialty grain to complete and submit new Federal government record(s), form(s), or report(s).

*Title:* Export Inspection and Weighing Waiver for High Quality Specialty Grain Transported in Containers.

*OMB Number:* 0580–0022.

*Expiration Date of Approval:* May 31, 2012.

*Type of Request:* Extension and revision of a currently approved information collection.

*Abstract:* GIPSA amended the regulations under the USGSA to waive the mandatory inspection and weighing requirements for high quality specialty grain exported in containers. GIPSA established this waiver to facilitate the marketing of high quality specialty grain exported in containers. To ensure compliance with this wavier, GIPSA required these exporters to maintain records generated during their normal course of business that pertain to these shipments and make these documents available to GIPSA upon request, for review and copying purposes.

**Grain Contracts**

*Estimate of Burden:* Public reporting and recordkeeping burden for maintaining contract information averages 6.0 hours per exporter.

*Respondents:* Exporters of high quality specialty grain in containers.

*Estimated Number of Respondents:* 80.

*Estimated Number of Respondents per Request:* 1.

*Estimated Total Burden on Respondents:* 480 Hours.

*Estimated Total Cost:* $2,640.

*Comments:* Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) 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; (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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

**J. Dudley Butler,**

*Administrator, Grain Inspection, Packers and Stockyards Administration.*

[FR Doc. 2012–711 Filed 1–13–12; 8:45 am]

**BILLING CODE 3410–KD–P**

## DEPARTMENT OF AGRICULTURE

### National Institute of Food and Agriculture

### Notice of Intent To Extend a Currently Approved Information Collection

**AGENCY:** National Institute of Food and Agriculture, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations at (5 CFR part 1320), this notice announces the National Institute of Food and Agriculture (NIFA) intention to request approval for an extension of the currently approved information collection for the NIFA proposal review process.

**DATES:** Written comments on this notice must be received by March 19, 2012, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

**ADDRESSES:** Written comments concerning this notice and requests for copies of the information collection may be submitted by any of the following methods: Email: *gmendez@nifa.usda.gov;* Fax: 202–720–0857; Mail: Office of Information Technology (OIT), NIFA, USDA, STOP 2216, 1400 Independence Avenue SW, Washington, DC 20250–2216.

**FOR FURTHER INFORMATION CONTACT:** Gidel Mendez, eGovernment Program Leader; Email: *gmendez@nifa.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* NIFA Proposal Review Process.

*OMB Number:* 0524–0041.

*Expiration Date of Current Approval:* 05/31/2012.

*Type of Request:* Extension of a currently approved information collection for three years.

*Abstract:* The National Institute of Food and Agriculture (NIFA) is responsible for performing a review of proposals submitted to NIFA

competitive award programs in accordance with section 103(a) of the Agricultural Research, Extension, and Education Reform Act of 1998, 7 U.S.C. 7613(a). Reviews are undertaken to ensure that projects supported by NIFA are of high quality, and are consistent with the goals and requirements of the funding program.

Proposals submitted to NIFA undergo a programmatic evaluation to determine worthiness of Federal support. The evaluations consist of a peer panel review and may also entail an assessment by Federal employees and electronically submitted (ad-hoc) reviews in the Peer Review System.

*Need and Use of the Information:* The information collected from the evaluations is used to support NIFA grant programs. NIFA uses the results of the proposal evaluation to determine whether a proposal should be declined or recommended for award. When NIFA has rendered a decision, copies of reviews, excluding the names of the reviewers, and summaries of review panel deliberations, if any, are provided to the submitting Project Director.

Given the highly technical nature of many of these proposals, the quality of the peer review greatly depends on the appropriate matching of the subject matter of the proposal with the technical expertise of the potential reviewer. In order to obtain this information, an electronic questionnaire is used to collect information about potential panel and ad-hoc reviewers. If the reviewer is already in our database, the questionnaire asks potential reviewers to update their basic biographical information including address, contact information, professional expertise, and their availability to review for NIFA in the future. If the reviewer is new they are prompted to complete the questionnaire. This information has been invaluable in the NIFA review process, which has been recognized by the grantee and grantor community for its quality.

The applications and associated materials made available to reviewers, as well as the discussions that take place during panel review meetings are strictly confidential and are not to be disclosed to or discussed with anyone who has not been officially designated to participate in the review process. While each panelist certifies at the time of preparing a review they do not have a conflict-of-interest with a particular application and will maintain its confidentiality in the Peer Review System, a certification of their intent at the time of the panel review proceedings is collected to emphasize and reinforce confidentiality not only of applications and reviews but also panel discussions. On the Conflict-of-Interest and Confidentiality Certification Form, the panelist affirms they understand the conflict-of-interest guidelines and will not be involved in the review of the application(s) where a conflict exists. The panelist also affirms their intent to maintain the confidentiality of the panel process and not disclose to another individual any information related to the peer review or use any information for personal benefit.

*Estimate of Burden:* NIFA estimates that anywhere from one hour to twenty hours may be required to review a proposal. It is estimated that approximately five hours are required to review an average proposal. Each proposal receives an average of four reviews, accounting for an annual burden of 20 hours. NIFA estimates it receives 4,600 competitive applications each year. The total annual burden on reviewers is 92,000 hours. NIFA estimates that the potential reviewer questionnaire takes an estimated 10 minutes to complete. The database consists of approximately 50,000 reviewers. The total annual burden of questionnaire is 8,330 hours. NIFA estimates that the potential Conflict-of-Interest and Confidentiality Certification Form takes an estimated 10 minutes to complete. The agency has approximately 1,000 panelists each year. The total annual burden of the certification form is 167 hours. The total annual burden of the component of the entire review process is 100,497 hours.

*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 will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on 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.

All responses to this notice will be summarized and included in the request to OMB for approval. All comments will become a matter of public record.

Done in Washington, DC this 9th day of January 2012.

**Catherine E. Woteki,**

*Under Secretary, Research, Education, and Economics.*

[FR Doc. 2012–629 Filed 1–13–12; 8:45 am]

**BILLING CODE 3410–22–P**

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### Dairyland Power Cooperative: CapX 2020 Hampton-Rochester-La Crosse Transmission Line Project

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice of intent to extend public comment period for a Draft Environmental Impact Statement.

**SUMMARY:** Notice is hereby given that the Rural Utilities Service (RUS) is extending the public comment period for the Draft Environmental Impact Statement (EIS) to meet its responsibilities under the National Environmental Policy Act (NEPA) and 7 CFR 1794 related to providing financial assistance to Dairyland Power Cooperative (Dairyland) for its share in the construction of a proposed 345-kilovolt (kV) transmission line and associated infrastructure between Hampton, Minnesota and the La Crosse area in Wisconsin (the proposed project). Dairyland is participating in the proposed project with a number of other utilities (Applicants).

The purpose of the proposed project is to: (1) Improve community reliability of the transmission system in Rochester, Winona, La Crosse, and the surrounding areas, which include areas served by Dairyland; (2) improve the regional reliability of the transmission system; and (3) increase generation outlet capacity.

**DATES:** Written comments on this Draft EIS will be accepted 30 days following the publication of this notice in the **Federal Register**. Written comments should be sent to Stephanie A. Strength, see the Address portion of this notice.

**ADDRESSES:** A copy of the Draft EIS may be viewed online at the following Web site: *http://www.rurdev.usda.gov/UWP–CapX2020–Hampton-Rochester-LaCrosse.html* and at the following repositories:

Alma Public Library, 312 North Main Street Alma, WI 54610, Phone: 608–685–3823.

Arcadia Public Library, 406 E Main Street Arcadia, WI 54612, Phone: 608–323–7505.

Campbell Library, 2219 Bainbridge Street La Crosse, WI 54603, Phone: 608–783–0052.
Cannon Falls Library, 306 West Mill Street Cannon Falls, MN 55009, Phone: 507–263–2804.
Dairyland Power Cooperative, 500 Old State Highway 35, Alma, WI 54610, Phone: 608–685–4497.
Galesville Public Library, 16787 South Main Street Galesville, WI 54630, Phone: 608–582–2552.
Holmen Area Library, 103 State Street Holmen, WI 54636, Phone: 608–526–4198.
Kenyon Public Library, 709 2nd Street Kenyon, MN 55946, Phone: 507–789–6821.
Riverland Energy Cooperative, N28988 State Road 93, Arcadia, WI 54612, Phone: 608–323–3381.
Rochester Public Library, 101 2nd Street SE., Rochester, MN 55904, Phone: 507–328–2300.
Shirley M. Wright Memorial Library, 11455 Fremont Street Trempealeau, WI 54661, Phone: 608–534–6197.
Tri-County Electric, 31110 Cooperative Way, Rushford, MN 55971, Phone: 507–864–7783.
La Crosse Public Library, 800 Main Street La Crosse, WI 54601, Phone: 608–789–7100.
Onalaska Public Library, 741 Oak Avenue South, Onalaska, WI 54650, Phone: 608–781–9568.
People's Cooperative Services, 3935 Hwy 14 E, Rochester, MN 55903, Phone: 507–288–4004.
Plainview Public Library, 345 1st Avenue Northwest, Plainview, MN 55964, Phone: 507–534–3425.
Van Horn Public Library, 115 SE 3rd Street Pine Island, MN 55963, Phone: 507–356–8558.
Xcel Energy, 5050 Service Drive Winona, MN 55987, Phone: 507–457–1236.
Xcel Energy, 1414 West Hamilton Avenue Eau Claire, WI 54701, Phone: 715–839–2621.
Zumbrota Public Library, 100 West Avenue Zumbrota, MN 55992, Phone: 507–732–5211.

**FOR FURTHER INFORMATION CONTACT:** To obtain copies of the Draft EIS, to comment on the Draft EIS, or for further information, contact: Stephanie Strength, Environmental Protection Specialist, USDA, Rural Utilities Service, 1400 Independence Avenue SW., Room 2244, Stop 1571, Washington, DC 20250–1571, or email *stephanie.strength@wdc.usda.gov.*

**SUPPLEMENTARY INFORMATION:** The U.S. Army Corps of Engineers (USACE) and the U.S. Fish and Wildlife Service (USFWS) are participating in the EIS as cooperating agencies, with RUS as the lead Federal agency. The Draft EIS addresses the construction and operation of the Proposed project, which, in addition to the 345-kV transmission line and associated infrastructure, includes 161-kV transmission lines in the vicinity of Rochester, Minnesota; construction of two new and expansion of three substations, with a total transmission line length of approximately 150 miles. Counties through which the proposed project may pass include Dakota, Goodhue, Wabasha, and Olmsted in Minnesota, and La Crosse, Trempealeau, and Buffalo in Wisconsin. The Draft EIS also addresses rebuilding an existing Dairyland 39-mile long 161 kV line that extends from Alma to north La Crosse, Wisconsin, which may be co-located in whole or in part with the 345-kV line.

Among the alternatives addressed in the Draft EIS is the No Action alternative, under which the proposed project would not be undertaken. Additional alternatives addressed in the Draft EIS include route alternatives also considered in the EISs prepared for the Proposed project by the states of Minnesota and Wisconsin. RUS has carefully studied public health and safety, environmental impacts, and engineering aspects of the Proposed project.

RUS used input provided by government agencies, private organizations, and the public in the preparation of the Draft EIS. RUS will prepare a Final EIS that considers all comments received on the Draft EIS. Following the 30-day comment period for the Final EIS, RUS will prepare a Record of Decision (ROD). Notices announcing the availability of the Final EIS and the ROD will be published in the **Federal Register** and in local newspapers.

In accordance with Section 106 of the National Historic Preservation Act and its implementing regulation, ''Protection of Historic Properties'' (36 CFR part 800) and as part of its broad environmental review process, RUS must take into account the effect of the proposed project on historic properties. 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. 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.

The proposed project involves unavoidable impacts to wetlands and floodplains; this Notice of Availability also serves as a statement of no practicable alternatives to impacts on wetlands and floodplains, in accordance with Executive Orders 11990 and 11988, respectively (see Draft EIS Sections 3.2 and 3.5).

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal, State and local environmental laws and regulations, and completion of the environmental review requirements as promulgated in RUS' Environmental Policies and Procedures (7 CFR part 1794).

**Nivin Elgohary,**

*Assistant Administrator, Electric Programs, Rural Utilities Service.*

[FR Doc. 2012–705 Filed 1–13–12; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 3–2012]**

### Foreign-Trade Zone 18—San Jose, CA, Application for Subzone, Tesla Motors, Inc. (Electric Passenger Vehicles), Palo Alto and Fremont, CA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of San Jose, California, grantee of FTZ 18, requesting special purpose subzone status for the electric passenger-vehicle manufacturing facilities of Tesla Motors, Inc. (Tesla), located in Palo Alto and Fremont, California. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 10, 2012.

The Tesla facilities (currently employing over 1,000 workers) consist of two sites: Site 1 (25.2 acres)—corporate headquarters, research and development, and manufacturing plant, located at 3500 Deer Creek Road, Palo Alto, California; and, Site 2 (210 acres)—manufacturing plant, located at 45550 Fremont Boulevard, Fremont, California. The facilities are used to manufacture electric passenger vehicles and related components, including battery packs, powertrain systems, and electronic modules (up to 200,000 units of each per year) for commercial sale. Components and materials sourced from abroad (representing 16 to 55% of the value of the finished products) include: Oils, greases, fluids, refrigerants, adhesives, sealants, anti-freeze/coolants, alcohols, plastic tubes/pipes/hoses/

fittings, foam tape/sheets/film, decals/ballotini, labels, knobs, handles, motors, pump parts, mechanical seals, plastic o-rings/clips, rubber o-rings/seals/grommets/washers/bushings and hoses, windshield wiper blades, floor mats, mirrors, glass, windshields and related trim pieces, shafts, flanges, base metal mountings, locks, motor and shaft couplings, pumps, compressors, body moldings and trim, latches, HVAC components, blower motors, valves, fasteners, electric motors, lithium-ion batteries, electrical assemblies, lamps and lighting equipment, electronic components, antennas, sensors, control modules, cables, switches, wiring harnesses, audio/video systems, loudspeakers, body panels, suspension components, shock absorbers, anti-roll bars, subframes assemblies, steering gear, carpet sets, interior trim, consoles, instruments, brake systems and parts, electric powertrain components, road wheels, tires, couplings, shafts, seats, coatings, paints, and pedals (duty rates range from free to 8.5%, 1.3¢/kg+5.7%).

FTZ procedures could exempt Tesla from customs duty payments on the foreign components used in export production. The company anticipates that 40 to 65 percent of the facilities' shipments will be exported. On its domestic sales, Tesla would be able to choose the duty rates during customs entry procedures that apply to finished electric passenger vehicles, battery packs, powertrain components, and electronic modules (free–3.4%) for the foreign inputs noted above. FTZ designation would further allow Tesla to realize logistical benefits through the use of weekly customs entry procedures. Customs duties also could possibly be deferred or reduced on foreign status production equipment. Tesla would also be exempt from duty payments on foreign inputs that become scrap during the production process. The request indicates that the savings from FTZ procedures would help improve the facilities' international competitiveness.

In accordance with the Board's regulations, Pierre Duy of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 19, 2012. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 2, 2012.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Pierre Duy at *Pierre.Duy@trade.gov* or (202) 482–1378.

Dated: January 10, 2012.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2012–728 Filed 1–13–12; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Proposed Information Collection; Comment Request; Firearms Convention

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before March 19, 2012.

**ADDRESSES:** Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Larry Hall, BIS ICB Liaison, (202) 482–4895, *Lawrence.Hall@bis.doc.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

This collection implements certain provisions of the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms Ammunition, Explosives, and Other Related Materials (Firearms Convention). Sections 742.17 and 748.14 of the Export Administration Regulations (EAR) require exporters of certain firearms to Organization of American States (OAS) countries to obtain an Import Certificate from the government of the importing country. This alerts the OAS country of the proposed import and helps insure compliance with the Firearms Convention.

#### II. Method of Collection

Submitted electronically or on paper.

#### III. Data

*OMB Control Number:* 0694–0114.

*Form Number(s):* N/A.

*Type of Review:* Regular submission.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 970.

*Estimated Time per Response:* 30 minutes.

*Estimated Total Annual Burden Hours:* 485.

*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: January 10, 2012.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2012–619 Filed 1–13–12; 8:45 am]

**BILLING CODE 3510–33–P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee (SITAC)

will meet on January 31, 2012, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

**Agenda**

*Public Session*

1. Welcome and Introductions.

2. Remarks from the Bureau of Industry and Security Management.

3. Industry Presentations.

4. New Business.

*Closed Session*

5. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than January 24, 2012.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded before the meeting to Ms. Springer.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on September 27, 2011 pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § 10(d), that the portion of this meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information contact Yvette Springer on (202) 482–2813.

Dated: January 11, 2012.

**Yvette Springer,**

*Committee Liaison Officer.*

[FR Doc. 2012–726 Filed 1–13–12; 8:45 am]

**BILLING CODE 3510–JT–P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Technical Advisory Committees; Notice of Recruitment of Private-Sector Members

**SUMMARY:** Seven Technical Advisory Committees (TACs) advise the Department of Commerce on the technical parameters for export controls applicable to dual-use commodities and technology and on the administration of those controls. The TACs are composed of representatives from industry representatives, academic leaders and U.S. Government representing diverse points of view on the concerns of the exporting community. Industry representatives are selected from firms producing a broad range of goods, technologies, and software presently controlled for national security, non-proliferation, foreign policy, and short supply reasons or that are proposed for such controls, balanced to the extent possible among large and small firms.

TAC members are appointed by the Secretary of Commerce and serve terms of not more than four consecutive years. The membership reflects the Department's commitment to attaining balance and diversity. TAC members must obtain secret-level clearances prior to appointment. These clearances are necessary so that members may be permitted access to the classified information needed to formulate recommendations to the Department of Commerce. Each TAC meets approximately four times per year. Members of the Committees will not be compensated for their services.

The seven TACs are responsible for advising the Department of Commerce on the technical parameters for export controls and the administration of those controls within the following areas: Information Systems TAC: Control List Categories 3 (electronics), 4 (computers), and 5 (telecommunications and information security); Materials TAC: Control List Category 1 (materials, chemicals, microorganisms, and toxins); Materials Processing Equipment TAC: Control List Category 2 (materials processing); Regulations and Procedures TAC: The Export Administration Regulations (EAR) and Procedures for implementing the EAR; Sensors and Instrumentation TAC: Control List Category 6 (sensors and lasers); Transportation and Related Equipment TAC: Control List Categories 7 (navigation and avionics), 8 (marine), and 9 (propulsion systems, space vehicles, and related equipment) and Emerging Technology and Research Advisory Committee: (1) The identification of emerging technologies and research and development activities that may be of interest from a dual-use perspective; (2) the prioritization of new and existing controls to determine which are of greatest consequence to national security; (3) the potential impact of dual-use export control requirements on research activities; and (4) the threat to national security posed by the unauthorized exports of technologies.

To respond to this recruitment notice, please send a copy of your resume to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov*.

*Deadline:* This Notice of Recruitment will be open for one year from its date of publication in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Ms. Yvette Springer on (202) 482–2813.

Dated: January 11, 2012.

**Yvette Springer,**

*Committee Liaison Officer.*

[FR Doc. 2012–725 Filed 1–13–12; 8:45 am]

**BILLING CODE 3510–JT–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–601]**

### Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of the 2009–2010 Antidumping Duty Administrative Review and Rescission of Administrative Review, in Part

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On July 13, 2011, the Department of Commerce (''Department'') published the preliminary results and intent to rescind in part, of the 2009–2010 administrative review of the antidumping duty order on tapered roller bearings (''TRBs'') from the People's Republic of China (''PRC''). *See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China: Preliminary Results of the 2009–2010 Administrative Review of the Antidumping Duty Order and Intent To Rescind Administrative Review, in Part,* 76 FR 41207 (July 13, 2011)

(''*Preliminary Results''*). The period of review (''POR'') is June 1, 2009, through May 31, 2010.

This review covers four respondents: (1) Changshan Peer Bearing Company, Ltd. (''CPZ/SKF,'' also referred to as ''SKF''); (2) Tainshui Hailin Import and Export Corporation (''Hailin I&E''); [1] (3) Zhejiang Sihe Machine Co., Ltd. (''Sihe''); and (4) Xinchang Kaiyuan Automotive Bearing Co., Ltd. (''Kaiyuan'').

We invited interested parties to comment on our *Preliminary Results.* Based on our analysis of the comments received, we made certain changes to our margin calculations for CPZ/SKF. The final dumping margins for this review are listed in the ''Final Results Margins'' section below.

**DATES:** *Effective Date:* January 17, 2012.

**FOR FURTHER INFORMATION CONTACT:** Frances Veith or Demitrios Kalogeropoulos, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4295 or (202) 482–2623, respectively.

**Background**

On July 13, 2011, the Department published its *Preliminary Results* in the antidumping duty administrative review of TRBs from the PRC. On July 26, 2011, Hailin I&E submitted its response to the Department's post-preliminary supplemental questionnaire regarding successor-in-interest information. On August 1, 2011, CPZ/SKF submitted its response to the Department's post-preliminary supplemental questionnaire regarding affiliation and factors of production (''FOPs''). The Timken Company (''Petitioner'') submitted post-preliminary surrogate value data on August 2, 2011. On August 12, 2011, Petitioner submitted a request for a public and closed hearings. Petitioner submitted comments regarding Hailin I&E's response to the Department's post-preliminary supplemental questionnaire on August 22, 2011.

On November 9, 2011, Hailin I&E submitted its case brief and on November 12, 2011, Petitioner submitted its case brief. On November 16, 2011, Petitioner, Hailin I&E, SKF, Fremont International Trading Inc., d/b/a FIT Bearings (''FIT''), and Northfield Industries LLC (''Northfield''), U.S. importers of TRBs from the PRC, each submitted a rebuttal brief. On November 22, 2011, Petitioner withdrew its request for public and closed hearings.

On November 8, 2011, the Department published an extension of time for the final results to December 12, 2011. *See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review,* 76 FR 69241 (November 8, 2011). On December 7, 2011, the Department published a full extension of the deadline for the final results to January 9, 2012. *See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China: Notice of Second Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review,* 76 FR 76360 (December 7, 2011).

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs filed by parties in this review are addressed in the Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, regarding, ''Tapered Roller Bearings from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the 2009–2010 Administrative Review,'' dated concurrently with this notice (''Issues and Decision Memorandum''), which is hereby adopted by this notice. A list of the issues that parties raised and to which we responded in the Issues and Decision Memorandum follows as an appendix to this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in the public memorandum, which is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Services System (''IA ACCESS''). Access to IA ACCESS is available in the Central Records Unit room 7046 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

**Period of Review**

The POR is June 1, 2009, through May 31, 2010.

**Scope of the Order**

Imports covered by the order are shipments of tapered roller bearings and parts thereof, finished and unfinished, from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. These products are currently classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') item numbers 8482.20.00, 8482.91.00.50, 8482.99.15, 8482.99.45, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15 [2] and 8708.99.80.80.[3] Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Subsequent to the issuance of the order, we issued the following scope rulings:

On February 7, 2011, in response to an inquiry from Blackstone OTR LLC and OTR Wheel Engineering, Inc. (collectively, ''Blackstone OTR''), the Department ruled that Blackstone OTR's wheel hub assemblies are included in the scope of the order.[4]

On April 18, 2011, in response to an inquiry from New Trend Engineering Limited (''New Trend''), the Department ruled that: (1) New Trend's splined and non-splined wheel hub assemblies without antilock braking system (''ABS'') elements are included in the scope of the order; and (2) New Trend's wheel hub assemblies with ABS elements are also included in the scope of the order.[5]

On June 14, 2011, in response to an inquiry from Bosda International (USA) LLC (''Bosda''), the Department ruled

[1] Because the Department previously revoked the order with respect to TRBs exported by Hailin I&E that had been produced by Hailin Bearing Factory (''HB Factory'') this administrative review only covers TRBs exported by Hailin I&E that were produced by any manufacturer other than HB Factory.

[2] Effective January 1, 2007, the HTSUS subheading 8708.99.8015 is renumbered as 8708.99.8115. *See* United States International Trade Commission (''USITC'') publication entitled, ''Modifications to the Harmonized Tariff Schedule of the United States Under Section 1206 of the Omnibus Trade and Competitiveness Act of 1988,'' USITC Publication 3898 (December 2006) found at *http://www.usitc.gov.*

[3] Effective January 1, 2007, the HTSUS subheading 8708.99.8080 is renumbered as 8708.99.8180; *see id.*

[4] *See* Memorandum entitled ''Tapered Roller Bearings from the People's Republic of China: Final Scope Ruling on Blackstone OTR LLC and OTR Wheel Engineering, Inc.'s Wheel Hub Assemblies and TRBs,'' dated February 7, 2011.

[5] *See* Memorandum entitled, ''Tapered Roller Bearings from the People's Republic of China: Final Scope Ruling on New Trend Engineering Ltd.'s Wheel Hub Assemblies,'' dated April 18, 2011.

that Bosda's wheel hub assemblies are included in the scope of the order.[6]

On August 2, 2011, in response to an inquiry from DF Machinery International, Inc. (''DF Machinery''), the Department ruled that DF Machinery's agricultural hub units are included in the scope of the order.[7]

**Successor in Interest Determination and Rescission of the Administrative Review, in Part**

In the *Preliminary Results,* although we preliminarily determined Gansu Hailin Zhongke Science & Technology Co., Ltd. (''Hailin Zhongke'') to be the successor-in-interest to Hailin Bearing Factory (''HB Factory''), we stated that we intended to solicit additional information to further consider this issue. We also stated that we intended to solicit additional information to determine whether Hailin Zhongke was the sole producer of the merchandise sold by Hailin I&E to the United States during the POR.[8] For the final results, we continue to find that Hailin Zhongke is the successor-in-interest to HB Factory.[9] Additionally, because we determined that Hailin I&E had no exports to the United States during the POR of TRBs produced by any manufacturer other than HB Factory's successor-in-interest, we are rescinding the review with respect to Hailin I&E and any manufacturer other than HB Factory or its successor-in-interest, Hailin Zhongke. For further discussion of this issue *see* the Issues and Decision Memorandum at Comment 4.

**Changes Since the Preliminary Results**

Based on an analysis of the comments received, the Department has made certain changes to the margin calculation for CPZ/SKF. For the final results, the Department has made the following changes:

- We adjusted CPZ/SKF's steel bar consumption for all control numbers (''CONNUMs'') to account for CPZ/SKF's consumption of purchased finished forged components not reported in its consumption of steel bar.[10]
- We made the following changes to CPZ/SKF's FOP data for merchandise which CPZ/SKF sold during the POR and which was produced by Spungen-owned Peer Bearing Company, Ltd.—Changshan (''CPZ/PBCD''). As facts available, in accordance with section 776(a)(1) of the Tariff Act of 1930, as amended (the ''Act''), in our normal value calculation for CPZ/SKF: (1) We included consumption factors from CPZ/PBCD's prior period FOP database and third-country processing costs, where applicable; [11] (2) for those sales that did not have corresponding CPZ/PBCD prior period FOPs, we used CPZ/SKF's current period consumption factors and third-country processing costs, where applicable, for those same models;[12] (3) we valued the CPZ/PBCD-produced FOPs using current period surrogate values; and (4) for CPZ/PBCD's inputs (*i.e.,* steel bar, spacer, and coal), we used contemporaneous Indian import data, placed on the record by Petitioner,[13] specifically, the harmonized tariff schedule (''HTS'') subcategory 7228.30.29 (other bars and rods of other alloy steel), HTS subcategory 8482.99 (other ball or roller bearings), and HTS subcategory 2701.11 (anthracite coal), respectively.[14]

**Separate Rates**

In the *Preliminary Results,* we found that Sihe and Kaiyuan, separate-rate respondents, demonstrated their eligibility for separate-rate status. *See Preliminary Results,* 76 FR at 41210. For the final results, we also continue to find that the evidence placed on the record of this review by Sihe and Kaiyuan demonstrates both a *de jure* and *de facto* absence of government control, with respect to their respective exports of the merchandise under review, and, thus continue to find that they are eligible for separate-rate status. *See id.* As stated in the *Preliminary Results,* CPZ/SKF reported that it is wholly foreign-owned, and therefore, consistent with the Department's practice, a further separate rate analysis was not necessary to determine whether CPZ/SKF's export activities were independent from government control, and we preliminarily granted a separate rate to CPZ/SKF.[15] For the final results, we continue to find that CPZ/SKF is eligible for separate rate status.

**Margin for the Separate Rate Companies**

As discussed above, the Department continues to find that Sihe and Kaiyuan 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 based entirely on facts available.[16] Consistent with the Department's practice, as the separate rate, we have established a margin for Sihe and Kaiyuan based on the rate we calculated for the individually examined respondent, CPZ/SKF.

**Final Results Margins**

We determine that the following weighted-average dumping margins exist for the period June 1, 2009, through May 31, 2010:

TRBs FROM THE PRC

| Exporters | Weighted-average percent margin |
|---|---|
| Changshan Peer Bearing Co., Ltd | 10.03 |
| Zhejiang Sihe Machine Co., Ltd | 10.03 |
| Xinchang Kaiyuan Automotive Bearing Co., Ltd | 10.03 |

[6] *See* Memorandum entitled ''Tapered Roller Bearings from the People's Republic of China Final Scope Determination on Bosda's Wheel Hub Assemblies,'' dated June 14, 2011.

[7] *See* Memorandum entitled ''Tapered Roller Bearings and Parts Thereof, finished and Unfinished, from the People's Republic of China-Final Scope Determination on DF Machinery's Agricultural Hub Units,'' dated August 3, 2011.

[8] *See Preliminary Results,* 75 FR at 41151–52. *See also* Memorandum to Wendy Frankel, Director, AD/CVD Operations, Office 8, Import Administration, through Erin Begnal, Program Manager, AD/CVD Operations, Office 8, from Brendan Quinn, International Trade Analyst, AD/CVD Operations, Office 8, entitled ''Tapered Roller Bearings from the People's Republic of China: Preliminary Successor-In-Interest Determination,'' dated July 7, 2010.

[9] *See* Issues and Decision Memorandum at Comment 4.

[10] *See* Issues and Decision Memorandum at Comment 1.

[11] *See* Petitioner's submission pertaining to SKF, dated December 17, 2010.

[12] *See* the Department's Memorandum titled, ''2009–2010 Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Analysis of the Final Results Margin Calculation for Changshan Peer Bearing Company'' dated concurrently with this notice (''Analysis Memo'').

[13] *See* Petitioner's surrogate value submission dated January 14, 2011; *see also* Issues and Decision Memorandum at Comment 3.

[14] *See* the Department's Memorandum titled, ''Final Results of the 2009–2010 Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Surrogate Value Memorandum'' dated concurrently with this notice.

[15] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China,* 64 FR 71104, 71104–05 (December 20, 1999) (where the respondent was wholly foreign-owned and, thus, qualified for a separate rate).

[16] *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)).

**Assessment Rates**

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For assessment purposes, we calculated importer (or customer)-specific assessment rates for merchandise subject to this review. Where appropriate, we calculated an *ad valorem* rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total entered values associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting *ad valorem* rate against the entered customs values for the subject merchandise. Where appropriate, we calculated a per-unit rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting per-unit rate against the entered quantity of the subject merchandise. Where an importer (or customer)-specific assessment rate is *de minimis* (*i.e.,* less than 0.50 percent), the Department will instruct CBP to assess that importer (or customer's) entries of subject merchandise without regard to antidumping duties, in accordance with 19 CFR 351.106(c)(2). We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity at the PRC-wide rate of 92.84 percent. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

With regard to Hailin I&E, we continue to find that Hailin Zhongke (1) is the successor-in-interest to HB Factory; and (2) was Hailin I&E's sole supplier of TRBs sold to the United States during the POR. We will instruct CBP to liquidate Hailin I&E's entries of subject merchandise produced by Hailin Zhongke during the POR without regard to antidumping duties for any unliquidated entries after November 9, 2001.[17]

With regard to CPZ/SKF, we made a correction to the calculation of the preliminary, importer-specific assessment rate. For the *Preliminary Results* we calculated two importer-specific assessment rates for CPZ/SKF based on CPZ/SKF's U.S. sales database, which reported ''Peer/SKF'' and ''Peer/PBCD'' as distinct importers. The Department finds, however, that CPZ/SKF's sales under review were imported by a single importer.[18] Accordingly, the Department has corrected its assessment rate calculation to calculate one assessment rate using all of CPZ/SKF's sales during the POR.[19] The labels ''Peer/SKF'' and ''Peer/PBCD'' were relevant in the prior review to distinguish sales made by either CPZ/PBCD and CPZ/SKF which were separately under review as distinct respondents using the same importer, requiring the calculation of two assessment rates, one for each respondent.[20] In the instant review of CPZ/SKF, we find that, as in the prior review, a single assessment rate is appropriate for this respondent.

**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 from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For CPZ/SKF, Sihe, and Kaiyuan, the cash deposit rate will be their respective rates established in the final results of this review, except if the rate is zero or *de minimis* no cash deposit will be required; (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 92.84 percent; 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 exporters that supplied that non-PRC exporter. These deposit 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 Secretary'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 administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under the 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 the regulations and terms of an APO is a violation which is subject to sanction.

**Disclosure**

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

We are issuing and publishing the final results and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 9, 2012.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

**Appendix I**

Comment 1: Whether CPZ/SKF Accurately Reported its Steel Bar Consumption
Comment 2: Whether CPZ/SKF Accurately Reported its ME Purchases
Comment 3: Whether to Use Prior Period FOPs When Valuing Certain of CPZ/SKF's Sales
Comment 4: Whether Hailin I&E's Producer, Hailin Zhongke, is the Successor-in Interest to HB Factory
Comment 5: Whether to Reinstate the Order With Respect to Hailin I&E
Comment 6: Whether to Modify Hailin I&E's Liquidation Instructions
Comment 7: Whether the Department Incorrectly Merged Databases

[FR Doc. 2012–730 Filed 1–13–12; 8:45 am]

**BILLING CODE P**

[17] *See* Issues and Decision Memorandum at Comment 4.

[18] *See* CPZ/SKF's supplemental Section C questionnaire response dated March 14, 2011 at SC–7.

[19] *See* Analysis Memo.

[20] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of the 2008–2009 Antidumping Duty Administrative Review,* 76 FR 3086 (January 19, 2011) and accompanying issues and decision memorandum at Comment 7.

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Manufacturing Council

**AGENCY:** International Trade Administration, U.S. Department of Commerce.

**ACTION:** Notice of an opportunity to apply for membership on the Manufacturing Council.

**SUMMARY:** The Department of Commerce is currently seeking applications to fill six vacant positions on the Manufacturing Council (Council). The purpose of the Council is to advise the Secretary of Commerce on matters relating to the competitiveness of the U.S. manufacturing sector and to provide a forum for regular communication between Government and the manufacturing sector.

**ADDRESSES:** Please submit application information via email to *jennifer.pilat@trade.gov* or by mail to Jennifer Pilat, Office of Advisory Committees, Manufacturing Council Executive Secretariat, U.S. Department of Commerce, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230.

**DATES:** All applications must be received by the Office of Advisory Committees by close of business on February 9, 2012.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Pilat, Manufacturing Council Executive Secretariat, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4501, email: *jennifer.pilat@trade.gov*.

**SUPPLEMENTARY INFORMATION:** The Office of Advisory Committees is accepting applications for six vacant positions on the Council for the current two-year charter term that began April 8, 2010. The appointed members shall serve until September 30, 2012 and would be eligible for possible reappointment. The member will be selected, in accordance with applicable Department of Commerce guidelines, based on his or her ability to advise the Secretary of Commerce on matters relating to the U.S. manufacturing sector, to act as a liaison among the stakeholders represented by the membership and to provide a forum for those stakeholders on current and emerging issues in the manufacturing sector. The Council's membership shall reflect the diversity of American manufacturing by representing a balanced cross-section of the U.S. manufacturing industry in terms of industry sectors, geographic locations, demographics, and company size, particularly seeking the representation of small- and medium-sized enterprises. Based on the diversity of the manufacturing industry currently represented on the Council, the Department is particularly encouraging applicants from the high-tech or bio-tech manufacturing and alternative energy manufacturing sectors. Additional factors that may be considered in the selection of these Council members include each candidate's proven experience in promoting, developing and marketing programs in support of manufacturing industries, proven experience in job creation in the manufacturing sector, and proven abilities to manage manufacturing organizations. Given the duties and objectives of the Council, the Department particularly seeks applicants who are active manufacturing executives (Chief Executive Officer, President, or a comparable level of responsibility) and who are leaders within their local manufacturing communities and industries.

Each Council member serves as the representative of a U.S. entity in the manufacturing sector. For the purposes of eligibility, a U.S. entity is defined as a firm incorporated in the United States (or an unincorporated firm with its principal place of business in the United States) that is controlled by U.S. citizens or by another U.S. entity. An entity is not a U.S. entity if 50 percent plus one share of its stock (if a corporation, or a similar ownership interest of an unincorporated entity) is controlled, directly or indirectly, by non-U.S. citizens or non-U.S. entities.

Appointments to the Council will be made by the Secretary of Commerce. All Council members serve at the discretion of the Secretary of Commerce. Council members shall serve in a representative capacity, representing the views and interests of their particular subsector within the manufacturing sector. Council members are not Special Government Employees.

Council members receive no compensation for their participation in Council activities. Members participating in Council meetings and events are responsible for their travel, living and other personal expenses. Meetings are held regularly and not less than annually, usually in Washington, DC. Members are required to attend a majority of the Council's meetings. The current Council last convened for a briefing on September 29, 2011 in Washington, DC. The next meeting is scheduled to take place on January 20, 2012 in Washington, DC. See 76 FR 79655 (Dec. 22, 2011) for further details.

To be considered for membership, please provide the following:

1. Name and title of the individual requesting consideration.

2. A sponsor letter from the applicant on his or her entity's letterhead or, if the applicant is to represent an entity other than his or her employer, a letter from the entity to be represented, containing a brief statement of why the applicant should be considered for membership on the Council. This sponsor letter should also address the applicant's manufacturing-related experience, including any manufacturing trade policy experience.

3. The applicant's personal resume.

4. An affirmative statement that the applicant meets all eligibility criteria.

5. An affirmative statement that the applicant is not required to register as a foreign agent under the Foreign Agents Registration Act of 1938, as amended.

6. An affirmative statement that the applicant is not a federally registered lobbyist, and that the applicant understands that, if appointed, the applicant will not be allowed to continue to serve as a Council member if the applicant becomes a federally registered lobbyist.

7. Information regarding the control of the entity to be represented, including the governing structure and stock holdings, as appropriate, signifying compliance with the criteria set forth above.

8. The entity's size and ownership, product or service line and major markets in which the entity operates.

9. Please include all relevant contact information such as mailing address, fax, email, phone number, and support staff information where relevant.

Dated: January 5, 2012.

**Jennifer Pilat,**

*Executive Secretary, The Manufacturing Council.*

[FR Doc. 2012–731 Filed 1–13–12; 8:45 am]

**BILLING CODE 3510–DR–P**

## DEPARTMENT OF COMMERCE

### United States Patent and Trademark Office

### Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) 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:* United States Patent and Trademark Office (USPTO).

*Title:* Patent and Trademark Resource Centers Metrics.

*Form Number(s):* N/A.

*Agency Approval Number:* 0651–00xx.

*Type of Request:* New information collection.

*Burden:* 162 hours annually.

*Number of Respondents:* 324 responses per year (81 libraries reporting their metrics quarterly).

*Avg. Hours Per Response:* The USPTO estimates that it will take the Patent and Trademark Resource Center (PTRC) librarians approximately 30 minutes (0.50 hours) to submit the information in this collection, including the time to gather the necessary information, prepare the worksheet, and submit the completed request to the USPTO.

*Needs and Uses:* The USPTO has developed an electronic worksheet to gather the metrics required under 35 U.S.C. 2(a)(2). The PTRCs will use this electronic worksheet to provide quarterly metrics to the USPTO concerning the public's use of the member library's patent and trademark services and the member library's public outreach efforts. The USPTO will use the information in this collection to determine how to more effectively train the PTRC staff and to determine what types of new and different services the PTRCs should provide to the public in the future.

*Affected Public:* Non-profit organizations.

*Frequency:* Quarterly.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer: Nicholas A. Fraser, email: Nicholas_A._Fraser@omb.eop.gov.*

Once submitted, the request will be publicly available in electronic format through the Information Collection Review page at *http://www.reginfo.gov.*

*Paper copies can be obtained by:*

• *Email: InformationCollection@uspto.gov.* Include ''0651–00xx Patent and Trademark Resource Centers Metrics copy request'' in the subject line of the message.

• *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before February 16, 2012 to Nicholas A. Fraser, OMB Desk Officer, via email to *Nicholas_A._Fraser@omb.eop.gov,* or by fax to (202) 395–5167, marked to the attention of Nicholas A. Fraser.

Dated: January 11, 2012.

**Susan K. Fawcett,**

*Records Officer, USPTO, Office of the Chief Information Officer.*

[FR Doc. 2012–720 Filed 1–13–12; 8:45 am]

**BILLING CODE 3510–16–P**

## CONSUMER PRODUCT SAFETY COMMISSION

### Teleconference and Public Meeting of the Chronic Hazard Advisory Panel on Phthalates and Phthalate Substitutes

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice of meetings.

**SUMMARY:** The Consumer Product Safety Commission (''CPSC'' or ''Commission'') is announcing a teleconference and the seventh meeting of the Chronic Hazard Advisory Panel (CHAP) on phthalates and phthalate substitutes. The Commission appointed this CHAP on April 14, 2010, to study the effects on children's health of all phthalates and phthalate alternatives, as used in children's toys and child care articles, pursuant to section 108 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) (Pub. L. 110–314). The CHAP will discuss its progress toward completing its analysis of potential risks from phthalates and phthalate substitutes.

**DATES:** The teleconference will take place from 11 a.m. to 1 p.m. EST (15:00 to 17:00 GMT) on Wednesday, February 1, 2012. Interested members of the public may listen to the CHAP's discussion. Members of the public will not have the opportunity to ask questions, comment, or otherwise participate in the teleconference. Interested parties should contact the CPSC project manager, Michael Babich, by email (*mbabich@cpsc.gov*) for call-in instructions no later than Monday, January 30, 2012. An additional public meeting will be held on Wednesday, February 15 through Friday, February 17, 2012. The meeting will begin at approximately 9 a.m. each day. It will end at approximately 5 p.m. on Wednesday and Thursday, and at approximately 2 p.m. on Friday. There will not be any opportunity for public participation at this meeting.

*Registration and Webcast:* No registration is required for the teleconference on February 1, 2012. Please follow the instructions above regarding the call-in instructions for the teleconference. Members of the public who wish to attend the February 15–17 public meeting in person may register on the day of the meeting. This meeting will also be available live via webcast at: *http://www.cpsc.gov/Webcast.* Registration is not necessary to view the webcast.

**ADDRESSES:** The meeting will be held in the fourth floor hearing room at the Commission's offices at 4330 East West Highway, Bethesda, MD.

**FOR FURTHER INFORMATION CONTACT:** Michael Babich, Directorate for Health Sciences, Consumer Product Safety Commission, Bethesda, MD 20814; telephone (301) 504–7253; email *mbabich@cpsc.gov.*

**SUPPLEMENTARY INFORMATION:** Section 108 of the CPSIA permanently prohibits the sale of any ''children's toy or child care article'' containing more than 0.1 percent of each of three specified phthalates: Di- (2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), and benzyl butyl phthalate (BBP). Section 108 of the CPSIA also prohibits, on an interim basis, the sale of any ''children's toy that can be placed in a child's mouth'' or ''child care article'' containing more than 0.1 percent of each of three additional phthalates: diisononyl phthalate (DINP), diisodecyl phthalate (DIDP), and di-n-octyl phthalate (DnOP).

Moreover, section 108 of the CPSIA requires the Commission to convene a CHAP ''to study the effects on children's health of all phthalates and phthalate alternatives as used in children's toys and child care articles.'' The CPSIA requires the CHAP to complete an examination of the full range of phthalates that are used in products for children and:

• Examine all of the potential health effects (including endocrine-disrupting effects) of the full range of phthalates;

• Consider the potential health effects of each of these phthalates, both in isolation, and in combination with other phthalates;

• Examine the likely levels of children's, pregnant women's, and others' exposure to phthalates, based upon a reasonable estimation of normal and foreseeable use and abuse of such products;

• Consider the cumulative effect of total exposure to phthalates, both from children's products and from other sources, such as personal care products;

• Review all relevant data, including the most recent, best-available, peer-reviewed, scientific studies of these phthalates and phthalate alternatives that employ objective data-collection practices or employ other objective methods;

• Consider the health effects of phthalates not only from ingestion, but

also as a result of dermal, hand-to-mouth, or other exposure;

• Consider the level at which there is a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals and their offspring, considering the best available science, and using sufficient safety factors to account for uncertainties regarding exposure and susceptibility of children, pregnant women, and other potentially susceptible individuals; and

• Consider possible similar health effects of phthalate alternatives used in children's toys and child care articles.

The CPSIA contemplates completion of the CHAP's examination within 18 months of the panel's appointment on April 14, 2010. The CHAP has an additional 6 months to complete its final report to the Commission. The CHAP must review prior work on phthalates by the Commission, but it is not to be considered determinative because the CHAP's examination must be conducted de novo.

The CHAP must make recommendations to the Commission regarding any phthalates (or combinations of phthalates), in addition to those identified in section 108 of the CPSIA, or phthalate alternatives that the panel determines should be prohibited from use in children's toys or child care articles, or otherwise restricted. The CHAP members were selected by the Commission from scientists nominated by the National Academy of Sciences. *See* 15 U.S.C. 2077, 2030(b).

The CHAP met previously in April, July, and December 2010, and in March, July, and November 2011, at the CPSC's offices in Bethesda, MD, and by teleconference in November 2010, September 2011, and December 2011. The CHAP heard testimony from interested parties at the July 2010, and November 2011 meetings. The February 2012 teleconference and public meeting will include discussion of the CHAP's progress in preparing a final report. There will not be any opportunity for public comment during the February 2012 teleconference or the public meeting.

Dated: January 11, 2012.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 2012–645 Filed 1–13–12; 8:45 am]

**BILLING CODE 6355–01–P**

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Sunshine Act Meeting

The National Civilian Community Corps Advisory Board gives notice of the following meeting:

**DATE AND TIME:** Tuesday, February 14, 2012, 2 p.m.–3:30 p.m.

**PLACE:** Conference room #8312, 8th floor, Corporation for National and Community Service Headquarters, 1201 New York Avenue NW. Washington, DC 20525

**CALL-IN INFORMATION:** This meeting is available to the public through the following toll-free call-in number: (888) 455–7057 conference call access code number NCCC. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Corporation will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Replays are generally available one hour after a call ends. The toll-free phone number for the replay is (203) 369–1895. The end replay date: March 14, 2012, 11:59 p.m. (CT).

**STATUS:** Open.

**Matters To Be Considered**

I. Meeting Convenes

II. Approval of Minutes

III. Director's Report:

IV. Area Reports:

- Projects and Partnerships
- Member Development
- Policy and Operations

V. Public Comment

**ACCOMMODATIONS:** Anyone who needs an interpreter or other accommodation should notify the Corporation's contact person by 5 p.m. Wednesday, January 27, 2012.

**FOR FURTHER INFORMATION CONTACT:** Erma Hodge, NCCC, Corporation for National and Community Service, 9th Floor, Room 9802B, 1201 New York Avenue NW., Washington, DC 20525. Phone (202) 606–6696. Fax (202) 606–3459. TTY: (800) 833–3722. Email: *ehodge@cns.gov.*

Dated: January 11, 2012.

**Valerie E. Green,**

*General Counsel.*

[FR Doc. 2012–826 Filed 1–12–12; 4:15 pm]

**BILLING CODE 6050–$$–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Federal Advisory Committee; Defense Intelligence Agency (DIA) Advisory Board; Closed Meeting

**AGENCY:** DIA, Department of Defense (DoD).

**ACTION:** Meeting notice.

**SUMMARY:** Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix 2 (2001)), the Government in the Sunshine Act of 1976 (5 U.S C. 552b), and 41 CFR 102–3.10, DoD hereby announces that the DIA Advisory Board will meet on February 24, 2012. The meeting is closed to the public. The meetings necessarily include discussions of classified information relating to DIA's intelligence operations including its support to current operations.

**DATES:** The meeting will be held on February 24, 2012 (from 8:30 a.m. to 4 p.m.).

**ADDRESSES:** The meeting will be held at Bolling Air Force Base.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Harrison, (703) 697–5102, Alternate Designated Federal Official, DIA Office for Congressional and Public Affairs, Pentagon 1A874, Washington, DC 20340–5100.

Committee's Designated Federal Official: Mr. William Caniano, (703) 614–4774, DIA Office for Congressional and Public Affairs, Pentagon 1A874, Washington, DC 20340–5100. *William.Caniano@dodiis.mil.*

**SUPPLEMENTARY INFORMATION:**

**Purpose of the Meeting**

For the Advisory Board to discuss DIA operations and capabilities in support of current intelligence operations.

**Agenda**

*February 24, 2012*

| | | |
|---|---|---|
| 8:30 a.m. | Convene Advisory Board Meeting and Administrative Business. | Mr. William Caniano, Designated Federal Official, Mrs. Mary Margaret Graham, Chairman. |
| 9 a.m. | Subcommittee Business | |
| 10:30 a.m. | Break | |
| 10:45 a.m. | Classified Briefings | DIA Personnel. |
| 12 p.m. | Lunch | |
| 1 p.m. | Briefings and Discussion | LTG Burgess, Director, DIA. |

| | | |
|---|---|---|
| 3 p.m. ..... | Break | |
| 3:10 p.m. ..... | Discussions and Deliberations ..... | Mr. William Caniano, Designated Federal Official, Mrs. Mary Margaret Graham, Chairman. |
| 4 p.m. ..... | Adjourn | |

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, the Director, DIA, has determined that the all meetings shall be closed to the public. The Director, DIA, in consultation with the DIA Office of the General Counsel, has determined in writing that the public interest requires that all sessions of the Board's meetings be closed to the public because they include discussions of classified information and matters covered by 5 U.S.C. 552b(c)(1).

**Written Statements**

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Board Committee Act of 1972, the public or interested organizations may submit written statements at any time to the DIA Advisory Board regarding its missions and functions. All written statements shall be submitted to the Designated Federal Official for the DIA Advisory Board. The Designated Federal Official will ensure that written statements are provided to the Board for its consideration. Written statements may also be submitted in response to the stated agenda of planned board meetings. Statements submitted in response to this notice must be received by the Designated Federal Official at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after that date may not be provided or considered by the Board until its next meeting. All submissions provided before that date will be presented to the Board before the meeting that is subject of this notice. Contact information for the Designated Federal Official is listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: January 11, 2012.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2012–657 Filed 1–13–12; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Notice of Availability for Exclusive, Non-Exclusive, or Partially-Exclusive Licensing of an Invention Concerning a Method and Device for Detection of Bioavailable Drug Concentration in a Fluid Sample

**AGENCY:** Department of the Army, DOD.

**ACTION:** Notice; correction.

**SUMMARY:** The notice published in the **Federal Register** on January 6, 2012 (77 FR 783) contained an incorrect U.S. Provisional Patent Application Serial No. The correct number is 61/105,604.

**FOR FURTHER INFORMATION CONTACT:** For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research and Technology Applications (ORTA), (301) 619–6664, both at telefax (301) 619–5034.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 2012–649 Filed 1–13–12; 8:45 am]

**BILLING CODE 3710–08–P**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Intent To Grant an Exclusive License for a U.S. Army Owned Invention to Triumph Actuation Systems—CT, LLC

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice.

**SUMMARY:** The Department of the Army announces that, unless there is objection, after 15 days it will grant an exclusive license to Triumph Actuation Systems—Connecticut, LLC, of Bloomfield, CT in U.S. patent 7,228,779, issued June 12, 2007, ''Automatic Primer Feed Mechanism''; U.S. patent 7,246,549, issued July 24, 2007, ''Automatic Primer Feed Mechanism; U.S. patent 7,318,369, issued January 15, 2008, ''Out-of-Battery Lock for the Automatic Primer Feed Mechanism''; U.S. patent 7,845,264, issued December 7, 2010, ''Automatic Primer Feed Mechanism''. Any license granted shall comply with 35 U.S.C. 209 and 37 CFR Part 404.

**DATES:** File written objections by February 1, 2012.

**FOR FURTHER INFORMATION CONTACT:** Mr. Timothy S. Ryan, Technology Transfer Program Manager, RDAR–EIB, U.S. Army ARDEC, Picatinny Arsenal, NJ 07806–5000, email: *timothy.s.ryan@us.army.mil;* (973) 724–7953.

**SUPPLEMENTARY INFORMATION:** Written objections must be filed within 15 days from publication date of this notice in the **Federal Register**. Any license granted shall comply with 35 U.S.C. 209 and 37 CFR 404.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 2012–648 Filed 1–13–12; 8:45 am]

**BILLING CODE 3710–08–P**

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

### Waiver for Certain Defense Items Produced in the United Kingdom

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Notice.

**SUMMARY:** The Under Secretary of Defense (Acquisition, Technology, and Logistics) is waiving the statutory limitation for certain defense items produced in the United Kingdom (UK). The law limits DoD procurement of certain items to sources in the national technology and industrial base. The waiver will permit procurement of enumerated items from sources in the UK, unless otherwise restricted by statute.

**DATES:** This waiver is effective beginning February 1, 2012, until February 1, 2013.

**FOR FURTHER INFORMATION CONTACT:** Ms. Patricia Foley, OUSD (AT&L), Office of the Director of Defense Procurement and Acquisition Policy, Contract Policy and International Contracting, Room 5E621, 3060 Defense Pentagon, Washington, DC 20301–3060, telephone (703) 693–1145.

**SUPPLEMENTARY INFORMATION:** Subsection (a) of 10 U.S.C. 2534 provides that the Secretary of Defense may procure the items listed in that subsection only if the manufacturer of the item is part of the national technology and industrial base. Subsection (i) of 10 U.S.C. 2534 authorizes the Secretary of Defense to

exercise the waiver authority in subsection (d) on the basis of the applicability of paragraph (2) or (3) of that subsection, only if the waiver is made for a particular item listed in subsection (a) and for a particular foreign country. Subsection (d) authorizes a waiver if the Secretary determines that application of the limitation ''would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items'' and if he determines that ''that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.'' The Secretary of Defense has delegated the waiver authority of 10 U.S.C. 2534(d) to the Under Secretary of Defense (Acquisition, Technology, and Logistics).

DoD has had a Reciprocal Defense Procurement Memorandum of Understanding (MOU) with the UK since 1975, most recently renewed on December 16, 2004.

The Under Secretary of Defense (Acquisition, Technology, and Logistics) finds that the UK does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in the UK, and also finds that application of the limitation in 10 U.S.C. 2534 against defense items produced in the UK would impede the reciprocal procurement of defense items under the MOU.

Under the authority of 10 U.S.C. 2534, the Under Secretary of Defense (Acquisition, Technology, and Logistics) has determined that application of the limitation of 10 U.S.C. 2534(a) to the procurement of any defense item produced in the UK that is listed below would impede the reciprocal procurement of defense items under the MOU with the UK.

On the basis of the foregoing, the Under Secretary of Defense (Acquisition, Technology, and Logistics) is waiving the limitation in 10 U.S.C. 2534(a) for procurements of any defense item listed below that is produced in the UK. This waiver applies only to the limitations in 10 U.S.C. 2534(a). It does not apply to any other limitation, including section 8016 of the DoD Appropriations Act for Fiscal Year 2012 (Pub. L. 112–74). This waiver applies to procurements under solicitations issued during the period from February 1, 2012, to February 1, 2013. Similar waivers have been granted since 1998, most recently in 2010 (75 FR 76447, December 8, 2010).

**List of Items to Which This Waiver Applies**

1. Air circuit breakers.
2. Welded shipboard anchor and mooring chain with a diameter of four inches or less.
3. Gyrocompasses.
4. Electronic navigation chart systems.
5. Steering controls.
6. Pumps.
7. Propulsion and machinery control systems.
8. Totally enclosed lifeboats.

**Ynette R. Shelkin,**

*Editor, Defense Acquisition Regulations System.*

[FR Doc. 2012–647 Filed 1–13–12; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF EDUCATION

### Arbitration Panel Decision Under the Randolph-Sheppard Act

**AGENCY:** Department of Education.

**ACTION:** Notice of decision.

**SUMMARY:** The Department of Education (Department) gives notice that on September 18, 2010, an arbitration panel rendered a decision in the matter of *John Bell, et al.* v. *New Jersey Commission for the Blind and Visually Impaired,* Case no. R–S/07–14.

**FOR FURTHER INFORMATION CONTACT:** You may obtain a copy of the full text of the arbitration panel decision from Mary Yang, U.S. Department of Education, 400 Maryland Avenue SW., room 5162, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–6327. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–(800) 877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

**SUPPLEMENTARY INFORMATION:** This arbitration panel was convened by the Department under 20 U.S.C. 107d-l(a), after receiving a complaint from the Complainant, John Bell. Under section 6(c) of the Randolph-Sheppard Act (Act), 20 U.S.C. 107d-2(c), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

**Background**

John Bell (Complainant) alleged violations by the New Jersey Commission for the Blind and Visually Impaired, the State licensing agency (SLA), under the Act and implementing regulations in 34 CFR part 395. Complainant alleged that the SLA violated the Act, the implementing regulations and the New Jersey Administrative Code concerning Complainant's management of a facility comprised of laundry equipment and vending machines at the Fairton Federal Correction Institution (Fairton) operated by the Federal Bureau of Prisons (BOP) at Fairton, New Jersey.

Specifically, Complainant alleged that the SLA unlawfully (1) entered into an ''intergovernmental agreement'' with BOP rather than a ''permit'' for the Fairton facility; (2) allowed BOP to collect 15 percent of Complainant's net sales, as opposed to net profit; (3) allowed BOP to improperly change the rate charged for laundry services; (4) failed to pay the cost of replacing certain laundry machines in 2003 and/or failed to reimburse Complainant for $48,000 for the lease purchase agreement he signed to replace the laundry machines himself; (5) required Complainant to pay the first $200 in repair costs for each machine breakdown; and (6) failed to provide Complainant with a State fair hearing.

Complainant requested that the arbitration panel grant the following relief: (1) Damages of approximately $440,000; (2) an order directing the SLA to file an arbitration against the BOP regarding the 15 percent that Complainant paid to BOP; (3) a recommendation from the panel to the Secretary of Education that the New Jersey Commission for the Blind and Visually Impaired be removed as the SLA under the Act based upon its failure to provide Complainant with a full State fair hearing; and (4) costs incurred in this proceeding, including reasonable attorney's fees.

Complainant filed for a State fair hearing of his complaint, which was held on October 23, 2007. The Administrative Law Judge (ALJ) set January 15, 2008, as the date for the parties to submit post-hearing briefs. However, prior to the decision, the SLA requested that the ALJ return the case to it. Complainant opposed the request, but the ALJ advised Complainant that under New Jersey law he was required to relinquish the case back to the SLA.

Subsequently, Complainant filed with the Department a request for Federal arbitration seeking an appeal of the State fair hearing decision. A Federal

arbitration panel was convened on December 8 and December 9, 2009.

**Synopsis of the Arbitration Panel Decision**

After reviewing all of the testimony and evidence, the panel found that most of the grievances were time barred, either by operation of the 15-day time limit set forth in the New Jersey Administrative Code, the doctrine of latches, or both. The panel further determined that Complainant did not show that the SLA had violated the Act or the Federal and State implementing regulations. Accordingly, the panel majority concluded that Complainant was not entitled to any remedy with the exception of Complainant's claim for the costs, including reasonable attorney's fees, he incurred in the State evidentiary hearing.

However, with respect to the State fair hearing, the panel majority concluded that the SLA knew, or had reason to know, prior to the commencement of the ALJ hearing, that Complainant's case would require the ALJ to interpret two potentially conflicting Federal statutes and, as a result, that the ALJ might lack subject matter jurisdiction. Yet, the SLA allowed the ALJ hearing to take place and asked the ALJ to return the case after Complainant had submitted his post-hearing brief requiring significant time and resources to no avail. Thus, the panel majority ruled that fundamental principles of fairness require that the SLA reimburse Complainant for the costs expended by Complainant in the State fair hearing, including reasonable attorney's fees.

The panel also retained jurisdiction of this matter for the sole purpose of resolving any disputes regarding the amount the SLA must pay Complainant for those costs.

One panel member dissented in part and concurred in part. This panel member dissented from the panel's determination that the commission payment was neither timely protested by Complainant nor a violation of the Act but concurred with the panel majority regarding the SLA's reimbursement to Complainant for costs incurred in the State fair hearing, including reasonable attorney's fees.

On January 11, 2011, the SLA sought reconsideration of the portion of the panel's award granting Complainant the costs he incurred in the State fair hearing, including reasonable attorney's fees.

The panel agreed to consider the SLA's motion and granted Complainant the opportunity to reply, which he did on or about March 2, 2011.

On March 25, 2011, the panel conferred via conference call. After reviewing the parties' motions including the legal authority cited, the panel unanimously denied the SLA's motion for reconsideration on the merits and affirmed its initial decision of September 18, 2010, to award Complainant his costs for the State fair hearing, including reasonable attorney's fees.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the Department.

*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: *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 *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: January 11, 2012.

**Alexa Posny,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2012–749 Filed 1–13–12; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

**[Docket ID: ED–2012–OESE–0003]**

### Request for Information To Gather Technical Expertise Pertaining to Testing Integrity

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Request for information.

**SUMMARY:** In light of recent, high-profile reports of misconduct by school officials in the test administration process, the U.S. Department of Education (''the Department'' or ''we'') is seeking to collect and share information about best practices that have been used to prevent, detect, and respond to irregularities in academic testing. To that end, the Department is taking several steps, described below, to collect information and gather suggestions to assist State educational agencies (SEAs), local educational agencies (LEAs), and the testing-integrity-focused organizations that service them. The Department anticipates making use of this information to facilitate further dialogue and to help SEAs and LEAs identify, share, and implement best practices for preventing, detecting, and investigating irregularities in academic testing.

First, the Department is issuing this request for information (RFI) to collect information about the integrity of academic testing. We pose a series of questions to which we invite interested members of the public to respond. Second, the Department will host a symposium where external experts can engage in further discussion and probe these issues in greater depth.

Third, the Department will publish a document that contains a summary of the recommendations that were developed as a result of the RFI and the symposium, as well as other resources identified by external experts participating in the symposium.

**DATES:** Written submissions must be received by the Department on or before 5 p.m., Washington, DC time, on February 16, 2012.

**ADDRESSES:** Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email. To ensure that we do not receive duplicate copies, please submit your comments only one time. In addition, please include the Docket ID and the term ''Testing Integrity response'' at the top of your comments.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How To Use This Site.''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments, address them to Carlos Martinez, Office of Elementary and Secondary Education, Attention: Testing Integrity RFI, U.S. Department of Education, 400 Maryland Avenue SW., room 3W104, Washington, DC 20202–6132.
- *Privacy Note:* The Department's policy for comments received from members of the public (including comments submitted by mail, commercial delivery, or hand delivery)

is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at *http://www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

Given the subject matter, some comments may include proprietary information as it relates to confidential commercial information. The Freedom of Information Act defines ''confidential commercial information'' as information the disclosure of which could reasonably be expected to cause substantial competitive harm. You may wish to request that we not disclose what you regard as confidential commercial information.

To assist us in making a determination on your request, we encourage you to identify any specific information in your comments that you consider confidential commercial information. Please list the information by page and paragraph numbers.

**FOR FURTHER INFORMATION CONTACT:** Carlos Martinez, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W104, Washington, DC 20202–6132 by phone at (202) 260–1440.

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:**

**1. Introduction**

The Department is seeking information about testing integrity that may help SEAs and LEAs ensure the integrity of the data used to measure student achievement and to ensure meaningful educational accountability in SEAs and LEAs. This is a request for information only. This RFI is specifically inquiring into best practices regarding: (1) Preventing and reducing testing irregularities in State academic assessments; (2) detecting and analyzing testing irregularities; (3) reviewing and investigating alleged testing irregularities; and (4) for assessments that are increasingly delivered online and by computer, how responses to the first three issues described above might be different from those that apply to assessments administered through more traditional means.

For the purposes of this RFI, a testing irregularity includes any occurrence that may inappropriately influence a student's performance on a State academic assessment, provide the appearance of impropriety, or otherwise constitute a breach in test security or improper administration of State academic testing.

This RFI is issued solely for information and planning purposes and is not a request for proposals (RFP) or a promise to issue an RFP or a notice inviting applications (NIA). This RFI does not commit the Department to contract for any supply or service whatsoever. Further, the Department is not now seeking proposals and will not accept unsolicited proposals. The Department will not pay for any information or administrative costs that you may incur in responding to this RFI.

If you do not respond to this RFI, you may still apply for future contracts and grants. The Department posts RFPs on the Federal Business Opportunities Web site (*http://www.fbo.gov*). The Department announces grant competitions in the **Federal Register** (*http://www.gpo.gov/fdsys*). It is your responsibility to monitor these sites to determine whether the Department issues an RFP or NIA after considering the information received in response to this RFI.

The documents and information submitted in response to this RFI become the property of the U.S. Government and will not be returned.

**2. Background**

Educators, parents, and the public in general rely on accurate, reliable, and timely information on student academic performance to improve instruction and help all students reach and maintain high levels of achievement. Indeed, the availability of valid, reliable, and timely data on student performance is essential in informing instruction, identifying professional development needs, helping ensure meaningful accountability, and implementing effective education reforms.

Accordingly, SEAs and LEAs must ensure the integrity of the data they use to measure student achievement and ensure meaningful educational accountability. Under section 1111(b)(3)(C)(iii) of the Elementary and Secondary Education Act of 1965, as amended, (ESEA) and 34 CFR 200.1–200.24, States must establish and maintain assessment systems that are valid, reliable, and consistent with nationally recognized professional and technical standards. Even the slightest appearance of impropriety in the test administration process can undermine State accountability systems—painstakingly built over the past decade—and damage the credibility of reform efforts underway across the country.

Accordingly, State and local officials have an interest in, and share responsibility for defending against, security breaches and threats to educational data integrity. States have a long history of stewardship of academic assessments, and many States have made great efforts to ensure that their assessments and other data collection instruments are properly administered and that data security requirements are clearly specified and followed.

The Department also has a role in this area. Under Title I of the ESEA, the Department is required to review and approve each State's assessment system. Accordingly, the Department examines evidence compiled and submitted by each State about its process for monitoring and improving the technical quality of its system. During the review of State assessment systems, the Department specifically examines procedures and policies for test security and data quality, including the training and monitoring of staff.

For these reasons, this RFI seeks solutions; advice; technical information; legal, regulatory, and policy approaches; and other input from the public regarding best practices for the prevention, detection, and investigation of alleged or actual testing irregularities. Through this RFI, the Department also seeks to gather information and suggestions for SEAs and LEAs on how they can address these issues.

In addition, as noted earlier, the Department will host a symposium where external experts can engage in further discussion and probe these issues in greater depth. Responses to the RFI will be shared with the external experts, to inform their planning for the symposium. A summary of the recommendations that are developed as a result of the RFI and the symposium, as well as other resources identified by external experts participating in the symposium, will be published shortly thereafter to help inform the field.

**3. Context for Responses**

3.1 The primary goal of this RFI is to gather information that will help SEAs and LEAs better understand existing best practices for preventing, detecting, and investigating testing irregularities. To that end, the Department welcomes responses that address SEA and LEA policies and practices related to these areas and to State laws and regulations. To help focus our consideration of the responses provided, we have developed several questions. Because the questions are only guides to helping us better understand the issues surrounding testing integrity, respondents do not have to respond to any specific question, and may provide comments in a format that is convenient to them. Commenters may also provide relevant

information that is not responsive to a particular question but may, nevertheless, be helpful.

3.2 *Questions Regarding the Prevention of Testing Irregularities.*

3.2.1 *Best Practices and Policies.* Describe the best practices and policies that SEAs and LEAs have implemented to prevent testing irregularities. What evidence exists that these are best practices? Where have these best practices been adopted? What are the general lessons learned from those adoptions? How might such best practices be effectively used in the future? Are there barriers to the adoption of these best practices at the SEA or LEA level? What controls are most effective in preventing testing irregularities?

3.2.2 *School Culture.* What role does school culture play in test security? For example, how has professional development been used to train school officials to help prepare students and parents for academic testing? What are SEAs and LEAs doing to ensure that educators are prepared? Are SEAs providing sufficient information to LEAs about their expectations regarding the integrity of academic testing? Have the consequences for misconduct during the testing process been clearly communicated to school officials?

3.2.3 *Contractual Provisions.* For those States that have assessment contracts, what provisions are included in these contracts to help prevent testing irregularities? What contractual provisions have been effective in preventing testing irregularities? What evidence exists that these provisions are effective? What provisions have States included in their quality assurance contracts to help analyze risks?

3.2.4 *Federal, State, and Local Roles.* What are the most appropriate roles for the Department, SEAs, and LEAs in preventing testing irregularities?

*Questions Regarding the Detection of Testing Irregularities*

3.2.5 *Detection Analyses.* How are testing irregularities generally detected? What are the different types of analyses that can be used to detect testing irregularities? What are the best practices and policies that SEAs and LEAs have used to detect testing irregularities? What is each type of analysis used for? How should the results of these analyses be interpreted? Can different types of analyses be used in conjunction with one another or to complement one another? What evidence exists that these are best practices? What is the appropriate sequence of events when seeking to determine whether testing irregularities have occurred? Specifically, what steps should be taken and in what order?

*Questions Regarding the Review and Investigation of Alleged Testing Irregularities*

3.2.6 *Contractual Provisions.* What provisions have States included in their assessment contracts to help detect irregularities (e.g., provisions related to the use of high-quality control plans)? What contractual provisions have been most effective in detecting testing irregularities?

3.2.7 *Federal, State, and Local Roles.* What are the appropriate roles for the Department, SEAs, and LEAs in responding to allegations of testing irregularities? Who are the parties involved in an investigation at the SEA and LEA levels?

3.2.8 *Responses to Alleged Testing Irregularities.* If testing irregularities are detected, what are the best practices for investigating them? What forensic analyses should be used? What cooperative practices between SEAs and LEAs have yielded positive outcomes? What are barriers to investigating testing irregularities?

3.2.9 *Managing Wrongdoing.* If alleged testing irregularities are a result of wrongdoing, under what circumstances is it appropriate to impose strict and meaningful sanctions against wrongdoers? Are educators subject to standards of professional conduct, laws, or regulations that dictate the type of sanctions that might be imposed on an individual who violates the law or compromises professional standards? How should intent of wrongdoing be determined, and by what entity? What can be done to restore the credibility of a school system that has been tarnished by alleged or actual wrongdoing?

*Questions Regarding Online and Computer-Based Assessments*

3.2.10 *Changes in Technology.* In a world where academic assessments are increasingly delivered online and by computer, how do responses to the questions listed above change when applied to online and computer-based assessments?

3.2.11 *Computer-based Assessment Protection.* What mechanisms or processes exist to ensure that the results of computer-based assessments are accurate and free from tampering? What are the best practices and policies that SEAs and LEAs have implemented in this area? What evidence exists that these are best practices? What are the potential threats to, and weak points in, computer-based assessment systems? Where are there likely opportunities for tampering and testing irregularities within the context of computer-based assessments?

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (e.g., Braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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**Program Authority:** 20 U.S.C. 6771.

Dated: January 11, 2012.

**Michael Yudin,**

*Acting Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 2012–753 Filed 1–13–12; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Paducah

**AGENCY:** Department of Energy.

**ACTION:** Notice of cancellation of open meeting.

**SUMMARY:** On December 23, 2011, the Department of Energy (DOE) published a notice of open meeting announcing a meeting on January 19, 2012, of the Environmental Management Site-Specific Advisory Board, Paducah. This notice announces the cancellation of this meeting. The meeting is being cancelled because the board will not have a quorum due to scheduling conflicts by members. The next regular meeting will be held on February 16, 2012.

**DATES:** The meeting scheduled for January 19, 2012, announced in the

December 23, 2011, issue of the **Federal Register** (FR Doc. 2011–32913, 76 FR 80355), is cancelled. The next regular meeting will be held on February 16, 2012.

**FOR FURTHER INFORMATION CONTACT:** Reinhard Knerr, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001; Phone: (270) 441–6825.

Issued at Washington, DC, on January 12, 2012.

**LaTanya R. Butler,**

*Acting Deputy Committee Management Officer.*

[FR Doc. 2012–831 Filed 1–12–12; 4:15 pm]

**BILLING CODE 6405–01–P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Northern New Mexico

**AGENCY:** Department of Energy.

**ACTION:** Notice of Open Meeting: Correction.

**SUMMARY:** On December 20, 2011, the Department of Energy (DOE) published a notice of open meeting announcing a meeting on January 25, 2012 of the Environmental Management Site-Specific Advisory Board, Northern New Mexico (76 FR 78909). This document makes a correction to that notice.

**FOR FURTHER INFORMATION CONTACT:** Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; Fax (505) 989–1752 or Email: *msantistevan@doeal.gov.*

**Corrections**

In the **Federal Register** of December 20, 2011, in FR Doc. 2011–32535, on page 78909, please make the following correction:

In that notice under **ADDRESSES,** first column, third paragraph, the meeting address has been changed. The original address was NNMCAB Offices, 96 Cities of Gold Road, Suite 3, Pojoaque, New Mexico 87506. The new address is Cities of Gold Conference Center, 10–A Cities of Gold Road, Santa Fe, NM 87506. The reason for this change is the renovations at the original location will not be completed by the meeting date.

Issued at Washington, DC on January 10, 2012.

**LaTanya R. Butler,**

*Acting Deputy Committee Management Officer.*

[FR Doc. 2012–681 Filed 1–13–12; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Portsmouth

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Thursday, February 2, 2012, 6 p.m.

**ADDRESSES:** Ohio State University, Endeavor Center, 1862 Shyville Road, Piketon, Ohio 45661.

**FOR FURTHER INFORMATION CONTACT:** Joel Bradburne, Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, Post Office Box 700, Piketon, Ohio 45661, (740) 897–3822, *Joel.Bradburne@lex.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management and related activities.

**Tentative Agenda**

- Call to Order, Introductions, Review of Agenda
- Approval of January Minutes
- Deputy Designated Federal Officer's Comments
- Federal Coordinator's Comments
- Liaisons' Comments
- Presentations by Fluor-B&W:
  - Information Portfolio, Karen Price
  - Fluor-B&W Community Commitment Plan Update, Jerry Schneider
- Administrative Issues
- Subcommittee Updates
- Public Comments
- Final Comments from the Board
- Adjourn

*Public Participation:* The meeting is open to the public. The EM SSAB, Portsmouth, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Joel Bradburne at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Joel Bradburne at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

*Minutes:* Minutes will be available by writing or calling Joel Bradburne at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.ports-ssab.energy.gov/.*

Issued at Washington, DC, on January 11, 2012.

**LaTanya R. Butler,**

*Acting Deputy Committee Management Officer.*

[FR Doc. 2012–677 Filed 1–13–12; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* RP12–292–000.

*Applicants:* Dauphin Island Gathering Partners.

*Description:* Dauphin Island Gathering Partners submits tariff filing per 154.204: Negotiated Rates 2012–01–06 to be effective 1/6/2012.

*Filed Date:* 1/6/12.

*Accession Number:* 20120106–5069.

*Comments Due:* 5 p.m. ET 1/18/12.

*Docket Numbers:* RP12–293–000.

*Applicants:* Trailblazer Pipeline Company LLC.

*Description:* Trailblazer Pipeline Company LLC submits tariff filing per 154.204: Negotiated Rate Filing—United Energy to be effective 1/7/2012.

*Filed Date:* 1/6/12.

*Accession Number:* 20120106–5076.
*Comments Due:* 5 p.m. ET 1/18/12.

*Docket Numbers:* RP12–294–000.
*Applicants:* Alliance Pipeline L.P.
*Description:* Alliance Pipeline L.P. submits tariff filing per 154.204: TAQA Assignment CNRL to be effective 1/1/2012.
*Filed Date:* 1/6/12.
*Accession Number:* 20120106–5077.
*Comments Due:* 5 p.m. ET 1/18/12.

*Docket Numbers:* RP12–295–000.
*Applicants:* Iroquois Gas Transmission System, L.P.
*Description:* Iroquois Gas Transmission System, L.P. submits tariff filing per 154.204: 01/06/12—Allocations and Curtailment to be effective 2/6/2012.
*Filed Date:* 1/6/12.
*Accession Number:* 20120106–5115.
*Comments Due:* 5 p.m. ET 1/18/12.

*Docket Numbers:* RP12–296–000.
*Applicants:* Carolina Gas Transmission Corporation.
*Description:* Carolina Gas Transmission Corporation's Interruptible Revenue Sharing Filing for Period Ending October 31, 2011.
*Filed Date:* 1/6/12.
*Accession Number:* 20120106–5119.
*Comments Due:* 5 p.m. ET 1/18/12.

*Docket Numbers:* RP12–297–000.
*Applicants:* Shell Energy North America (US) L.P.
*Description:* Joint Petition of Salmon Resources, Ltd and Shell Energy North America (US), L.P. for Temporary Waiver of Capacity Release Regulations and Policies, and Request for Shortened Comment Period and Expedited Treatment.
*Filed Date:* 1/6/12.
*Accession Number:* 20120106–5218.
*Comments Due:* 5 p.m. ET 1/13/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

**Filings in Existing Proceedings**

*Docket Numbers:* RP11–1942–002.
*Applicants:* Tennessee Gas Pipeline Company, L.L.C.
*Description:* Tennessee Gas Pipeline Company, L.L.C. submits tariff filing per 154.203: Quality Interchangeability Settlement Clean up Sheets 293, 304 to be effective 1/1/2012.
*Filed Date:* 1/6/12.
*Accession Number:* 20120106–5118.
*Comments Due:* 5 p.m. ET 1/18/12.

*Docket Numbers:* RP12–254–001.
*Applicants:* Gas Transmission Northwest LLC.
*Description:* Gas Transmission Northwest LLC submits tariff filing per 154.205(b): Amendment to RP12–254 to be effective 1/1/2012.
*Filed Date:* 1/6/12.
*Accession Number:* 20120106–5188.
*Comments Due:* 5 p.m. ET 1/18/12.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 9, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–641 Filed 1–13–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–3297–001.
*Applicants:* Powerex Corporation.
*Description:* Powerex Corporation submits Notice of Non-Material Change in Status.
*Filed Date:* 1/5/12.
*Accession Number:* 20120105–5166.
*Comments Due:* 5 p.m. ET 1/26/12.

*Docket Numbers:* ER12–233–00.1
*Applicants:* Wolverine Power Supply Cooperative, Inc.
*Description:* Wolverine Power Supply Cooperative, Inc. submits tariff filing per 35: Compliance Filing of Amended and Restated Wholesale Power Contract to be effective 1/1/2012.
*Filed Date:* 1/6/12.
*Accession Number:* 20120106–5033.
*Comments Due:* 5 p.m. ET 1/27/12.

*Docket Numbers:* ER12–367–001.
*Applicants:* Niagara Mohawk Power Corporation.
*Description:* Amendment to Pleading, or, In the Alternative, Motion to Correct Filing, and Request for Clarification of National Grid USA.
*Filed Date:* 1/4/12.
*Accession Number:* 20120104–5148.
*Comments Due:* 5 p.m. ET 1/25/12.

*Docket Numbers:* ER12–458–000.
*Applicants:* Quantum Choctaw Power, LLC.
*Description:* Quantum Choctaw Power, LLC submits tariff filing per: SUPPLEMENT TO MBR APPLICATION to be effective N/A.
*Filed Date:* 1/6/12.
*Accession Number:* 20120106–5146.
*Comments Due:* 5 p.m. ET 1/27/12.

*Docket Numbers:* ER12–636–001.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* PJM Interconnection, L.L.C. submits tariff filing per 35.17(b): Amendment to Quality Review Filing in Docket No. ER12–636 to be effective 2/18/2012.
*Filed Date:* 1/6/12.
*Accession Number:* 20120106–5150.
*Comments Due:* 5 p.m. ET 1/18/12.

*Docket Numbers:* ER12–766–000.
*Applicants:* Black Creek Hydro Inc.
*Description:* Notice of Cancellation of Black Creek Hydro, Inc. for market base rate and power sale agreements.
*Filed Date:* 1/5/12.
*Accession Number:* 20120105–5164.
*Comments Due:* 5 p.m. ET 1/26/12.

*Docket Numbers:* ER12–767–000.
*Applicants:* Cleco Power LLC.
*Description:* Cleco Power LLC submits tariff filing per 35.13(a)(2)(iii): MBR revision 2012.01.06 to be effective 1/6/2012.
*Filed Date:* 1/6/12.
*Accession Number:* 20120106–5039.
*Comments Due:* 5 p.m. ET 1/27/12.

*Docket Numbers:* ER12–768–000.
*Applicants:* Cleco Evangeline LLC.
*Description:* Cleco Evangeline LLC submits tariff filing per 35: MBR revision 2012.01.06 to be effective 1/6/2012.
*Filed Date:* 1/6/12.
*Accession Number:* 20120106–5042.
*Comments Due:* 5 p.m. ET 1/27/12.

*Docket Numbers:* ER12–769–000.
*Applicants:* Public Service Company of New Mexico.
*Description:* Public Service Company of New Mexico submits tariff filing per 35.13(a)(2)(iii): PNM Rate Schedule 168 to be effective 3/6/2012.
*Filed Date:* 1/6/12.
*Accession Number:* 20120106–5053.
*Comments Due:* 5 p.m. ET 1/27/12.

*Docket Numbers:* ER12–770–000.
*Applicants:* Midwest Independent Transmission System Operator, Inc.
*Description:* Midwest Independent Transmission System Operator, Inc.

submits tariff filing per 35.13(a)(2)(iii): DEI Cert. of Concurrence to be effective 1/1/2012.

*Filed Date:* 1/6/12.

*Accession Number:* 20120106–5095.

*Comments Due:* 5 p.m. ET 1/27/12.

*Docket Numbers:* ER12–772–000.

*Applicants:* PacifiCorp.

*Description:* PacifiCorp submits tariff filing per 35.13(a)(2)(iii): Noble Americas Energy Solutions NITSA Rev 4 to be effective 1/1/2012.

*Filed Date:* 1/6/12.

*Accession Number:* 20120106–5106.

*Comments Due:* 5 p.m. ET 1/27/12.

*Docket Numbers:* ER12–773–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii): Amendments to Schedule 12–Appendix re RTEP approved by the PJM Board 12/7/2011 to be effective 4/5/2012.

*Filed Date:* 1/6/12.

*Accession Number:* 20120106–5112.

*Comments Due:* 5 p.m. ET 1/27/12.

*Docket Numbers:* ER12–773–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Correction of Transmittal Letter of PJM Interconnection, L.L.C.

*Filed Date:* 1/6/12.

*Accession Number:* 20120106–5155.

*Comments Due:* 5 p.m. ET 1/27/12.

*Docket Numbers:* ER12–774–000.

*Applicants:* Midwest Independent Transmission System Operator, Inc.

*Description:* Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): 01–06–12 Attachment MM–GRE to be effective 1/1/2012.

*Filed Date:* 1/6/12.

*Accession Number:* 20120106–5157.

*Comments Due:* 5 p.m. ET 1/27/12.

*Docket Numbers:* ER12–775–000.

*Applicants:* CPV Cimarron Renewable Energy Company, LLC.

*Description:* CPV Cimarron Renewable Energy Company, LLC submits tariff filing per 35.12: Initial MBR Tariff Filing to be effective 3/7/2012.

*Filed Date:* 1/6/12.

*Accession Number:* 20120106–5158.

*Comments Due:* 5 p.m. ET 1/27/12.

*Docket Numbers:* ER12–776–000.

*Applicants:* New York Independent System Operator, Inc., Niagara Mohawk Power Corporation.

*Description:* New York Independent System Operator, Inc. submits tariff filing per 35.15: Niagara Mohawk Notice of Termination of Nine Mile EPC Agreement to be effective 9/8/2011.

*Filed Date:* 1/6/12.

*Accession Number:* 20120106–5163.

*Comments Due:* 5 p.m. ET 1/27/12.

*Docket Numbers:* ER12–777–000.

*Applicants:* Alabama Power Company.

*Description:* Alabama Power Company submits tariff filing per 35.13(a)(2)(iii): SWE (Hampton) 2012 NITSA Filing to be effective 1/1/2012.

*Filed Date:* 1/6/12.

*Accession Number:* 20120106–5182.

*Comments Due:* 5 p.m. ET 1/27/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 6, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–703 Filed 1–13–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–2819–001.

*Applicants:* ALLETE, Inc.

*Description:* Allete, Inc submits its triennial market power analysis.

*Filed Date:* 12/30/11.

*Accession Number:* 20120104–0202.

*Comments Due:* 5 p.m. ET 2/28/12.

*Docket Numbers:* ER11–3839–001.

*Applicants:* Nevada Power Company.

*Description:* Rate Schedule No. 30 Amended & Restated TFA–Post Joint Settlement Proceedings to be effective 6/20/2011.

*Filed Date:* 1/4/12.

*Accession Number:* 20120104–5074.

*Comments Due:* 5 p.m. ET 1/25/12.

*Docket Numbers:* ER12–758–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Original Service Agreement No. 3169; Queue No. V3–052 (Line 17703) to be effective 12/5/2011.

*Filed Date:* 1/4/12.

*Accession Number:* 20120104–5063.

*Comments Due:* 5 p.m. ET 1/25/12.

*Docket Numbers:* ER12–759–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Original Service Agreement No. 3170; Queue No. V3–052 (Line 94507) to be effective 12/5/2011.

*Filed Date:* 1/4/12.

*Accession Number:* 20120104–5065.

*Comments Due:* 5 p.m. ET 1/25/12.

*Docket Numbers:* ER12–760–000.

*Applicants:* California Independent System Operator Corporation.

*Description:* 2012–01–04 CAISO Penalty Allocation Procedures Amendment to be effective 12/31/9998.

*Filed Date:* 1/4/12.

*Accession Number:* 20120104–5096.

*Comments Due:* 5 p.m. ET 1/25/12.

*Docket Numbers:* ER12–760–001.

*Applicants:* California Independent System Operator Corporation.

*Description:* 2012–01–04 Errata to Penalty Allocation Procedure Amendment to be effective 3/5/2012.

*Filed Date:* 1/4/12.

*Accession Number:* 20120104–5098.

*Comments Due:* 5 p.m. ET 1/25/12.

*Docket Numbers:* ER12–762–000.

*Applicants:* Pacific Gas and Electric Company.

*Description:* Notices of Termination of Service Agreement Nos. 38 and 86 under FERC Transmission Owner Tariff of Pacific Gas and Electric Company.

*Filed Date:* 1/4/12.

*Accession Number:* 20120104–5146.

*Comments Due:* 5 p.m. ET 1/25/12.

Take notice that the Commission received the following electric securities filings:

*Docket Numbers:* ES12–16–000.

*Applicants:* Southern Indiana Gas and Electric Company.

*Description:* Application of Southern Indiana Gas and Electric Company for issuance of short term debt securities authorization under Section 204 of the Federal Power Act.

*Filed Date:* 1/4/12.

*Accession Number:* 20120104–5145.

*Comments Due:* 5 p.m. ET 1/25/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and

385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 5, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–644 Filed 1–13–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER11–3322–001.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* PJM Interconnection, L.L.C. submits tariff filing per 35: Compliance Filing per the November 4, 2011 Order in Docket ER11–3322 to be effective 11/7/2011.

*Filed Date:* 1/5/12.

*Accession Number:* 20120105–5120.

*Comments Due:* 5 p.m. ET 1/17/12.

*Docket Numbers:* ER11–4717–001.

*Applicants:* International Paper Company.

*Description:* IP Baseline eTariff—Clone to be effective 9/30/2011.

*Filed Date:* 1/5/12.

*Accession Number:* 20120105–5063.

*Comments Due:* 5 p.m. ET 1/26/12.

*Docket Numbers:* ER12–763–000.

*Applicants:* Ohio Valley Electric Corporation.

*Description:* Tariff Filing—IA and FA between DEO and OVEC to be effective 1/1/2012.

*Filed Date:* 1/5/12.

*Accession Number:* 20120105–5057.

*Comments Due:* 5 p.m. ET 1/26/12.

*Docket Numbers:* ER12–764–000.

*Applicants:* Carolina Power & Light Company.

*Description:* Carolina Power & Light Company submits tariff filing per 35.13(a)(2)(iii): Rate Schedule No. 180 of Carolina Power and Light Company to be effective 1/1/2012.

*Filed Date:* 1/5/12.

*Accession Number:* 20120105–5107.

*Comments Due:* 5 p.m. ET 1/26/12.

*Docket Numbers:* ER12–765–000.

*Applicants:* RC Cape May Holdings, LLC.

*Description:* RC Cape May Holdings, LLC submits tariff filing per 35.13(a)(2)(iii): Update to Category Seller Designation to be effective 1/5/2012.

*Filed Date:* 1/5/12.

*Accession Number:* 20120105–5121.

*Comments Due:* 5 p.m. ET 1/26/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 5, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–643 Filed 1–13–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL11–44–000]**

### Iberdrola Renewables, Inc., PacifiCorp, NextEra Energy Resources, LLC, Invenergy Wind North America LLC, Horizon Wind Energy LLC v. Bonneville Power Administration; Notice of Designation of Certain Commission Personnel as Non-Decisional

Commission staff members Steve Rodgers and Saeed Farrokhpay, both of the Office of Energy Market Regulation, are assigned to assist in developing tariff provisions that are responsive to the Commission's December 7, 2011 order issued in the above-referenced docket and/or a settlement agreement in this proceeding.

As ''non-decisional'' staff, Messrs. Rodgers and Farrokhpay will not participate in an advisory capacity in the Commission's review of any future filings in the above-referenced docket, including offers of settlement or settlement agreements.

Different Commission ''advisory staff'' will be assigned to review and process subsequent filings that are made in the above-referenced docket, including any offer of settlement or settlement agreement. Non-decisional staff and advisory staff are prohibited from subsequent communications with one another concerning matters in the above-referenced docket.

Dated: January 6, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–642 Filed 1–13–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 12717–002]**

### Northern Illinois Hydropower, LLC; Notice of Meeting

a. *Date and Time of Meeting:* Thursday, January 26, 2012 from 11 a.m. to 12 p.m. EST.

b. *Place:* Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

c. *FERC Contact:* Janet Hutzel, (202) 502–8675 or *janet.hutzel@ferc.gov*.

d. *Purpose of Meeting:* Commission staff will meet with Northern Illinois Hydropower, LLC to discuss potentially moving the powerhouse location for the Brandon Road Project No. 12717, and the effects moving the powerhouse may have on processing the license application.

e. All local, state, and Federal agencies, tribes, and interested parties are hereby invited to participate. Please contact Janet Hutzel at (202) 502–8675 or via email at *janet.hutzel@ferc.gov* by the close of business on Friday, January 20, 2012 to attend via teleconference.

Dated: January 9, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–689 Filed 1–13–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project Nos. 12921–002 and 14076–000]**

### FFP Project 32, LLC and Northland Power Mississippi River LLC; Notice Announcing Preliminary Permit Drawing

The Commission has received two preliminary permit applications deemed filed on February 1, 2011, at 8:30 a.m.,[1] for proposed projects to be located on the Mississippi River, in Tensas Parish, Louisiana, and Jefferson County Mississippi. The applications were filed by FFP Project 32, LLC for Project No. 12921–002, and Northland Power Mississippi River LLC for Project No. 14076–000.

On January 17, 2012, at 9 a.m. (eastern time), the Secretary of the Commission, or her designee, will conduct a random drawing to determine the filing priority of the applicants identified in this notice. The Commission will select among competing permit applications as provided in section 4.37 of its regulations.[2] The priority established by this drawing will be used to determine which applicant, among those with identical filing times, will be considered to have the first-filed application.

The drawing is open to the public and will be held in room 2C, the Commission Meeting Room, located at 888 First St. NE., Washington, DC 20426. A subsequent notice will be issued by the Secretary announcing the results of the drawing.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–690 Filed 1–13–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project Nos. 12865–002 and 14072–000]**

### FFP Project 17, LLC and Northland Power Mississippi River LLC; Notice Announcing Preliminary Permit Drawing

The Commission has received two preliminary permit applications deemed filed on February 1, 2011, at 8:30 a.m.,[1] for proposed projects to be located on the Mississippi River, near the town of North Vacherie, in St. James Parish, Louisiana. The applications were filed by FFP Project 17, LLC for Project No. 12865–002, and Northland Power Mississippi River LLC for Project No. 14072–000.

On January 17, 2012, at 9 a.m. (eastern time), the Secretary of the Commission, or her designee, will conduct a random drawing to determine the filing priority of the applicants identified in this notice. The Commission will select among competing permit applications as provided in section 4.37 of its regulations.[2] The priority established by this drawing will be used to determine which applicant, among those with identical filing times, will be considered to have the first-filed application.

The drawing is open to the public and will be held in room 2C, the Commission Meeting Room, located at 888 First St. NE., Washington, DC 20426. A subsequent notice will be issued by the Secretary announcing the results of the drawing.

Dated: January 10, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–693 Filed 1–13–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project Nos. 12848–002 and 14081–000]**

### FFP Project 6, LLC and Northland Power Mississippi River LLC; Notice Announcing Preliminary Permit Drawing

The Commission has received two preliminary permit applications deemed filed on February 1, 2011, at 8:30 a.m.,[1] for proposed projects to be located on the Mississippi River, near the town of New Orleans, in Orleans Parish, Louisiana. The applications were filed by FFP Project 6, LLC for Project No. 12848–002, and Northland Power Mississippi River LLC for Project No. 14081–000.

On January 17, 2012, at 9 a.m. (eastern time), the Secretary of the Commission, or her designee, will conduct a random drawing to determine the filing priority of the applicants identified in this notice. The Commission will select among competing permit applications as provided in section 4.37 of its regulations.[2] The priority established by this drawing will be used to determine which applicant, among those with identical filing times, will be considered to have the first-filed application.

The drawing is open to the public and will be held in room 2C, the Commission Meeting Room, located at 888 First St. NE., Washington, DC 20426. A subsequent notice will be issued by the Secretary announcing the results of the drawing.

Dated: January 10, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–697 Filed 1–13–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project Nos. 12929–002 and 14079–000]**

### FFP Project 40, LLC and Northland Power Mississippi River LLC; Notice Announcing Preliminary Permit Drawing

The Commission has received two preliminary permit applications deemed filed on February 1, 2011, at 8:30 a.m.,[1] for proposed projects to be located on the Mississippi River, near the town of Helena, in Phillips County Arkansas, and Tunica and Coahoma counties, Mississippi. The applications were filed by FFP Project 40, LLC for Project No. 12929–002, and Northland Power Mississippi River LLC for Project No. 14079–000.

On January 17, 2012, at 9 a.m. (eastern time), the Secretary of the Commission, or her designee, will conduct a random drawing to determine the filing priority of the applicants identified in this notice. The Commission will select among competing permit applications as provided in section 4.37 of its regulations.[2] The priority established by

[1] Under the Commission's Rules of Practice and Procedure, any document received after regular business hours is considered filed at 8:30 a.m. on the next regular business day. 18 CFR 385.2001(a)(2) (2011).

[2] 18 CFR 4.37 (2011).

[1] Under the Commission's Rules of Practice and Procedure, any document received after regular business hours is considered filed at 8:30 a.m. on the next regular business day. 18 CFR 385.2001(a)(2) (2011).

[2] 18 CFR 4.37 (2011).

[1] Under the Commission's Rules of Practice and Procedure, any document received after regular business hours is considered filed at 8:30 a.m. on the next regular business day. 18 CFR 385.2001(a)(2) (2011).

[2] 18 CFR 4.37 (2011).

this drawing will be used to determine which applicant, among those with identical filing times, will be considered to have the first-filed application.

The drawing is open to the public and will be held in room 2C, the Commission Meeting Room, located at 888 First St. NE., Washington, DC 20426. A subsequent notice will be issued by the Secretary announcing the results of the drawing.

Dated: January 10, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–700 Filed 1–13–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project Nos. 12817–002 and 14083–000]**

## Free Flow Power Corporation and Northland Power Mississippi River LLC; Notice Announcing Preliminary Permit Drawing

The Commission has received two preliminary permit applications deemed filed on February 1, 2011, at 8:30 a.m.,[1] for proposed projects to be located on the Mississippi River, in West Baton Rouge and East Baton Rouge Parishes, Louisiana. The applications were filed by Free Flow Power Corporation for Project No. 12817–002, and Northland Power Mississippi River LLC for Project No. 14083–000.

On January 17, 2012, at 9 a.m. (eastern time), the Secretary of the Commission, or her designee, will conduct a random drawing to determine the filing priority of the applicants identified in this notice. The Commission will select among competing permit applications as provided in section 4.37 of its regulations.[2] The priority established by this drawing will be used to determine which applicant, among those with identical filing times, will be considered to have the first-filed application.

The drawing is open to the public and will be held in room 2C, the Commission Meeting Room, located at 888 First St. NE., Washington, DC 20426. A subsequent notice will be issued by the Secretary announcing the results of the drawing.

Dated: January 10, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–696 Filed 1–13–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project Nos. 12851–002 and 14082–000]**

## FFP Project 7, LLC and Northland Power Mississippi River LLC; Notice Announcing Preliminary Permit Drawing

The Commission has received two preliminary permit applications deemed filed on February 1, 2011, at 8:30 a.m.,[1] for proposed projects to be located on the Mississippi River, near the town of New Orleans, in Jefferson and Orleans Parishes, Louisiana. The applications were filed by FFP Project 7, LLC for Project No. 12851–002, and Northland Power Mississippi River LLC for Project No. 14082–000.

On January 17, 2012, at 9 a.m. (eastern time), the Secretary of the Commission, or her designee, will conduct a random drawing to determine the filing priority of the applicants identified in this notice. The Commission will select among competing permit applications as provided in section 4.37 of its regulations.[2] The priority established by this drawing will be used to determine which applicant, among those with identical filing times, will be considered to have the first-filed application.

The drawing is open to the public and will be held in room 2C, the Commission Meeting Room, located at 888 First St. NE., Washington, DC 20426. A subsequent notice will be issued by the Secretary announcing the results of the drawing.

Dated: January 10, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–698 Filed 1–13–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project Nos. 12863–002 and 14074–000]**

## FFP Project 21, LLC and Northland Power Mississippi River LLC; Notice Announcing Preliminary Permit Drawing

The Commission has received two preliminary permit applications deemed filed on February 1, 2011, at 8:30 a.m.,[1] for proposed projects to be located on the Mississippi River, near the town of Donaldsonville, in Ascension Parish, Louisiana. The applications were filed by FFP Project 21, LLC for Project No. 12863–002, and Northland Power Mississippi River LLC for Project No. 14074–000.

On January 17, 2012, at 9 a.m. (eastern time), the Secretary of the Commission, or her designee, will conduct a random drawing to determine the filing priority of the applicants identified in this notice. The Commission will select among competing permit applications as provided in section 4.37 of its regulations.[2] The priority established by this drawing will be used to determine which applicant, among those with identical filing times, will be considered to have the first-filed application.

The drawing is open to the public and will be held in room 2C, the Commission Meeting Room, located at 888 First St. NE., Washington, DC 20426. A subsequent notice will be issued by the Secretary announcing the results of the drawing.

Dated: January 10, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–694 Filed 1–13–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 14071–000; Project No. 12866–002]**

## FFP Project 10, LLC, Northland Power Mississippi River LLC; Notice Announcing Preliminary Permit Drawing

The Commission has received two preliminary permit applications deemed

[1] Under the Commission's Rules of Practice and Procedure, any document received after regular business hours is considered filed at 8:30 a.m. on the next regular business day. 18 CFR 385.2001(a)(2) (2011).

[2] 18 CFR 4.37 (2011).

[1] Under the Commission's Rules of Practice and Procedure, any document received after regular business hours is considered filed at 8:30 a.m. on the next regular business day. 18 CFR 385.2001(a)(2) (2011).

[2] 18 CFR 4.37 (2011).

[1] Under the Commission's Rules of Practice and Procedure, any document received after regular business hours is considered filed at 8:30 a.m. on the next regular business day. 18 CFR 385.2001(a)(2) (2011).

[2] 18 CFR 4.37 (2011).

filed on February 1, 2011, at 8:30 a.m.,[1] for proposed projects to be located on the Mississippi River, near the town of Avondale, in Jefferson Parish, Louisiana. The applications were filed by FFP Project 10, LLC for Project No. 12866–002, and Northland Power Mississippi River LLC for Project No. 14071–000.

On January 17, 2012, at 9 a.m. (eastern time), the Secretary of the Commission, or her designee, will conduct a random drawing to determine the filing priority of the applicants identified in this notice. The Commission will select among competing permit applications as provided in section 4.37 of its regulations.[2] The priority established by this drawing will be used to determine which applicant, among those with identical filing times, will be considered to have the first-filed application.

The drawing is open to the public and will be held in room 2C, the Commission Meeting Room, located at 888 First St. NE., Washington, DC 20426. A subsequent notice will be issued by the Secretary announcing the results of the drawing.

Dated: January 10, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–704 Filed 1–13–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project Nos. 12924–002 and 14077–000]**

## FFP Project 33, LLC and Northland Power Mississippi River LLC; Notice Announcing Preliminary Permit Drawing

The Commission has received two preliminary permit applications deemed filed on February 1, 2011, at 8:30 a.m.,[1] for proposed projects to be located on the Mississippi River, in Warren County, Mississippi, and Tensas and Madison Parishes, Louisiana. The applications were filed by FFP Project 33, LLC for Project No. 12924–002, and Northland Power Mississippi River LLC for Project No. 14077–000.

On January 17, 2012, at 9 a.m. (eastern time), the Secretary of the Commission, or her designee, will conduct a random drawing to determine the filing priority of the applicants identified in this notice. The Commission will select among competing permit applications as provided in section 4.37 of its regulations.[2] The priority established by this drawing will be used to determine which applicant, among those with identical filing times, will be considered to have the first-filed application.

The drawing is open to the public and will be held in room 2C, the Commission Meeting Room, located at 888 First St. NE., Washington, DC 20426. A subsequent notice will be issued by the Secretary announcing the results of the drawing.

Dated: January 10, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–702 Filed 1–13–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project Nos. 12925–002 and 14078–000]**

## FFP Project 39, LLC and Northland Power Mississippi River LLC; Notice Announcing Preliminary Permit Drawing

The Commission has received two preliminary permit applications deemed filed on February 1, 2011, at 8:30 a.m.,[1] for proposed projects to be located on the Mississippi River, in Bolivar County, Mississippi, and Desha County, Arkansas. The applications were filed by FFP Project 39, LLC for Project No. 12925–002, and Northland Power Mississippi River LLC for Project No. 14078–000.

On January 17, 2012, at 9 a.m. (eastern time), the Secretary of the Commission, or her designee, will conduct a random drawing to determine the filing priority of the applicants identified in this notice. The Commission will select among competing permit applications as provided in section 4.37 of its regulations.[2] The priority established by this drawing will be used to determine which applicant, among those with identical filing times, will be considered to have the first-filed application.

The drawing is open to the public and will be held in room 2C, the Commission Meeting Room, located at 888 First St. NE., Washington, DC 20426. A subsequent notice will be issued by the Secretary announcing the results of the drawing.

Dated: January 10, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–701 Filed 1–13–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 12930–002, Project No. 14080–000]**

## FFP Project 41, LLC, Northland Power Mississippi River LLC; Notice Announcing Preliminary Permit Drawing

The Commission has received two preliminary permit applications deemed filed on February 1, 2011, at 8:30 a.m.,[1] for proposed projects to be located on the Mississippi River, in Tunica County, Mississippi, and Lee County, Arkansas. The applications were filed by FFP Project 41, LLC for Project No. 12930–002, and Northland Power Mississippi River LLC for Project No. 14080–000.

On January 17, 2012, at 9 a.m. (eastern time), the Secretary of the Commission, or her designee, will conduct a random drawing to determine the filing priority of the applicants identified in this notice. The Commission will select among competing permit applications as provided in section 4.37 of its regulations.[2] The priority established by this drawing will be used to determine which applicant, among those with identical filing times, will be considered to have the first-filed application.

The drawing is open to the public and will be held in room 2C, the Commission Meeting Room, located at 888 First St. NE., Washington, DC 20426. A subsequent notice will be issued by the Secretary announcing the results of the drawing.

[1] Under the Commission's Rules of Practice and Procedure, any document received after regular business hours is considered filed at 8:30 a.m. on the next regular business day. 18 CFR 385.2001(a)(2) (2011).

[2] 18 CFR 4.37 (2011).

[1] Under the Commission's Rules of Practice and Procedure, any document received after regular business hours is considered filed at 8:30 a.m. on the next regular business day. 18 CFR 385.2001(a)(2) (2011).

[2] 18 CFR 4.37 (2011).

[1] Under the Commission's Rules of Practice and Procedure, any document received after regular business hours is considered filed at 8:30 a.m. on the next regular business day. 18 CFR 385.2001(a)(2) (2011).

[2] 18 CFR 4.37 (2011).

Dated: January 10, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–699 Filed 1–13–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 12857–002; Project No. 14073–000]**

### FFP Project 18, LLC, Northland Power Mississippi River LLC; Notice Announcing Preliminary Permit Drawing

The Commission has received two preliminary permit applications deemed filed on February 1, 2011, at 8:30 a.m.,[1] for proposed projects to be located on the Mississippi River, in St. James Parish, Louisiana. The applications were filed by FFP Project 18, LLC for Project No. 12857–002, and Northland Power Mississippi River LLC for Project No. 14073–000.

On January 17, 2012, at 9 a.m. (eastern time), the Secretary of the Commission, or her designee, will conduct a random drawing to determine the filing priority of the applicants identified in this notice. The Commission will select among competing permit applications as provided in section 4.37 of its regulations.[2] The priority established by this drawing will be used to determine which applicant, among those with identical filing times, will be considered to have the first-filed application.

The drawing is open to the public and will be held in room 2C, the Commission Meeting Room, located at 888 First St. NE., Washington, DC 20426. A subsequent notice will be issued by the Secretary announcing the results of the drawing.

Dated: January 10, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–695 Filed 1–13–12; 8:45 am]

**BILLING CODE 6717–01–P**

[1] Under the Commission's Rules of Practice and Procedure, any document received after regular business hours is considered filed at 8:30 a.m. on the next regular business day. 18 CFR 385.2001(a)(2) (2011).

[2] 18 CFR 4.37 (2011).

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project Nos. 12927–002 and 14075–000]**

### FFP Project 30, LLC and Northland Power Mississippi River LLC; Notice Announcing Preliminary Permit Drawing

The Commission has received two preliminary permit applications deemed filed on February 1, 2011, at 8:30 a.m.,[1] for proposed projects to be located on the Mississippi River, in West Feliciana and Pointe Coupee Parishes, Louisiana. The applications were filed by FFP Project 30, LLC for Project No. 12927–002, and Northland Power Mississippi River LLC for Project No. 14075–000.

On January 17, 2012, at 9 a.m. (eastern time), the Secretary of the Commission, or her designee, will conduct a random drawing to determine the filing priority of the applicants identified in this notice. The Commission will select among competing permit applications as provided in section 4.37 of its regulations.[2] The priority established by this drawing will be used to determine which applicant, among those with identical filing times, will be considered to have the first-filed application.

The drawing is open to the public and will be held in room 2C, the Commission Meeting Room, located at 888 First St. NE., Washington, DC 20426. A subsequent notice will be issued by the Secretary announcing the results of the drawing.

Dated: January 10, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–691 Filed 1–13–12; 8:45 am]

**BILLING CODE 6717–01–P**

[1] Under the Commission's Rules of Practice and Procedure, any document received after regular business hours is considered filed at 8:30 a.m. on the next regular business day. 18 CFR 385.2001(a)(2) (2011).

[2] 18 CFR 4.37 (2011).

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 14311–000]**

### Modern Hydro; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On November 1, 2011, Modern Hydro filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), to study the feasibility of the proposed Delhi Milldam Water Power Project No. 14311 to be located at the existing Delhi Dam, on the south fork of the Maquoketa River, near the township of Delhi, in Delaware County, Iowa. The Delhi Dam is owned by the Lake Delhi Recreation Association Board. There are no federal lands associated with the project.

The proposed project would consist of: (1) The existing Delhi Dam and reservoir; (2) an existing 61-foot-wide concrete powerhouse; (3) an existing 86-foot-long concrete-gated ogee spillway with three 25-foot-wide vertical sluice gates; (4) two refurbished 2,400-volt Westinghouse generator units powered by two refurbished S. Morgan Smith turbines with a combined generating capacity of 1,500 kilowatts; (5) an existing substation connected to an existing 12.5-kilovolt distribution line; and (6) appurtenant facilities. The project would have an estimated annual generation of 2,960,000 kilowatt-hours.

*Applicant Contact:* Mr. Dwight Shanak, N3311 Sunrise Lane, Waupaca, WI 54981, (715) 258–5720.

*FERC Contact:* Tyrone A. Williams, (202) 502–6331.

Deadline for filing comments, motions to intervene, and competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact *FERC Online Support at FERCOnlineSupport@ferc.gov* or toll free at 1-(866) 208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*.

Enter the docket number (P–14311–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: January 9, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–688 Filed 1–13–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RM98–1–000]**

### Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

| Docket No. | Document dated | Presenter or requester |
|---|---|---|
| Prohibited: | | |
| 1. CP07–444–000 | 11–18–11 | Several Individuals.[1] |
| 2. EC11–60–000 | 12–17–11 | Marshall Burkes. |
| 3. RM10–23–002 | 12–22–11 | Theodore J. Skerpon. |
| Exempt: | | |
| 1. P–2503–147 | 11–1–11 | Commission Staff.[2] |
| 2. CP11–515–000 | 11–2–11 | Janice and Kevin O'Keeffe |
| 3. CP11–515–000 | 11–14–11 | Commission Staff.[3] |
| 4. DI10–9–000 | 11–18–11 | Hon. John Williamson, M.P. |
| 5. P–2277–023 | 11–21–11 | Commission Staff.[4] |
| 6. CP11–56–000 | 11–28–11 | Commission Staff.[5] |
| 7. CP11–161–000 | 11–28–11 | Commission Staff.[6] |
| 8. P–13417–000 | 12–5–11 | Hon. Herb Kohl |
| 9. CP11–72–000 | 12–9–11 | Commission Staff.[7] |
| 10. CP12–30–000 | 12–15–11 | Hon. Leonard Lance. |
| 11. P–14263–000 | 12–16–11 | Gov. Matthew H. Mead. |
| 12. CP11–14–000 | 12–20–11 | Commission Staff".[8] |
| 13. P–12632–002 | 12–20–11 | Hon. Troy Fraser. |
| 14. P–2188–000 | 12–22–11 | Hon. Max Baucus. |

[1] Form letters were submitted from 379 individuals over the period of 11/18 to 12/22.
[2] Telephone record.
[3] Telephone records and email exchanges that occurred on 11/14 and 11/29.
[4] Telephone record.
[5] Telephone record from three occurrences—11/28, 12/7 and 12/20.
[6] Telephone record.
[7] Telephone record from two occurrences—12/9 and 12/13.
[8] Email exchanges that occurred on 12/20 and 12/27.

Dated: January 10, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–692 Filed 1–13–12; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9618–6]**

## Request for Nominations for Peer Reviewers for the Draft Research Report Entitled, ''Investigation of Ground Water Contamination Near Pavillion, WY''

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

**ACTION:** Notice.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) invites public nominations of scientific experts to be considered as peer reviewers for the external review of the draft research report entitled, ''Investigation of Ground Water Contamination near Pavillion, Wyoming.'' The draft research report was prepared by the National Risk Management Research Laboratory (NRMRL), within the EPA Office of Research and Development (ORD), and by EPA Region 8. EPA released the draft report for public comment on December 14, 2011 (see **Federal Register** Vol. 76, No. 240 at *http://www.gpo.gov/fdsys/pkg/FR-2011-12-14/pdf/FR-2011-12-14.pdf*). This draft report is not final as described in EPA's Information Quality Guidelines, and it does not represent and should not be construed to represent final Agency policy or views.

Eastern Research Group, Inc. (ERG), an EPA contractor for external peer review, will organize and conduct the external peer review. Nominees must have expertise in the areas described under ''Expertise Sought'' below, be free of any conflict of interest, and be available to participate in a one- to two-day peer review meeting that will take place in March or April, 2012 (exact date to be determined based on reviewer availability). ERG will consider and screen all nominated candidates against the selection criteria described under ''Reviewer Selection'' below. A second **Federal Register** notice will be published about one month prior to the external peer review meeting to provide the meeting date, location, and registration information. Additional details about the peer review process can be found at: *http://cfpub.epa.gov/si/si_public_pr_agenda.cfm*.

The public comment period for ''Investigation of Ground Water Contamination near Pavillion, Wyoming'' began December 14, 2011, and ends January 27, 2012. Peer reviewers will be provided with all public comments for their consideration as they review the research report.

**DATES:** Nominations for scientific peer review should be submitted via email as soon as they are available, but no later than February 17, 2012. Nominations should consist of the nominee's full name and their current email address or other contact information.

**ADDRESSES:** Peer reviewer nominations (including full name, email, and if available phone number) should be sent to *peerreview@erg.com* via email (preferred) or via facsimile at (781) 674–2906, Attn: Pavillion Peer Review.

*Background*: Pavillion, Wyoming is located in Fremont County, about 20 miles northwest of Riverton. The concern at the site is potential ground water contamination, based on resident complaints about smells, tastes, and adverse changes in water quality of their domestic wells. ORD and Region 8 have been collaborating to conduct a ground water investigation to better understand the basic ground water hydrology and how the constituents of concern may be occurring in the aquifer. A draft research report entitled ''Investigation of Ground Water Contamination near Pavillion, Wyoming'' was released on December 8, 2011. Prior to the release of the draft report, a public meeting was held November 9, 2011, to discuss findings and interpretations of data from the Pavillion site. The draft report and further information can be found at *http://www.epa.gov/region8/superfund/wy/pavillion/*.

*Expertise Sought:* EPA is seeking candidates who are nationally and/or internationally recognized scientists and/or engineers, who can conduct a scientifically thorough and unbiased review of the document. Any qualified person may be nominated to be considered for this peer review. Individuals may self-nominate.

Candidates must have a medium to high degree of experience and expertise (and numerous publications, research projects, or field experience) in one or more of the following areas:

—Petroleum Engineering (Natural gas, oil).
—Petroleum Geology (Particularly in hydraulic fracturing and well-testing mechanical integrity).
—Hydrology/hydrogeology (In or near drilling areas).
—Geophysics, Environmental Engineering (As related to drilling and its effects).
—Water Quality (Studies of contaminated ground water, etc.).
—Organic/Inorganic Chemistry and Geochemistry (Chemical fate and transport, oxidation/reduction reactions, hydraulic fracturing chemistry and/or gas-liquid exchange and solubility).
—Conducting laboratory and/or field research on physical and biogeochemical processes in subsurface environments.
—Conducting computer-based research on physical and biogeochemical processes in subsurface environments.
—Conducting laboratory and/or field-based research in hydraulic fracturing.
—Conducting peer reviews of scientific and/or technical research studies and results for scientific/technical journal publications.

*Reviewer Selection:* ERG will contact each nominee via email to request that they send to ERG a copy of their CV, fill out a calendar of availability, complete a detailed conflict-of-interest form, and fill out an expertise form. ERG will carefully consider all candidates nominated through this process and will conduct a parallel search for experts to assemble as broad a pool of initial candidates as possible. ERG will then screen all candidates against the criteria listed below to determine their suitability as peer reviewers. From among candidates who most strongly meet the selection criteria, ERG will select a final set of five to seven reviewers who, collectively, best provide expertise spanning the multiple areas listed above and, to the extent feasible, best provide a balance of perspectives.

**Selection Criteria**

—Demonstrated scientific credentials and disciplinary expertise in their field including:
  ○ Scientific credentials equivalent to a Ph.D. or P.E., Sc.D
  ○ Authorship on original publications and/or reviews in peer-reviewed scientific journals.
  ○ Significant professional accomplishments and recognition by professional societies.
—Absence of financial conflicts of interest.
—Absence of an appearance of lack of impartiality.
—Willingness and availability to commit time to the scientific peer review and to meet all required deadlines.
—Background experiences that would contribute to the diversity of perspectives of the peer reviewers.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Foster, U.S. Environmental Protection Agency, P.O. Box 1198, Ada, OK 74821; telephone: (580) 436–8750: facsimile: (580) 436–8529; or email: *foster.rebecca@epa.gov.* To send Peer Review nomination, see **ADDRESSES** section above.

Dated: January 5, 2012.

**Cynthia Sonich-Mullin,**

*Director, National Risk Management Research Laboratory.*

[FR Doc. 2012–716 Filed 1–13–12; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting

**AGENCY:** Federal Election Commission.

**DATE AND TIME:** Thursday, January 19, 2012 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 January 12, 2012.
Draft Advisory Opinion 2011–25: Atlas Air Worldwide Holdings, Inc.
Draft Advisory Opinion 2011–26: Martin Freeman.
Draft Advisory Opinion 2011–27: New Mexico Voices for Children.
Draft Advisory Opinion 2011–28: Western Representation 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, Secretary, at (202) 694–1040, at least 72 hours prior to the meeting date.

**PERSON TO CONTACT FOR INFORMATION:** Judith Ingram, Press Officer, Telephone: (202) 694–1220.

**Shawn Woodhead Werth,**

*Secretary of the Commission.*

[FR Doc. 2012–881 Filed 1–12–12; 4:15 pm]

**BILLING CODE 6715–01–P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 31, 2012.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. *The FFD Financial Corporation Employee Stock Ownership Plan, (''ESOP''), and Enos L. Loader, both of Dover, Ohio, Richard A. Brinkman, Strasburg, Ohio, and Leonard L. Gundy, New Philadelphia, Ohio, as individuals and in their capacities as Trustees of the ESOP, Janet K. Loader. Dover, Ohio, and Rebecca J. Brinkman,* Strasburg, Ohio, as individuals; to acquire voting shares of FFD Financial Corporation, and thereby indirectly acquire voting shares of First Federal Community Bank, NA, both in Dover, Ohio.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Edward A. Cox, Jr., individually, and together with John M. Cox,* both of Naples, Florida, as a group acting in concert; to acquire voting shares of Rush-Oak Corporation, and thereby indirectly acquire voting shares of Oak Bank, both in Chicago, Illinois.

Board of Governors of the Federal Reserve System, January 11, 2012.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 2012–646 Filed 1–13–12; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Federal Open Market Committee; Domestic Policy Directive of December 13, 2011

In accordance with Section 271.7(d) of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on December 13, 2011.[1]

''The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long-run objectives, the Committee seeks conditions in reserve markets consistent with federal funds trading in a range from 0 to ¼ percent. The Committee directs the Desk to continue the maturity extension program it began in September to purchase, by the end of June 2012, Treasury securities with remaining maturities of approximately 6 years to 30 years with a total face value of $400 billion, and to sell Treasury securities with remaining maturities of 3 years or less with a total face value of $400 billion. The Committee also directs the Desk to maintain its existing policies of rolling over maturing Treasury securities into new issues and of reinvesting principal payments on all agency debt and agency mortgage-backed securities in the System Open Market Account in agency mortgage-backed securities in order to maintain the total face value of domestic securities at approximately $2.6 trillion. The Committee directs the Desk to engage in dollar roll transactions as necessary to facilitate settlement of the Federal Reserve's agency MBS transactions. The System Open Market Account Manager and the Secretary will keep the Committee informed of ongoing developments regarding the System's balance sheet that could affect the attainment over time of the Committee's objectives of maximum employment and price stability.''

By order of the Federal Open Market Committee, January 11, 2012.

**William B. English,**

*Secretary, Federal Open Market Committee.*

[FR Doc. 2012–742 Filed 1–13–12; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL TRADE COMMISSION

**[File No. 121 0022]**

### AmeriGas Propane, L.P., AmeriGas Propane, Inc., Energy Transfer Partners, L.P., and Energy Transfer Partners GP, L.P.; Analysis of Proposed Agreement Containing Consent Order To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

[1] Copies of the Minutes of the Federal Open Market Committee at its meeting held on December 13, 2011, which includes the domestic policy directive issued at the meeting, are available on the Board's Web site, *www.federalreserve.gov.* The minutes are also published in the Federal Reserve Bulletin and in the Board's Annual Report.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before February 13, 2012.

**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 ''AmeriGas, File No. 121 0022'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/amerigasetpconsent*, 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 D), 600 Pennsylvania Avenue NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Thomas Dahdouh ((415) 848–5122), FTC, Western Regional Office—San Francisco, 600 Pennsylvania Avenue NW., Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 11, 2012), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before February 6, 2012. Write ''AmeriGas, File No. 121 0022'' 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 does not 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 does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or 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, do not 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).[1] 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 *https://ftcpublic.commentworks.com/ftc/amerigasetpconsent* 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 ''AmeriGas, File No. 121 0022'' 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 D), 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 February 13, 2012. 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*.

## Analysis of Agreement Containing Consent Order To Aid Public Comment

### I. Overview

The Federal Trade Commission has accepted an Agreement Containing Consent Order (''Proposed Order'') with AmeriGas Propane, L.P. (''AmeriGas''), AmeriGas Propane, Inc., Energy Transfer Partners, L.P. (''ETP''), and Energy Transfer Partners GP, L.P. (''ETP GP''), which is designed to guard against possible anticompetitive effects that would likely result from the transaction as originally proposed.

On October 15, 2011, AmeriGas entered into an agreement with ETP and ETP GP in which AmeriGas proposed to acquire ETP's Heritage Propane business through the approximately $2.9 billion acquisition of four entities owned by ETP, Heritage Operating, L.P., Heritage GP, LLC, Titan Energy Partner, L.P., and Titan Energy GP, L.L.C. ETP's Heritage Propane business includes Heritage Propane Express, an entity that is engaged in the business of preparing, filling, distributing and selling portable cylinders prefilled with propane commonly used for barbeque grills (referred to herein as ''propane exchange cylinders''). The AmeriGas Cylinder Exchange or ''ACE'' division is also engaged in the business of preparing, filling, distributing and selling exchange cylinders, and is the second largest provider of propane exchange cylinders in the United States. In response to competitive concerns raised by Commission staff regarding

[1] 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).

AmeriGas's purchase of the Heritage Propane Express Business, the parties subsequently proposed a modified transaction that excludes those assets. The Order, as accepted by the Commission, settles charges that the acquisition, as originally proposed, may have substantially lessened competition in the market for preparing, filling, distributing and selling propane exchange cylinders in the United States and in certain regional areas within the United States.

**II. The Parties**

AmeriGas, a limited partnership, is the largest propane distribution company in the United States. Its ACE division supplies prefilled propane exchange cylinders to retailers who then sell those cylinders to consumers. AmeriGas is the second largest supplier and marketer of propane exchange cylinders.

ETP GP is a publicly traded partnership and the general partner of ETP, which is also a publicly traded partnership. ETP is engaged in the business of supplying propane exchange cylinders through its Heritage Propane Express division. Heritage Propane Express is the third largest supplier and marketer of propane exchange cylinders in the country with operations in 37 states.

**III. The Products and the Structure of the Market**

Propane exchange cylinders, often referred to as 20 pound DOT cylinders,[2] are small, portable tanks that can be filled with propane, and that are used primarily for barbeque grills, patio heaters, and mosquito magnets. At one time, the only option for consumers who needed to purchase propane for these uses was to purchase empty cylinders and take them to locations where they could have the cylinders filled. Starting in the 1990's cylinder exchange became popular. This option allows consumers to purchase a prefilled cylinder which can then be exchanged for a clean prefilled cylinder when the fuel in the first cylinder has been used. The consumer exchanging an empty cylinder for a full one typically pays only for the propane. Exchange cylinders are available for purchase and exchange at various locations, including grocery stores, home improvement stores, hardware stores, big box stores, convenience stores, and gas stations. Although consumers have the option of refilling these cylinders, many prefer the convenience of purchasing prefilled exchange cylinders that have been cleaned and safety tested by the supplier before they are sold. Many retailers also prefer the convenience and possible safety benefits of selling prefilled exchange cylinders rather than arranging to have large propane tanks on their premises and training employees to perform refilling services. For these reasons, the use of propane exchange cylinders has grown, and the refilling of cylinders has declined over the last ten years. As a consequence of these changes in demand, refilling cylinders does not provide a competitive constraint on the price of propane cylinder exchange services.

Companies that distribute and sell propane exchange cylinders typically provide the following services, either directly or indirectly: Cylinder preparation (including cleaning, rust removal, repainting and valve repairs for the cylinders); refilling with a designated amount of propane; marketing and distribution (including delivery and retrieval of cylinders, and placement and maintenance of cages that display and dispense exchange cylinders at retail locations); and sale of exchange cylinders.

**IV. The Complaint**

The Complaint alleges that the market for propane exchange cylinder services that can serve large multi-state chain retailers is highly concentrated. Large multi-state retail chains generally require that their propane exchange cylinder suppliers have the scale and geographic scope of coverage to handle significant portions of their business. These retailers also require that their propane exchange cylinder suppliers offer ''just in time'' deliveries to ensure that cages are continuously stocked with prefilled cylinders, particularly during peak holiday periods and weekends. Currently, there are only three suppliers that can provide propane exchange cylinder services to such retailers: Ferrellgas Partners, L.P.'s ''Blue Rhino'' division, the largest provider of propane exchange cylinder services on a national and regional basis; AmeriGas's ACE, the second largest provider of propane exchange cylinder services; and ETP's Heritage Propane Express, the third largest provider of these services. The Complaint alleges that AmeriGas's acquisition of the Heritage Propane Exchange assets, as originally proposed, would have reduced the number of companies that can supply these services to multi-state retail chains from three to two.

The Complaint further alleges that Heritage Propane Express played the role of a disruptive ''maverick,'' offering lower prices and better terms and conditions than the other two large players. In addition, the Complaint alleges that entry into the market for supply of propane exchange cylinder services to large multi-state chain retailers is not likely to be timely or sufficient to defeat a price increase due to the large scale of entry needed to service large national or regional retailers requiring reliable distribution services in many locations.

The Complaint alleges that the effect of the acquisition, as originally proposed, may be to substantially lessen competition by, *inter alia,* increasing the likelihood of collusion or coordinated interaction among the remaining two large competitors by removing Heritage Propane Express, a disruptive force in the marketplace.

**V. The Modified Transaction**

AmeriGas, AmeriGas Propane, Inc., ETP and ETP GP have now entered into an amendment to their original agreement. Pursuant to this amendment (''Amendment 2''), AmeriGas will not acquire the Heritage Propane Express assets. Rather, they will continue to be operated by ETP through a new subsidiary, Heritage Propane Express, LLC, until such time as ETP decides to sell those assets. However, because Heritage Propane Express, LLC will no longer have access to certain back office and propane supply services that will be transferred to AmeriGas, AmeriGas is required to make such services available to Heritage Propane Express, LLC at cost for a specified period of time. This provision will allow Heritage Propane Express, LLC to continue to function as a viable entity. Amendment 2 contains a number of other provisions addressing the provision of transition services that are likely to be needed. Because Amendment 2 contains competitively sensitive information, the details of the transition services are not publicly available.

**VI. The Order**

The Order remedies the Commission's competitive concerns raised by the original transaction, as proposed.

The Order incorporates Amendment 2, described above, into the Order and requires the Respondents to comply with all the terms of that document, including all terms pertaining to the provision of transition services by AmeriGas to Heritage Propane Express, LLC until such time as Heritage Propane

[2] The metal cylinders can hold approximately 25 pounds of propane, but for safety reasons, can only be filled to 80% capacity, or approximately 20 pounds. In the marketplace at this point in time, most exchange cylinders are only filled with 15 to 17 or so pounds of propane. The reference in this Analysis is intended as a description of the size and type of cylinder, and is not a reference to actual fill levels.

Express, LLC is sold to another entity, or, barring a sale, for a period of one year. The specified transition services include access to propane supply under specified terms.

Section II.C of the Order requires that, for a period of two years, ETP cannot sell the Heritage Propane Express assets without prior written approval of the Commission. This ensures that the Commission will have an opportunity to review a future sale of these assets, particularly if the assets would not be reportable under the Hart-Scott-Rodino Antitrust Improvements Act. Section II.D requires ETP to provide prior notification to the Commission before acquiring any other cylinder exchange businesses for the next 10 years. Section II.E similarly requires AmeriGas to provide prior notification to the Commission before acquiring any other cylinder exchange businesses for the next 10 years. Both II.D and II.E provide that prior notification is not necessary for transactions that fall under a certain threshold in terms of the annual sales of propane exchange cylinders by any company that they propose to acquire.

Section II.F addresses the availability of the transition services outlined in Amendment 2. It requires that AmeriGas make these transition and supply services available to ETP for up to one year, so that Heritage Propane Express, LLC can be operated as a viable entity. If that company is sold within one year, Section II.F requires that AmeriGas provide transition and propane supply services to Heritage Propane Express's buyer for a period of six months, with an option to extend the arrangement for another six months. These provisions are designed to ensure that the Heritage Propane Express assets will continue to be viable as a stand-alone propane exchange cylinder business and that any new purchaser will have the necessary services and supply for a short transition period. Section II.G requires ETP to operate the Heritage Propane Express assets in a manner that maintains their economic viability for a period of two years or until ETP no longer holds an interest in the assets.

The remaining Order provisions are standard reporting requirements to allow the Commission to determine on-going compliance with the provisions of the Order.

## VII. Opportunity for Public Comment [3]

The Final Order has been placed on the public record for 30 days to receive comments from interested parties. Comments received during this period will become part of the public record. After 30 days, the Commission will review the comments received and determine whether to take further action. The purpose of this analysis is to facilitate comment on the Consent Agreement and Order. This analysis does not constitute and official interpretation of the Consent Agreement or Order, not does it modify its terms in any way. The Consent Agreement does not constitute an admission by AmeriGas, ETP or ETP GP that they have violated the law or that the facts as alleged in the Complaint, other than the jurisdictional facts, are true.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 2012–748 Filed 1–13–12; 8:45 am]

**BILLING CODE 6750–01–P**

[3] The Commission normally will issue an order for public comment but not issue a final order until it considers all comments received during the comment period. Here, however, consistent with Commission Rule 2.34(c), 16 CFR 2.34(c), the Commission has issued the Final Order in advance of the comment period. The Commission took this step to avoid any unnecessary and potentially costly delay to the larger underlying transaction involving the sale of ETP's bulk propane business, which is not the subject of the Order, and is a highly seasonal business; that is, the market for bulk propane and related services is greatest during the winter and early spring. After the public comment period, the Commission will have the option to initiate a proceeding to reopen and modify the Decision and Order or commence a new administrative proceeding if the public comments lead it to believe that such action is appropriate.

## GENERAL SERVICES ADMINISTRATION

**[Notice-MG–2012–01; Docket No. 2012–0002; Sequence 2]**

## Office of Federal High-Performance Green Buildings; the Green Building Advisory Committee; Notification of Upcoming Public Advisory Teleconference Meetings

**AGENCY:** Office of Governmentwide Policy, General Services Administration (GSA).

**ACTION:** Teleconference Meeting Notice.

**SUMMARY:** This notice provides the schedule for three teleconference meetings of the Green Building Advisory Committee (the Committee). The teleconference meetings are open to the public. Notice of this meeting is being provided according to the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. 10(a)(2).

**DATES:** *Effective date:* January 17, 2012.

*Teleconference Meeting Dates:* The teleconferences will be held on Monday, January 30, 2012; Monday, February 27, 2012; and Monday, March 26, 2012. Each teleconference will start at 3 p.m. Eastern time and end no later than 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Ken Sandler, Designated Federal Officer, Office of Federal High Performance Green Buildings, Office of Governmentwide Policy, General Services Administration, 1275 First Street NE., Room 633D, Washington, DC 20417, telephone (202) 219–1121 (note: this is not a toll-free number). Email: *ken.sandler@gsa.gov.*

Contact Tyler Telesford at (202) 501–9153 or Sheila Turner at (202) 501–8880 to receive the teleconference call-in number to listen to the teleconference, as well as to obtain advance meeting materials. The public is invited to submit written comments relevant to the topics covered in these teleconferences by written statement to Ken Sandler at the GSA address above or at *ken.sandler@gsa.gov* until April 9, 2012.

**SUPPLEMENTARY INFORMATION:**

### Background

The Green Building Advisory Committee provides advice to GSA as specified in Public Law 110–140, under the Federal Advisory Committee Act. Under this authority, the Committee will advise GSA on the rapid transformation of the Federal building portfolio to sustainable technologies and practices. The Committee focuses primarily on reviewing strategic plans, products and activities of the Office of Federal High-Performance Green Buildings and providing advice regarding how the Office can most effectively accomplish its mission.

### Agenda

*Monday, January 30, 2012*

- Overall GSA Office of Federal High-Performance Green Buildings (OFHPGB) strategy and project plan.
- National Research Council Levers for Change report.

Following are the proposed topics for the February and March teleconference meetings. More detailed agendas will be available closer to the meetings. Please contact the Designated Federal Officer, Ken Sandler at the email address or telephone number above.

*Monday, February 27, 2012*

- ''Blue sky'' discussion: best opportunities for transformative change to Federal sustainable buildings.

*Monday, March 26, 2012*

- Communications/Research into Practice Knowledge Hub.
- High-Performance Building Demonstration Projects.

Dated: January 10, 2012.

**John C. Thomas,**

*Deputy Director, Office of Committee and Regulatory Management, Office of Governmentwide Policy, General Services Administration.*

[FR Doc. 2012–622 Filed 1–13–12; 8:45 am]

**BILLING CODE 6820–27–P**

## GENERAL SERVICES ADMINISTRATION

**[Notice—FTR–2012–01; Docket number 2012–0004; Sequence 1]**

### Office of Asset and Transportation Management; Privately Owned Vehicle Mileage Reimbursement Rates

**AGENCY:** Office of Governmentwide Policy (OGP), General Services Administration (GSA).

**ACTION:** Notice of FTR Bulletin 12–02, Calendar Year (CY) 2012 Privately Owned Vehicle Mileage Reimbursement Rates.

**SUMMARY:** The General Services Administration's (GSA) annual privately owned vehicle (POV) mileage reimbursement rate review has resulted in no rate changes when employees use their privately owned automobile (POA), their POA when Government owned automobiles (GOA) are authorized, their privately owned airplane, and/or their privately owned motorcycle for official purposes. FTR Bulletin 12–02 indicates that there will be no POV rate changes beginning on January 1, 2012. This notice announcing FTR Bulletin 12–02 is the only notification of this decision.

FTR Bulletin 12–02 and all other FTR Bulletins are posted at *www.gsa.gov/ftrbulletins.* Any further bulletins posted due to adjustments will be announced in the **Federal Register**. The POV Mileage Reimbursement Rate Web site is *www.gsa.gov/mileage.*

**DATES:** This notice is effective on January 17, 2012 and applies to travel performed on or after January 1, 2012, through December 31, 2012, unless changed by a subsequent bulletin.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, please contact Mr. Cy Greenidge, Office of Governmentwide Policy, Office of Asset and Transportation Management, at (202) 219–2349, or by email at *travel policy@gsa.gov.* Please cite Notice of FTR Bulletin 12–02.

**SUPPLEMENTARY INFORMATION:**

#### Change in Standard Procedure

GSA's annual privately owned vehicle (POV) mileage reimbursement rate review has resulted in no rate changes when employees use their privately owned automobile (POA), their POA when Government owned automobiles (GOA) are authorized, their privately owned airplane, and/or their privately owned motorcycle for official purposes. Historically, GSA has determined these rates by reviewing the annual standard automobile study conducted by the Internal Revenue Service, as well as conducting independent automobile, motorcycle, and aircraft studies, and/or by applying consumer price index data. GSA will continue to monitor these costs on a monthly basis and will adjust the rate if warranted. Any adjustments will be posted in the **Federal Register** and posted as a bulletin on GSA's Web site (*www.gsa.gov/ftrbulletins*) and on our POV Mileage Reimbursement Rate Web site (*www.gsa.gov/mileage*).

GSA posts the POV mileage reimbursement rates, formerly published in 41 CFR Chapter 301, solely on the Internet at *www.gsa.gov/ftr.* This process, implemented in FTR Amendment 2010–07 (75 FR 72965, Nov. 29, 2010), ensures more timely updates in mileage reimbursement rates by GSA for Federal employees on official travel.

Notices published periodically in the **Federal Register**, such as this one, and the changes posted on the GSA Web site, now constitute the only notification of revisions to privately owned vehicle reimbursement rates for Federal agencies.

Dated: January 6, 2012.

**Janet Dobbs,**

*Deputy Associate Administrator.*

[FR Doc. 2012–623 Filed 1–13–12; 8:45 am]

**BILLING CODE 6820–14–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

**[Document Identifier: OS–0990–new; 30-Day Notice]**

### Agency Information Collection Request. 30-Day Public Comment Request

**AGENCY:** Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, email your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at (202) 395–5806.

*Proposed Project:* Evaluation of the effectiveness of an educational interactive video on research integrity—OMB No. 0990–New–Office of Research Integrity.

*Abstract:* The Office of Research Integrity (ORI) proposes to conduct a nine-month evaluation study of the effectiveness of an educational interactive video on research integrity.

The study seeks to answer two questions: (a) Objectively, is the Educational Interactive Video for Research Integrity (EIVRI) effective in achieving learning outcomes? (b) Subjectively, do learners and teachers perceive the video simulation as effective in helping them learn and teach research integrity? To answer the first question, a pretest-posttest control group experimental design is used to assess the effectiveness of individual learning of research integrity principles and concepts through the use of the video simulation. The video simulation instruction will be incorporated into an existing syllabus for a research integrity or research ethics course for the treatment group. The control group will use the existing syllabus with no video simulation in class. Participants will be graduate students enrolled in these ethics courses to learn and apply the responsible conduct of research at educational institutions. Participants will fill out a demographics form to discern if they have had prior training experience in research integrity. Those who have prior training experience and those who do not have prior training experience will be randomly assigned to either the treatment group or the control group. The random assignment will be done by picking the last digit of each individual's social security number for

the two groups. The video simulation will be approximately four-hour long total. All students will take a pre-test quiz when they fill out the demographics form. Once the treatment is completed, all students will be asked to take a post-test quiz and answer a post-viewing questionnaire to capture their perceptions of the video simulation.

To answer the second question, the study will collect qualitative data from semi-structured interviews as well as focus groups. The semi-structured interviews will be conducted twice with faculty who teach the courses in the first part of the study, in person or on the phone, before and after he/she uses the video simulation. Participants for the focus groups will be selected from the students who participate in the first part of the study. The focus group will last one hour.

ESTIMATED ANNUALIZED BURDEN TABLE

| Forms | Type of respondent | Number of respondents | Number of responses per respondent | Average burden (in hours) per response | Total burden hours |
|---|---|---|---|---|---|
| Educational Interactive Video ..... | Individuals/Households ..... | 3000 | 1 | 14/60 | 700 |

**Keith A. Tucker,**

*Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.*

[FR Doc. 2012–632 Filed 1–13–12; 8:45 am]

**BILLING CODE 4150–05–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Meeting of the Presidential Commission for the Study of Bioethical Issues

**AGENCY:** Office of the Assistant Secretary for Health, Presidential Commission for the Study of Bioethical Issues, Department of Health and Human Services.

**ACTION:** Notice of meeting.

**SUMMARY:** The Presidential Commission for the Study of Bioethical Issues will conduct its eighth meeting in February. At this meeting, the Commission will discuss issues of privacy and access related to human genome sequence data. The Commission will also be discussing neuroscience and related ethical issues.

**DATES:** The meeting will take place February 2, 2012 from 9 a.m. to approximately 5:15 p.m. and on February 3, 2012 from 9 a.m. to approximately 12 p.m.

**ADDRESSES:** Millberry Union, University of California, San Francisco, 500 Parnassus Avenue, San Francisco, CA 94143, (415) 476–2019.

**FOR FURTHER INFORMATION CONTACT:** Hillary Wicai Viers, Communications Director, Presidential Commission for the Study of Bioethical Issues, 1425 New York Avenue NW., Suite C–100, Washington, DC 20005. *Telephone:* (202) 233–3960. *Email: Hillary.Viers@bioethics.gov.* Additional information may be obtained at *http://www.bioethics.gov.*

**SUPPLEMENTARY INFORMATION:** Pursuant to the Federal Advisory Committee Act of 1972, Public Law 92–463, 5 U.S.C. app. 2, notice is hereby given of the eighth meeting of the Presidential Commission for the Study of Bioethical Issues (the Commission). The meeting will be held from 9 a.m. to approximately 5:15 p.m. on Thursday, February 2, 2012, and from 9 a.m. to approximately 12 p.m. on Friday, February 3, 2012, in San Francisco, California. The meeting will be open to the public with attendance limited to space available. The meeting will also be webcast at *http://www.bioethics.gov.* Under authority of Executive Order 13521, dated November 24, 2009, the President established the Commission. The Commission is an advisory panel of the nation's leaders in medicine, science, ethics, religion, law, and engineering. The Commission advises the President on bioethical issues arising from advances in biomedicine and related areas of science and technology. The Commission seeks to identify and promote policies and practices that ensure scientific research, health care delivery, and technological innovation are conducted in a socially and ethically responsible manner. The main agenda item for the Commission's eighth meeting is to discuss issues of privacy and access related to human genome sequence data. The Commission will also be discussing neuroscience and related ethical issues. The draft meeting agenda and other information about PCSBI, including information about access to the webcast, will be available at *http://www.bioethics.gov.* The Commission welcomes input from anyone wishing to provide public comment on any issue before it. Respectful debate of opposing views and active participation by citizens in public exchange of ideas can enhance decisions that are reached and the overall public understanding of them. The Commission is particularly interested in receiving comments and questions during the meeting that are responsive to specific sessions. Written comments will be accepted at the registration desk and comment forms will be provided for members of the public to write down questions and comments for the Commission as they arise. To accommodate as many individuals as possible, the time for each question or comment may be limited. If the number of individuals wishing to pose a question or make a comment is greater than can reasonably be accommodated during the scheduled meeting, the Commission may make a random selection. Anyone planning to attend the meeting who needs special assistance, such as sign language interpretation or other reasonable accommodations, should notify Esther Yoo by telephone at (202) 233–3960, or email at *Esther.Yoo@bioethics.gov* in advance of the meeting. The Commission will make every effort to accommodate persons who need special assistance. Written comments will also be accepted in advance of the meeting and are especially welcome. Please address written comments by email to *info@bioethics.gov,* or by mail to the following address: Public Commentary, Presidential Commission for the Study of Bioethical Issues, 1425 New York Ave. NW., Suite C–100, Washington, DC 20005. Comments will be publicly available, including any personally identifiable or confidential business information that they contain. Trade secrets should not be submitted.

Dated: January 6, 2012.

**Valerie H. Bonham,**

*Executive Director, Presidential Commission for the Study of Bioethical Issues.*

[FR Doc. 2012–650 Filed 1–13–12; 8:45 am]

**BILLING CODE 4154–06–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Office of Child Support Enforcement; Privacy Act of 1974; Computer Matching Agreement

**AGENCY:** Office of Child Support Enforcement (OCSE), ACF, HHS.

**ACTION:** Notice of a Computer Matching Program.

**SUMMARY:** In accordance with the Privacy Act of 1974 (5 U.S.C. 522a), as amended, OCSE is publishing notice of a computer matching program between OCSE and state agencies administering the Supplemental Nutrition Assistance Program (SNAP).

**DATES:** HHS invites interested parties to review, submit written data, comments or arguments to the agency about the matching program until February 16, 2012. As required by the Privacy Act (5 U.S.C. 552a(r)), HHS on January 5, 2012, sent a report of a Computer Matching Program to the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives and the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

**ADDRESSES:** Interested parties may submit written comment on this notice by writing to Linda Deimeke, Director, Division of Federal Systems, Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade SW., 4th Floor East, Washington, DC 20447. Comments received will be available for public inspection at this address from 9 a.m. to 5 p.m. ET, Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Linda Deimeke, Director, Division of Federal Systems, Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade SW., 4th Floor East, Washington, DC 20447, (202) 401–5439.

**SUPPLEMENTARY INFORMATION:** The Privacy Act of 1974 (5 U.S.C. 552a), as amended, provides for certain protections for individuals applying for and receiving federal benefits. The law governs the use of computer matching by federal agencies when records in a system of records are matched with other federal, state or local government records. The Privacy Act requires agencies involved in computer matching programs to:

1. Negotiate written agreements with the other agency or agencies participating in the matching programs;
2. Provide notification to applicants and beneficiaries that their records are subject to matching;
3. Verify information produced by such matching program before reducing, making a final denial of, suspending or terminating an individual's benefits or payments;
4. Publish notice of the computer matching program in the **Federal Register**;
5. Furnish reports about the matching program to Congress and OMB; and
6. Obtain the approval of the matching agreement by the Data Integrity Board of any Federal agency participating in a matching program.

This matching program meets these requirements.

Dated: December 16, 2011.

**Vicki Turetsky,**

*Commissioner, Office of Child Support Enforcement.*

**Notice of New Computer Matching Program**

*A. Participating Agencies*

The participating agencies are OCSE, which is the ''source agency,'' and state agencies administering the Supplemental Nutrition Assistance Program (SNAP), which are the ''non-federal agencies.''

*B. Purpose of the Matching Program*

The purpose of the matching program is to provide new hire, quarterly wage (QW) and unemployment insurance (UI) information from OCSE's National Directory of New Hires (NDNH) to state agencies administering SNAP for the purpose of establishing or verifying the eligibility of SNAP applicants and recipients. The state agencies administering SNAP may also use the NDNH information for the purpose of updating the recipients' reported participation in work activities and updating recipients' and their employers' contact information maintained by the state agencies administering SNAP.

*C. Authority for Conducting the Match*

The authority for conducting the matching program is contained in Section 453(j)(10) of the Social Security Act. 42 U.S.C. 653(j)(10).

*D. Categories of Individuals Involved and Identification of Records Used in the Matching Program*

The categories of individuals involved in the matching program are adult members of households that receive or have applied for SNAP benefits. The system of records maintained by OCSE from which records will be disclosed for the purpose of this matching program is the ''OCSE National Directory of New Hires'' (NDNH), No. 09–80–0381, last published in the **Federal Register** at 76 FR 560 on January 5, 2011. The NDNH contains new hire, QW and UI information. The disclosure of NDNH information by OCSE to the state agencies administering SNAP is a ''routine use'' under this system of records. Records resulting from the matching program and which are disclosed to state agencies administering the SNAP include names, Social Security numbers, home addresses and employment information.

*E. Inclusive Dates of the Matching Program*

The computer matching agreement will be effective and matching activity may commence the later of the following:

(1) 30 days after this notice is published in the **Federal Register** or (2) 40 days after OCSE sends a report of the matching program to the Congressional committees of jurisdiction under 5 U.S.C. 552a(o)(2)(A); and to OMB, unless OMB disapproves the agreement within the 40-day review period or grants a waiver of 10 days of the 40-day review period. The matching agreement will remain in effect for 18 months from its effective date, unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement. The agreement is subject to renewal by the HHS Data Integrity Board for 12 additional months if the matching program will be conducted without any change and each party to the agreement certifies to the Board in writing that the program has been conducted in compliance with the agreement.

[FR Doc. 2012–627 Filed 1–13–12; 8:45 am]

**BILLING CODE 4184–42–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2012–N–0018]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Healthcare Professional Survey of Prescription Drug Promotion

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on the Healthcare Professional Survey of Prescription Drug Promotion. This survey is designed to explore the opinions and perceptions of physicians, nurse practitioners, and physician assistants with regard to the promotion of prescription drugs to consumers and healthcare providers.

**DATES:** Submit either electronic or written comments on the collection of information by March 19, 2012.

**ADDRESSES:** Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Juanmanuel Vilela, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr. PI50–400B, Rockville, MD 20850, (301) 796–7651, *Juanmanuel.vilela@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Healthcare Professional Survey of Prescription Drug Promotion—(OMB Control Number 0910—New)**

*I. Regulatory Background*

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes the Food and Drug Administration (FDA) to conduct research relating to health information. Section 903(d)(2)(c) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 393(d)(2)(c)) authorizes FDA to conduct research relating to drugs and other FDA regulated products in carrying out the provisions of the FD&C Act.

*II. Description*

The rise of direct-to-consumer (DTC) drug advertising and prescription drug promotion has affected healthcare professionals in a number of ways. First, healthcare professionals regularly encounter patients who have been exposed to DTC ads. Second, healthcare professionals also see and hear such ads directly as mass media consumers themselves. Since clarification of the adequate provision requirement for prescription drug broadcast ads in 1997, FDA has faced numerous questions about the influence of DTC pharmaceutical marketing because such advertising directly engages consumers and potentially affects interactions between patients and their physicians (Refs. 1 and 2). Those questions have grown more urgent with the growth of DTC advertising in recent years (Refs. 3 and 4). In 2002, FDA considered this form of promotion sufficiently important as a force in the physician-patient interaction that they surveyed both patients and physicians regarding their perceptions of DTC advertising (Ref. 5). Now, nearly a decade later, there are critical reasons to return to the field to gather more evidence on the influence of DTC advertising in the examination room and on the relationships between healthcare professionals and patients.

One of the most noteworthy aspects of the current healthcare environment in 2011 is the role now played by various physician extenders. Naylor and Kurtzman (Ref. 6) recently noted that nurses are the single largest group of healthcare providers in the United States and they argue that nurse practitioners will play an increasingly vital role in primary care delivery. Similarly, physician assistants also bolster the ability of our healthcare system to offer some types of care at lower cost. The aforementioned 2002 FDA study did not include nurse practitioners or physician assistants in the sample; that study focused on general practitioners and specialists in several key areas targeted by DTC advertising. Murray and colleagues (Ref. 7) also conducted a large-scale survey of U.S. physicians regarding their perceptions of DTC advertising, but they also did not include nurse practitioners or physician assistants in their sample. Because DTC advertising likely affects daily interactions between patients and nurse practitioners and physician assistants—similar to the 2002 FDA study that suggested the influence of advertising on physicians' work lives—including these groups in the new sample will further understanding of DTC advertising in the healthcare system.

Another limitation of the 2002 FDA study was the extent to which the results were nationally representative. As FDA has acknowledged, the initial set of results as reported were applicable to survey respondents but were not weighted to reflect national statistics as to the age, sex, and racial composition of the healthcare professional population. Similar to many types of surveys that have struggled in recent decades with declines in cooperation rates (Ref. 8), surveys of healthcare professionals in general often can benefit from weighting to reduce nonresponse bias. The current survey will include weighted responses from respondents that will reflect national demographic patterns.

Over the past decade, researchers have been able to better assess how DTC advertising has unfolded in the United States and determine the questions that warrant further survey work. For example, researchers have worried for a number of years that DTC advertising might produce adverse outcomes, such as clinically inappropriate patient requests for drugs or patient overestimation of the efficacy of advertised medications (Refs. 5, 7, 9, and 10). At the same time, the 2002 FDA

survey found that roughly as many physicians thought DTC advertising had a positive effect on their practice as those who thought there had been a negative influence. Moreover, the 2002 FDA survey found that roughly a third of physicians surveyed thought that DTC advertising had essentially no influence on their practice. The question of whether a similar pattern will emerge now, despite the growth of DTC advertising, is a vital one. Furthermore, FDA will benefit from knowing more detail about the various types of perceived effects DTC advertising might have. For example, some healthcare professionals might be ambivalent rather than strongly in favor of or opposed to DTC advertising. In addition, with the proliferation of social media platforms, the emergence of online pharmaceutical marketing, and the evolution of office detailing practices (Refs. 11 and 12), FDA will benefit by knowing more about healthcare professionals' awareness of new and emerging drug promotion sites and practices. The proposed survey will address these issues.

*III. Method Overview*

We propose a nationally representative sample of healthcare professionals that will yield 2,000 responses from 500 general practitioners, 500 specialists, 500 nurse practitioners, and 500 physician assistants. Such a design will help to ensure our ability to discuss not only healthcare professional perceptions generally but also to assess potential variation between different types of healthcare professionals. This sample will be recruited from a national Internet healthcare professional panel that includes over 70,000 individuals originating from the American Medical Association master file and other medical organizations. Because there are not enough individuals in this panel to satisfy the needs of the proposed project, nurse practitioners and physician assistants will be specially recruited from relevant professional organizations.

Healthcare providers are a difficult group to recruit, and so several strategies will be put into place to achieve a high response rate. These include sending prenotification letters before online invitation, lengthening the data collection period to 8 weeks (from the more typical 4 weeks), tailoring contact materials, disclosing FDA sponsorship on survey materials, and conducting reminder telephone calls. Appropriate weighting will be applied to adjust for any survey nonresponse as well as any noncoverage or undersampling and oversampling resulting from the sample design.

Participants who agree to participate will answer questions online. The survey is expected to take no longer than 20 minutes. This will be a one-time (versus annual) data collection.

FDA estimates the burden of this collection of information as follows: The total respondent sample for this data collection is 2,025. We will sample 25 respondents for basic programming pretesting and 2,000 respondents for the full study. We estimate the response burden to be 20 minutes, for a burden of 1,008 hours.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| Activity | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response (in hours) | Total hours |
|---|---|---|---|---|---|
| Screener | 10,000 | 1 | 10,000 | 2/60 | 333 |
| Pretest | 25 | 1 | 25 | 20/60 | 8 |
| Main Study | 2,000 | 1 | 2,000 | 20/60 | 667 |
| Total | | | | | 1,008 |

There are no capital costs or operating and maintenance costs associated with this collection of information.

*IV. References*

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Fintor, L., ''Direct-to-Consumer Marketing: How Has It Fared?,'' *Journal of the National Cancer Institute,* 94, 329–331, 2002.

2. Palumbo, F.B. and C.D. Mullins, ''The Development of Direct-to-Consumer Prescription Drug Advertising Regulations,'' *Food and Drug Law Journal,* 57, 423–443, 2002.

3. Curry, T.J., J. Jarosch, and S. Pacholok, ''Are Direct to Consumer Advertisements of Prescription Drugs Educational? Comparing 1992 to 2002,'' *Journal of Drug Education,* 35, 2172–2232, 2005.

4. Government Accountability Office (GAO), ''Improvements Needed in FDA's Oversight of Direct-to-Consumer Advertising, GAO–07–54, Washington, DC: GAO, November 16, 2006.

5. Aikin, K.J., J.L. Swasy, and A.C. Braman, ''Patient and Physician Attitudes and Behaviors Associated With DTC Promotion of Prescription Drugs,'' Washington, DC: Food and Drug Administration, November 19, 2004.

6. Naylor, M.D. and E.T. Kurtman, ''The Role of Nurse Practitioners in Reinventing Primary Care,'' *Health Affairs,* 29, 893–899, 2010.

7. Murray, E., B. Lo, L. Pollack, et al., ''Direct-to-Consumer Advertising: Physicians' Views of Its Effects on Quality of Care and the Doctor-Patient Relationship,'' *Journal of the American Board of Family Practice,* 16, 513–524, 2003.

8. Dey, E.L., ''Working With Low Survey Response Rates: The Efficacy of Weighting Adjustments,'' *Research in Higher Education,* 38, 215–227, 1997.

9. Mintzes, B., M.L. Barer, R.L. Kravitz, et al., ''Influence of Direct-to-Consumer Pharmaceutical Advertising and Patients' Requests on Prescribing Decisions: Two Site Cross Sectional Study,'' *British Medical Journal,* 324, 278–279, 2002.

10. Mitra, A., J. Swasy, and K. Aikin, ''How Do Consumers Interpret Market Leadership Claims in Direct-to-Consumer Advertising of Prescription Drugs?,'' *Advances in Consumer Research,* 33, 381–387, 2006.

11. Donohue, J.M., M. Cevasco, and M.B. Rosenthal, ''A Decade of Direct-to-Consumer Advertising of Prescription Drugs,'' *New England Journal of Medicine,* 357, 673–681, 2007.

12. Chew, L.D., T.S. O'Young, T.K. Hazlet, et al., ''A Physician Survey of the Effect of Drug Sample Availability on Physician's Behavior,'' *Journal of General Internal Medicine,* 15, 478–483, 2000.

Dated: January 10, 2012.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2012–638 Filed 1–13–12; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2012–N–0032]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Antimicrobial Animal Drug Distribution Reports Under Section 105 of the Animal Drug User Fee Amendments of 2008

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on paperwork requirements for an electronic form (e-form), to collect distribution reports for antimicrobials in food producing animals.

**DATES:** Submit either electronic or written comments on the collection of information by March 19, 2012.

**ADDRESSES:** Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Denver Presley II, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, (301) 796–3793.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Antimicrobial Animal Drug Distribution Reports Under Section 105 of the Animal Drug User Fee Amendments of 2008—Federal Food, Drug, and Cosmetic Act, Section 512(*l*)(3) (OMB Control Number 0910–0659)—Revision**

Section 105 of the Animal Drug User Fee Amendments of 2008 (ADUFA II) (Public Law 316) amended section 512 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360b) by, among other things, creating section 512(*l*)(3) to require that the sponsor of each new animal drug that contains an antimicrobial agent submit an annual report to FDA on the amount of each antimicrobial active ingredient in the drug that is sold or distributed for use in food-producing animals, including information on any distributor-labeled product. The legislation was enacted to address the problem of antimicrobial resistance and to help ensure that FDA has the necessary information to examine safety concerns related to the use of antibiotics in food-producing animals (154 Congressional Record H7534).

Each report must specify: (1) The amount of each antimicrobial active ingredient by container size, strength, and dosage form; (2) quantities distributed domestically and quantities exported; and (3) a listing of the target animals, indications, and production classes that are specified on the approved label of the product. The first report under the statute was to be submitted not later than March 31, 2010. The report covered the period of the preceding calendar year and included separate information for each month of the calendar year.

We are now seeking to further implement the statutory requirements of ADUFA II and enhance its public health and safety mission as envisioned by Congress by introducing an electronic form for the submission of the required annual reports under ADUFA II. The e-form FDA 3744a will enable sponsors to submit electronically and capture all information as mandated by Section 105 of ADUFA II. Form FDA 3744 will continue to be designated for paper submissions.

List of information required on form FDA 3744 and e-form FDA 3744a:

- Application Type
- Application Number
- Firm Name
- Dosage Form(s)
- Production Class(es)
- Animal Species—Food Animal or Food and Non-Food Animal
- Indications
- Active Ingredient(s)
- Domestic Quantities
  - Unit of Measure for All Active Ingredients
  - Calendar Year
  - Quantity Sold by Month for All Active Ingredients
  - Annual Total Sold for All Active Ingredients
- Export Quantities
  - Unit of Measure for All Active Ingredients
  - Calendar Year
  - Quantity Sold by Month for All Active Ingredients
  - Annual Total Sold for All Active Ingredients
- Individual Product Information for All Active Ingredients
  - Dosage Form
  - Container Size
  - Container Units
  - Active Ingredient Strength
- Quantities of Individual Products Sold or Distributed (Domestic and Export)
  - Unit of Measure for All Active Ingredients
  - Quantity Sold by Month for All Active Ingredients
  - Annual Total Sold for All Active Ingredients

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| FD&C Act section 512(*l*)(3) | Form FDA No. | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours | Capital costs |
|---|---|---|---|---|---|---|---|
| Annual Reports for Sponsors With Active Applications—Paper Submission. | 3744 | 14 | 5.9 | 83 | 60 | 4,980 | $6,975 |
| Annual Reports for Sponsors With Active Applications—Electronic Submission. | e-Form 3744a | 12 | 6.7 | 80 | 50 | 4,000 | |
| Annual Reports for Sponsors With Inactive Applications—Paper Submission. | 3744 | 13 | 6.2 | 81 | 2 | 162 | |
| Annual Reports for Sponsors With Inactive Applications—Electronic Submission. | e-Form 3744a | 11 | 7.3 | 80 | 2 | 160 | |
| Total | | | | | | 9,302 | |

[1] There are no operating and maintenance costs associated with this collection of information.

The total annual responses were calculated by multiplying the number of respondents times the number of responses per respondent. Total burden hours were calculated by multiplying total annual responses times the average burden per response.

As explained in the supporting statement for the subject collection of information (OMB control number 0910–0659), the initial one-time capital costs are for the design of the report. Here, e-form FDA 3744a and reporting via the Electronic Submission Gateway are provided by FDA. Thus, the remaining cost, as described in approved OMB control number 0910–0659 is $6,975 per year (3 hours × $46.50 wage rate × 50 sponsors) = $6,975. FDA believes that the sponsors already possess the computer equipment needed to prepare the report so that additional capital expenditures will not be necessary.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

| Revised 21 CFR 514.80(b)(5) | Number of recordkeepers | Number of records per recordkeeper | Total annual records | Average burden per recordkeeping | Total hours |
|---|---|---|---|---|---|
| All Applicants | 34 | 1 | 34 | 2 | 68 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Total annual records were calculated by multiplying the number of recordkeepers times the number of records per recordkeeper. Total hours were calculated by multiplying total annual records times the average burden per recordkeeping.

Dated: January 10, 2012.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2012–639 Filed 1–13–12; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; 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:* Center for Scientific Review Special Emphasis Panel, Member Conflict: Diabetes and Obesity.

*Date:* January 26, 2012.

*Time:* 9:30 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Krish Krishnan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041, *krishnak@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Member Conflict: Integrative Neuroscience.

*Date:* February 2, 2012.

*Time:* 2 p.m. to 3 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
*Contact Person:* Lynn E Luethke, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5166, MSC 7844, Bethesda, MD 20892, (301) 806–3323, *luethkel@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Collaborative Applications in Adult Psychopathology and Disorders of Aging.
*Date:* February 6, 2012.
*Time:* 4 p.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Doubletree Guest Suites Santa Monica, 1707 Fourth Street, Santa Monica, CA 90401.
*Contact Person:* Mark Lindner, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, (301) 435–0913, *mark.lindner@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Hypertension and Microcirculation A.
*Date:* February 7, 2012.
*Time:* 1 p.m. to 1:45 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
*Contact Person:* Larry Pinkus, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214, *pinkusl@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 9, 2012.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–732 Filed 1–13–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Human Genome Research Institute; Notice of Meeting

Pursuant to section 401(d)(4) of the Public Health Service Act (42 U.S.C. 281(d)(4)), notice is hereby given that the National Human Genome Research Institute (NHGRI) will host a series of meetings to enable public discussion of the Institute's proposal to reorganize its internal structure. The proposed reorganization reflects the expanding scope of NHGRI's research portfolio in response to the priorities detailed in the Institute's new strategic plan for genomics research, titled ''Charting a Course for Genomic Medicine from Base Pairs to Bedside.'' (Green, E.D., Guyer, M.S. *Nature.* (470) 204–213.2011.)

The first public meeting will be a webinar and teleconference on January 18, 2012. The second public meeting will be on February 13, 2012, during the open session of the 64th meeting of the National Advisory Council for Human Genome Research. Background materials on the proposed reorganization and logistical information regarding the two public meetings are available at *genome.gov/reorg.* Additional information and updated details on these public meetings will be added to this Web site as the dates approach.

*Organizing Institute:* National Human Genome Research Institute.
*Dates and Times:* January 18, 2012, at 2:30 p.m. EST.
February 13, 2012, at 1 p.m. EST.
*Agenda:* The agenda for each meeting will include presentations and discussion about the proposed internal reorganization. Members of the public will have the opportunity to ask questions and provide comments on NHGRI's proposal. Draft agendas, background materials, and instructions for joining the meetings will be made available at *genome.gov/reorg.* Individuals wishing to submit written questions or comments should send them via email to *NHGRIcomments@nih.gov.*
*Contact Person:* Laura Lyman Rodriguez, Ph.D., Office of Policy, Communications, and Education, National Human Genome Research Institute, National Institutes of Health, 31 Center Drive, Room 4B09, Bethesda, MD 20892–2153, (301) 594–7185, *NHGRIcomments@nih.gov*.

Dated: January 10, 2012.

**Eric D. Green,**

*Director, NHGRI.*

[FR Doc. 2012–729 Filed 1–13–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; 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 and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism; Special Emphasis Panel, Review of the Collaborative Initiative on Fetal Alcohol Spectrum Disorders.
*Date:* March 28–29, 2012.
*Time:* 4 p.m. to 5 p.m.
*Agenda:* To review and evaluate cooperative agreement applications.
*Place:* Legacy Hotel and Meeting Center, 1775 Rockville Pike, Rockville, MD 20852.
*Contact Person:* Beata Buzas, Ph.D., Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, National Institutes Of Health, 5635 Fishers Lane, Rm 2081, Rockville, MD 20852, (301) 443–0800, *bbuzas@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: January 9, 2012.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–733 Filed 1–13–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID: FEMA–2011–0042; OMB No. 1660–0083]**

### Agency Information Collection Activities: Proposed Collection; Comment Request, Application for Community Disaster Loan (CDL) Program

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency, 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 a proposed extension,

without change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the Community Disaster Loan (CDL) Program. This collection allows the government to make loans to communities that have suffered economic problems due to disasters.

**DATES:** Comments must be submitted on or before March 19, 2012.

**ADDRESSES:** To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2011–0042. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Regulatory Affairs Division, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *Email.* Submit comments to *FEMA–POLICY@dhs.gov.* Include Docket ID FEMA–2011–0042 in the subject line.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Victor Kurz, Program Manager, Disaster Assistance Directorate, Public Assistance Division, (202) 646–7947 for additional information. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or email address: *FEMA–Information-Collections-Management@dhs.gov.*

**SUPPLEMENTARY INFORMATION:** The Community Disaster Loan (CDL) Program is authorized by Section 417 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended, 42 U.S.C. 5184, and implementing regulations at 44 CFR subpart K. The Assistant Administrator may make a CDL to any local government which has suffered a substantial loss of tax or other revenues as a result of a major disaster or emergency and which demonstrates a need for Federal financial assistance in order to perform its governmental functions.

**Collection of Information**

*Title:* Application for Community Disaster Loan (CDL) Program.

*Type of Information Collection:* Extension, without change, of a currently approved information collection.

*OMB Number:* 1660–0083.

*Form Titles and Numbers:* FEMA Form 090–0–1, Certification of Eligibility for Community Disaster Loans; FEMA Form 116–0–1, Promissory Note; FEMA Form 085–0–1, Local Government Resolution—Collateral Security; FEMA Form 090–0–2, Application for Community Disaster Loan.

*Abstract:* The loan package for the CDL Program provides States, Local and Tribal governments that have suffered substantial loss of tax or other revenues as a result of a major disaster or emergency, the opportunity to obtain financial assistance in order to perform their governmental functions. The loan must be justified on the basis of need and actual expenses.

*Affected Public:* State, local or Tribal Government.

*Estimated Total Annual Burden Hours:* 975 hours.

ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

| Type of respondent | Form name/form number | Number of respondents | Number of responses per respondent | Total number of responses | Avg. burden per response (in hours) | Total annual burden (in hours) | Avg. hourly wage rate | Total annual respondent cost |
|---|---|---|---|---|---|---|---|---|
| State, Local or Tribal Government. | Certification of Eligibility for Community Disaster Loans/FEMA Form 090–0–1. | 50 | 1 | 50 | [1] 2.5 | 125 | $49.32 | $6,165 |
| State, Local or Tribal Government. | Promissory Note/FEMA Form 116–0–1. | 50 | 1 | 50 | 4 | 200 | 49.32 | 9,864 |
| State, Local or Tribal Government. | Local Government Resolution—Collateral Security/FEMA Form 085–0–1. | 50 | 1 | 50 | 10 | 500 | 49.32 | 24,660 |
| State, Local or Tribal Government. | Application for Community Disaster Loan/FEMA Form 090–0–2. | 50 | 1 | 50 | 1 | 50 | 49.32 | 2,466 |
| State, Local or Tribal Government. | Annual Financial Report. | 50 | 1 | 50 | 1 | 50 | 38.04 | 1,902 |
| State, Local or Tribal Government. | Letter of Application | 50 | 1 | 50 | 1 | 50 | 49.32 | 2,337 |
| Total | | 50 | | 50 | | 975 | | 47,523 |

[1] 150 minutes.

**Note:** The ''Avg. Hourly Wage Rate'' for each respondent includes a 1.4 multiplier to reflect a fully-loaded wage rate.

*Estimated Cost:* The estimated annual cost to respondents for the hour burden is $47,523. There are no annual costs to respondents' operations and maintenance costs for technical services. There are no annual start-up or capital costs. The cost to the Federal Government is $1,015,220.

**Comments**

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practicality; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

**John G. Jenkins, Jr.,**

*Acting Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 2012–631 Filed 1–13–12; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID: FEMA–2011–0032; OMB No. 1660–0068]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request, Federal Hotel and Motel Fire Safety Declaration Form

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**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 February 16, 2012.

**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 email address *FEMA-Information-Collections-Management@dhs.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Collection of Information

*Title:* Federal Hotel and Motel Fire Safety Declaration Form.

*Type of information collection:* Extension, without change, of a currently approved information collection.

*OMB Number:* 1660–0068.

*Form Titles and Numbers:* FEMA Form 516–0–1, Federal Hotel and Motel Fire Safety Declaration Form.

*Abstract:* FEMA collects information voluntarily offered by places of accommodation regarding the existence of smoke detectors and automatic fire sprinkler systems. The information is compiled as a National Master List of lodging establishments meeting minimum criteria for life-safety from fire, as defined in the Hotel and Motel Fire Safety Act of 1990. The list is used by Federal employees to select lodging for work-related travel and by the general public seeking life-safety while traveling.

*Affected Public:* Business or other for-profit; State, local or Tribal Government.

*Estimated Number of Respondents:* 2,294.

*Frequency of Response:* On occasion.

*Estimated Average Hour Burden per Respondent:* Federal Hotel and Motel Fire Safety Declaration Form, FEMA Form 516–0–1, 15 minutes; Review of FEMA Form 516–0–1, 20 minutes.

*Estimated Total Annual Burden Hours:* 694 hours.

*Estimated Cost:* The estimated annual cost to respondents for the hour burden is $25,357. There are no annual costs to respondents operations and maintenance costs for technical services. There is no annual start-up or capital costs. The cost to the Federal Government is $71,141.

**John G. Jenkins, Jr.,**

*Acting Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 2012–630 Filed 1–13–12; 8:45 am]

**BILLING CODE 9111–45–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID: FEMA–2011–0015; OMB No. 1660–0002]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request, Disaster Assistance Registration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**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 February 16, 2012.

**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 email address *FEMA–Information-Collections-Management@dhs.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Collection of Information

*Title:* Disaster Assistance Registration.

*Type of information collection:* Revision of a currently approved information collection.

*OMB Number:* 1660–0002.

*Form Titles and Numbers:* FEMA Form 009–0–1T (English) Tele-Registration, Disaster Assistance Registration; FEMA Form 009–0–1Int (English) Internet, Disaster Assistance Registration; FEMA Form 009–0–2Int

(Spanish) Internet, Registro Para Asistencia De Desastre; FEMA Form 009–0–1 (English) Paper Application/ Disaster Assistance Registration; FEMA Form 009–0–2 (Spanish), Solicitud en Papel/Registro Para Asistencia De Desastre; FEMA Form 009–0–1S (English) Smartphone, Disaster Assistance Registration; FEMA Form 009–0–2S (Spanish) Smartphone, Registro Para Asistencia De Desastre; FEMA Form 009–0–3 (English), Declaration and Release; FEMA Form 009–0–4 (Spanish), Declaración Y Autorización; FEMA Form 009–0–5 (English) Receipt for Government Property; FEMA Form 009–0–6 (Spanish) Recibo de la Propiedad del Gobierno.

*Abstract:* The Disaster Assistance Registration form is used to collect pertinent information to provide financial assistance, and if necessary, direct assistance to eligible individuals and households who, as a direct result of a disaster or emergency, have uninsured or under-insured, necessary or serious expenses that they are unable to meet through other means.

*Affected Public:* Individuals or Households.

*Estimated Number of Respondents:* 2,835,180.

*Frequency of Response:* On occasion.

*Estimated Average Hour Burden per Respondent:* Tele-Registration Application for Disaster Assistance (English), FEMA Form 009–0–1T, 18 minutes; Internet Application for Disaster Assistance (English and Spanish), FEMA Forms 009–0–1Int and 009–0–2Int, 18 minutes; Paper Application for Disaster Assistance (English and Spanish), FEMA Forms 009–0–1 and 009–0–2, 18 minutes; Smartphone Application for Disaster Assistance, FEMA Forms (English and Spanish) 009–0–1S and 009–0–2S, 18 minutes; Declaration and Release (English and Spanish), FEMA Forms 009–0–3 and 009–0–4, 2 minutes; Receipt of Government Property (English and Spanish), FEMA Form 009–0–5 and 009–0–6, 10 minutes.

*Estimated Total Annual Burden Hours:* 555,009 hours.

*Estimated Cost:* The estimated annual cost to respondents for the hour burden is $17,016,572.24. There are no annual costs to respondents operations and maintenance costs for technical services. There is no annual start-up or capital costs. The cost to the Federal Government is $15,618,762.

**John G. Jenkins, Jr.,**

*Acting Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 2012–633 Filed 1–13–12; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURFITY

### U.S. Customs and Border Protection

### Accreditation and Approval of Saybolt LP, as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of Saybolt LP, as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Saybolt LP, 2321 Burnett Blvd., Wilmington, NC 28401, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labls_scientific_svcs/commercial_gaugers/*.

**DATES:** The accreditation and approval of Saybolt LP, as commercial gauger and laboratory became effective on August 10, 2011. The next triennial inspection date will be scheduled for August 23014.

**FOR FURTHER INFORMATION CONTACT:** Stephen Cassata, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, (202) 344–1060.

Dated: January 4, 2012.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services.*

[FR Doc. 2012–789 Filed 1–13–12; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs And Border Protection

### Accreditation of Intertek USA, Inc., as a Commercial Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation of Intertek USA, Inc., as a commercial laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12, Intertek USA, Inc., 1114 Seaco Avenue Deer Park, TX 77536, has been accredited to test petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12. Anyone wishing to employ this entity to conduct laboratory analyses should request and receive written assurances from the entity that it is accredited by the U.S. Customs and Border Protection to conduct the specific test requested. Alternatively, inquiries regarding the specific test this entity is accredited to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

**DATES:** The accreditation of Intertek USA, Inc., as commercial laboratory became effective on August 11, 2010. The next triennial inspection date will be scheduled for August 2013.

**FOR FURTHER INFORMATION CONTACT:** Stephen Cassata, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, (202) 344–1060.

Dated: January 4, 2012.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services.*

[FR Doc. 2012–661 Filed 1–13–12; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### Customs and Border Protection

### Approval of Altol Petroleum Product Service, as a Commercial Gauger

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of approval of Altol Petroleum Product Service, as a commercial gauger.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.13, Altol Petroleum Product Service, Parque Industrial Sabanetas, Edificio M–1380–01–02, Ponce, PR 00731, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

**DATES:** The approval of Altol Petroleum Product Service, as commercial gauger became effective on March 12, 2010. The next triennial inspection date will be scheduled for March 2013.

**FOR FURTHER INFORMATION CONTACT:** Stephen Cassata, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, (202) 344–1060.

Dated: December 9, 2011.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services.*

[FR Doc. 2012–665 Filed 1–13–12; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Approval of Altol Petroleum Product Service, as a Commercial Gauger

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of approval of Altol Petroleum Product Service, as a commercial gauger.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.13, Altol Petroleum Product Service, Calle Gregorio Ledesma HN–55 Urb. Levittown, Toa Baja, PR 00949, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

**DATES:** The approval of Altol Petroleum Product Service, as commercial gauger became effective on February 26, 2010. The next triennial inspection date will be scheduled for February 2013.

**FOR FURTHER INFORMATION CONTACT:** Stephen Cassata, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, (202) 344–1060.

Dated: December 9, 2011.

**Ira S. Reese,**

*Executive Director Laboratories and Scientific Services.*

[FR Doc. 2012–676 Filed 1–13–12; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** General notice.

**SUMMARY:** This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties. For the calendar quarter beginning January 1, 2012, the interest rates for overpayments will be 2 percent for corporations and 3 percent for non-corporations, and the interest rate for underpayments will be 3 percent for both corporations and non-corporations. This notice is published for the convenience of the importing public and U.S. Customs and Border Protection personnel.

**DATES:** *Effective Date:* January 1, 2012.

**FOR FURTHER INFORMATION CONTACT:** Ron Wyman, Revenue Division, Collection and Refunds Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 614–4516.

**SUPPLEMENTARY INFORMATION:**

#### Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206, 112 Stat. 685) to provide different interest rates applicable to overpayments: One for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2011–32, the IRS determined the rates of interest for the calendar quarter beginning January 1, 2012, and ending on March 31, 2012.

The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (1%) plus two percentage points (2%) for a total of three percent (3%) for both corporations and non-corporations. For corporate overpayments, the rate is the Federal short-term rate (1%) plus one percentage point (1%) for a total of two percent (2%). For overpayments made by non-corporations, the rate is the Federal short-term rate (1%) plus two percentage points (2%) for a total of three percent (3%). These interest rates are subject to change for the calendar quarter beginning April 1, 2012, and ending June 30, 2012.

For the convenience of the importing public and U.S. Customs and Border Protection personnel, the following list of IRS interest rates used to calculate interest on overdue accounts and refunds of customs duties covering the period from before July of 1974 to date is published in summary format.

| *Beginning date* | *Ending date* | *Under-payments* (percent) | *Over-payments* (percent) | *Corporate over-payments* (Eff. 1–1–99) (percent) |
|---|---|---|---|---|
| 070174 | 063075 | 6 | 6 | |
| 070175 | 013176 | 9 | 9 | |
| 020176 | 013178 | 7 | 7 | |
| 020178 | 013180 | 6 | 6 | |
| 020180 | 013182 | 12 | 12 | |
| 020182 | 123182 | 20 | 20 | |
| 010183 | 063083 | 16 | 16 | |
| 070183 | 123184 | 11 | 11 | |
| 010185 | 063085 | 13 | 13 | |
| 070185 | 123185 | 11 | 11 | |
| 010186 | 063086 | 10 | 10 | |
| 070186 | 123186 | 9 | 9 | |
| 010187 | 093087 | 9 | 8 | |
| 100187 | 123187 | 10 | 9 | |
| 010188 | 033188 | 11 | 10 | |
| 040188 | 093088 | 10 | 9 | |
| 100188 | 033189 | 11 | 10 | |
| 040189 | 093089 | 12 | 11 | |
| 100189 | 033191 | 11 | 10 | |
| 040191 | 123191 | 10 | 9 | |
| 010192 | 033192 | 9 | 8 | |
| 040192 | 093092 | 8 | 7 | |
| 100192 | 063094 | 7 | 6 | |
| 070194 | 093094 | 8 | 7 | |
| 100194 | 033195 | 9 | 8 | |
| 040195 | 063095 | 10 | 9 | |
| 070195 | 033196 | 9 | 8 | |
| 040196 | 063096 | 8 | 7 | |
| 070196 | 033198 | 9 | 8 | |
| 040198 | 123198 | 8 | 7 | |
| 010199 | 033199 | 7 | 7 | 6 |
| 040199 | 033100 | 8 | 8 | 7 |
| 040100 | 033101 | 9 | 9 | 8 |
| 040101 | 063001 | 8 | 8 | 7 |
| 070101 | 123101 | 7 | 7 | 6 |
| 010102 | 123102 | 6 | 6 | 5 |
| 010103 | 093003 | 5 | 5 | 4 |
| 100103 | 033104 | 4 | 4 | 3 |
| 040104 | 063004 | 5 | 5 | 4 |
| 070104 | 093004 | 4 | 4 | 3 |
| 100104 | 033105 | 5 | 5 | 4 |
| 040105 | 093005 | 6 | 6 | 5 |
| 100105 | 063006 | 7 | 7 | 6 |
| 070106 | 123107 | 8 | 8 | 7 |
| 010108 | 033108 | 7 | 7 | 6 |
| 040108 | 063008 | 6 | 6 | 5 |
| 070108 | 093008 | 5 | 5 | 4 |
| 100108 | 123108 | 6 | 6 | 5 |
| 010109 | 033109 | 5 | 5 | 4 |
| 040109 | 123110 | 4 | 4 | 3 |
| 010111 | 033111 | 3 | 3 | 2 |
| 040111 | 093011 | 4 | 4 | 3 |
| 100111 | 033112 | 3 | 3 | 2 |

Dated: January 11, 2012.

**David V. Aguilar,**

*Acting Commissioner, U.S. Customs and Border Protection.*

[FR Doc. 2012–724 Filed 1–13–12; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5603–N–03]**

### Notice of Submission of Proposed Information Collection to OMB; Construction Complaint—Request for Financial Assistance

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The information collection is submitted by homeowners and is used by HUD to identify the items of complaint in order to help the homeowner obtain correction. The information is also used to identify builders not conforming to applicable standard and to determine eligibility for financial assistance.

**DATES:** *Comments Due Date:* February 16, 2012.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0047) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: (202) 395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: (202) 395–5806.

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov.* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*This notice also lists the following information:*

*Title of Proposal:* Construction Complaint—Request for Financial Assistance.

*OMB Approval Number:* 2502–0047.

*Form Numbers:* HUD–92556.

*Description of the Need for the Information and Its Proposed Use:* The information collection is submitted by homeowners and is used by HUD to identify the items of complaint in order to help the homeowner obtain correction. The information is also used to identify builders not conforming to applicable standard and to determine eligibility for financial assistance.

*Frequency of Submission:* On occasion

| | Number of respondents | Annual responses | × | Hours per response | Burden hours |
|---|---|---|---|---|---|
| Reporting Burden | 10 | 1 | | 0.5 | 5 |

*Total Estimated Burden Hours:* 5.

*Status:* Extension without change of a currently previously approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 10, 2012,

**Colette Pollard,**

*Departmental Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 2012–706 Filed 1–13–12; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5603–N–02]**

### Notice of Submission of Proposed Information Collection to OMB; Builder's Certification/Guarantee and New Construction Subterranean Termite Soil Treatment Record

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The collection of the requested information requires that the sites for HUD insured structures must be free of termite hazards. Builders certify and guarantee that all required treatment for termites are performed and there is no infestation of treated areas for a year. Also, pest control companies are required to provide a record of any soil treatment methods used to prevent subterranean termite infestation. The respondents for this collection are builders, pest control companies, mortgage lenders and homebuyers.

**DATES:** *Comments Due Date:* February 16, 2012.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0525) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: (202) 395–5806. Email: *OIRA_Submission@omb.eop.gov;* fax: (202) 395–5806.

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management

Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov.* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*This notice also lists the following information:*

*Title of Proposal:* Builder's Certification/Guarantee and New Construction Subterranean Termite Soil Treatment Record.

*OMB Approval Number:* 2502–0525.

*Form Numbers:* HUD–NPCA–99–A, HUD–NPCA–99–B.

*Description of the Need for the Information and Its Proposed Use:* The collection of the requested information requires that the sites for HUD-insured structures must be free of termite hazards. Builders certify and guarantee that all required treatment for termites are performed and there is no infestation of treated areas for a year. Also, pest control companies are required to provide a record of any soil treatment methods used to prevent subterranean termite infestation. The respondents for this collection are builders, pest control companies, mortgage lenders and homebuyers.

*Frequency of Submission:* On occasion.

| | Number of respondents | Annual responses | × | Hours per response | Burden hours |
|---|---|---|---|---|---|
| Reporting Burden | 30,000 | 2 | | 0.1665 | 9,990 |

*Total Estimated Burden Hours:* 9,990.

*Status:* Extension without change of a currently previously approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 10, 2012.

**Colette Pollard,**

*Departmental Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 2012–708 Filed 1–13–12; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R3–ES–2011–N278; FXES11130300000F3–123–FF03E00000]**

### Endangered and Threatened Wildlife and Plants; Permit Applications

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act requires that we invite public comment before issuing these permits.

**DATES:** We must receive any written comments on or before February 16, 2012.

**ADDRESSES:** Send written comments by U.S. mail to the Regional Director, Attn: Lisa Mandell, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458; or by electronic mail to *permitsR3ES@fws.gov.*

**FOR FURTHER INFORMATION CONTACT:** Lisa Mandell, (612) 713–5343.

**SUPPLEMENTARY INFORMATION:**

#### Background

We invite public comment on the following permit applications for certain activities with endangered species authorized by section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) and our regulations governing the taking of endangered species in the Code of Federal Regulations (CFR) at 50 CFR 17. Submit your written data, comments, or request for a copy of the complete application to the address shown in **ADDRESSES.**

#### Permit Applications

*Permit Application Number:* TE217351.

*Applicant:* Katrina L. Schultes, U.S.D.A., Forest Service, Nelsonville, OH.

The applicant requests a renewed and amended permit to take (capture and release) Indiana bats (*Myotis sodalis*) in the States of Ohio and Kentucky. Proposed activities are aimed at enhancement of survival of the species in the wild.

*Permit Application Number:* TE60958A.

*Applicant:* Bat Calls Identification, Inc., Kansas City, MO.

The applicant requests a permit to take (capture and release) Indiana bats, Ozark big-eared bats (*Corynorhinus townsendii ingens*), Virginia big-eared bats (*Corynorhinus townsendii virginianus*), and gray bats (*Myotis grisescens*) throughout the ranges of the species. This includes proposed work in the States of Alabama, Arkansas, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, and Wisconsin. Proposed activities are for the enhancement of survival of the species in the wild.

*Permit Application Number:* TE43555A.

*Applicant:* Maria Gabriella Bidart-Bouzat, Bowling Green State University, Bowling Green, OH.

The applicant requests a permit renewal and amendment to take (temporarily hold) Karner Blue Butterfly (*Lycaeides melissa samuelis*) adults, larvae, and eggs for scientific purposes. Specimens (including eggs) will be received in conjunction with permitted reintroduction programs, and all larval specimens surviving to adults will be

released to the wild following authorized activities. Research is proposed for the recovery and enhancement of survival of the species in the wild.

*Permit Application Number:* TE60999A.

*Applicant:* Levi D. Miller, USDA–Forest Service, Logan, OH.

The applicant requests a permit to take (capture and release) Indiana bats in the States of Ohio and Kentucky. Proposed activities are aimed at enhancement of survival of the species in the wild.

*Permit Application Number:* TE62286A.

*Applicant:* Jason B. Whittle, Cuyahoga Falls, OH.

The applicant requests a permit to take (capture and release) Indiana bats throughout the range of the species. This includes proposed work in the States of Alabama, Arkansas, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee, Vermont, Virginia, and West Virginia. Proposed activities are for the enhancement of survival of the species in the wild.

*Permit Application Number:* TE62297A.

*Applicant:* Michael D. Whitby, Ball State University, Muncie, IN.

The applicant requests a permit to take (capture and release) Indiana bats and gray bats throughout the States of Alabama, Arkansas, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee, Vermont, Virginia, and West Virginia. Proposed activities are for the enhancement of survival of the species in the wild.

*Permit Application Number:* TE62311A.

*Applicant:* Mary B. Gilmore, Cincinnati, OH.

The applicant requests a permit to take (capture and release) Indiana bats throughout the range of the species. This includes proposed work in the States of Alabama, Arkansas, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee, Vermont, Virginia, and West Virginia. Proposed activities are for the enhancement of survival of the species in the wild.

*Permit Application Number:* TE235639.

*Applicant:* Davey Resource Group, Kent, OH.

The applicant requests a permit to take (capture and release) Indiana bats within Indiana, Kentucky, Michigan, Ohio, Pennsylvania, and West Virginia. Proposed activities are for the enhancement of survival of the species in the wild.

*Permit Application Number:* TE02560A.

*Applicant:* Timothy C. Carter, Ball State University, Muncie, IN.

The applicant requests a permit renewal and amendment to take (capture and release) Indiana bats and gray bats throughout the States of Georgia, Illinois, Indiana, Iowa, Michigan, Missouri, Ohio and Wisconsin. Proposed activities are for the enhancement of survival of the species in the wild.

*Permit Application Number:* TE62334A.

*Applicant:* Mark Hove, University of Minnesota, St. Paul, MN.

The applicant requests a permit to take (capture and hold) mussel specimens occurring in the Mississippi and St. Croix River watersheds for scientific research. Proposed research activities are in the interest of recovery of the species, and the applicant may capture any of the following listed or proposed species: Winged mapleleaf (*Quadrula fragosa*), Higgins' eye pearlymussel (*Lampsilis higginsi*), Sheepnose (*Plethobasus cyphyus*), Snuffbox (*Epioblasma triquetra*), and Spectaclecase (*Cumberlandia monodonta*). Proposed recovery research will occur in the Mississippi River basin, in the States of Minnesota and Wisconsin.

*Permit Application Number:* TE02373A.

*Applicant:* Environmental Solutions and Innovations, Inc., Cincinnati, OH.

The applicant requests a permit renewal to take (capture and release) Indiana bats, gray bats, Virginia big-eared bats, Ozark big-eared bats, Running buffalo clover (*Trifolium stoloniferum*), Northeastern bulrush (*Scirpus ancistrocheatus*), and the following mussel species:

| | |
|---|---|
| *Alasmidonta atropurpurea* | Cumberland elktoe |
| *Alasmidonta heterodon* | Dwarf wedgemussel |
| *Cyprogenia stegaria* | Fanshell |
| *Cumberlandia monodonta* | Spectaclecase |
| *Dromus dromas* | Dromedary pearlymussel |
| *Epioblasma brevidens* | Cumberland combshell |
| *Epioblasma capsaeformis* | Oyster mussel |
| *Epioblasma florentina florentina* | Yellow blossom |
| *Epioblasma florentina walkeri* | Tan riffleshell |
| *Epioblasma obliquata obliquata* | Purple catspaw |
| *Epioblasma obliquata perobliqua* | White catspaw |
| *Epioblasma torulosa rangiana* | Northern riffleshell |
| *Epioblasma torulosa torulosa* | Tubercled-blossom pearlymussel |
| *Epioblasma triquetra* | Snuffbox |
| *Hemistena lata* | Cracking pearlymussel |
| *Lampsilis abrupta* | Pink mucket |
| *Leptodea leptodon* | Scaleshell |
| *Obovaria retusa* | Ring pink |
| *Pegias fibula* | Littlewing pearlymussel |
| *Plethobasus cicatricosus* | White wartyback pearlymussel |
| *Plethobasus cooperianus* | Orangefoot pimpleback |
| *Plethobasus cyphyus* | Sheepnose |
| *Pleurobema clava* | Clubshell |
| *Pleurobema collina* | James spiny mussel |
| *Pleurobema plenum* | Rough pigtoe |
| *Potamilus capax* | Fat pocketbook |
| *Quadrula cylindrical strigillata* | Rough rabbitsfoot |
| *Quadrula fragosa* | Winged mapleleaf |

| | |
|---|---|
| *Villosa fabalis* | Rayed bean |
| *Villosa trabilis* | Cumberland bean |

As part of the same application, the applicant also requests a permit renewal to take (capture and release) the following fish species:

| | |
|---|---|
| *Cyprinella caerulea* | Blue shiner |
| *Etheostoma sellare* | Maryland darter |
| *Percina rex* | Roanoke logperch |
| *Phoxinus cumberlandensis* | Blackside Dace |

Proposed work would take place in the States of Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin. Proposed activities include presence/absence surveys, habitat evaluation, and other activity designed to enhance the survival of the species in the wild.

*Permit Application Number:* TE234121.

*Applicant:* Western Ecosystems Technology, Inc.

The applicant requests a permit renewal to take (capture and release) Indiana bats, gray bats, Ozark big-eared bats, and Virginia big-eared bats within Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin. Proposed activities are for the enhancement of survival of the species in the wild.

*Permit Application Number:* TE10891A.

*Applicant:* Illinois State Museum, Research and Collection Center, Springfield, IL.

The applicant requests a permit renewal to take (capture and release; collect) Hine's emerald dragonfly (*Somatochlora hineana*) adults and larvae for scientific study in the interest of recovery of the species. Proposed activities may occur throughout the range of the species in Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

*Permit Application Number:* TE02651A.

*Applicant:* The Ohio Department of Transportation, Columbus, OH.

The applicant requests a permit renewal to take (capture and release) Indiana bats and American burying beetle (*Nicrophorus americanus*) within the State of Ohio. Proposed activities are for the enhancement of survival of the species in the wild.

*Permit Application Number:* TE224720.

*Applicant:* ABR, Inc. Environmental Research & Services

The applicant requests a permit renewal to take (capture and release) Indiana bats within the States of Connecticut, Delaware, Illinois, Indiana, Iowa, Maryland, Massachusetts, Michigan, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin. Proposed activities are for the enhancement of survival of the species in the wild.

*Permit Application Number:* TE151107.

*Applicant:* Redwing Ecological Services, Inc.

The applicant requests a permit renewal to take (capture and release) Indiana bats, gray bats, Ozark big-eared bats, and Virginia big-eared bats within the States of Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin. Proposed activities are for the enhancement of survival of the species in the wild.

*Permit Application Number:* TE06845A.

*Applicant:* Bernardin, Lochmueller and Associates, Inc., Evansville, IN.

The applicant requests a permit renewal to take (capture and release) Indiana bats within the State of Indiana. Proposed activities are for the enhancement of survival of the species in the wild.

*Permit Application Number:* TE181256.

*Applicant:* Lewis Environmental Consulting, LLC, Murray, KY.

The applicant requests a permit renewal to take (capture and release) the following mussel species: Clubshell, Northern riffleshell, Orange-footed pimpleback pearlymussel, Pink mucket pearlymussel, Rough pigtoe, Purple cat's paw pearlymussel, White cat's paw pearlymussel, Fanshell, Fat pocketbook, Higgins' eye pearlymussel, Winged mapleleaf, Scaleshell, Ring pink, and White wartyback. Proposed activities may occur within the States of Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Mississippi, Missouri, Ohio, Pennsylvania, Tennessee, West Virginia, and Wisconsin, and are for the enhancement of survival of the species in the wild.

*Permit Application Number:* TE006012.

*Applicant:* Dr. Steve Taylor, Illinois Natural History Survey, Center for Biodiversity, Champaign, IL.

The applicant requests a permit renewal to take Illinois Cave Amphipod (*Gammarus acherondytes*) for scientific research within the State of Illinois. Proposed activities are to monitor and evaluate the recovery of the population and enhance the survival of the species in the wild.

*Permit Application Number:* TE212420.

*Applicant:* John A. Vucetich, Michigan Technological University, Houghton, MI.

The applicant requests a permit renewal to take (capture and release) the Gray Wolf (*Canus lupus*) within the Isle Royale National Park, State of Michigan. Proposed activities are for the enhancement of survival of the species in the wild.

*Permit Application Number:* TE06797A.

*Applicant:* Rod D. McClanahan, Anna, IL.

The applicant requests a permit renewal to take (capture and release) Indiana bats, gray bats, Virginia big-

eared bats, Ozark big-eared bats, and Northern flying squirrel (*Glaucomys sabrinus*) throughout the States of Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin. The proposed activities are for the enhancement of survival of the species in the wild.

*Permit Application Number:* TE07358A.

*Applicant:* Civil & Environmental Consultants, Inc., Indianapolis, IN.

The applicant requests a permit renewal to take (capture and release) Indiana bats and gray bats throughout the States of Alabama, Arkansas, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Vermont, Virginia, and West Virginia. The proposed activities are for the enhancement of survival of the species in the wild.

*Permit Application Number:* TE194099.

*Applicant:* Dr. Michael A. Hoggarth, Westerville, OH.

The applicant requests a permit renewal to take (capture and release) the following mussel species: Clubshell, Cracking pearlymussel, Cumberland bean, Cumberland combshell, Cumberland elktoe, Dromedary pearlymussel, Dwarf wedgemussel, Fanshell, Fat Pocketbook, James spinymussel, Littlewing pearlymussel, Oyster mussel, Orange-footed pimpleback pearlymussel, Pink mucket pearlymussel, Purple catspaw pearlymussel, Rabbitsfoot, Rayed bean, Ring pink, Rough pigtoe, Scaleshell, Sheepnose, Spectaclecase, Snuffbox mussel, Tan riffleshell, White catspaw, and White wartyback. Proposed activities may occur within the States of Kentucky, Indiana, Michigan, New York, Ohio, Pennsylvania, and West Virginia, and are for the enhancement of survival of the species in the wild.

**Public Comments**

We seek public review and comments on these permit applications. Please refer to the permit number when you submit comments. Comments and materials we receive are available for public inspection, by appointment, during normal business hours at the address shown in the **ADDRESSES** section. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**National Environmental Policy Act (NEPA)**

In compliance with NEPA (42 U.S.C. 4321 *et seq.*), we have made an initial determination that the proposed activities in these permits are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement (516 DM 6 Appendix 1, 1.4C(1)).

Dated: January 3, 2012.

**Lynn Lewis,**

*Assistant Regional Director, Ecological Services, Region 3.*

[FR Doc. 2012–743 Filed 1–13–12; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R9–IA–2012–N006; FXGO16710900000P5–123–FF09A30000]**

### Endangered Species; Receipt of Applications for Permit

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of applications for permit.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless Federal authorization is acquired that allows such activities.

**DATES:** We must receive comments or requests for documents on or before February 16, 2012.

**ADDRESSES:** Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov.*

**FOR FURTHER INFORMATION CONTACT:** Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

**SUPPLEMENTARY INFORMATION:**

**I. Public Comment Procedures**

*A. How do I request copies of applications or comment on submitted applications?*

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

*B. May I review comments submitted by others?*

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**II. Background**

To help us carry out our conservation responsibilities for affected species, and

in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment before final action on these permit applications before final action is taken.

**III. Permit Applications**

*A. Endangered Species*

Applicant: Zoological Society of San Diego, San Diego, CA; PRT–62113A

The applicant requests a permit to import one captive-born male Aye-aye (*Daubentonia madagascariensis*) from Japan, for the purpose of enhancement of the survival of the species.

Applicant: Omaha's Henry Doorly Zoo, Omaha, NE; PRT–62434A

The applicant requests a permit to import one captive-born male snow leopard (*Uncia uncia*) from Canada for the purpose of enhancement of the survival of the species.

Applicant: Houston Zoo, Inc., Houston, TX; PRT–697763

The applicant requests amendment to their captive-bred wildlife registration under 50 CFR 17.21(g) to include the red-crowned crane (*Grus japonensis*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: ADLSeven Hunting Ranch LLC, Crystal City, TX; PRT–62429A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the barashigha (*Rucervus duvaucelii*), Eld's deer (*Rucervus eldii*), Arabian oryx (*Oryx leucoryx*), scimitar-horned oryx (*Oryx dammah*), Addax (*Addax nasomaculatus*), and dama gazelle (*Nanger dama*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Hahn Laboratory/University of Pennsylvania School of Medicine, Philadelphia, PA; PRT–54173A

The applicant requests a permit to import chimpanzee (*Pan troglodytes*) biological samples from Cameroon for the purpose of enhancement to the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Donald Hotter, Colstrip, MT; PRT–30686A

Applicant: Stanley Coman, Clancy, MT; PRT–61274A

Correction

On January 4, 2012, we published a **Federal Register** notice inviting the public to comment on several applications for permits to conduct certain activities with endangered species (77 FR 298). We provided an incorrect permit number in our description of the Feld Entertainment application, which starts in the second column on page 300. We printed the incorrect number of PRT–702230. That number should have been PRT–720230. All the other information we printed was correct. With this notice, we correct that error and extend the comment period for the Feld Entertainment application (see **DATES**). The complete corrected entry for this application is as follows:

Applicant: Feld Entertainment Inc., Vienna, VA; PRT–720230

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for leopard (*Panthera pardus*) and Asian elephant (*Elephas maximus*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

**Brenda Tapia,**

*Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.*

[FR Doc. 2012–682 Filed 1–13–12; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLWYD01000.L13110000.EJ0000.LXSI 016K0000]**

### Call for Nominations for the Pinedale Anticline Working Group, Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Nominations are being solicited for one position representing transportation/rights-of-way or energy and mineral development interests on the Pinedale Anticline Working Group (PAWG).

**DATES:** Complete nominations must be received no later than February 16, 2012.

**ADDRESSES:** Mail or deliver nominations to Shelley Gregory, Bureau of Land Management, Pinedale Field Office, 1625 West Pine Street, P.O. Box 768, Pinedale, WY 82941, or email to ssgregory@blm.gov.

**FOR FURTHER INFORMATION CONTACT:** Shelley Gregory, Bureau of Land Management, Pinedale Field Office, 1625 West Pine Street, P.O. Box 768, Pinedale, WY 82941; (307) 315–0612, ssgregory@blm.gov.

**SUPPLEMENTARY INFORMATION:** The PAWG was established by the Environmental Impact Statement Record of Decision (ROD) for the Pinedale Anticline Project Area (PAPA) on July 27, 2000, and carried forward with the release of the ROD for the PAPA Supplemental Environmental Impact Statement on September 12, 2008. The Secretary of the Interior renewed the PAWG charter on August 3, 2010.

The PAWG is a Federal Advisory Committee Act group which develops recommendations and provides advice to the Bureau of Land Management (BLM) on mitigation, monitoring and adaptive management in the PAPA.

PAWG duties and responsibilities are as follows:

1. Develop recommendations for the BLM regarding matters relating to monitoring and mitigation of oil and gas development as described in the ROD for the PAPA. At the direction of the Designated Federal Officer, the PAWG may review and analyze information, recommend issues for evaluation and provide advice on the issues presented.

2. Review the implementation of construction and rehabilitation operations through an annual field inspection to provide advice to ensure that the mitigation measures are reasonable and effective.

3. Advise the BLM on working with stakeholders to develop or enhance resource management programs and objectives.

4. Make recommendations on future PAWG resource management priorities.

Nominations are being solicited for persons representing the following categories:

1. Transportation and rights-of-way interests.

2. Energy and mineral development interests.

Nomination packages should contain the following information:

1. Name of Resource Advisory Council to be Considered For

2. Specific Area of Interest Nominee Seeks to Represent

3. Full Legal Name of Nominee

4. Business Address

5. Home Address

6. Mailing Address

7. Business Phone

8. Home Phone

9. Email Address

10. Occupation/Title

11. Education

12. Work History

13. Career/Education/Experience Highlights

14. Experience or Knowledge of the Council's Geographic Area of Jurisdiction

15. Experience Working with Disparate Groups to Achieve Collaborative Solutions

16. Any BLM Permits, Leases or Licenses Held by Nominee or Employer

17. Whether or Not Nominee is a Registered Lobbyist

18. Original Signature and Date

19. Two Letters of Reference From Interests or Organizations to be Represented

20. A Current Resume

A group nominating more than one person should indicate a preferred order of appointment. The Obama Administration prohibits individuals who are currently federally registered lobbyists from being appointed or re-appointed to FACA and non-FACA boards, committees, or councils.

Members are expected to attend all scheduled PAWG meetings. Members are appointed for 2-year terms and may be reappointed to additional terms at the discretion of the Secretary of the Interior.

Additional information about the PAWG, its membership and activities, and the nomination process can be found at: *http://www.blm.gov/wy/st/en/field_offices/pinedale/pawg.html.*

**Authority:** 43 CFR 1784.4–1.

**Donald A. Simpson,**

*State Director.*

[FR Doc. 2012–652 Filed 1–13–12; 8:45 am]

**BILLING CODE 4310–22–P**

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[LLMT921000–12–L13200000–EL0000–P; MTM 97988]**

## Notice of Competitive Coal Lease Sale, Montana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the coal reserves in the lands described below in Musselshell County, Montana, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended.

**DATES:** The lease sale will be held at 11 a.m. on February 28, 2012. Sealed bids must be submitted on or before 10 a.m. on February 28, 2012.

**ADDRESSES:** The lease sale will be held in the 920 Conference Room of the Bureau of Land Management (BLM) Montana State Office, 5001 Southgate Drive, Billings, Montana 59101–4669.

**FOR FURTHER INFORMATION CONTACT:** Greg Fesko by telephone at (406) 896–5080 or by email at *gfesko@blm.gov;* or Connie Schaff by telephone at (406) 896–5060 or by email at *cschaff@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 individuals 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 individuals. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** This sale is being held in response to a lease by application (LBA) filed by Signal Peak Energy LLC. The Federal coal resource to be offered consists of all reserves recoverable by underground mining methods in the following described lands:

**Principal Meridian, Montana**

T. 6 N., R. 27 E.,
Sec. 4, lot 1, S½NE¼, SE¼NW¼, S½;
Sec. 8, NE¼, NE¼NW¼, S½NW¼, S½;
Sec. 10, W½NE¼, SE¼NE¼, NW¼, S½;
Sec. 14, SW¼NE¼, NW¼, S½; and
Sec. 22, W½, SE¼.

Containing 2,679.86 acres, more or less, in Musselshell County, Montana.

The tract (LBA MTM 97988) contains an estimated 35.5 million tons of recoverable coal reserves. The tract's coal reserves average 12.4 feet in thickness, 9,735 BTU per pound in heating value, 9.64 percent ash, and 0.87 percent sulfur content. The coal reserves to be offered are based on mining the Mammoth coal seam described in the proposed action in the Environmental Assessment and consists of all reserves recoverable by underground mining methods. The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets or exceeds the BLM's estimate of the fair market value of the tract. The minimum bid for the tract is $100 per acre or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The minimum bid is not intended to represent fair market value. The fair market value will be determined by the authorized officer after the sale.

Sealed bids clearly marked ''Sealed Bid for MTM 97988 Coal Sale—Not to be opened before 11 a.m. on February 28, 2012'' must be submitted to the Cashier, BLM Montana State Office, at the address given above.

Prior to lease issuance, the high bidder, if other than the applicant, must pay to the BLM the cost recovery fees in the amount of $132,739 in addition to all processing costs the BLM incurs after the date of this sale notice (43 CFR 3473.2).

The bids should be sent by certified mail, return-receipt requested, or be hand delivered. The cashier will issue a receipt for each hand-delivered bid. Bids received after 10 a.m. on February 28, 2012, will not be considered. If identical high bids are received, the tying high bidders will be requested to submit follow-up sealed bids until a high bid is received. All tie-breaking sealed-bids must be submitted within 15 minutes following the sale official's announcement at the sale that identical high bids have been received. A lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre, or fraction thereof, and a royalty payable to the United States of 12.5 percent of the value of coal mined by surface methods and 8.0 percent of the value of coal mined by underground methods. Bidding instructions for the tract offered and the terms and conditions of the proposed coal lease are included in the Detailed Statement of Lease Sale. Copies of the statement and the proposed coal lease are available at the Montana State Office. Case file MTM 97988 is also available

for public inspection at the Montana State Office.

**Phillip C. Perlewitz,**

*Chief, Branch of Solid Minerals.*

[FR Doc. 2012–651 Filed 1–13–12; 8:45 am]

**BILLING CODE 4310–DN–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLAZ910000.L14300000.ET0000. LXSIURAM0000 241A; AZA–35138]**

### Notice of Availability of Record of Decision for the Northern Arizona Proposed Withdrawal

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Availability.

**SUMMARY:** The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the Northern Arizona Proposed Withdrawal. The Secretary of the Interior signed the ROD on January 9, 2012, which constitutes the final decision of the Department of the Interior.

**ADDRESSES:** Copies of the ROD are available upon request from the State Director, Arizona State Office, One N Central Ave, Phoenix, AZ, or via the Internet at *http://www.blm.gov/az/st/en/prog/mining/timeout/rod.html.*

**FOR FURTHER INFORMATION CONTACT:** Chris Horyza, Project Manager, Bureau of Land Management, Arizona State Office, One North Central Avenue, Suite 800, Phoenix, Arizona 85004–4427, (602) 417–9446, email *chris_horyza@blm.gov* or Scott Florence, District Manager, Arizona Strip District BLM, 345 East Riverside Drive, St. George, Utah 84790. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339 to contact the above individual during normal business hours. The service 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 Final EIS for the Northern Arizona Proposed Withdrawal was released and made available for a 30-day public availability period on October 28, 2011. The final EIS documents the effects of withdrawing from location and entry under the General Mining Law 1,006,545 acres of Federal land and interests in land in the vicinity of the Grand Canyon, Arizona for 20 years, subject to valid existing rights. The withdrawal would also apply to lands subsequently acquired by the United States within the boundaries of the withdrawal. The Resource Management Plan for the Arizona Strip Field Office and Forest plans for the Kaibab National Forest would be amended to reflect the intent of the withdrawal. Based on the analysis in the Northern Arizona Proposed Withdrawal EIS, and as set forth in the ROD, the Department of the Interior has decided a withdrawal of 1,006,545 acres from location and entry under the Mining Law, subject to valid existing rights and in accordance with the preferred alternative is warranted. Unpatented mining claims with valid existing rights and private lands will not be affected.

The Record of Decision constitutes the final decision of the Secretary of Interior. There is no administrative protest or appeal from a decision of the Secretary.

**Authority:** 40 CFR 1506.6, 43 CFR part 2310.

**Robert V. Abbey,**

*Director, Bureau of Land Management.*

[FR Doc. 2012–620 Filed 1–13–12; 8:45 am]

**BILLING CODE 4310–32–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Captain John Smith Chesapeake National Historic Trail Advisory Council

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** As required by the Federal Advisory Committee Act, the National Park Service (NPS) is hereby giving notice that the Advisory Committee on the Captain John Smith Chesapeake National Historic Trail will hold a meeting via conference call. Designated through an amendment to the National Trails System Act (16 U.S.C. 1241), the trail consists of ''a series of water routes extending approximately 3,000 miles along the Chesapeake Bay and its tributaries in the States of Virginia, Maryland, Delaware, and in the District of Columbia,'' tracing the 1607–1609 voyages of Captain John Smith to chart the land and waterways of the Chesapeake Bay. This meeting is available to the public through a toll-free call-in number. Preregistration is required to receive call-in information. Any individual who wishes to participate in the call or provide public comment should register prior to February 1, 2012 via email at *Christine_Lucero@nps.gov* or telephone: (757) 258–8914. For those wishing to make comments, please provide a written summary of your comments prior to the meeting. The Designated Federal Official for the Advisory Council is John Maounis, Superintendent, Captain John Smith National Historic Trail, telephone: (410) 260–2471.

**DATES:** The Captain John Smith Chesapeake National Historic Trail Advisory Council will meet from 1 p.m. to 3 p.m. on Wednesday, February 1, 2012.

**ADDRESSES:** The meeting will convene via conference call at 1 p.m. on February 1, 2012. For more information, please contact the NPS Chesapeake Bay Office, 410 Severn Avenue Suite 314, Annapolis, MD 21403.

**FOR FURTHER INFORMATION CONTACT:** Christine Lucero, Partnership Coordinator for the Captain John Smith Chesapeake National Historic Trail, telephone: (757) 258–8914 or email: *Christine_Lucero@nps.gov.*

**SUPPLEMENTARY INFORMATION:** Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), this notice announces a meeting of the Captain John Smith Chesapeake National Historic Trail Advisory Council for the purpose of reviewing the land conservation strategy of the Captain John Smith Chesapeake National Historic Trail.

The Committee meeting is available to the public through a toll-free call-in number. Preregistration is required to receive call-in information. Any individual who wishes to participate in the call or provide public comment should register prior to February 1, 2012 via email at *Christine_Lucero@nps.gov* or telephone: (757) 258–8914; a written summary of comments should be provided prior to the meeting. Before including your address, telephone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment-including your personal identifying information-may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All comments will be made part of the public record and will be electronically distributed to all Committee members.

Dated: January 6, 2012.

**John Maounis,**

*Superintendent, Captain John Smith National Historic Trail, National Park Service, Department of the Interior.*

[FR Doc. 2012–626 Filed 1–13–12; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### Notice of Proposed Information Collection

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**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) is announcing its intention to request approval for the collection of information for OSM's call for nominations for its Excellence in Surface Coal Mining Reclamation Awards and Abandoned Mine Land Reclamation Awards.

**DATES:** Comments on the proposed information collection must be received by March 19, 2012, to be assured of consideration.

**ADDRESSES:** Comments may be mailed to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 203–SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov.*

**FOR FURTHER INFORMATION CONTACT:** To receive a copy of the information collection request contact John Trelease at (202) 208–2783 or by email at *jtrelease@osmre.gov.*

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (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)]. This notice identifies an information collection that OSM will be submitting to OMB for approval. The collection is for nominations to OSM's Excellence in Surface Coal Mining Reclamation Awards and Abandoned Mine Land Reclamation Awards. OSM will request a 3-year term of approval for the 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. Since this is a new information collection request, OSM is seeking new OMB control number. Responses are voluntary.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Title:* Reclamation Awards—Call for Nominations.

*OMB Control Number:* 1029–xxxx.

*Summary:* This information collection clearance package is being submitted by the Office of Surface Mining Reclamation and Enforcement (OSM) for approval to collect information for our annual call for nominations for our Excellence in Surface Coal Mining Reclamation Awards and Abandoned Mine Land Reclamation Awards. Since 1986, the Office of Surface Mining has presented awards to coal mine operators who completed exemplary active reclamation. A parallel award program for abandoned mine land reclamation began in 1992. The objective was to give public recognition to those responsible for the nation's most outstanding achievement in environmentally sound surface mining and land reclamation and to encourage the exchange and transfer of successful reclamation technology. The call for nominations has been in existence for years without OMB approval and is currently inactive. This collection request seeks a three-year term of approval.

*Bureau Form Number:* None.

*Frequency of Collection:* Once.

*Description of Respondents:* Industry and state/tribal nominees for reclamation awards and state/tribal judges.

*Total Annual Responses:* 22 active mine respondents, 12 abandoned mine land respondents, and 26 state and tribal judges.

*Total Annual Burden Hours:* 2,384.

*Total Annual Non-Wage Burden:* $34,000.

Dated: January 10, 2012.

**John A. Trelease,**

*Acting Chief, Division of Regulatory Support.*

[FR Doc. 2012–577 Filed 1–13–12; 8:45 am]

**BILLING CODE 4310–05–M**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–253 and 731–TA–132, 252, 271, 273, 532–534 and 536 (Third Review)]**

### Certain Circular Welded Pipe and Tube From Brazil, India, Korea, Mexico, Taiwan, Thailand, and Turkey; Scheduling of Full Five-Year Reviews

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the countervailing duty order on welded carbon steel pipe and tube from Turkey, the antidumping duty orders on welded carbon steel pipe and tube from India, Thailand, and Turkey, the antidumping duty orders on circular welded nonalloy steel pipe from Brazil, Korea, Mexico, and Taiwan, and the antidumping duty order on small diameter carbon steel pipe and tube from Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B). For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

**DATES:** *Effective Date:* January 3, 2012.

**FOR FURTHER INFORMATION CONTACT:** Nathanael Comly (202) 205–3174, Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the

Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—On October 4, 2011, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (76 FR 65748, October 24, 2011). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

*Participation in the reviews and public service list.*—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Staff report.*—The prehearing staff report in the reviews will be placed in the nonpublic record on April 13, 2012, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

*Hearing.*—The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on May 3, 2012, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 26, 2012. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 30, 2012, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

*Written submissions.*—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is April 24, 2012. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is May 14, 2012; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before May 14, 2012. On June 5, 2012, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 7, 2012, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E–Filing, available on the Commission's Web site at *http://edis.usitc.gov.*

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**AUTHORITY:** These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: January 11, 2012.

**James R. Holbein,**

*Secretary to the Commission.*

[FR Doc. 2012–714 Filed 1–13–12; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Notice of Extension of Public Comment Period for Lodging of Consent Decree Under the Clean Water Act

On December 14, 2011, a proposed Consent Decree (''Decree'') was lodged with the United States District Court for the Northern District of Illinois in a case captioned *United States, et al.* v. *Metropolitan Water Reclamation District of Greater Chicago,* Civil Action No. 1:11-cv-08859.

In this action the United States, on behalf of the U.S. Environmental Protection Agency (''U.S. EPA''), and the State of Illinois sought penalties and injunctive relief under the Clean Water Act (''CWA'') against the Metropolitan Water Reclamation District of Greater Chicago (''Defendant'') relating to discharges from its combined sewer outfalls (''CSOs''). The Complaint alleges that Defendant violated the following CSO-related provisions of its

CWA permits: the prohibition on discharging pollutants into waters of the United States that cause or contribute to violations of applicable water quality standards for dissolved oxygen, solids, and floatables. The United States also alleges that Defendant violated the requirement of its NPDES permits to provide the equivalent of primary treatment for at least ten times the average dry weather flow for the average design year.

The proposed Consent Decree between Defendant, the United States, and the State of Illinois requires the following: (1) A schedule for completion of the Tunnel and Reservoir Program (''TARP''), the long term control plan to increase Defendant's capacity to handle wet weather events and address CSO discharges in Chicago area waterways; (2) a plan to control floatables in such waterways; (3) post construction monitoring following completion of TARP; (4) payment of a civil penalty of $675,000, of which $350,000 will be paid to the United States and $325,000 to the State of Illinois; and (5) a green infrastructure program to reduce CSO discharges, localized flooding and stormwater impacts.

In a **Federal Register** Notice published on December 22, 2011, the Department of Justice announced its intention to receive comments relating to the Consent Decree for a period of thirty (30) days from the date of that publication. 76 FR 79,710 (Dec. 22, 2011). In response to a request from various entities, the Department of Justice is extending that public comment period for sixty (60) days, until March 21, 2012. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States, et al.* v. *Metropolitan Water Reclamation District of Greater Chicago,* D.J. Ref. 90–5–1–1–07679. During the public comment period, the Decree may be examined on the Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*), or by faxing a request to fax no. (202) 514–0097, phone confirmation number (202) 514–5271. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $31.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

**Maureen Katz,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2012–718 Filed 1–13–12; 8:45 am]

**BILLING CODE;P**

## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms and Explosives

**[OMB Number 1140–0050]**

### Agency Information Collection Activities: Proposed Collection; Comments Requested: Identification Markings Placed on Firearms

**ACTION:** 60-Day Notice of Information Collection.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until March 19, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact John Spencer, Chief, Firearms Technology Branch, 244 Needy Road, Martinsburg, West Virginia 25405, *fire_tech@atf.gov,* (304) 616–4300.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Summary of Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Identification Markings Placed on Firearms.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None.

**Need for Collection**

Each licensed firearms manufacturer or licensed firearm importer must legibly identify each firearm by engraving, casting, stamping (impressing), or otherwise conspicuously placing on the frame or receiver an individual serial number. Also, ATF requires minimum height and depth requirements for identification markings placed on firearms.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 2,962 respondents will take 5 seconds to mark the firearm.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 2,500 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, Room 2E–508, 145 N Street NE., Washington, DC 20530.

**Jerri Murray,**

*Department Clearance Officer, PRA, U.S. Department of Justice.*

[FR Doc. 2012–635 Filed 1–13–12; 8:45 am]

**BILLING CODE 4410–FY–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Importer of Controlled Substances; Notice of Application

Pursuant to Title 21 Code of Federal Regulations 1301.34 (a), this is notice that on June 28, 2011, Cerilliant Corporation, 811 Paloma Drive, Suite A, Round Rock, Texas 78665–2402, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the following basic classes of controlled substances:

| Drug | Schedule |
|---|---|
| Cathinone (1235) | I |
| Methcathinone (1237) | I |
| N-Ethylamphetamine (1475) | I |
| N,N-Dimethylamphetamine (1480) | I |
| Fenethylline (1503) | I |
| Gamma Hydroxybutyric Acid (2010). | I |
| Alpha-ethyltryptamine (7249) | I |
| Ibogaine (7260) | I |
| Lysergic acid diethylamide (7315) | I |
| 2,5-Dimethoxy-4-(n)-propylthiophenethylamine (7348). | I |
| Marihuana (7360) | I |
| Tetrahydrocannabinols (7370) | I |
| Mescaline (7381) | I |
| 3,4,5-Trimethoxyamphetamine (7390). | I |
| 4-Bromo-2,5-dimethoxyamphetamine (7391). | I |
| 4-Bromo-2,5-dimethoxyphenethylamine (7392). | I |
| 4-Methyl-2,5-dimethoxyamphetamine (7395). | I |
| 2,5-Dimethoxyamphetamine (7396). | I |
| 3,4-Methylenedioxyamphetamine (7400). | I |
| 3,4-Methylenedioxy-N-ethylamphetamine (7404). | I |
| 3,4-Methylenedioxymethamphetamine (7405). | I |
| 4-Methoxyamphetamine (7411) | I |
| 5-Methoxy-N-N-dimethyltryptamine (7431). | I |
| Alpha-methyltryptamine (7432) | I |
| Diethyltryptamine (7434) | I |
| Dimethyltryptamine (7435) | I |
| Psilocybin (7437) | I |
| Psilocyn (7438) | I |
| 5-Methoxy-N,N-diisopropyltryptamine (7439). | I |
| N-Benzylpiperazine (7493) | I |
| Etorphine (except HCl)(9056) | I |
| Heroin (9200) | I |
| Morphine-N-oxide (9307) | I |
| Normorphine (9313) | I |
| Pholcodine (9314) | I |
| Dextromoramide (9613) | I |
| Dipipanone (9622) | I |
| Racemoramide (9645) | I |
| Trimeperidine (9646) | I |
| Tilidine (9750) | I |
| Amphetamine (1100) | II |
| Methamphetamine (1105) | II |
| Methylphenidate (1724) | II |
| Amobarbital (2125) | II |
| Pentobarbital (2270) | II |
| Secobarbital (2315) | II |
| Phencyclidine (7471) | II |
| Phenylacetone (8501) | II |
| Cocaine (9041) | II |
| Codeine (9050) | II |
| Dihydrocodeine (9120) | II |
| Oxycodone (9143) | II |
| Hydromorphone (9150) | II |
| Benzoylecgonine (9180) | II |
| Ethylmorphine (9190) | II |
| Meperidine (9230) | II |
| Methadone (9250) | II |
| Dextropropoxyphene, bulk (non-dosage forms) (9273). | II |
| Morphine (9300) | II |
| Oripavine (9330) | II |
| Thebaine (9333) | II |
| Levo-alphacetylmethadol (9648) | II |
| Oxymorphone (9652) | II |
| Poppy Straw Concentrate (9670) | II |
| Fentanyl (9801) | |

The company plans to import small quantities of the listed controlled substances for the manufacture of analytical reference standards.

In reference to drug codes 7360 and 7370, the company plans to import a synthetic cannabidiol and a synthetic Tetrahydrocannabinol. No other activity for this drug code is authorized for this registration.

No comments, objections, or requests for any hearings will be accepted on any application for registration or re-registration to import crude opium, poppy straw, concentrate of poppy straw, and coca leaves. As explained in the Correction to Notice of Application pertaining to Rhodes Technologies, 72 FR 3417 (2007), comments and requests for hearings on applications to import narcotic raw material are not appropriate.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances listed in schedule I or II, which fall under the authority of section 1002(a)(2)(B) of the Act 21 U.S.C. 952(a)(2)(B) may, in the circumstances set forth in 21 U.S.C. 958(i), file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, **Federal Register** Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than February 16, 2012.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745–46, all applicants for registration to import a basic class of any controlled substances in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: January 6, 2012.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 2012–660 Filed 1–13–12; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 28, 2011, Cerilliant Corporation, 811 Paloma Drive, Suite A, Round Rock, Texas 78665–2402, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

| Drug | Schedule |
|---|---|
| Cathinone (1235) | I |
| Methcathinone (1237) | I |
| N-Ethylamphetamine (1475) | I |
| N, N-Dimethylamphetamine (1480) | I |
| Aminorex (1585) | I |

| Drug | Schedule |
|---|---|
| 4-Methylaminorex (cis isomer) (1590) | I |
| Gamma-Hydroxybutyric acid (2010) | I |
| Methaqualone (2565) | I |
| 1-Pentyl-3-(1-naphthoyl) indole (7118) | I |
| 1-Butyl-3-(1-naphthoyl) indole (7173) | I |
| 1-[2-(4-Morpholinyl) ethyl]-3-(1-naphthoyl) Indole (7200) | I |
| Alpha-ethyltryptamine (7249) | I |
| 5-(1, 1-Dimethylheptyl)-2-[{1R, 3S)-3-hydroxycyclohexyl]-phenol (7297) | I |
| 5-(1, 1-Dimethyloctyl)-2-[{1R, 3S)-3-hydroxycyclohexyl]-phenol (7298) | |
| Lysergic acid diethylamide (7315) | I |
| 2, 5-Dimethoxy-4-(n)-propylthiophenethylamine (7348) | I |
| Marihuana (7360) | I |
| Tetrahydrocannabinols (7370) | I |
| Mescaline (7381) | I |
| 3, 4, 5-Trimethoxyamphetamine (7390) | I |
| 4-Bromo-2, 5-dimethoxyamphetamine (7391) | I |
| 4-Bromo-2, 5-dimethoxyphenethylamine (7392) | I |
| 4-Methyl-2, 5-dimethoxyamphetamine (7395) | I |
| 2, 5-Dimethoxyamphetamine (7396) | I |
| 2, 5-Dimethoxy-4-ethylamphetamine (7399) | I |
| 3, 4-Methylenedioxyamphetamine (7400) | I |
| 5-Methoxy-3, 4-methylenedioxyamphetamine (7401) | I |
| N-Hydroxy-3, 4-methylendioxyamphetamine (7402) | I |
| 3, 4-Methylendioxy-N-ethylamphetamine (7404) | I |
| 3, 4-Methylenedioxymethamphetamine (7405) | I |
| 4-Methoxyamphetamine (7411) | I |
| 5-Methoxy-N-N-dimethyltryptamine (7431) | I |
| Alpha-methyltryptamine (7432) | I |
| Bufotenine (7433) | I |
| Diethyltryptamine (7434) | I |
| Dimethyltryptamine (7435) | I |
| Psilocybin (7437) | I |
| Psilocyn (7438) | I |
| 5-Methoxy-N, N-diisopropyltyptamine (7439) | I |
| N-Benzylpiperazine (7493) | I |
| Acetyldihydrocodeine (9051) | I |
| Benzylmorphine (9052) | I |
| Codeine-N-oxide (9053) | I |
| Dihydromorphine (9145) | I |
| Heroin (9200) | I |
| Hydromorphinol (9301) | I |
| Methyldihydromorphine (9304) | I |
| Morphine-N-oxide (9307) | I |
| Normorphine (9313) | I |
| Pholcodine (9314) | I |
| Acetylmethadol (9601) | I |
| Allylprodine (9602) | I |
| Alphacetylmethadol except levo-alphacetylmethadol (9603) | I |
| Alphameprodine (9604) | I |
| Alphamethadol (9605) | I |
| Betacetylmethadol (9607) | I |
| Betameprodine (9608) | I |
| Betamethadol (9609) | I |
| Betaprodine (9611) | I |
| Hydroxypethidine (9627) | I |
| Noracymethadol (9633) | I |
| Norlevorphanol (9634) | I |
| Normethadone (9635) | I |
| Trimeperidine (9646) | I |
| Phenomorphan (9647) | I |
| 1-Methyl-4-phenyl-4-propionoxypiperidine (9661) | I |
| Tilidine (9750) | I |
| Para-Fluorofentanyl (9812) | I |
| 3-Methylfentanyl (9813) | I |
| Alpha-Methylfentanyl (9814) | I |
| Acetyl-alpha-methylfentanyl (9815) | I |
| Beta-hydroxyfentanyl (9830) | I |
| Beta-hydroxy-3-methylfentanyl (9831) | I |
| Alpha-Methylthiofentanyl (9832) | I |
| 3-Methylthiofentanyl (9833) | I |
| Thiofentanyl (9835) | I |
| Amphetamine (1100) | II |
| Methamphetamine (1105) | II |
| Lisdexamfetamine (1205) | II |

| Drug | Schedule |
|---|---|
| Phenmetrazine (1631) | II |
| Methylphenidate (1724) | II |
| Amobarbital (2125) | II |
| Pentobarbital (2270) | II |
| Secobarbital (2315) | II |
| Glutethimide (2550) | II |
| Nabilone (7379) | II |
| 1-Phenylcyclohexylamine (7460) | II |
| Phencyclidine (7471) | II |
| 1-Piperidinocyclohexanecarbonitrile (8603) | II |
| Alphaprodine (9010) | II |
| Cocaine (9041) | II |
| Codeine (9050) | II |
| Dihydrocodeine (9120) | II |
| Oxycodone (9143) | II |
| Hydromorphone (9150) | II |
| Diphenoxylate (9170) | II |
| Benzoylecgonine (9180) | II |
| Ethylmorphine (9190) | II |
| Hydrocodone (9193) | II |
| Levomethorphan (9210) | II |
| Levorphanol (9220) | II |
| Isomethadone (9226) | II |
| Meperidine (9230) | II |
| Meperidine intermediate-A (9232) | II |
| Meperidine intermediate-B (9233) | II |
| Meperidine intermediate-C (9234) | II |
| Methadone (9250) | II |
| Methadone intermediate (9254) | II |
| Dextropropoxyphene, bulk (non-dosage forms) (9273) | II |
| Morphine (9300) | II |
| Thebaine (9333) | II |
| Levo-alphacetylmethadol (9648) | II |
| Oxymorphone (9652) | II |
| Noroxymorphone (9668) | II |
| Racemethorphan (9732) | II |
| Alfentanil (9737) | II |
| Sufentanil (9740) | II |
| Tapentadol (9780) | II |
| Fentanyl (9801) | II |

The company plans to manufacture small quantities of the listed controlled substances to make reference standards which will be distributed to their customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than March 19, 2012.

Dated: January 5, 2012.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 2012–478 Filed 1–13–12; 8:45 am]

BILLING CODE 4410–09–P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 8, 2011, Siegfried (USA), 33 Industrial Park Road, Pennsville, New Jersey 08070, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

| Drug | Schedule |
|---|---|
| Gamma Hydroxybutyric Acid (2010). | I |
| Dihydromorphine (9145) | I |
| Hydromorphinol (9301) | I |
| Methylphenidate (1724) | II |
| Amobarbital (2125) | II |
| Pentobarbital (2270) | II |
| Secobarbital (2315) | II |
| Codeine (9050) | II |
| Oxycodone (9143) | II |
| Hydromorphone (9150) | II |
| Hydrocodone (9193) | II |
| Methadone (9250) | II |
| Methadone intermediate (9254) | II |
| Dextropropoxyphene, bulk (non-dosage forms) (9273). | II |
| Morphine (9300) | II |
| Oripavine (9330) | II |
| Oxymorphone (9652) | II |

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than March 19, 2012.

Dated: January 6, 2012.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 2012–679 Filed 1–13–12; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a), of Title 21 of the Code of Federal Regulations (CFR), this is notice that on September 6, 2011 Cedarburg Pharmaceuticals, Inc., 870 Badger Circle, Grafton, Wisconsin 53024, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

| Drug | Schedule |
|---|---|
| 4–Anilino-N-phenethyl-4-piperidine (8333). | II |
| Fentanyl (9801) | II |

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers. Regarding the drug code (8333), the company plans to use this controlled substance to manufacture another controlled substance.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than March 19, 2012.

Dated: January 6, 2012.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 2012–656 Filed 1–13–12; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on September 12, 2011, Johnson Matthey, Inc., Pharmaceuticals Materials, 900 River Road, Conshohocken, Pennsylvania 19428, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

| Drug | Schedule |
|---|---|
| Gamma Hydroxybutyric Acid (2010) | I |
| Amphetamine (1100) | II |
| Methylphenidate (1724) | II |
| Codeine (9050) | II |
| Oxycodone (9143) | II |
| Hydrocodone (9193) | II |
| Morphine (9300) | II |
| Thebaine (9333) | II |

The company plans to manufacture the listed controlled substances in bulk for sale in bulk to its customers. The Thebaine (9333) will also be used to manufacture other controlled substances in bulk which will also be for sale in bulk to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than March 19, 2012.

Dated: January 6, 2012.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 2012–653 Filed 1–13–12; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Registration

By Notice dated August 9, 2011, and published in the **Federal Register** on August 18, 2011, 76 FR 51401, Austin Pharma LLC., 811 Paloma Drive, Suite C, Round Rock, Texas 78665–2402, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

| Drug | Schedule |
|---|---|
| Marihuana (7360) | I |
| Tetrahydrocannabinols (7370) | I |

The company plans to manufacture bulk active pharmaceutical ingredients (APIs) for distribution to its customers.

In reference to drug code 7360 (Marihuana), the company plans to bulk manufacture cannabidiol as a synthetic intermediate. This controlled substance will be further synthesized to bulk manufacture a synthetic THC (7370). No other activity for this drug code is authorized for this registration.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Austin Pharma LLC. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Austin Pharma LLC. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: January 6, 2012.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 2012–663 Filed 1–13–12; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Registration

By Notice dated August 10, 2011, and published in the **Federal Register** on August 18, 2011, 76 FR 51401, AMRI Rensselaer, Inc., 33 Riverside Avenue, Rensselaer, New York 12144, made application by renewal to the Drug

Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

| Drug | Schedule |
|---|---|
| Marihuana (7360) | I |
| Tetrahydrocannabinols (7370) | I |
| Amphetamine (1100) | II |
| Lisdexamfetamine (1205) | II |
| Methylphenidate (1724) | II |
| Pentobarbital (2270) | II |
| Meperidine (9230) | II |
| 4–Anilino-N-phenethyl-4-piperidine (8333). | II |
| Fentanyl (9801) | II |

The company plans to manufacture bulk controlled substances for use in product development and for distribution to its customers.

In reference to drug code 7360 (Marihuana), the company plans to bulk manufacture cannabidiol as a synthetic intermediate. This controlled substance will be further synthesized to bulk manufacture a synthetic THC (7370). No other activity for this drug code is authorized for this registration.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of AMRI Rensselaer, Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated AMRI Rensselaer, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: January 6, 2012.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 2012–658 Filed 1–13–12; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### National Institute of Corrections

### Solicitation for a Cooperative Agreement—Jail Resource Management: Review and Revision

**AGENCY:** National Institute of Corrections, U.S. Department of Justice.

**ACTION:** Solicitation for a Cooperative Agreement.

**SUMMARY:** The National Institute of Corrections (NIC) is seeking applications for the revision of its Jail Resource Management training program. The project will be for a 9-month period and will be carried out in conjunction with the NIC Jails Division. The awardee will work closely with NIC staff on all aspects of the project. To be considered, applicants must demonstrate, at a minimum, in-depth knowledge of (1) the purpose, functions, and operational complexities of local jails, (2) budget issues common in jails, (3) analysis of jail resource needs, (4) development and presentation of a budget request to appropriate governing bodies, (5) budget management, and (6) the resource constraints faced by many local governments and their jails. Also, the applicant must demonstrate expertise and experience in developing curricula based on adult learning principles, specifically the Instructional Theory into Practice (ITIP) model.

**DATES:** Applications must be received by 4 p.m. (EDT) on Thursday, February 9, 2012.

**ADDRESSES:** Mailed applications must be sent to: Director, National Institute of Corrections, 320 First Street NW., Room 5002, Washington, DC 20534. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by the due date as mail at NIC is sometimes delayed due to security screening.

Applicants who wish to hand-deliver their applications should bring them to 500 First Street NW., Washington, DC 20534, and dial (202) 307–3106, ext. 0, at the front desk for pickup.

Faxed or emailed applications will not be accepted; however, electronic applications can be submitted via *http://www.grants.gov*.

**FOR FURTHER INFORMATION CONTACT:** A copy of this announcement and the required application forms can be downloaded from the NIC Web site at *www.nicic.gov/cooperativeagreements.*

Questions about this project and the application procedures should be directed to Erika McDuffe, Correctional Program Specialist, National Institute of Corrections. Questions must be emailed to Ms. McDuffe at *emcduffe@bop.gov.* Ms. McDuffe will respond by email to the individual. Also, all questions and responses will be posted on NIC's Web site at *www.nicic.gov* for public review. (The names of those submitting the questions will not be posted.) The Web site will be updated regularly and postings will remain on the Web site until the closing date of this cooperative agreement solicitation.

**SUPPLEMENTARY INFORMATION:**

*Background:* NIC's Jail Resource Management course is a 3-day training program that focuses on the resource needs of the jail, development and presentation of a budget request, management of the budget, and identification of alternate funding options. This 3-day program is held in regions throughout the county.

Program participants are primarily sheriffs and administrators from smaller jails who have no specialized fiscal management staff. Most have no formally established mechanisms to identify, document, track, justify, or present resource needs. As a result, their jails often receive budget allocations that are inadequate to maintain a safe and secure jail.

NIC wishes to update the content of Jail Resource Management and ensure its design conforms to the ITIP model. The following reference materials are posted with this announcement on NIC's Web site: Jail Resource Management: Lesson Plans; Jail Resource Management: Participant Manual; Jail Resource Management: Presentation Slides; Jail Resource Management: Activities.

*Scope of Work:* The cooperative agreement awardee will revise the content of the current program to ensure it is current, accurate, and relevant. The awardee also will ensure that module sequencing is logical and enhances the flow of the program. Finally, the awardee will revise the program's design to conform to the ITIP model. The awardee will ensure that content, module sequencing, and instructional strategies effectively contribute to meeting the program's goal. To achieve this, the awardee will complete the following activities, at a minimum.

*Initial Meeting:* The cooperative agreement awardee, with subject matter expert and the curriculum specialist, will attend an initial meeting with the NIC staff for a project overview and preliminary planning. This will take place shortly after the cooperative agreement is awarded. The meeting will last up to one half day and will be conducted via Web conferencing.

*Initial curriculum review:* The awardee will review and become

familiar with the current lesson plans, presentation slides, participant manual, and other training materials. The awardee will document any comments based on this review for discussion at the initial curriculum review. The current program will be offered in March and the awardee may attend the course as a part of the curriculum review.

Curriculum review meeting with NIC staff: After becoming familiar with the curriculum, the awardee (project director, subject matter experts, and curriculum specialist) will meet with NIC staff for 3 days in Washington, DC, to discuss the program's goal, audience, and design. The awardee and NIC staff will identify needed revisions to content, instructional strategies, presentation slides, the participant manual, and other training materials.

In the cooperative agreement application, the awardee is required to project milestones and dates for the completion of all project activities. Based on the decisions made during the initial meeting, the awardee and NIC staff may set additional dates for completion of specific activities.

The awardee will document primary discussion points and all decisions made during the meeting and will give NIC this documentation within 2 weeks of the meeting.

Draft revisions and NIC review: Based on decisions made during the initial meeting, the awardee will draft revisions to the curriculum. Lesson plan revisions will be completed first. The awardee will send revised lesson plans to NIC staff for review and approval before any other materials are developed. Once the lesson plans are approved, the awardee will draft revisions to the presentation slides and participant manual. The awardee will also send these draft revisions to NIC staff for review and approval. Finally, the awardee will draft participant evaluation forms to be completed after each module and at the end of the program and will send these to NIC staff for approval.

*Program Pilot:* The awardee will conduct one pilot of the revised curriculum at a location yet to be determined. The awardee will identify trainers for this pilot in conjunction with NIC staff. The awardee will hire these trainers and pay their fees and expenses.

The awardee will also pay fees and expenses for the project director and curriculum specialist, both of whom are required to attend the entire program. If qualified, the project director or others on the cooperative agreement team may be included among the trainers.

The awardee will print all program materials for the instructors and the participants and will assume all costs. The awardee will send one full set of these materials to NIC staff prior to the program for approval.

During the pilot, the awardee, curriculum specialist, and trainers will meet regularly with NIC staff to discuss their observations about the revised program and the participants' response. They will also review and discuss the module evaluations each day.

The awardee will document the main discussion points and decisions from these meetings. The awardee will also summarize all participant evaluations (module and end-of-program). The awardee will submit the documentation of the meetings, the evaluation summaries, and all participant evaluations to NIC within 2 weeks after the program.

*Final program revisions:* Based on the results of the pilot program and discussion with NIC staff, the awardee will draft additional curriculum revisions. The awardee will send the drafts to NIC staff for review and approval before creating the final curriculum.

*Final product:* The final curriculum will include a program description (overview), detailed narrative lesson plans, presentation slides for each lesson plan, a participant manual that follows the lesson plans, and other training materials as identified through this project. The curriculum will be designed according to the ITIP model for adult learners. Lesson plans will be in a format that NIC provides. The awardee will deliver all materials in hard copy (1) and on a disk. The awardee must also ensure that all products meet NIC's standards for accessibility and Section 508 compliance.

*Meetings:* In addition to the initial Web conference and the curriculum review meeting noted above, the awardee will attend other meetings with NIC staff as needed for project development and updates. These meetings will include, at a minimum, 1 two-day meeting in Washington, DC, and several Web conferences. The Web conferences will be hosted by NIC and will last up to 4 hours each. NIC will pay to host the Web conferences, but fees for project staff who attend will be charged to the cooperative agreement. For all meetings, the awardee should plan to have the project director, subject matter experts, and the curriculum specialist attend.

*Application Requirements:* An application package must include OMB Standard Form 425, Application for Federal Assistance; a cover letter that identifies the audit agency responsible for the applicant's financial accounts as well as the audit period or fiscal year under which the applicant operates (*e.g.,* July 1 through June 30); and an outline of projected costs with the budget and strategy narratives described in this announcement. The following additional forms must also be included: OMB Standard Form 424A, Budget Information—Non-Construction Programs; OMB Standard Form 424B, Assurances—Non-Construction Programs (both available at *www.grants.gov*); DOJ/FBOP/NIC Certification Regarding Lobbying, Debarment, Suspension and Other Responsibility Matters; and the Drug-Free Workplace Requirements (available at *www.nicic.org/Downloads/PDF/certif-frm.pdf.*)

Applications should be concisely written, typed double spaced, and reference the NIC application number and title referenced in this announcement. If you are hand delivering or submitting via Fed-Ex, please include an original and three copies of your full proposal (program and budget narrative, application forms, assurances, and other descriptions). The original should have the applicant's signature in blue ink. Electronic submissions will be accepted only via *www.grants.gov.*

The narrative portion of the application should include, at a minimum a brief paragraph indicating the applicant's understanding of the project's purpose; a brief paragraph that summarizes the project goals and objectives; a clear description of the methodology that will be used to complete the project and achieve its goals; a statement or chart of measurable project milestones and timelines for the completion of each milestone; a description of the qualifications of the applicant organization and a resume for the principal and each staff member assigned to the project (including instructors) that documents relevant knowledge, skills, and abilities to complete the project; and a budget that details all costs for the project, shows consideration for all contingencies for the project, and notes a commitment to work within the proposed budget.

In addition to the narrative and attachments, the applicant must submit only one full curriculum developed by the primary curriculum developer named in the application. This curriculum must be in ITIP format and include lesson plans, presentation slides, and a participant manual, at a minimum.

**Authority:** Pub. L. 93–415.

*Funds Available:* NIC is seeking the applicant's best ideas regarding accomplishment of the scope of work and the related costs for achieving the goals of this solicitation. Funds may be used only for activities linked to the desired outcome of the project. The funding amount should not exceed $ 80,000.

*Eligibility of Applicants:* An eligible applicant is any state or general unit of local government, private agency, educational institution, organization, individual, or team with expertise in the described areas. Applicants must have demonstrated ability to implement a project of this size and scope.

*Review Considerations:* Applications will be subject to the NIC review process. The criteria for the evaluation of each application are:

**Project Design and Management—25 Points**

Is there a clear understanding of the purpose of the project and the nature and scope of project activities? Does the applicant give a clear and complete description of all work required to complete this project? Does the applicant specify project objectives, tasks, and milestones? Are the roles and the time required of project staff clearly defined?

**Applicant Organization/Project Staff Background—25 Points**

Is there a description of the background and expertise of all project personnel as they relate to this project? Does the applicant have an established reputation or skill that makes the applicant particularly well qualified for the project?

**Budget—20 Points**

Does the application provide adequate cost detail to support the proposed budget? Does the application include a chart that aligns the budget with project activities along a timeline with, at minimum, quarterly benchmarks? In terms of program value, is the estimated cost reasonable in relation to work performed and project products?

**Sample Curriculum—30 Points**

Does the sample curriculum include all components specified in the RFP (lesson plans, presentation slides, and participant manual)? Are the lesson plans designed according to the ITIP model? Are the lesson plans detailed, clear, and well written (spelling, grammar, punctuation)? Is the participant manual clear, and does it follow the lesson plans?

**Note:** NIC will NOT award a cooperative agreement to an applicant who does not have a Dun and Bradstreet Database Universal Number (DUNS) and is not registered in the Central Contractor Registry (CCR). Applicants can obtain a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at (800) 333–0505. Applicants who are sole proprietors should dial (866) 705–5711 and select option #1.

Applicants may register in the CCR online at the CCR Web site at *www.ccr.gov.* Applicants can also review a CCR handbook and worksheet at this Web site.

*Number of Awards:* One.

*NIC Opportunity Number:* 12JA03. This number should appear as a reference line in the cover letter, where the opportunity number is requested on Standard Form 424, and on the outside of the envelope in which the application is sent.

*Catalog of Federal Domestic Assistance Number:* 16.601.

*Executive Order 12372:* This project is not subject to the provisions of the executive order.

**Morris L. Thigpen,**

*Director, National Institute of Corrections.*

[FR Doc. 2012–628 Filed 1–13–12; 8:45 am]

**BILLING CODE 4410–36–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice: (12–002)]**

### Meeting of NASA Advisory Council Science Committee Heliophysics Subcommittee

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Heliophysics Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

**DATES:** Monday, February 27, 2012, 9 a.m. to 5:30 p.m. and Tuesday, February 28, 2012, 9 a.m. to 4:30 p.m., Local Time.

**ADDRESSES:** NASA Headquarters, 300 E Street SW., Room 8H40, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov.*

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Heliophysics Division Overview and Program Status
—Status of the Explorer Program
—Status of Solar Terrestrial Probes Program
—Status of Current Flight Missions
—Research and Analysis Programs
—Heliophysics Budget Status
—Heliophysics Strategic Planning

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship and green cards should provide identifying information 3 working days in advance by contacting Marian Norris via email at *mnorris@nasa.gov* or by telephone at (202) 358–4452.

**Patricia D. Rausch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 2012–640 Filed 1–13–12; 8:45 am]

**BILLING CODE 7510–13–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No.: 50–333; NRC–2012–0006]**

### Entergy Nuclear Operations, Inc.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (NRC or the Commission)

has granted the request of Entergy Nuclear Operations, Inc. (the licensee) to withdraw its January 13, 2011 (Agencywide Documents and Management System (ADAMS) Accession No. ML110130436), application for the proposed amendment to Renewed Facility Operating License (FOL) No. DPR–59 for the James A. FitzPatrick Nuclear Power Plant, located in Oswego County, New York.

The proposed amendment would have modified the Renewed FOL by deleting references to specific Safety Evaluation Reports, Technical Specification Amendments, and Exemptions from License Condition 2.C(3), Fire Protection, and replacing them with the words ''as supplemented.''

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on February 22, 2011 (76 FR 9823). However, by letter dated January 4, 2012 (ADAMS Accession No. ML120050483), the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated January 13, 2011, and the licensee's letter dated January 4, 2012, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are accessible electronically through the ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–(800) 397–4209, or (301) 415–4737 or by email to *pdr.resource@nrc.gov*.

Dated at Rockville, Maryland, this 9th day of January 2012.

For the Nuclear Regulatory Commission.

**Bhalchandra K. Vaidya,**

*Project Manager, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2012–664 Filed 1–13–12; 8:45 am]

**BILLING CODE 7590–01–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 a Closed Meeting on Thursday, January 19, 2012 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, January 19, 2012 will be:

institution and settlement of injunctive actions; institution and settlement of administrative proceedings; other matters relating to enforcement proceedings; and an adjudicatory matter.

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: January 12, 2012.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2012–892 Filed 1–12–12; 4:15 pm]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–66122; File No. SR–Phlx–2011–186]**

## Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees Applicable to the Trading of NMS Stocks Through NASDAQ OMX PSX

January 10, 2012.

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 December 28, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') 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 the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the fees applicable to trading on the NASDAQ OMX PSX system (''PSX''). The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov,* 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 the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange is proposing to modify order routing fees applicable to the use of PSX's PMOP routing strategy. PMOP is a routing option under which an incoming order routes only to Protected Quotations (as defined in SEC Rule 600 under Regulation NMS),[3] and only for the displayed size of such quotes. If shares remain unexecuted after routing, they are posted to the PSX book and do not route out again. Currently, the Exchange charges $0.0025 per share executed with respect to PMOP orders that execute at the New York Stock Exchange (''NYSE'') and $0.0035 per

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 242.600.

share executed with respect to PMOP orders that execute at other trading venues. The Exchange is proposing to reduce the fee for PMOP orders that execute at other venues to $0.0031 per share executed.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Sections 6(b)(4) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Phlx operates or controls. In general, routing fees are reasonable because they seek to recoup the cost of the execution on the other venue, which is generally borne by the order router and, ultimately, the routing exchange. The proposed change reflects a reduction in fees in order to make the routing services of PSX more attractive to potential customers.

The Exchange also believes that the proposed change is equitable. All similarly situated members are subject to the same fee structure, and access to Phlx is offered on fair and non-discriminatory terms; specifically, the same routing fee, credit or pass through fee applies to any participant and does not differ based on user type (*e.g.,* customer or broker-dealer). The Exchange further believes that the fee for the PMOP routing strategy is equitable because PMOP is a complex routing strategy that it involves ascertaining all venues displaying a protected quote and the simultaneous routing of orders to the displayed size of such quotes; accordingly, the Exchange believes that charging a higher fee with respect to the strategy as compared with other strategies is equitable. Nevertheless, the change will reduce the difference between PMOP fees and fees for the use of other strategies, thereby enhancing the competiveness of the Exchange's routing services.

Furthermore, the new routing fees are reasonable and equitable in that the decision to send routable orders and to use PHLX as a router is entirely voluntarily; members can avail themselves of numerous other means of directing orders to other venues, including becoming members of those markets or using any of a number of competitive routing services offered by other exchanges and brokers.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange 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. Because the market for order execution and routing is extremely competitive, members may readily favor the Exchange's competitors in making order routing decisions to the extent that they deem PSX's fees to be excessive. Moreover, the Exchange believes that the proposal will enhance competition through its use of reduced fees to draw greater order flow to PSX.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[6] 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 email to *rule-comments@sec.gov.* Please include File No. SR–Phlx–2011–186 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 No. SR–Phlx–2011–186. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2011–186 and should be submitted on or before February 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–637 Filed 1–13–12; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–66125; File No. SR–EDGA–2011–41]**

## Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGA Rule 1.5(q)

January 10, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 200.30–3(a)(12).

''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 29, 2011, the EDGA Exchange, Inc. (the ''Exchange'' or the ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

EDGA Exchange, Inc. (''EDGA'' or the ''Exchange''), proposes to amend EDGA Rule 1.5(q) to change the starting time of the Pre-Opening Session from 7 a.m. Eastern Time (''ET'') to 8 a.m. ET. The Exchange proposes to make a conforming amendment to Rule 14.1(c)(2) to change the reference for the starting time of the Pre-Opening Session from 7 a.m. ET to 8 a.m. ET. Through this filing, the Exchange proposes to amend the rule text from SR–EDGA–2011–28,[3] which proposed to change the Pre-Opening Session starting time to 7 a.m. ET. The text of the proposed rule change is attached as Exhibit 5 and is available on the Exchange's Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

## 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 self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange filed a rule change to amend EDGA Rule 1.5(q) to change the starting time of the Pre-Opening Session from 8 a.m. ET to 7 a.m. ET.[4] This change would have allowed the Exchange to compete with other exchanges that open their markets for entry of orders prior to 8 a.m. ET.[5] The Exchange proposes to amend the rule text of its August 25 Rule Filing at this time in order to accommodate Members who initially expressed an interest in the change in Pre-Opening Session time to begin at 7 a.m. ET; but, after further consideration, Members confirmed that they were no longer interested because the additional costs and resources needed to open earlier outweighed any incidental benefits from increased trading activity that they would incur. As such, based on the Exchange's feedback from Members it surveyed in September 2011, the Exchange confirmed that no Members adversely relied upon the August 25 Rule Filing.

At this time, the Exchange has not implemented the 7 a.m. ET starting time for the Pre-Opening Session because it has not notified its Members pursuant to the language in the August 25 Rule Filing.[6] In addition, the Exchange notes Members are not adversely impacted by the amendment to the rule text of the August 25 Rule Filing as no Members were required to incur any costs or make any changes to their systems to comply with the earlier Pre-Opening time if they were not planning to trade beginning at 7 a.m. ET.

Based on the foregoing, the Exchange proposes to amend Rule 1.5(q) and make a conforming amendment to Rule 14.1(c)(2) to change the starting time of the Pre-Opening Session from 7 a.m. ET back to 8 a.m. ET as it appeared before the August 25 Rule Filing.

2. Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,[7] in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that amending its rule text from the August 25 Rule Filing will afford the Exchange additional time to evaluate the potential benefits of an earlier starting time for the Pre-Opening Session. In addition, the Exchange believes that it is not discriminating against its Members given that the Exchange contacted Members to discuss amending the text of the August 25 Rule Filing, and the Exchange confirmed that no Members had adjusted their infrastructure or incurred any costs in reliance on the August 25 Rule Filing.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing 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 become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)(iii) thereunder.[9]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65196 (August 25, 2011), 76 FR 54267 (August 31, 2011) (SR–EDGA–2011–28). For the purposes of this filing, the Exchange will refer to SR–EDGA–2011–28 as the ''August 25 Rule Filing.'' Given that the August 25 Rule Filing was immediately effective but not operative, the Exchange proposes to amend its rule text in this filing.

[4] *Id.* The Exchange initially proposed to expand its operational hours to open the System earlier so that Members could enter and execute orders beginning at 7 a.m. ET rather than 8 a.m. ET.

[5] *See* The NASDAQ Stock Market LLC Rule 4617 (opens at 7 a.m. EST). *See also* NASDAQ OMX BX Rule 4617 (opens at 7 a.m. EST); NYSE Arca Equities Rule 7.34 (opens at 1 a.m. Pacific Time).

[6] *See* Securities Exchange Act Release No. 65196 (August 25, 2011), 76 FR 54267 (August 31, 2011) (SR–EDGA–2011–28), stating the Exchange will provide notice to Members in an information circular when the proposed rule change will be effective, which will be no later than January 1, 2012.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6)(iii).

of filing.[10] However, Rule 19b–4(f)(6)(iii) [11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange notes that waiver of this requirement will permit the Exchange to immediately remove language from its rules that could otherwise create confusion for Members because the 7 a.m. ET start time has not been implemented.[12] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the Exchange to notify its Members by January 1, 2012 as prescribed in the August 25 Rule Filing and would immediately provide certainty with respect to the Exchange's rules regarding the start time for the Pre-Opening Session. For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGA–2011–41 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–EDGA–2011–41. This file number should be included on the subject line if email 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–2011–41 and should be submitted on or before February 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–684 Filed 1–13–12; 8:45 am]

**BILLING CODE 8011–01–P**

[10] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

[11] *Id.*

[12] *See* Securities Exchange Act Release No. 65196 (August 25, 2011), 76 FR 54267 (August 31, 2011) (SR–EDGA–2011–28), stating the Exchange will provide notice to Members in an information circular when the proposed rule change will be effective, which will be no later than January 1, 2012.

[13] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–66128; File No. SR–NYSEArca–2011–96]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees for the NYSE Arca Integrated Data Feed

January 10, 2012.

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 December 28, 2011, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish fees for the NYSE Arca Integrated Data Feed. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.com.*

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to establish fees for the NYSE Arca Integrated Data Feed.[3] It is a market data product

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposed rule change establishing the NYSE Arca Integrated Data Feed was immediately

Continued

offered to vendors and subscribers that combines three existing market data feeds as well as additional market data from the Exchange into one integrated product. The three existing products are NYSE Arca BBO, NYSE Arca Trades, and ArcaBook. In addition, the NYSE Arca Integrated Data Feed includes order imbalance information prior to the opening and closing of trading and security status information (*i.e.,* delayed openings and trading halts). The order imbalance information included in the NYSE Arca Integrated Data Feed is available pursuant to NYSE Arca Equities Rule 7.35[4] and as part of the NYSE ArcaBook data feed product. Security status information is not currently available through any other NYSE Arca market data products.[5] The NYSE Arca Integrated Data Feed is available through the Exchange's Liquidity Center Network (''LCN'') and the Secure Financial Transaction Infrastructure (''SFTI'') network.

The proposed fees for the NYSE Arca Integrated Data Feed are as follows:[6]

| Fee type | Monthly fee | Description |
|---|---|---|
| Direct Access Fee | $3,000 | Applies to end users, market data vendors, and extranets. |
| Redistribution Fee | 3,000 | Additional fee applied to any end user, market data vendor, or extranet that redistributes the data feed. |

The Exchange notes that the three existing data feed products (NYSE Arca BBO, NYSE Arca Trades, and ArcaBook) would continue to be available to vendors and subscribers separately at the same prices at which they are currently available.[7] The monthly access fee for each of those feeds on a separate basis is $750.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the ''Act'')[8] in general and with Section 6(b)(4) and 6(b)(5) of the Act[9] in particular in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers. The NYSE Arca Integrated Data Feed fees are reasonable because they represent not only the value of the three existing data feeds but also the value of the additional market data included (*i.e.,* order imbalance information and security status information) and the value of receiving the data on an integrated basis. Some vendors and subscribers may not have the technology or resources to integrate the separate data feeds in a timely and/or efficient manner, and thus the integration feature of the product may be valuable to them. The redistribution fee also is reasonable because vendors receive value from redistributing the NYSE Arca Integrated Data Feed in their business products for their customers. Moreover, the fees are equitably allocated and not unfairly discriminatory because vendors and subscribers may choose to continue to receive the separate feeds at current prices or can choose to pay more for the NYSE Arca Integrated Data Feed in order to receive additional and integrated data, thereby allowing the vendors and subscribers to choose the best business solution.

The existence of alternatives to the NYSE Arca Integrated Data Feed, including real-time consolidated data, free delayed consolidated data, and proprietary data from other sources, as well as the continued availability of the Exchange's separate data feeds, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives. The recent decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* No. 09–1042 (DC Cir. 2010), upheld the Commission's reliance upon the existence of competitive market mechanisms to set reasonable and equitably allocated fees for proprietary market data:

> In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.'

*NetCoalition* at 15 (quoting H.R. Rep. No. 94–229 at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' ''[10]

As explained below in the Exchange's Statement on Burden on Competition, the Exchange believes that there is substantial evidence of competition in the marketplace for data and that the Commission can rely upon such evidence in concluding that the fees established in this filing are the product of competition and therefore satisfy the relevant statutory standards.[11] As the *NetCoalition* decision noted, the Commission is not required to

effective on October 26, 2011. *See* Securities Exchange Act Release No. 65669, (Nov. 2, 2011), 76 FR 69311 (Nov. 8, 2011) (SR–NYSEArca–2011–78).

[4] *See http://datasvr.tradearca.com/arcadataserver/Auction.php.*

[5] Security status information is available for other NYSE markets. NYSE Alerts and NYSE Amex Alerts are real-time data feed information services from the NYSE and NYSE Amex that provide real-time messages regarding certain conditions related to the trading of NYSE- and NYSE Amex-traded securities, including security trading status data.

[6] Customers are separately responsible for the appropriate ArcaBook professional and nonprofessional user fees and NYSE Arca Trades user fees.

[7] NYSE Arca expects that data concerning quotations and transaction reports required to be disseminated under Rule 602 and 603 of Regulation NMS will be delivered from the Exchange's matching engine to the Securities Information Processor, to the individual proprietary feeds described above, and to the NYSE Arca Integrated Data Feed at substantially the same time. The Commission notes that under Rule 603 NYSE Arca is required to distribute market data on terms that are fair and reasonable and not unreasonably discriminatory. *See* 17 CFR 242.603(a). In addition, the Commission notes that, ''independently distributed data could not be made available on a more timely basis than core data is made available to a Network processor. Stated another way, * * * Rule 603(a) prohibits an SRO or broker-dealer from transmitting data to a vendor or user any sooner than it transmits the data to a Network processor.'' Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005), at 37567. Accordingly, the Commission notes that it would be inconsistent with Rule 603 for NYSE Arca to transmit data to the individual proprietary feeds any sooner than it transmits data to the Securities Information Processor.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

[10] *NetCoalition* at 16.

[11] Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act'') amended paragraph (A) of Section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3), to make clear that all exchange fees for market data may be filed by exchanges on an immediately effective basis.

undertake a cost-of-service or ratemaking approach, and the Exchange incorporates by reference into this proposed rule change its analysis of this topic in another recent rule filing.[12]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. An exchange's ability to price its data feed products is constrained by (1) competition among exchanges and other trading platforms that compete with one another in a variety of dimensions, (2) the existence of inexpensive real-time consolidated data and free delayed consolidated data, and (3) the inherent contestability of the market for proprietary data.

The market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

It is common for broker-dealers to further exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. As a recent Commission Concept Release noted, the ''current market structure can be described as dispersed and complex'' with ''trading volume * * * dispersed among many highly automated trading centers that compete for order flow in the same stocks'' and ''trading centers offer[ing] a wide range of services that are designed to attract different types of market participants with varying trading needs.'' [13]

Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products and therefore constrain markets from overpricing proprietary market data. The U.S. Department of Justice recently acknowledged the aggressive competition among exchanges. In announcing the abandoned bid for NYSE Euronext by NASDAQ OMX Group Inc. and IntercontinentalExchange Inc., Assistant Attorney General Christine Varney stated that exchanges ''compete head to head to offer real-time equity data products. These data products include the best bid and offer of every exchange and information on each equity trade, including the last sale.'' [14]

Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality, and price and distribution of its data products. Without trade executions, exchange data products cannot exist. Moreover, data products are valuable to many end users only insofar as they provide information that end users expect will assist them or their customers in making trading decisions. The Exchange notes in that respect that the NYSE Arca Integrated Data Feed would provide greater efficiencies and reduce errors for vendors and subscribers, including high-frequency traders, that otherwise would have to integrate the data feeds manually.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's broker-dealer customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the broker-dealer chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the broker-dealer will choose not to buy it.

Moreover, as a broker-dealer chooses to direct fewer orders to a particular exchange, the value of the product to that broker-dealer decreases for two reasons. First, the product will contain less information because executions of the broker-dealer's orders will not be reflected in it. Second, and perhaps more importantly, the product will be less valuable to that broker-dealer because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the broker-dealer is directing orders will become correspondingly more valuable.

Similarly, in the case of products that are distributed through market data vendors, the vendors provide price discipline for proprietary data products because they control the primary means of access to certain end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Thomson Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract ''eyeballs'' that contribute to their advertising revenue.

Other market participants have noted that the liquidity provided by the order book, trade execution, core market data, and non-core market data are joint products of a joint platform and have common costs.[15] The Exchange agrees

[12] *See* Securities Exchange Act Release No. 63291 (Nov. 9, 2010), 75 FR 70311 (Nov. 17, 2010) (SR–NYSEArca–2010–97).

[13] Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3594 (Jan. 22, 2010) (File No. S7–02–10). This Concept Release included data from the third quarter of 2009 showing that no market center traded more than 20% of the volume of listed stocks, further evidencing the dispersal of and competition for trading activity. *Id.* at 3598.

[14] Press Release, U.S. Department of Justice, Assistant Attorney General Christine Varney Holds Conference Call Regarding NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandoning Their Bid for NYSE Euronext (May 16, 2011), available at *http://www.justice.gov/iso/opa/atr/speeches/2011/at-speech-110516.html.*

[15] *See* Securities Exchange Act Release No. 62887 (Sept. 10, 2010), 75 FR 57092, 57095 (Sept. 17, 2010) (SR–Phlx-2010–121); Securities Exchange Act Release No. 62907 (Sept. 14, 2010), 75 FR 57314, 57317 (Sept. 20, 2010) (SR–NASDAQ–2010–110); and Securities Exchange Act Release No. 62908 (Sept. 14, 2010) (SR–NASDAQ–2010–111), 75 FR 57321, 57324 (Sept. 20, 2010) (''all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.''); *see also* August 1, 2008 Comment Letter of Jeffrey S. Davis, Vice President and Deputy General Counsel, NASDAQ OMX Group, Inc., Statement of Janusz Ordover and Gustavo Bamberger (''because market data is both an input to and a byproduct of executing trades on a particular platform, market data and trade

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with and adopts those discussions and the arguments therein. The Exchange also notes that the economics literature confirms that there is no way to allocate common costs between joint products that would shed any light on competitive or efficient pricing.[16]

That large market participants, including internalizers handling retail order flow, use proprietary exchange feeds (rather than CTS and CQS feeds) to make trade and routing decisions further demonstrates the joint nature of market data and order flow.[17] So does the fact that some exchanges use certain market data quote revenue as a form of a direct market-maker and/or liquidity provider rebate to drive more liquidity to their books in less active stocks. This fact highlights that market data and trade executions are joint products that are linked on a platform basis.[18]

The Exchange believes that retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: they can simply refuse to purchase any proprietary data product that fails to provide sufficient value. The Exchange and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully. Moreover, the Exchange believes that products can enhance order flow to the Exchange by providing more widespread distribution of information about transactions in real time, thereby encouraging wider participation in the market by investors with access to the Internet or television. Conversely, the value of such products to distributors and investors decreases if order flow falls because the products contain less content.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of an exchange's costs to the market data portion of an exchange's joint product. Rather, all of an exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return that each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platforms may choose to pay rebates to attract orders, charge relatively low prices for market information (or provide information free of charge), and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market information, and setting relatively low prices for accessing posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering.

The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including 12 equities self-regulatory organization (''SRO'') markets, as well as internalizing broker-dealers (''BDs'') and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities (''TRFs'') compete to attract internalized transaction reports.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including but not limited to the Exchange, NYSE, NYSE Amex, NASDAQ OMX, BATS, and Direct Edge.

The fact that proprietary data from ATSs, BDs, and vendors can bypass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the amount of data available via proprietary products is greater in size than the actual number of orders and transaction reports that exist in the marketplace. Because investors can thus find suitable substitutes for most proprietary market data products, a market that overprices its market data products stands a high risk that investors may substitute another source of market information for its own because securities and investment methodologies are fungible.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TrackECN, BATS Trading and Direct Edge. Today, BATS has represented that it publishes its market data at no charge on its Web site in order to attract more order flow, and it uses market data revenue rebates that it can provide from resulting additional executions to maintain low execution charges for its users.[19] A proliferation of dark pools and other

execution services are an example of 'joint products' with 'joint costs.'''), attachment at pg. 4, *available at sec.gov/comments/34–57917/3457917–12.pdf.*

[16] *See generally* Mark Hirschey, Fundamentals of Managerial Economics, at 600 (2009) (''It is important to note, however, that although it is possible to determine the separate marginal costs of goods produced in variable proportions, it is impossible to determine their individual average costs. This is because common costs are expenses necessary for manufacture of a joint product. Common costs of production—raw material and equipment costs, management expenses, and other overhead—cannot be allocated to each individual by-product on any economically sound basis. * * * Any allocation of common costs is wrong and arbitrary.''). This is not new economic theory. *See, e.g.,* F. W. Taussig, ''A Contribution to the Theory of Railway Rates,'' *Quarterly Journal of Economics* V(4) 438, 465 (July 1891) (''Yet, surely, the division is purely arbitrary. These items of cost, in fact, are jointly incurred for both sorts of traffic; and I cannot share the hope entertained by the statistician of the Commission, Professor Henry C. Adams, that we shall ever reach a mode of apportionment that will lead to trustworthy results.'').

[17] *See Report of the Staffs of the CFTC and SEC to the Joint Advisory Committee on Emerging Regulatory Issues—Findings Regarding the Market Events of May 6, 2010* at 76–79 (Sept. 30, 2010). That report again recognized that retail order flow is generally handled by internalizers. *See id.* at 77.

[18] *See* Exhibit 3B to Securities Exchange Act Release No. 63291 (Nov. 9, 2010), 75 FR 70311 (Nov. 17, 2010) (SR–NYSEArca-2010–97).

[19] This is simply a securities market-specific example of the well-established principle that in certain circumstances more sales at lower margins can be more profitable than fewer sales at higher margins; the BATS example is additional evidence that market data is an inherent part of a market's joint platform.

ATSs operate profitably with fragmentary shares of consolidated market volume.

In this environment, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products. A broker-dealer that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. If a platform increases its market data fees, the change may affect the overall cost of doing business with the platform, and affected market participants will assess whether they can lower their trading costs by directing orders elsewhere, thereby lessening the need for the more expensive data, or simply not purchase the data.

In establishing the price for the NYSE Arca Integrated Data Feed, the Exchange considered the competitiveness of the market for data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of alternatives to the Exchange's product, including real-time consolidated data, free delayed consolidated data, and proprietary data from other sources, as well as the continued availability of the Exchange's separate data feeds at a lower price, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives. Accordingly, the Exchange believes that the acceptance of data feed products in the marketplace demonstrates the consistency of these fees with applicable statutory standards.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[20] of the Act and subparagraph (f)(2) of Rule 19b–4[21] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Arca.

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 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 email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2011–96 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–NYSEArca–2011–96. This file number should be included on the subject line if email 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2011–96 and should be submitted on or before February 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–686 Filed 1–13–12; 8:45 am]

**BILLING CODE 8011–01–P**

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(2).

[22] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–66126; File No. SR–NASDAQ–2012–003]**

## Self-Regulatory Organizations; NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Customer Rebate To Add Liquidity in Penny Pilot Options

January 10, 2012.

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 January 3, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The NASDAQ Stock Market LLC proposes to modify Rule 7050, governing pricing for NASDAQ members using the NASDAQ Options Market (''NOM''), NASDAQ's facility for executing and routing standardized equity and index options. Specifically, NOM proposes to amend the applicability of the Customer Rebate to Add Liquidity for the Penny Pilot[3] Options (''Penny Options'').

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Penny Pilot was established in March 2008 and in October 2009 was expanded and extended through December 31, 2011. *See* Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008)(SR–NASDAQ–2008–026)(notice of filing and immediate effectiveness establishing Penny Pilot); 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009)(SR–NASDAQ–

Continued

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for 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

NASDAQ proposes to modify Exchange Rule 7050 governing the rebates and fees assessed for option orders entered into NOM. Specifically, the Exchange is proposing to modify the six tier structure for paying Customer Rebates to Add Liquidity in Penny Pilot Options. The Exchange proposes to reduce the tiers to four tiers and further incentivize NOM Participants to route Customer orders to the Exchange by paying an additional rebate for certain orders after the NOM Participant has met a volume criteria. The Exchange believes that incentivizing NOM Participants to send additional Customer orders to the Exchange will benefit all market participants by adding liquidity to the market.

Specifically, the Exchange currently pays a Customer Rebate to Add Liquidity in Penny Pilot Options based on the following tier structure:

| | Monthly volume | Rebate to add liquidity |
|---|---|---|
| Tier 1 | Participant adds Customer liquidity of up to 24,999 contracts per day in a month | $0.26 |
| Tier 2 | Participant adds Customer liquidity of 25,000—59,999 contracts per day in a month | 0.36 |
| Tier 3 | Participant adds Customer liquidity of 60,000—124,999 contracts per day in a month | 0.38 |
| Tier 4 | Participant adds Customer liquidity of 125,000 or more contracts per day in a month | 0.40 |
| Tier 5 [a] | Participant adds (1) Customer liquidity of 60,000 or more contracts per day in a month, and (2) NOM Market Maker liquidity of 60,000 or more contracts per day in a month. | 0.40 |
| Tier 6 [b] | Participant adds Customer liquidity of 25,000 or more contracts per day in a month, and (2) the Participant simultaneously qualifies for credit under the Investor Support Program set forth in Rule 7014. | 0.37 |

[a] For purposes of Tier 5, the Exchange will aggregate the trading activity of separate NOM Participants when computing average daily volumes where 75 percent common ownership or control exists between NOM Participants.

[b] For purposes of Tier 6, the Exchange will allow a NOM Participant to qualify for the rebate if a NASDAQ member under common ownership with the NOM Participant qualifies for a credit under the Investor Support Program. Common ownership is defined as 75 percent common ownership or control.

The Exchange proposes to amend the Customer Rebate to Add Liquidity in Penny Pilot Options to a four tier structure as follows:

| | Monthly volume | Rebate to add liquidity |
|---|---|---|
| Tier 1 | Participant adds Customer liquidity of up to 49,999 contracts per day in a month | $0.26 |
| Tier 2 | Participant adds Customer liquidity of 50,000 or more contracts per day in a month | 0.42 |
| Tier 3 [a] | Participant adds (1) Customer liquidity of 100,000 or more contracts per day in a month, and (2) NOM Market Maker liquidity of 40,000 or more contracts per day in a month. | 0.43 |
| Tier 4 [b] | Participant adds (1) Customer liquidity of 25,000 or more contracts per day in a month, (2) the Participant has certified for the Investor Support Program set forth in Rule 7014; and (3) the Participant executed at least one order on NASDAQ's equity market. | 0.40 |

[a] For purposes of Tier 3, the Exchange will aggregate the trading activity of separate NOM Participants when computing average daily volumes where 75 percent common ownership or control exists between NOM Participants.

[b] For purposes of Tier 4, the Exchange will allow a NOM Participant to qualify for the rebate if a NASDAQ member under common ownership with the NOM Participant has certified under the Investor Support Program and executed at least one order on NASDAQ's equity market. Common ownership is defined as 75 percent common ownership or control.

Currently, Tier 1 firms that add up to 24,999 contracts per day in a month of liquidity receive a rebate of $0.26 per contract. The Exchange is proposing to amend Tier 1 to cover up to 49,999 contracts per day in a month, and to pay the same $0.26 per contract rebate. Based on past experience, the Exchange anticipates that all firms currently receiving the $0.26 rebate will maintain their current level of rebate.

Currently, Tier 2 firms that add between 25,000 and 59,999 contracts per day in a month receive a rebate of $0.36 per contract. The Exchange is proposing to amend Tier 2 to cover 50,000 or more contracts per day in a month, and to pay a rebate of $0.42 per contract. As a result, firms that currently contribute between 25,000 and 49,999 per day of liquidity in Customer contracts will receive a lower rebate (down from $0.36 to $0.26 per contract). However, firms that contribute between

2009–091)(notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60965 (November 9, 2009), 74 FR 59292 (November 17, 2009)(SR–NASDAQ–2009–097)(notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61455 (February 1, 2010), 75 FR 6239 (February 8, 2010)(SR–NASDAQ–2010–013)(notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62029 (May 4, 2010), 75 FR 25895 (May 10, 2010) (SR–NASDAQ–2010–053)(notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 65969 (December 15, 2011, 76 FR 79268 (December 21, 2011) (SR–NASDAQ–2011–169) (notice of filing and immediate effectiveness extension and replacement of Penny Pilot). *See also* Exchange Rule Chapter VI, Section 5.

50,000 and 59,999 contracts per day of Customer order liquidity will receive a higher rebate (up from $0.36 to $0.42 per contract). Based upon current volume levels and past trading patterns, the Exchange anticipates that firms will contribute sufficient liquidity to avoid receiving reduced rebates.

Currently, Tier 3 firms that add between 60,000 and 124,999 contracts per day in a month receive a rebate of $0.38 per contract. This tier is being eliminated. NOM Participants who previously qualified for Tier 3 would now qualify for Tier 2, which is now 50,000 or more contracts, and would receive a higher rebate in Tier 2 (up from $0.38 to $0.42 per contract).

Currently, Tier 4 firms that add 125,000 contracts or more per day in a month receive a rebate of $0.40 per contract. This tier is being eliminated. NOM Participants who previously qualified for Tier 4 would now qualify for Tier 2, which is now 50,000 or more contracts, and would receive a higher rebate in Tier 2 rebate (up from $0.40 to $0.42 per contract).

Currently, Tier 5 firms that (1) provide 60,000 or more contracts per day in a month of Customer order liquidity in Penny Pilot Options, and (2) provide 60,000 or more contracts per day of NOM Market Maker liquidity receive a rebate of $0.40 per contract if both criteria are met. For purposes of determining qualification for this tier, the Exchange aggregates [4] the trading activity of separate NOM Participants in calculating the average daily volume if there is at least 75% common ownership between the NOM Participants. The Exchange proposes to rename this Tier 5 as ''Tier 3'' and modify the Customer volume to require that firms: (1) Provide 100,000 or more contracts per day in a month of Customer order liquidity in Penny Pilot Options (an increase from 60,000), and (2) provide 40,000 or more contracts per day of NOM Market Maker liquidity (a decrease from 60,000). If a firm meets both criteria, the Exchange would pay an increased rebate of $0.43 per contract. Based upon current volume levels and past trading patterns, the Exchange anticipates that firms will contribute sufficient liquidity to receive an increased rebate.

Currently, Tier 6 firms that (1) provide 25,000 or more contracts per day in a month of Customer order liquidity in Penny Pilot Options, and (2) simultaneously qualify for credit under the Investor Support Program (''ISP'') as set forth in NASDAQ Rule 7014 [5] receive a rebate of $0.37 per contract. Specifically, firms that qualify for a credit under the ISP by providing retail investor liquidity to NASDAQ's equity market can qualify for a higher rebate on NASDAQ's options market if they contribute 25,000 or more contracts per day of Customer order liquidity in Penny Pilot Options on NOM. The Exchange proposes to rename this Tier 6 as ''Tier 4'' and pay an increased rebate of $0.40 per contract for firms that meet the criteria for this tier. In addition, the Exchange proposes to revise the requirement of newly named Tier 4 to state that firms (1) that provide 25,000 or more contracts per day in a month of Customer order liquidity in Penny Pilot Options, (2) where the Participant has certified for the ISP as set forth in Rule 7014; and (3) where the Participant executed at least one order on NASDAQ's equity market will receive the $0.40 per contract rebate. A member desiring to participate in the ISP must submit an application to the Exchange and designate one or more of its NASDAQ ports for ISP use.[6] The Exchange's proposal to qualify for newly named Tier 4 would not require the Participant to transact any ISP volume, however, the Participant would be required to execute at least one order on NASDAQ's equity market.[7] The Exchange provides a methodology by which members can demonstrate their compliance with the requirements of Rule 7014. A member shall certify to the reasonable satisfaction of the Exchange: (i) Its Baseline Participation Ratio; [8] and (ii) if requested by the Exchange, its compliance with any other sections or requirements of Rule 7014, but not more often than once a month during participation in ISP. The Exchange would permit a NOM Participant to qualify for newly named Tier 4 if that NOM Participant meets the Customer liquidity volume of 25,000 or more contracts per day in a month, has certified under Rule 7014 and has executed at least one order on NASDAQ's equity market. Based upon current volume levels and past trading patterns, the Exchange anticipates that firms will contribute sufficient liquidity to receive an increased rebate in this tier. The Exchange believes the increased rebate would encourage participants in the Exchange's equity markets to also participate in the Exchange's options market.

The Exchange also proposes to further incentivize those NOM Participants that qualify for proposed Tiers 2, 3 and 4 by offering to pay an additional $0.01 per contract rebate on each Customer order of 5,000 or more, displayed or non-displayed contracts, which adds liquidity in a Penny Pilot Option, as long as that NOM Participant has qualified for a rebate in Tier 2, 3 or 4 for that month. This would be in addition to the rebate for the qualifying tier.[9]

The Exchange is not otherwise amending the Customer Rebates to Add Liquidity.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[10] in general, and with Section 6(b)(4) of the

[4] Aggregation is necessary and appropriate because certain NOM participants conduct Customer and NOM Market Maker trading activity through separate but related broker-dealers.

[5] For a detailed description of the ISP, *see* Securities Exchange Act Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2010) (NASDAQ–2010–141) (notice of filing and immediate effectiveness) (the ''ISP Filing''). *See also* Securities Exchange Act Release Nos. 63414 (December 2, 2010), 75 FR 76505 (December 8, 2010) (NASDAQ–2010–153) (notice of filing and immediate effectiveness); and 63628 (January 3, 2011), 76 FR 1201 (January 7, 2011) (NASDAQ–2010–154) (notice of filing and immediate effectiveness).

[6] *See* Exchange Rule 7014.

[7] Currently, in order to comply with Tier 6, a participant must qualify for credit under the ISP. In order to qualify for an ISP credit, a Participant would need to transact a certain amount of displayed liquidity through an ISP-designated port which results in an increase in the overall liquidity that the member provides to NASDAQ measured as a proportion of the consolidated share volume traded by all market participants across all trading venues. To this end, a member's ''Baseline Participation Ratio'' is determined by measuring the number of shares in liquidity-providing orders entered by the member (through any NASDAQ port) and executed on NASDAQ and dividing this number by the consolidated (across all trading venues) share volume of System Securities traded in a given month. To determine whether a member added liquidity to NASDAQ in a given month, NASDAQ would perform the same calculation on a monthly basis for the then-current month and compare the resulting ratio to the Baseline Participation Ratio. For a detailed description of the ISP, *see* Securities Exchange Act Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2010) (NASDAQ–2010–141) (notice of filing and immediate effectiveness) (the ''ISP Filing''). *See also* Securities Exchange Act Release Nos. 63414 (December 2, 2010), 75 FR 76505 (December 8, 2010) (NASDAQ–2010–153) (notice of filing and immediate effectiveness); and 63628 (January 3, 2011), 76 FR 1201 (January 7, 2011) (NASDAQ–2010–154) (notice of filing and immediate effectiveness). [sic] by transacting a certain volume.

[8] The term ''Baseline Participation Ratio'' shall mean, with respect to a member, the lower of such member's Participation Ratio for the month of August 2010 or the month of August 2011, provided that in calculating such Participation Ratios, the numerator shall be increased by the amount (if any) of the member's Indirect Order Flow for such month, and provided further that if the result is zero for either month, the Baseline Participation Ratio shall be deemed to be 0.485% (when rounded to three decimal places). *See* NASDAQ Rule 7014(g)(1).

[9] The rebate would be paid for a partial execution.

[10] 15 U.S.C. 78f.

Act,[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls.

The Exchange believes that the proposed new pricing tiers are reasonable, equitable and not unfairly discriminatory because they continue an existing program [12] to encourage broker-dealers acting as agent for Customer orders to select the Exchange as a venue to post Customer orders. The Exchange believes that its success at attracting Customer order flow benefits all market participants by improving the quality of order interaction and executions at the Exchange. The Exchange believes the existing monthly volume thresholds have incentivized firms that route Customer orders to the Exchange to increase Customer order flow to the Exchange. The Exchange desires to continue to encourage firms that route Customer orders to increase Customer order flow to the Exchange by offering greater Customer rebates for greater liquidity added to the Exchange.

Specifically, the Exchange believes that the increased rebates would further incentivize firms to continue to send more Customer volume to the Exchange. Today, the Exchange pays any Customer order up to 24,999 contracts per day in a given month a rebate of $0.26 per contract for adding liquidity in Penny Pilot Options. The Exchange would continue to pay this same rebate, but would pay such a rebate for any Customer order up to 49,999 contracts per day in a given month that adds liquidity in Penny Pilot Options. This would result in a decreased rebate to certain Participants that currently qualify for Tier 2. The Exchange believes that this increase in the number of Customer orders that qualify for Tier 1 is reasonable, equitable and not unfairly discriminatory because all Customer orders that add liquidity in Penny Pilot Options have the ability to earn the rebate; there is no minimum order requirement. Also, all NOM Participants transacting Customer orders in Penny Pilot Options are eligible to receive this rebate. The Exchange currently pays a higher rebate for Tier 2 Customer orders in Penny Pilot Options between 25,000 and 59,999 contracts per day in a given month of $0.36 per contract. The Exchange believes that offering the Tier 1 rebate up to 49,999 contracts per day and starting the Tier 2 rebate at 50,000 Customer contracts per day would encourage NOM Participants to send a greater number of Customer orders to the Exchange to obtain the increased rebate of $0.42 per contract.

The Exchange believes that amending Tier 2 from between 25,000 and 59,999 Customer orders per day in a given month to 50,000 or more Customer contracts per day in a given month (capturing those Customer contracts between 50,000 and 59,999) is reasonable because the Exchange is also offering a higher rebate of $0.42 per contract, an increase from the current $0.36 per contract. The Exchange believes that simplifying the current Tiers 1, 2, 3 and 4, which have no other qualifier than Customer volume, down to two tiers and offering a higher rebate of $0.42 per contract for any Customer order volume over 50,000 contracts per day in a given month, in Penny Pilot Options, would allow a greater number of NOM Participants to obtain a higher rebate. Those NOM Participants that currently qualify for Tiers 3 and 4 would be eligible for a higher rebate and a portion of those NOM Participants that currently qualify for Tier 2 would be eligible for the higher rebate. The Exchange believes that for these reasons, the proposal is equitable and not unfairly discriminatory.

The Exchange also proposes to amend current Tier 5, which would be renamed Tier 3, to increase the number of Customer contracts from 60,000 to 100,000 contracts per day in a given month and also decrease the second qualifier, concerning NOM Market Maker liquidity, from 60,000 to 40,000 per day in a given month. The Exchange believes that this amendment is reasonable because the Exchange is seeking to incentivize NOM Participants to transact a greater number of Customer orders. By increasing the number of Customer orders to 100,000 per day and lowering the second qualifier on Market Maker liquidity to 40,000 per day the Exchange desires to further incentivize NOM Participants to send additional Customer order flow, in Penny Pilot Options, to the Exchange and provide incentives for Market Makers to increase liquidity on the Exchange for the benefit of all NOM participants. The Exchange believes that Broker Dealers that make markets and also route Customer order flow to the Exchange today, would be incentivized to meet the new criteria and qualify for Tier 3 because of the lower Market Maker liquidity volume and the increased rebate. The Exchange proposes to increase the rebate from $0.40 per contract to $0.43 per contract in order to incentivize NOM Participants that also route Customer order flow to register to make markets on the Exchange. The Exchange believes that this newly named Tier 3 is equitable and not unfairly discriminatory because Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants. The Exchange has set a reasonable goal of 40,000 or more contracts per day of Market Maker liquidity on NOM, an achievable goal that should encourage increased Market Maker registration and liquidity on the Exchange. The Exchange believes that paying an increased rebate of $0.43 per contract ($0.01 per contract higher than Tier 2) is equitable and not unfairly discriminatory because increased Market Maker liquidity would, in turn, improve the amount of liquidity available on the Exchange and improve the quality of order interaction and executions on the Exchange.

The Exchange also proposes to amend current Tier 6, which would be renamed Tier 4, to increase the rebate from $0.37 per contract to $0.40 per contract to incentivize NOM Participants to transact additional Customer orders in Penny Pilot Options and encourage participants in the Exchange's equity markets to also participate in the Exchange's options market. The Exchange believes that this proposed amendment is reasonable because the Exchange seeks to incentivize NOM Participants to transact a greater number of Customer orders in Penny Pilot Options. Furthermore, the Exchange believes that it is reasonable to allow NOM Participants with a certain amount of Customer orders, to qualify for a Customer rebate by allowing a related NASDAQ member, under common ownership, to qualify for the rebate as specified herein. The Exchange also believes that the amendments to the newly named Tier 4 criteria, namely 25,000 or more Customer contracts, has certified for ISP and executed at least one order on NASDAQ's equity market, are reasonable because, as stated above, the Exchange believes that this proposal would incentivize NOM Participants to transact additional Customer orders and encourage participants in the Exchange's equity markets to also participate in the Exchange's options market. The Exchange believes this would encourage participants in the Exchange's equity markets to also participate in the Exchange's options market particularly because the

[11] 15 U.S.C. 78f(b)(4).

[12] The Exchange adopted these monthly volume achievement tiers in September 2011. *See* Securities Exchange Act Release Nos. 65317 (September 12, 2011), 76 FR 57778 (September 16, 2011) (SR–NASDAQ–2011–124) and 65317 (September 12, 2011), 76 FR 61129 (October 3, 2011) (SR–NASDAQ–2011–127).

Exchange's proposal to qualify for newly named Tier 4 would not require the Participant to transact any volume, but only to certify for ISP.

The Exchange believes that the requirement to certify in combination with requiring the Participant to execute at least one order on NASDAQ's equity market would promote the submission of liquidity-providing orders to NASDAQ. The ISP encourages members to add targeted liquidity that is executed in the NASDAQ Market Center. The Exchange believes that the ISP promotes submission of liquidity-providing orders to NASDAQ, which would benefit all NASDAQ members and all investors. By allowing members to certify under Rule 7014, while also meeting the volume criteria of 25,000 or more Customer contracts in Penny Pilot Options, the Exchange believes that the proposal would encourage greater participation in the options market. The Exchange believes that increased rebate and the amended criteria for newly named Tier 4 are equitable and not unfairly discriminatory because together these amendments are intended to encourage increased activity in both the NASDAQ Options Market and in the ISP of the NASDAQ equity market. The goal of the ISP is to incentivize members [13] to provide liquidity from individual equity investors to the NASDAQ Market Center. The increased rebate in newly named Tier 4 would encourage firms that certify pursuant to Rule 7014 to increase the amount of Customer order liquidity provided to the NASDAQ Options Market. The addition of such liquidity, either through the ISP or through increased Customer order flow, would benefit all Exchange members that participate in those markets.[14] The Exchange believes that amending newly named Tier 4 to require firms to be certified for ISP instead of qualifying for a credit would provide further incentive for firms to add volume to NOM and also participate in the equities market because the firm has to execute at least one order in the equity market.

The Exchange believes that it is reasonable to offer a rebate of $0.01 per contract on each Customer order of 5,000 or more displayed or non-displayed contracts, which adds liquidity in a Penny Pilot Option, as long as that NOM Participant has qualified for a rebate in Tier 2, 3 or 4 for that month. This $0.01 per contract rebate would be in addition to the rebate for the qualifying tier. The Exchange believes that this enhanced incentive will encourage NOM Participants to send larger orders to the Exchange, which in turn would also assist those Participants that send Customer orders in Penny Pilot Options to earn higher rebates by qualifying for a higher tier as well as bringing additional liquidity to the Exchange. The Exchange further believes that limiting the enhanced $0.01 per contract rebate to firms already qualifying for Tiers 3, 4 or 5 (and not those that qualify for Tier 1) is equitable and not unfairly discriminatory because generally NOM Participants in Tier 1 today are not sending Customer orders of 5,000 or more contracts. If those Participants in Tier 1 sent ten Customer orders of 5,000 or more per day in a given month to the Exchange, they would qualify for Tier 2 and would be paid the additional enhanced rebate. The Exchange believes that it is equitable and not unfairly discriminatory to incentivize those NOM Participants that qualify for higher volume tiers as they are the most likely to obtain the enhanced rebate and continue to send larger orders, which provides more liquidity to the Exchange. Finally, the Exchange would pay the enhanced rebate uniformly to those NOM Participants that qualify for Tiers 2, 3 or 4 and meet the Customer order volume discussed herein for Penny Pilot Options.

The Exchange operates in a highly competitive market comprised of nine U.S. options exchanges in which sophisticated and knowledgeable market participants can and do send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive or rebate opportunities to be inadequate. The Exchange believes that the proposed rebate scheme is competitive and similar to other rebates and tiers opportunities in place on other exchanges. The Exchange believes that this competitive marketplace materially impacts the rebates present on the Exchange today and substantially influenced the proposal set forth above.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[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 email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2012–003 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.

[13] The Commission has expressed its concern that a significant percentage of the orders of individual investors are executed at over the counter (''OTC'') markets, that is, at off-exchange markets; and that a significant percentage of the orders of institutional investors are executed in dark pools. *See* Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (Concept Release on Equity Market Structure, ''Concept Release''). In the Concept Release, the Commission has recognized the strong policy preference under the Act in favor of price transparency and displayed markets. The Commission published the Concept Release to invite public comment on a wide range of market structure issues, including high frequency trading and un-displayed, or ''dark,'' liquidity. *See also* Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (''Schapiro Speech,'' available on the Commission Web site) (comments of Commission Chairman on what she viewed as a troubling trend of reduced participation in the equity markets by individual investors, and that nearly 30 percent of volume in U.S.-listed equities is executed in venues that do not display their liquidity or make it generally available to the public).

[14] NASDAQ Rule 7018(a) already provides incentives for firms to participate in both NASDAQ's equity market and its options market.

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File Number SR–NASDAQ–2012–003. This file number should be included on the subject line if email 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2012–003 and should be submitted on or before February 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–685 Filed 1–13–12; 8:45 am]

**BILLING CODE 8011–01–P**

## SOCIAL SECURITY ADMINISTRATION

**[Docket No. SSA–2012–0003]**

### Occupational Information Development Advisory Panel

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Notice of the Charter Renewal for the Occupational Information Development Advisory Panel.

**SUMMARY:** Notice is hereby given that on January 6, 2012; our Commissioner renewed the Charter for the Occupational Information Development Advisory Panel (Panel). This discretionary Panel will provide independent advice and recommendations on plans and activities to create an occupational information system (OIS) tailored specifically for our disability programs and adjudicative needs. We require advice and recommendations on the use of occupational information in our disability programs and the research design of the OIS, including the development and testing of an OIS content model and taxonomy, work analysis instrumentation, sampling, and data collection and analysis.

Membership includes professionals from academia, private sector, and public entities, (*e.g.,* Department of Labor) with expertise in one or more of the following subject areas: (a) Occupational analysis, design and development of occupational classifications, instrument design, labor market economics, sampling, data collection and analyses; (b) disability evaluation, vocational rehabilitation, forensic vocational assessment, and physical or occupational therapy; (c) occupational or physical rehabilitation medicine, psychiatry, or psychology; and (d) disability claimant advocacy.

The Panel will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. The charter was filed with the appropriate congressional committees.

For further information contact, Ms. Leola S. Brooks, Designated Federal Officer, Occupational Information Development Advisory Panel, Social Security Administration, 6401 Security Boulevard 3–E–26 Richard Ball Building, Baltimore, MD 21235–0001. Fax to (410) 597–0825, or Email to *OIDAP@ssa.gov.*

**Leola S. Brooks,**

*Designated Federal Officer, Occupational Information Development Advisory Panel.*

[FR Doc. 2012–678 Filed 1–13–12; 8:45 am]

**BILLING CODE 4191–02–P**

## DEPARTMENT OF STATE

**[Public Notice: 7719]**

### Advisory Committee on International Postal and Delivery Services

**AGENCY:** Department of State.

**ACTION:** Notice of renewal of the Advisory Committee charter.

*Renewal of Advisory Committee:* The Secretary of State announces the renewal of the charter of the Advisory Committee on International Postal and Delivery Services in fulfillment of the provisions of the 2006 Postal Accountability and Enhancement Act (Pub. L. 109–435) and in accordance with the Federal Advisory Committee Act.

*Purpose:* The purpose of the Advisory Committee is to serve the Department of State in an advisory capacity with respect to the formulation, coordination, and oversight of foreign policy related to international postal services and other international delivery services. The Committee provides a forum for government employees, representatives of the industry sector and members of the public to present their advice and views directly to the Department of State.

For further information, please contact Dennis Delehanty, Office of Global Systems (IO/GS), Bureau of International Organization Affairs, U.S. Department of State, at (202) 647–4197.

Dated: January 10, 2012.

**Dennis M. Delehanty,**

*Foreign Affairs Officer, Department of State.*

[FR Doc. 2012–741 Filed 1–13–12; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF STATE

**[Public Notice: 7757]**

### Culturally Significant Objects Imported for Exhibition Determinations: ''Snapshot: Painters and Photography, Bonnard to Vuillard''

**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, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Snapshot: Painters and Photography, Bonnard to Vuillard'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Phillips Collection, Washington, DC, from on or about February 4, 2012, until on or about May 6, 2012, the Indianapolis Museum of Art, Indianpolis, IN, from on or about June 8, 2012, until on or about September 2, 2012, and at possible additional exhibitions or venues yet to

[16] 17 CFR 200.30–3(a)(12).

be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: January 11, 2012.

**J. Adam Ereli,**

*Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2012–736 Filed 1–13–12; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF STATE

**[Public Notice 7756]**

### Culturally Significant Objects Imported for Exhibition Determinations: ''The Cult of Beauty: The Victorian Avant-Garde, 1860–1900''

**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 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''The Cult of Beauty: The Victorian Avant-Garde, 1860–1900,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Fine Arts Museums of San Francisco, San Francisco, CA from on or about February 18, 2012, until on or about June 17, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Ona M. Hahs, 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, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: January 9, 2012.

**J. Adam Ereli,**

*Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2012–738 Filed 1–13–12; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF STATE

**[Delegation of Authority: 341]**

### Delegation by the Secretary of State to the Under Secretary for Arms Control and International Security of Authority To Submit Reports Regarding the New START Treaty

By virtue of the authority vested in me as Secretary of State, including Section 1 of the State Department Basic Authorities Act, as amended (22 U.S.C. 2651a), and to the extent authorized by law, I hereby delegate to the Under Secretary for Arms Control and International Security the authorities and functions delegated to the Secretary of State pursuant to the Presidential Memorandum of November 2, 2011, specifically:

(1) The authority to make the annual certification specified in section (a)(2)(A) of the Resolution of Advice and Consent to Ratification of the New START Treaty (the Resolution); with the Director of National Intelligence, at the direction of the President, preparing the report specified in that section. The Under Secretary shall submit the certification along with the report prepared by the Director of National Intelligence to the Senate.

(2) The authority to submit the reports specified in section (a)(10) and section (a)(12)(B) of the Resolution to the Committees on Foreign Relations and Armed Services of the Senate.

Any act, executive order, regulation or procedure subject to, or affected by, this delegation shall be deemed to be such act, executive order, regulation or procedure as amended from time to time. Notwithstanding this delegation of authority, the Secretary, the Deputy Secretary, or the Deputy Secretary for Management and Resources may at any time exercise any authority or function delegated by this delegation of authority.

This delegation of authority shall be published in the **Federal Register**.

Dated: December 14, 2011.

**Hillary Rodham Clinton,**

*Secretary of State.*

[FR Doc. 2012–739 Filed 1–13–12; 8:45 am]

**BILLING CODE 4710–35–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending December 24, 2011

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* DOT–OST–2011–0232.

*Date Filed:* December 20, 2011.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* January 10, 2012.

**Description**

Application of Atlantic Southeast Airlines, Inc. notifying the Department, pursuant to the requirements of 14 CFR 215.4, of a change in the carrier's name to ''ExpressJet Airlines, Inc.'' and requesting the reissuance of its certificates of public convenience and necessity and other economic authorities and requests that the trade names ''ASA,'' ''Atlantic Southeast,'' and ''Atlantic Southeast Airlines, Inc.'' be registered for use in its operations.

**Renee V. Wright,**

*Program Manager, Docket Operations, Federal Register Liaison.*

[FR Doc. 2012–683 Filed 1–13–12; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Fifth Meeting: RTCA, Next Gen Advisory Committee

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

**ACTION:** Notice of RTCA, NextGen Advisory Committee.

**SUMMARY:** The FAA is issuing this notice to advise the public of the fifth meeting of RTCA, NextGen Advisory Committee.

**DATES:** The meeting will be held February 3, 2012, from 9:30 a.m.–3:30 p.m.

**ADDRESSES:** The meeting will be held at Embry-Riddle Aeronautical University, Florida NextGen Test Bed, 557 Innovation Way, Daytona Beach, FL 32114.

**FOR FURTHER INFORMATION CONTACT:** The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036: or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org*.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App.), notice is hereby given for a NextGen Advisory Committee meeting. The agenda will include the following:

**February 3, 2012**

- Welcome and Introductions—Chairman Dave Barger, President and CEO, JetBlue Airways
- Official Statement of Designated Federal Official, Michael Huerta, FAA Administrator (Acting)
- Review and approval of September 29, 2011 meeting summary/NACSC TORs Revisions
- Chairman's Report—Chairman Barger
- Subcommittee Report: NAC Subcommittee & Work Groups—Subcommittee Co-Chairs—Steve Brown, Senior Vice President, Operations and Administration, National Business Aviation Association/Tom Hendricks, Senior Vice President, Safety, Security and Operations, Air Transport Association
- Break
- Review and Approve Recommendation for Submission to FAA
- *Applying the Metroplex Prioritization Criteria and Mapping the Integrated Capabilities to Identified Metroplexes*—a recommendation derived from a mapping of integrated capabilities to seven Metroplexes. This mapping enables an assessment of the benefits and feasibility of these site specific capabilities.
- Lunch Break
- Review and Approve Recommendations for Submission to FAA
- *DataComm Roadmap*—a roadmap for Tower and domestic En Route DataComm services and associated technologies
- Afternoon Break
- Review and Approve Recommendations for Submission to FAA
- *Executive Level NextGen Implementation Metrics*—an executive-level set of metrics that capture an overall status of NextGen implementation
- Other Business/Anticipated Issues for NAC Consideration and Action at the next Meeting on May 24, 2012 in Seattle, Washington
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 5, 2012.

**John Raper,**

*Manager, Business Operations Branch, Federal Aviation Administration.*

[FR Doc. 2012–540 Filed 1–13–12; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Seventeenth Meeting: RTCA Special Committee 213, Enhanced Flight Vision/Synthetic Vision Systems (EFVS/SVS)

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

**ACTION:** Notice of RTCA Special Committee 213, Enhanced Flight Vision/Synthetic Vision Systems (EFVS/SVS).

**SUMMARY:** The FAA is issuing this notice to advise the public of the seventeenth meeting of RTCA Special Committee 213, Enhanced Flight Vision/Synthetic Vision Systems (EFVS/SVS).

**DATES:** The meeting will be held February 7–9, 2012, from 8 a.m.–5 p.m.

**ADDRESSES:** The meeting will be held at Universal Avionics Systems Corporation, 3260 E. Universal Way, Tucson, AZ 85756.

**FOR FURTHER INFORMATION CONTACT:** The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org*.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a Special Committee 213, Enhanced Flight Vision/Synthetic Vision Systems (EFVS/SVS). The agenda will include the following:

**February 7, 2012**

- Introductions and Administrative Items
- Review and approve minutes from last full plenary meeting
- Introductions and administrative items
- Review and approve minutes from last full plenary meeting
- ED–179B status and update

**February 8, 2012**

- Plenary discussion (0800–1700, including breaks and lunch)
- Work Group 2 (VS) Discussion
- Work Group 1 (SVS/CVS) break discussion out if needed

**February 9, 2012**

- Plenary discussion (0800–1500, including breaks and lunch)
- E Work Group 1 and 2 Update
- Administrative items (meeting schedule)
- Adjourn at 1500

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 5, 2012.

**John Raper,**

*Manager, Business Operations Branch, Federal Aviation Administration.*

[FR Doc. 2012–541 Filed 1–13–12; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Eighteenth Meeting: RTCA Special Committee 216: Aeronautical Systems Security (Joint Meeting With EUROCAE WG–72)

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

**ACTION:** Notice of RTCA Special Committee 216: Aeronautical Systems Security (Joint meeting with EUROCAE WG–72).

**SUMMARY:** The FAA is issuing this notice to advise the public of the eighteenth meeting of RTCA Special Committee 216: Aeronautical Systems Security (Joint meeting with EUROCAE WG–72).

**DATES:** The meeting will be held February 14–17, 2012, from 9 a.m.—5 p.m.

**ADDRESSES:** The meeting will be held at GE Aviation, Gateway Office, 3925 Gateway Centre Blvd., Suite 100, Pinellas Park, Florida 33872.

**FOR FURTHER INFORMATION CONTACT:** The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 216, Aeronautical Systems Security (Joint meeting with EUROCAE WG–72). The agenda will include the following:

**February 14, 2012**

- Welcome, Introductions, and Administrative Remarks
- Agenda Overview and Approval
- Split Plenary Session (9:15 a.m.—12 p.m.) SC 216
  - Review of the Summary of the 18th meeting held October 25–28, 2011
  - RTCA Specific Publication Progress and Update
  - Subgroup and Action Item Reports
  - PMC update/TOR Proposal for schedule and deliverable
- Split Plenary Session (9:15 a.m.—12 p.m.) WG–72
  - Introduction, Report about publications and relations
  - EUROCAE Document Discussions, e.g. Glossary publication, Parts & Volumes rules
  - WG–72 specific concerns
  - Status of cooperation: TC377/WG1
  - Status of liaison: ECAC
- Joint Plenary Session
  - Reports on editorial status of document (ED–202A/DO–326A, ED–203/DO-xx3, ED–204/DO-xx4)
  - Status of liaisons: ICAO, TC377/WG1, SAE S–18
  - Schedule/Document plan & Working Group assignments
- Subgroup meetings/breakouts

**February 16, 2012**

- Subgroup meetings/breakouts

**February 17, 2012**

- Subgroup meetings/breakouts
- Joint Plenary Meeting
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 5, 2012.

**John Raper,**

*Manager, Business Operations Branch, Federal Aviation Administration.*

[FR Doc. 2012–544 Filed 1–13–12; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Eleventh Meeting: RTCA Special Committee 224, Airport Security Access Control Systems

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

**ACTION:** Notice of RTCA Special Committee 224, Airport Security Access Control Systems.

**SUMMARY:** The FAA is issuing this notice to advise the public of the eleventh meeting of RTCA Special Committee 224, Airport Security Access Control Systems.

**DATES:** The meeting will be held February 9, 2012, from 10 a.m.–4 p.m.

**ADDRESSES:** The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 224, Airport Security Access Control Systems. The agenda will include the following:

**February 9, 2012**

- Welcome, Introductions, and Administrative Remarks
- Review and approve summary from tenth plenary meeting
- Updates from the TSA and SIA
- Discussion of PMC response to committee recommendation
- Planning for next version development
- Time and Place of Next Meeting
- Any Other Business
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 5, 2012.

**John Raper,**

*Manager, Business Operations Branch, Federal Aviation Administration.*

[FR Doc. 2012–543 Filed 1–13–12; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket Number FRA–2009–0078]**

### Petition for Waiver of Compliance

In accordance with part 211 of title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that by a document dated December 21, 2011, the American Short Line and Regional Railroad Association (ASLRRA), on behalf of its member railroads, has petitioned the Federal Railroad Administration (FRA) for a 2-year extension of the waivers of the hours of service requirements at 49 U.S.C. 21103(A)(4)(a), which were granted on March 5, 2010 (for 6-day per week regular schedules), and November 22, 2011 (for 5-day per week regular schedules with an occasional sixth work day).

In its petition, ASLRRA seeks to extend the waivers that granted relief

from 49 U.S.C. 21103(A)(4)(a) allowing covered train employees to initiate an on-duty period for 6 consecutive days followed by 24, rather than 48, hours off duty. Additionally, ASLRRA explains that the waivers have had no negative impact on safety, and have provided benefits for the railroads, shippers, and employees.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Ave. SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by March 2, 2012 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and 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 (Volume 65, Number 70; Pages 19477–78) or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on January 10, 2012.

**Ron Hynes,**

*Acting Deputy Associate Administrator for Regulatory and Legislative Operations.*

[FR Doc. 2012–747 Filed 1–13–12; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[DOT Docket No. NHTSA–2011–0045]**

### Paperwork Reduction Act of 1995

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Request for public comment on proposed collection of information.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), on March 30, 2011 (76 FR 17746) the agency published a 60-day notice in the **Federal Register** soliciting public comment on the proposed information collection abstracted below.

In further compliance with the PRA, the agency now publishes this second notice announcing the submission of its proposed collection to the Office of Management and Budget (OMB) for review and notifying the public about how to submit comments on the proposed collection to OMB during the 30-day comment period.

**DATES:** Comments must be submitted on or before February 16, 2012.

**ADDRESSES:** Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Ann Burton, NHTSA 1200 New Jersey Avenue SE., W46–492, NTI–200, Washington, DC 20590. Ms. Burton's telephone number is (202) 366–2685. Please identify the relevant collection of information by referring to its OMB Control Number.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day public comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

i. Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

ii. The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

iii. How to enhance the quality, utility, and clarity of the information to be collected;

iv. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

(1) *Title:* 23 CFR, 1200.10(d), Uniform Safety Program Cost Summary Form for Highway Safety Plan.

*OMB Number:* 2127–0003.

*Type of Request:* Extension of a currently approved collection.

*Affected Public:* For the Highway Cost Summary, the public is 50 States, District of Columbia, Puerto Rico, American Samoa, Guam, Northern Marianas, the Virgin Islands and Bureau of Indian Affairs.

*Abstract:* Each State shall have a highway safety program approved by the Secretary, designed to reduce traffic accidents and deaths, injuries, and property damage resulting there from. Such program shall be in accordance with uniform guidelines promulgated by the Secretary to improve driver performance, and to improve pedestrian performance, motorcycle safety and bicycle safety. Under this program, States submit the Highway Safety Program and other documentation explaining how they intend to use the grant funds. In order to account for funds expended under these priority areas and other program areas, States are required to submit a Program Cost Summary. The Program Cost Summary is completed to reflect the State's proposed Allocation of funds (including

carry-forward funds) by program area, based on the projects and activities identified in the Highway Safety Plan.

*Estimated Annual Burden:* 570.

*Estimated Number of Respondents:* 57.

(2) *Title:* 23 CFR, 1345, Occupant Protection Incentive Grant—Section 405.

*OMB Number:* 2127–0600.

*Affected Public:* For Section 405, the public is 50 States, District of Columbia, Puerto Rico, American Samoa, Guam, Northern Marianas and the Virgin Islands.

*Type of Request:* Extension of a currently approved collection.

*Abstract:* An occupant protection incentive grant is available to states that can demonstrate compliance with at least four of six criteria. Demonstration of compliance requires submission of copies of relevant seat belt and child passenger protection statutes plan and/or reports on statewide seat belt enforcement and child seat education programs and possibly some traffic court records. In addition, States eligible to receive grant funds must submit a Program Cost Summary (Form 217), allocating section 405 funds to occupant protection programs.

*Estimated Annual Burden:* 1,736.

*Estimated Number of Respondents:* 56.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

**Mary D. Gunnels,**

*Associate Administrator, Regional Operations and Program Delivery.*

[FR Doc. 2012–727 Filed 1–13–12; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### Research and Innovative Technology Administration, Bureau of Transportation Statistics

### Advisory Council on Transportation Statistics; Request for Nominations

**AGENCY:** Research and Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS), DOT.

**ACTION:** Request for Nominations to the Advisory Council on Transportation Statistics (ACTS).

**SUMMARY:** The BTS solicits nominations for interested persons to serve on the ACTS. The ACTS is composed of BTS stakeholders who advise the Director on the quality, reliability, consistency, objectivity, and relevance of transportation statistics and analyses collected, supported, or disseminated by the BTS and DOT.

**DATES:** Nominations for the ACTS must be received on or before January 27, 2012.

**ADDRESSES:** Deborah D. Johnson, ACTS Liaison at the Research and Innovative Technology Administration, Bureau of Transportation Statistics, 1200 New Jersey Avenue SE., Room E34–316, Washington, DC 20590 at (202) 366–8578 or email at *deborah.johnson@dot.gov.* Send nominations with complete contact information and biography or the completed application in written form (for self-nominations) to the above street address. This notice and the DOT F 1120.1 application form are available on the Internet at *http://www.bts.gov/programs/advisory_council_on_transportation_statistics/.*

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 (Pub. L. 102–240), directed the Director of the Bureau of Transportation Statistics (BTS) to establish an advisory Council on Transportation Statistics. In 2005, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) codified the requirement for the ACTS in 49 U.S.C. Section 111 (See Section 5601 of SAFETEA–LU). The functions of the ACTS are to: (1) Advise the Director on the quality, reliability, consistency, objectivity, and relevance of transportation statistics and analyses collected, supported, or disseminated by BTS and DOT; (2) provide input to and review the congressional report required by 49 U.S.C. Section 111(d)(4); and (3) advise the Director of BTS on methods to encourage cooperation and interoperability of transportation data collected by BTS, the operating administrations of DOT, States, local governments, metropolitan planning organizations, and private sector entities *http://www.bts.gov/programs/advisory_council_on_transportation_statistics/charter.html.*

Committee members must not be officers or employees of the Federal Government and serve without pay on staggered 3-year terms. The Director may allow a member, when attending meetings of the Committee or a subcommittee, reimbursement of expenses authorized under Section 5703 of Title 5, United States Code and the Federal Travel Regulation, 41 CFR part 301, relating to per diem, travel, and transportation.

The President's Memorandum of June 18, 2010, concerning lobbyists on Agency boards and commissions (75 FR 35995, 6/23/10) directed the heads of Executive departments and agencies not to make any new appointments or reappointments of federally registered lobbyists to advisory committees and other boards and commissions. Pursuant to the President's directive, BTS will not consider for appointment to the ACTS any individual who is subject to the registration and reporting requirements of the Lobbying Disclosure Act (2 U.S.C. 1605).

The Designated Federal Officer anticipates calling Committee meetings approximately twice each year. Meetings are open to the general public, except as provided under the Federal Advisory Committee Act (FACA) (5 U.S.C. App.). Notice of each meeting is published in the **Federal Register** at least 15 calendar days prior to the date of the meeting.

#### II. Request for Nominations

The BTS seeks nominations for membership to the ACTS from among its stakeholder groups. The ACTS is composed of not fewer than nine and not more than 11 members appointed by the BTS Director, who are not officers or employees of the United States. Each member shall have expertise in transportation data collection or analysis or application; except that one member shall have expertise in economics, one member shall have expertise in statistics, and one member shall have experience in transportation safety. At least one member shall be a senior official of a State department of transportation. Members shall include representation of a cross-section of transportation community stakeholders.

The Agency is required under FACA to appoint members of diverse views and interests to ensure the committee is balanced with appropriate consideration of background. All Committee members must be able to attend at least one meeting each year in person or by teleconference. Interested persons should have a commitment to improving transportation statistics and have knowledge of transportation

issues, experience on panels that deal with transportation statistics and data, and a record of collaboration and professional experience in transportation statistics and data issues.

Nominations should be submitted to Deborah Johnson at the address given in the **ADDRESSES** section at the beginning of this Notice. Applicants must submit Form F 1120.1 to apply for membership. The form is available at *http://www.bts.gov/programs/advisory_council_on_transportation_statistics/.* This Internet site also contains additional information on the ACTS, including reports, meeting minutes, and membership information.

Nominations must be received on or before January 27, 2012.

Issued in Washington, DC, on the 5th day of December 2011.

**Pat Hu,**

*Director, Bureau of Transportation Statistics.*

[FR Doc. 2012–430 Filed 1–13–12; 8:45 am]

**BILLING CODE 4910–HY–P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

January 11, 2012.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

**DATES:** Comments should be received on or before February 16, 2012 to be assured of consideration.

**ADDRESSES:** Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to the (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and to the (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 11020, Washington, DC 20220, or on-line at *www.PRAComment.gov.*

**FOR FURTHER INFORMATION CONTACT:** Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov.*

**Alcohol and Tobacco Tax and Trade Bureau (TTB)**

*OMB Number:* 1513–0037.

*Type of Review:* Revision of a currently approved collection.

*Title:* Withdrawal of Spirits, Specially Denatured Spirits, or Wines for Exportation.

*Form:* TTB F 5100.11.

*Abstract:* TTB F 5100.11 is completed by exporters to report the withdrawal of spirits, denatured spirits, and wines from internal revenue bonded premises, without payment of tax for direct exportation, transfer to a foreign trade zone, Customs manufacturer's bonded warehouse or Customs bonded warehouse, or for use as supplies on vessels or aircraft.

*Respondents:* Private Sector: Businesses or other for-profits.

*Estimated Total Burden Hours:* 6,000.

*OMB Number:* 1513–0040.

*Type of Review:* Revision of a currently approved collection.

*Title:* Application for Operating Permit Under 26 U.S.C. 5171(d).

*Form:* TTB F 5110.25.

*Abstract:* TTB F 5110.25 is completed by proprietors of Distilled Spirits Plants who engage in certain specified types of activities. TTB National Revenue Center personnel uses the information on the form to identify the applicant, the location of the business, the types of activities to be conducted, and the qualifications of the applicant.

*Respondents:* Private Sector: Businesses or other for-profits.

*Estimated Total Burden Hours:* 20.

*OMB Number:* 1513–0043.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Application and Permit to Ship Puerto Rican Spirits to the United States Without Payment of Tax.

*Form:* TTB F 5110.31.

*Abstract:* TTB F 5110.31 is used to allow a person to ship spirits in bulk into the U.S. without payment of tax. The form identifies the person in Puerto Rico from where shipments are to be made, the person in the U.S. receiving the spirits, and amounts of spirits to be shipped.

*Respondents:* Private Sector: Businesses or other for-profits.

*Estimated Total Burden Hours:* 750.

**Dawn D. Wolfgang,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2012–719 Filed 1–13–12; 8:45 am]

**BILLING CODE 4810–31–P**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Actions Taken Pursuant to Executive Order 13382 Related to the Islamic Republic of Iran Shipping Lines (IRISL)

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing on OFAC's list of Specially Designated Nationals and Blocked Persons the names of ten newly-designated entities, along with one individual, whose property and interests in property are blocked pursuant to Executive Order 13382 of June 28, 2005, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters.''

**DATES:** The designation by the Director of OFAC, pursuant to Executive Order 13382, of the ten entities and one individual identified in this notice was effective on December 20, 2011.

**FOR FURTHER INFORMATION CONTACT:** Assistant Director, Sanctions Compliance & Evaluation, tel.: (202) 622–2490, Office of Foreign Assets Control; Assistant Director for Policy, tel.: (202) 622–4855, Office of Foreign Assets Control; or Chief Counsel (Foreign Assets Control), tel.: (202) 622–2410, Office of the General Counsel, Department of the Treasury, Washington, DC 20220.

**SUPPLEMENTARY INFORMATION:**

#### Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site *(http://www.treas.gov/offices/enforcement/ofac)* or via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

#### Background

On June 28, 2005, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the ''Order''), effective at 12:01 a.m. eastern daylight time on June 29, 2005. In the Order, the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and

interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in the Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

On December 20, 2011, the Director of OFAC, in consultation with the Departments of State, Justice, and other relevant agencies, designated ten entities and one individual whose property and interests in property are blocked pursuant to Executive Order 13382.

The list of additional designees is as follows:

BIIS MARITIME LIMITED, 147/1 St. Lucia Street Valletta, VLT 1185, Malta; c/o Irano Hind Shipping Company, PO Box 15875, Mehrshad Street, Sadaghat Street, Opposite of Park Mellat, Vali-e-Asr Ave., Tehran, Iran; Business Registration Document # C31530 (Malta); Web site *www.iranohind.com* [NPWMD]

ISIM AMIN LIMITED, 147/1 St. Lucia Street, Valletta, VLT 1185, Malta; Business Registration Document # C40069 (Malta) [NPWMD]

ISIM ATR LIMITED, c/o Irano Hind Shipping Company, PO Box 15875, Mehrshad Street, Sadaghat Street, Opposite of Park Mellat, Vali-e-Asr Ave., Tehran, Iran; 147/1 St. Lucia Street, Valletta VLT 1185, Malta; Business Registration Document # C34477 (Malta); Web site *www.iranohind.com* [NPWMD]

ISIM OLIVE LIMITED, 147/1 St. Lucia Street, Valletta, VLT 1185, Malta; Business Registration Document # C34479 (Malta) [NPWMD]

ISIM SAT LIMITED, 147/1 St. Lucia Street, Valletta, VLT 1185, Malta; Business Registration Document # C34476 (Malta) [NPWMD]

ISIM SEA CHARIOT LIMITED, 147/1 St. Lucia Street, Valletta, VLT 1185, Malta; Business Registration Document # C45153 (Malta) [NPWMD]

ISIM SEA CRESCENT LIMITED, 147/1 St. Lucia Street, Valletta, VLT 1185, Malta; Business Registration Document # C45152 (Malta) [NPWMD]

ISIM SININ LIMITED, 147/1 St. Lucia Street, Valletta, VLT 1185, Malta; c/o Irano Hind Shipping Company, PO Box 15875, Mehrshad Street, Sadaghat Street, Opposite of Park Mellat, Vali-e-Asr Ave., Tehran, Iran; Business Registration Document # C37437 (Malta); Web site *www.iranohind.com* [NPWMD]

ISIM TAJ MAHAL LIMITED, 147/1 St. Lucia Street, Valletta, VLT 1185, Malta; Business Registration Document # C41660 (Malta) [NPWMD]

ISIM TOUR LIMITED, 147/1 St. Lucia Street, Valletta, VLT 1185, Malta; Business Registration Document # C34478 (Malta) [NPWMD]

KHALILI, Jamshid, Third Floor, Number 143, Dr. Lavasani Avenue, Farmanieh Avenue, Tehran, Iran; DOB 23 Sep 1957; nationality Iran; Passport R1451357 (Iran) (individual) [NPWMD]

Dated: January 4, 2012.

**Adam J. Szubin,**

*Director, Office of Foreign Assets Control.*

[FR Doc. 2012–680 Filed 1–13–12; 8:45 am]

**BILLING CODE 4810–AL–P**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Additional Designations, Foreign Narcotics Kingpin Designation Act

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is publishing the names of three individuals whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (''Kingpin Act'') (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

**DATES:** The designation by the Director of OFAC of the three individuals identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on January 10, 2012.

**FOR FURTHER INFORMATION CONTACT:** Assistant Director, Sanctions Compliance & Evaluation, Office of Foreign Assets Control, U.S. Department of the Treasury, Washington, DC 20220, Tel: (202) 622–2490.

**SUPPLEMENTARY INFORMATION:**

#### Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site at *http://www.treasury.gov/ofac* or via facsimile through a 24-hour fax-on-demand service at (202) 622–0077.

#### Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the imposition of sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury, in consultation with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security may designate and block the property and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or

directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On January 10, 2012, the Director of OFAC designated the following three individuals whose property and interests in property are blocked pursuant to section 805(b) of the Kingpin Act.

1. ALVAREZ ZEPEDA, Oscar, Avenida Francisco Solis No. 30–B, Colonia Vicente Lombardo Toledano, Culiacan, Sinaloa C.P. 80010, Mexico; Boulevard Universitarios No. 789, Local 4, Colonia Villa Universidad, Culiacan, Sinaloa C.P. 80010, Mexico; Localidad San Jose del Barranco S/N, Badiraguato, Sinaloa C.P. 80500, Mexico; DOB 15 Sep 1979; POB Badiraguato, Sinaloa, Mexico; C.U.R.P. AAZO790915HSLLPS09 (Mexico) R.F.C. AAZO790915AL6 (Mexico) (INDIVIDUAL) [SDNTK].
2. TORRES HOYOS, Carlos Mario, Calle 48D No. 99–35, Medellin, Colombia; DOB 11 Aug 1976; POB Caucasia, Antioquia, Colombia; Cedula No. 71763915 (Colombia) (INDIVIDUAL) [SDNTK].
3. VALDEZ BENITES, Joel, Avenida Mar Baltico No. 944, Colonia Lombardo Toledano, Culiacan, Sinaloa C.P. 80010, Mexico; DOB 20 Apr 1972; POB Badiraguato, Sinaloa, Mexico; C.U.R.P. VABJ720420HSLLNL00 (Mexico) Passport G04809091 (Mexico) (INDIVIDUAL) [SDNTK].

Dated: January 10, 2012.

**Adam J. Szubin,**

*Director, Office of Foreign Assets Control.*

[FR Doc. 2012–721 Filed 1–13–12; 8:45 am]

**BILLING CODE 4810–AL–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0695]**

### Agency Information Collection (Application for Reimbursement of Licensing or Certification Test Fees): Activity Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before February 16, 2012.

**ADDRESSES:** Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0695'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, FAX (202) 273–0487 or email *denise.mclamb@va.gov*. Please refer to ''OMB Control No. 2900–0695.''

**SUPPLEMENTARY INFORMATION:**

*Title:* Application for Reimbursement of Licensing or Certification Test Fees, (38 U.S.C. Chapters 30, 32, and 35; 10 U.S.C. Chapters 1606 & 1607), VA Form 22–0803.

*OMB Control Number:* 2900–0695.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Claimants complete VA Form 22–0803 to request reimbursement of licensing or certification fees paid.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 1, 2011, at pages 67557–67558.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 1,000 hours.

*Frequency of Response:* On occasion.

*Estimated Average Burden per Respondents:* 15 minutes.

*Estimated Annual Responses:* 4,000.

Dated: January 11, 2012.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Enterprise Records Service.*

[FR Doc. 2012–666 Filed 1–13–12; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0073]**

### Agency Information Collection (VA Enrollment Certification): Activity Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before February 16, 2012.

**ADDRESSES:** Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0073'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, FAX (202) 273–0487 or email *denise.mclamb@va.gov*. Please refer to ''OMB Control No. 2900–0073.''

**SUPPLEMENTARY INFORMATION:**

*Title:* VA Enrollment Certification, VA Form 22–1999.

*OMB Control Number:* 2900–0073.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* School officials and employers complete VA Form 22–1999 to report and certify a claimant's enrollment in an educational program. The data is used to determine the amount of benefits payable and whether the claimant requested an advanced or accelerated payment.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 1, 2011, at page 67561.

*Affected Public:* Not-for-profit institutions.

**Estimated Annual Burden**

a. Electronically—104,262 hours.
b. Paper copy—55,855 hours.

**Estimated Average Burden per Respondent**

c. Electronically—8 minutes.
d. Paper copy—10 minutes.
*Frequency of Response:* On occasion.

**Estimated Number of Respondents**

a. Electronically—781,967.
b. Paper copy—335,129.

Dated: January 11, 2012.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Enterprise Records Service.*

[FR Doc. 2012–673 Filed 1–13–12; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0712]**

### Proposed Information Collection (Nation-wide Customer Satisfaction Surveys) Activity: Comment Request

**AGENCY:** Veterans Health Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each revision of a previously approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to identify problems or complaints in VA's health care services.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before March 19, 2012.

**ADDRESSES:** Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov*; or to Cynthia Harvey-Pryor, Veterans Health Administration (10P7BFP) Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *cynthia.harvey-pryor@va.gov*. Please refer to ''OMB Control No. 2900–0712'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Harvey-Pryor at (202) 461–5870 or FAX (202) 273–9381.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Nation-wide Customer Satisfaction Surveys, VA Forms 10–1465–2 through 10–1465–6.

*OMB Control Number:* 2900–0712.

*Type of Review:* Revision of a previously approved collection.

*Abstract:* The Survey of Health Experience of Patients (SHEP) Survey is used to obtain information from VA patients that will be used to identify problems or compliant and to improve the quality of health care services delivered to veterans. Data will be use to measure improvement toward the goal of matching or exceeding non-VA external benchmark performance.

*Affected Public:* Individuals or households.

**Estimated Annual Burden**

a. Inpatient Short Form, VA Form 10–1465–2—18,750 hours.
b. Ambulatory Care Long Form, VA Form 10–1465–3—9,802 hours.
c. Ambulatory Care Short Form, VA Form 10–1465–4—42,233 hours.
d. Clinician and Group Survey Patient Centered Medical Home, Short Form, VA Form 10–1465–5.—20,000 hours.
e. Clinician and Group Survey Patient Centered Medical Home, Long Form, VA Form 10–1465–6—3,333 hours.

**Estimated Average Burden per Respondent**

a. Inpatient Short Form, VA Form 10–1465–2—15 minutes.
b. Ambulatory Care Long Form, VA Form 10–1465–3—25 minutes.
c. Ambulatory Care Short Form, VA Form 10–1465–4—20 minutes.
d. Clinician and Group Survey Patient Centered Medical Home, Short Form, VA Form 10–1465–5—15 minutes.
e. Clinician and Group Survey Patient Centered Medical Home, Long Form, VA Form 10–1465–6—25 minutes.
*Frequency of Response:* On occasion.

**Estimated Number of Respondents**

a. Inpatient Short Form, VA Form 10–1465–2—75,000.
b. Ambulatory Care Long Form, VA Form 10–1465–3—23,524.
c. Ambulatory Care Short Form, VA Form 10–1465–4—126,700.
d. Clinician and Group Survey Patient Centered Medical Home, Short Form, VA Form 10–1465–5—20,000.
e. Clinician and Group Survey Patient Centered Medical Home, Long Form, VA Form 10–1465–6—3,333.

Dated: January 11, 2012.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Enterprise Records Service.*

[FR Doc. 2012–675 Filed 1–13–12; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–New (VR&E Longitudinal Study Survey)]**

### Proposed Information Collection (Vocational Rehabilitation and Employment Longitudinal Study Survey) Activity: Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine the long-term outcomes of Veterans participating in VBA's Vocational Rehabilitation and Employment (VR&E) Program.

**DATES:** Written comments and recommendations on the proposed

collection of information should be received on or before March 19, 2012.

**ADDRESSES:** Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@ va.gov*. Please refer to ''OMB Control No. 2900—New (VR&E Longitudinal Study Survey)'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Vocational Rehabilitation and Employment Longitudinal Study Survey.

*OMB Control Number:* 2900—New (VR&E Longitudinal Study Survey).

*Type of Review:* New data collection.

*Abstract:* As required by Public Law 110–389 Section 334, VBA will collect survey data on individuals who began participating in the VR&E program during fiscal years 2010, 2012, and 2014. VA will conduct a study of this data to determine the long-term positive outcomes of individuals participating in VBA's VR&E program. The purpose of this study is to monitor the effectiveness of VR&E program, so that we can find ways to improve the program and increase the support VA provide to Veterans on a daily basis.

*Affected Public:* Individuals and Households.

*Estimated Annual Burden:* 2,333 hours.

*Estimated Average Burden per Respondent:* 20 minutes.

*Frequency of Response:* Annually.

*Estimated Number of Respondents:* 7,000.

Dated: January 11, 2012.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Enterprise Records Service.*

[FR Doc. 2012–674 Filed 1–13–12; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0074]**

### Agency Information Collection (Request for Change of Program or Place of Training): Activity Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before February 16, 2012.

**ADDRESSES:** Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0074'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, FAX (202) 273–0487 or email *denise.mclamb@va.gov*. Please refer to ''OMB Control No. 2900–0074.''

**SUPPLEMENTARY INFORMATION:**

*Title:* Request for Change of Program or Place of Training, VA Form 22–1995.

*OMB Control Number:* 2900–0074.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Claimants receiving educational benefits complete VA Form 22–1995 to request a change in program or training establishment. VA uses the data collected to determine the claimant's eligibility for continued educational benefits.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 1, 2011, at pages 67558–67559.

*Affected Public:* Individuals or households.

**Estimated Annual Burden**

a. Electronically—8,709 hours.
b. Paper Copy—27,095 hours.

**Estimated Average Burden per Respondent**

a. Electronically—15 minutes.
b. Paper Copy—20 minutes.

*Frequency of Response:* On occasion.

**Estimated Number of Respondents**

a. Electronically—34,836.
b. Paper Copy—81,284.

Dated: January 11, 2012.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Enterprise Records Service.*

[FR Doc. 2012–672 Filed 1–13–12; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0579]**

### Agency Information Collection (Request for Vocational Training Benefits—Certain Children of Vietnam Veterans): Activity Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before February 16, 2012.

**ADDRESSES:** Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0579'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, FAX (202) 273–0487 or email *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0579.''

**SUPPLEMENTARY INFORMATION:**

*Title:* Request for Vocational Training Benefits—Certain Children of Vietnam Veterans, 38 CFR 21.8014.

*OMB Control Number:* 2900–0579.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Vietnam veterans' children born with certain birth defects may submit a written claim to request participation in a vocational training program. In order for VA to relate the claim to other existing VA records, applicants must provide identifying information about themselves and the natural parent who served in Vietnam. The information collected will allow VA counselors to review existing records and to schedule an appointment with the applicant to evaluate the claim.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 1, 2011, at page 67560.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 15 hours.

*Estimated Average Burden per Respondent:* 15 minutes.

*Frequency of Response:* One-time.

*Estimated Number of Respondents:* 60.

Dated: January 11, 2012.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Enterprise Records Service.*

[FR Doc. 2012–667 Filed 1–13–12; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0209]**

### Agency Information Collection (Application for Work-Study Allowance): Activity Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before February 16, 2012.

**ADDRESSES:** Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0209'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, FAX (202) 273–0487 or email *denise.mclamb@va.gov*. Please refer to ''OMB Control No. 2900–0209.''

**SUPPLEMENTARY INFORMATION:**

**Titles**

a. Application for Work-Study Allowance, VA Form 22–8691.

b. Student Work-Study Agreement (Advance Payment), VA Form 22–8692.

c. Extended Student Work-Study Agreement, VA Form 22–8692a.

d. Work-Study Agreement, VA Form 22–8692b.

*OMB Control Number:* 2900–0209.

*Type of Review:* Extension of a currently approved collection.

**Abstracts**

a. VA Form 22–8691 is used by claimants to apply for work-study benefits.

b. VA Form 22–8692 is used to request an advance payment of work-study allowance.

c. VA Form 22–8692a is used by a claimant to extend his or her work-study contract.

d. VA Form 22–8692b is used by claimants who do not want a work-study advanced allowance payment.

The data collected is used to determine an applicant's eligibility for work-study allowance and the amount payable.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 1, 2011, at page 67558.

*Affected Public:* Individuals or households.

**Estimated Annual Burden**

a. VA Form 22–8691—4,350 hours.
b. VA Form 22–8692—608 hours.
c. VA Form 22–8692a—25 hours.
d. VA Form 22–8692b—608 hours.

**Estimated Average Burden per Respondent**

a. VA Form 22–8691—15 minutes.
b. VA Form 22–8692—5 minutes.
c. VA Form 22–8692a—3 minutes.
d. VA Form 22–8692b—5 minutes.

*Frequency of Response:* Annually.

**Estimated Number of Respondents**

a. VA Form 22–8691—17,400.
b. VA Form 22–8692—7,300.
c. VA Form 22–8692a—500.
d. VA Form 22–8692b—7,300.

Dated: January 11, 2012.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Enterprise Records Service.*

[FR Doc. 2012–669 Filed 1–13–12; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0178]**

### Agency Information Collection (Monthly Certification of On-the-Job and Apprenticeship Training): Activity Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of

Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before February 16, 2012.

**ADDRESSES:** Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0178'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, FAX (202) 273–0487 or email *denise.mclamb@va.gov*. Please refer to ''OMB Control No. 2900–0178.''

**SUPPLEMENTARY INFORMATION:**

*Title:* Monthly Certification of On-the-Job and Apprenticeship Training, VA Forms 22–6553d and 22–6553d–1.

*OMB Control Number:* 2900–0178.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Claimants receiving on the job and apprenticeship training complete VA Form 22–6553d to report the number of hours worked. Schools or training establishments also complete the form to report whether the claimant's educational benefits are to be continued, unchanged or terminated, and the effective date of such action. VA Form 22–6553d–1 is an identical printed copy of VA Form 22–6553d. Claimants use VA Form 22–6553d–1 when the computer-generated version of VA Form 22–6553d is not available. VA uses the data collected to process a claimant's educational benefit claim.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 1, 2011, at pages 67559–67560.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 30,722 hours.

*Estimated Average Burden per Respondent:* 10 minutes.

*Frequency of Response:* Monthly.

*Estimated Number of Respondents:* 20,481.

*Number of Responses Annually:* 184,329.

Dated: January 11, 2012.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Enterprise Records Service.*

[FR Doc. 2012–670 Filed 1–13–12; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0156]**

### Agency Information Collection (Notice of Change in Student Status): Activity Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before February 16, 2012.

**ADDRESSES:** Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0156'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, FAX (202) 273–0487 or email *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0156.''

**SUPPLEMENTARY INFORMATION:**

*Title:* Notice of Change in Student Status, VA Form 22–1999b.

*OMB Control Number:* 2900–0156.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Educational institutions use VA Form 22–1999b to report a student's enrollment status. Benefits are not payable when a student interrupts or terminates a program. VA uses the information to determine a student's continued entitlement to educational benefits or if the benefits should be increased, decreased, or terminated.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 1, 2011, at pages 67556–67557.

*Affected Public:* Business or other for-profit, and Not-for-profit institutions.

**Estimated Annual Burden**

a. VA Form 22–1999b (Paper Copy)—16,667 hours.

b. VA Form 22–1999b (Electronically Filed)—35,000 hours.

**Estimated Average Burden per Respondent**

a. VA Form 22–1999b (Paper Copy)—10 minutes.

b. VA Form 22–1999b (Electronically Filed)—7 minutes.

*Frequency of Response:* On occasion.

**Estimated Total Number of Responses Annually**

a. VA Form 22–1999b (Paper Copy)—100,000.

b. VA Form 22–1999b (Electronically Filed)—300,000.

Dated: January 11, 2012.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Enterprise Records Service.*

[FR Doc. 2012–671 Filed 1–13–12; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0353]**

### Agency Information Collection (Certification of Lessons Completed): Activity Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and

its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before February 16, 2012.

**ADDRESSES:** Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0353'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, FAX (202) 273–0487 or email *denise.mclamb@va.gov*. Please refer to ''OMB Control No. 2900–0353.''

**SUPPLEMENTARY INFORMATION:**

*Title:* Certification of Lessons Completed, VA Forms 22–6553b and 22–6553b–1.

*OMB Control Number:* 2900–0353.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Students enrolled in a correspondence school complete VA Forms 22–6553b and 22–6553b–1 to report the number of correspondence course lessons completed and forward the forms to the correspondence school for certification. School official certifies the number of lessons serviced and submits the forms to VA for processing. Benefits are payable based on the data provided on the form. Benefits are not payable when students interrupt, discontinue, or complete the training. VA uses the data collected to determine the amount of benefit is payable.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 1, 2011, at pages 67560–67561.

*Affected Public:* Individuals or households, and Business or other for-profit.

*Estimated Annual Burden:* 411 hours.

*Estimated Average Burden per Respondent:* 10 minutes.

*Frequency of Response:* Quarterly.

*Estimated Number of Respondents:* 821.

*Number of Responses Annually:* 2,463.

Dated: January 11, 2012.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Enterprise Records Service.*

[FR Doc. 2012–668 Filed 1–13–12; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

### Research Advisory Committee on Gulf War Veterans' Illnesses; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Research Advisory Committee on Gulf War Veterans' Illnesses will meet on January 31 and February 1, 2012. The meeting will be held in room 1143 of the Lafayette Building, 811 Vermont Avenue NW., Washington, DC. The meeting will start at 8 a.m. each day and will adjourn at 5 p.m. on January 31 and at 12:30 p.m. on February 1. All sessions will be open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, research plans and research strategies relating to the health consequences of military service in the Southwest Asia theater of operations during the Gulf War.

The Committee will review VA program activities related to Gulf War Veterans' illnesses and updates on relevant scientific research published since the last Committee meeting. The session on January 31 will be devoted to discussion of the Gulf War Research Strategic Plan being prepared in VA's Office of Research and Development followed by an update of VA Gulf War research funding. The research presentations on February 1 will involve background information on Gulf War Veterans' illnesses, nervous system function, its relation to ill Gulf War Veterans, and possible laboratory markers for Gulf War Veterans' illnesses. The session will also include discussion of Committee business and activities.

The meeting will include time reserved for public comments each day. A sign-up sheet for five-minute comments will be available at the meeting. Individuals who speak are invited to submit a 1–2 page summary of their comments at the time of the meeting for inclusion in the official meeting record. Members of the public may also submit written statements for the Committee's review to Dr. Roberta White at *rwhite@bu.edu.*

Any member of the public seeking additional information should contact Dr. Roberta White, Scientific Director, at (617) 638–4620 or Dr. Victor Kalasinsky, Designated Federal Officer, at (202) 443–5682, or email at *victor.kalasinsky@va.gov.*

Dated: January 11, 2012.

By direction of the Secretary.

**Vivian Drake,**

*Committee Management Officer.*

[FR Doc. 2012–710 Filed 1–13–12; 8:45 am]

**BILLING CODE P**

# FEDERAL REGISTER

Vol. 77 Tuesday,
No. 10 January 17, 2012

Part II

## Department of Energy

10 CFR Part 431
Energy Conservation Program for Certain Industrial Equipment: Energy Conservation Standards and Test Procedures for Commercial Heating, Air-Conditioning, and Water-Heating Equipment; Proposed Rule

## DEPARTMENT OF ENERGY

### 10 CFR Part 431

**[Docket No. EERE–2011–BT–STD–0029]**

**RIN 1904–AC47**

## Energy Conservation Program for Certain Industrial Equipment: Energy Conservation Standards and Test Procedures for Commercial Heating, Air-Conditioning, and Water-Heating Equipment

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

**ACTION:** Notice of proposed rulemaking and announcement of public meeting.

**SUMMARY:** The U.S. Department of Energy (DOE) is proposing to amend its energy conservation standards for several classes of commercial heating, air-conditioning, and water-heating equipment. Pursuant to the Energy Policy and Conservation Act of 1975 (EPCA), as amended, DOE must assess whether the uniform national standards for these covered equipment need to be updated each time the corresponding industry standard—the American National Standards Institute (ANSI)/ American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE)/Illuminating Engineering Society of North America (IESNA) Standard 90.1 (ASHRAE Standard 90.1)—is amended, which most recently occurred on October 29, 2010. Based upon its analysis of the energy savings potential of amended energy conservation standards and the lack of clear and convincing evidence to support more-stringent standards, DOE is proposing to adopt the amended standards in ASHRAE Standard 90.1 for small, large, and very large water-cooled and evaporatively-cooled commercial package air conditioners; variable refrigerant flow (VRF) water-source heat pumps less than 17,000 Btu/h; VRF water-source heat pumps at or greater than 135,000 Btu/h; and computer room air conditioners. DOE is also proposing updates to the current Federal test procedures to incorporate by reference the most current versions of the following relevant industry test procedures specified in ASHRAE Standard 90.1: Air-conditioning, Heating, and Refrigeration Institute (AHRI) 210/240 (small commercial package air conditioning and heating equipment); AHRI 340/360 (large and very large commercial package air conditioning and heating equipment); Underwriters Laboratories (UL) 727 and ANSI Z21.47 (commercial warm-air furnaces); and ANSI Z21.10.3 (commercial water heaters). Furthermore, DOE is proposing to adopt AHRI 1230 for newly-created classes of variable refrigerant flow air conditioners and heat pumps, ASHRAE 127 for computer room air conditioners, and AHRI 390 for single package vertical air conditioners and single package vertical heat pumps. In addition, DOE is announcing a public meeting to receive comment on its proposal and related issues.

**DATES:** *Meeting:* DOE will hold a public meeting on February 14, 2012, from 9 a.m. to 4 p.m., in Washington, DC. The meeting will also be broadcast as a webinar. See section X, ''Public Participation,'' for webinar information, participant instructions, and information about the capabilities available to webinar participants.

*Comments:* DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) before and after the public meeting, but no later than April 2, 2012. For details, see section X, ''Public Participation,'' of this NOPR.

**ADDRESSES:** The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585. To attend, please notify Ms. Brenda Edwards at (202) 586–2945. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting, should advise DOE as soon as possible by contacting Ms. Edwards at the phone number above to initiate the necessary procedures. Please also note that any person wishing to bring a laptop computer into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing laptops, or allow an extra 45 minutes. Persons may also attend the public meeting via webinar. For more information, refer to section X, ''Public Participation,'' of this NOPR.

Any comments submitted must identify the NOPR on Energy Conservation Standards and Test Procedures for ASHRAE Standard 90.1 Products, and provide docket number EERE–2011–BT–STD–0029 and/or Regulatory Information Number (RIN) 1904–AC47. Comments may be submitted using any of the following methods:

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

2. *Email: ASHRAE90.1-2011-STD-0029@ee.doe.gov.* Include docket number EERE–2011–BT–STD–0029 and/or RIN 1904–AC47 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 compact disc (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 (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section X of this document (Public Participation).

*Docket:* The docket is available for review at *www.regulations.gov,* including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *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: *www.regulations.gov.* This web page contains a link to the docket for this notice, along with simple instructions on how to access all documents, including public comments, in the docket. See section X, ''Public Participation,'' for further information on how to submit comments through *www.regulations.gov.*

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Mohammed Khan, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–7892. Email: *Mohammed.Khan@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, Mailstop GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9507. Email: *Eric.Stas@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

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## I. Summary of the Proposed Rule

The Energy Policy and Conservation Act (EPCA) (42 U.S.C. 6291 *et seq.*), as amended, requires DOE to consider amending the existing Federal energy conservation standard for certain types of listed commercial and industrial equipment (generally, commercial water heaters, commercial packaged boilers, commercial air conditioning and heating equipment, and packaged terminal air conditioners and heat pumps) each time ASHRAE Standard 90.1, *Energy Standard for Buildings Except Low-Rise Residential Buildings,* is amended with respect to such equipment. (42 U.S.C. 6313(a)(6)(A)) For each type of equipment, EPCA directs that if ASHRAE Standard 90.1 is amended,[1] DOE must adopt amended

[1] Although EPCA does not explicitly define the term ''amended'' in the context of ASHRAE Standard 90.1, DOE provided its interpretation of what would constitute an ''amended standard'' in a final rule published in the **Federal Register** on March 7, 2007 (hereafter referred to as the ''March 2007 final rule''). 72 FR 10038. In that rule, DOE

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energy conservation standards at the new efficiency level in ASHRAE Standard 90.1, unless clear and convincing evidence supports a determination that adoption of a more-stringent efficiency level as a national standard would produce significant additional energy savings and be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)) If DOE decides to adopt as a national standard the efficiency levels specified in the amended ASHRAE Standard 90.1, DOE must establish such standard not later than 18 months after publication of the amended industry standard. (42 U.S.C. 6313(a)(6)(A)(ii)(I)) If DOE determines that a more-stringent standard is appropriate under the statutory criteria, DOE must establish such more-stringent standard not later than 30 months after publication of the revised ASHRAE Standard 90.1. (42 U.S.C. 6313(a)(6)(B)) ASHRAE officially released ASHRAE Standard 90.1–2010 on October 29, 2010, thereby triggering DOE's above-referenced obligations pursuant to EPCA to determine for those equipment with efficiency level changes beyond the current Federal standard, whether: (1) the amended industry standard should be adopted; or (2) clear and convincing evidence exists to justify more-stringent standard levels.

Accordingly, this NOPR sets forth DOE's determination of scope for consideration of amended energy conservation standards with respect to certain heating, ventilating, air-conditioning, and water-heating equipment addressed in ASHRAE Standard 90.1–2010. Such inquiry is necessary to ascertain whether the revised ASHRAE efficiency levels have become more stringent, thereby ensuring that any new amended national standard would not result in prohibited ''backsliding.'' For those equipment classes for which ASHRAE set more-stringent or new efficiency levels (*i.e.,* small, large, and very large water-cooled and evaporatively-cooled air conditioners; variable refrigerant flow water-source heat pumps with a cooling capacity either less than 17,000 Btu/h or equal to or greater than 135,000 Btu/h with and without heat recovery; and computer room air conditioners), where possible,[2] DOE analyzed the energy savings potential of amended national energy conservation standards (at both the new ASHRAE Standard 90.1 efficiency levels and more-stringent efficiency levels). For the classes of water-cooled and evaporatively-cooled air conditioning and heating equipment, as well as the VRF equipment classes, DOE determined that the potential for energy savings from adopting more stringent levels than the ASHRAE Standard 90.1 levels was not significant, and, thus, DOE is proposing to adopt the ASHRAE Standard 90.1 levels without further analysis. (See section IV.B for further details.) For computer room air conditioners, DOE also analyzed the economic justification of amended national energy conservation standards at more-stringent efficiency levels, in addition to the energy savings potential. DOE did not identify any equipment on the market for evaporatively-cooled air conditioners with a capacity less than 240,000 Btu/h (small and large product classes) or VRF water-source heat pumps with a cooling capacity less than 17,000 Btu/h. As a result, DOE did not analyze the economic or energy savings potential of these amended national energy conservation standards, because there are currently no energy savings associated with these product classes, nor is there any available equipment information.

In light of the above, DOE has tentatively concluded that for twelve classes of water-cooled and evaporatively-cooled air conditioners, four classes of VRF water-source heat pumps, and thirty classes of computer room air conditioners: (1) The revised efficiency levels in ASHRAE 90.1–2010 [3] are more stringent than current national standards or represent new standards; and (2) their adoption as Federal energy conservation standards would result in energy savings where models exist below the revised efficiency levels. DOE has also tentatively concluded that there is not clear and convincing evidence as would justify adoption of more-stringent efficiency levels for this equipment.

Thus, in accordance with the criteria discussed elsewhere in this notice, DOE is proposing to amend its existing energy conservation standards for twelve equipment classes of water-cooled and evaporatively-cooled equipment and VRF water-source heat pumps less than 17,000 Btu/h (with and without heat recovery), and to establish new energy conservation standards for VRF water-source heat pumps at or greater than 135,000 Btu/h (with and without heat recovery) and thirty classes of computer room air conditioners by adopting the efficiency levels specified by ASHRAE Standard 90.1–2010.

The proposed standards for small water-cooled and evaporatively-cooled commercial package air conditioners, VRF water-source heat pumps less than 17,000 Btu/h, and computer room air conditioners less than 65,000 Btu/h would apply to equipment manufactured on or after the date two years after the effective date specified in ASHRAE Standard 90.1–2010 (*i.e.,* by June 1, 2013 for small water-cooled and evaporatively-cooled commercial package air conditioners, and by October 29, 2012 for VRF water-source heat pump less than 17,000 Btu/h and computer room air conditioners less than 65,000 Btu/h). (42 U.S.C. 6313(a)(6)(D)(i)) The proposed standards for large and very large water-cooled and evaporatively-cooled commercial package air conditioners, VRF water-source heat pumps equal to or greater than 135,000 Btu/h, and computer room air conditioners equal to or greater than 65,000 Btu/h would apply to such equipment manufactured on or after the date three years after the effective date specified in ASHRAE Standard 90.1–2010 (*i.e.,* by June 1, 2014 for large and very large water-cooled and evaporatively-cooled commercial package air conditioners, and by October 29, 2013 for VRF water-source heat pumps equal to or greater than 135,000 Btu/h and computer room air conditioners equal to or greater than 65,000 Btu/h). (42 U.S.C. 6313(a)(6)(D)(ii))

In addition, when the test procedures referenced in ASHRAE Standard 90.1 are updated, EPCA requires DOE to amend the test procedures for those ASHRAE equipment (which manufacturers are required to use in order to certify compliance with energy conservation standards mandated under EPCA) to be consistent with the amended industry test procedure. (42 U.S.C. 6314(a)(4)(B)) Specifically, these amendments would update the citations and incorporations by reference in

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stated that the statutory trigger requiring DOE to adopt uniform national standards based on ASHRAE action is for ASHRAE to change a standard for any of the equipment listed in EPCA section 342(a)(6)(A)(i) (42 U.S.C. 6313(a)(6)(A)(i)) by increasing the energy efficiency level for that equipment type. *Id.* at 10042. In other words, if the revised ASHRAE Standard 90.1 leaves the standard level unchanged or lowers the standard, as compared to the level specified by the national standard adopted pursuant to EPCA, DOE does not have the authority to conduct a rulemaking to consider a higher standard for that equipment pursuant to 42 U.S.C. 6313(a)(6)(A). DOE subsequently reiterated this position in a final rule published in the **Federal Register** on July 22, 2009. 74 FR 36312, 36313.

[2] If DOE found there were no models available on the market for any equipment class, DOE did not perform an analysis of the energy savings potential of that equipment class.

[3] To obtain a copy of ASHRAE Standard 90.1–2010, visit *www.ashrae.org/technology/page/548* or contact the ASHRAE publications department by e-mail at *orders@ashrae.org* or by telephone at (800) 527–4723.

DOE's regulations to the most recent version of the following industry standards: (1) AHRI 210/240–2008 (Performance Rating of Unitary Air-Conditioning & Air-Source Heat Pump Equipment); (2) AHRI 340/360–2007 (Performance Rating of Unitary Commercial and Industrial Unitary Air-Conditioning and Heat Pump Equipment); (3) UL 727–2006 (Standard for Safety for Oil-Fired Central Furnaces); (4) ANSI Z21.47–2006 (Standard for Gas-Fried Central Furnaces); and (5) ANSI Z21.10.3–2006 (Gas Water Heaters, Volume III, Storage Water Heaters with Input Ratings Above 75,000 Btu Per Hour, Circulating and Instantaneous). DOE is also proposing to adopt three new test procedures for VRF equipment (AHRI 1230–2010), computer room air conditioners (ASHRAE 127–2007), and single package vertical units (AHRI 390–2003). In addition to harmonizing the test procedures with the latest versions in ASHRAE Standard 90.1, DOE also reviewed each of these test procedures in their totality as part of DOE's seven-year review required by EPCA.

DOE is also proposing to include an optional ''break-in'' provision in its test procedures for commercial air conditioning and heating equipment, in order to provide the manufacturer with the option of running the test unit for a set amount of time prior to testing the equipment. Such a provision could allow components within the unit to warm-up to conditions that are more characteristic of typical operation and more accurately reflect efficiencies achieved in the field. Lastly, DOE has identified a number of issues associated with its test procedures for which it is seeking comments from interested parties.

## II. Introduction

The following section briefly discusses the statutory authority underlying today's proposal, as well as some of the relevant historical background related to the establishment of standards for water-cooled and evaporatively-cooled air conditioners, variable refrigerant flow water-source heat pump systems, and computer room air conditioners.

### *A. Authority*

Title III, Part C[4] of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6311–6317, as codified), added by Public Law 95–619, Title IV, § 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which includes the commercial heating, air-conditioning, and water-heating equipment that is the subject of this rulemaking.[5] In general, this program addresses the energy efficiency of certain types of commercial and industrial equipment. Relevant provisions of the Act specifically include definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labelling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

EPCA contains mandatory energy conservation standards for commercial heating, air-conditioning, and water-heating equipment. (42 U.S.C. 6313(a)) Specifically, the statute sets standards for small, large, and very large commercial package air-conditioning and heating equipment, packaged terminal air conditioners (PTACs) and packaged terminal heat pumps (PTHPs), warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks. *Id.* In doing so, EPCA established Federal energy conservation standards that generally correspond to the levels in ASHRAE Standard 90.1, as in effect on October 24, 1992 (*i.e.,* ASHRAE Standard 90.1–1989), for each type of covered equipment listed in 42 U.S.C. 6313(a). The Energy Independence and Security Act of 2007 (EISA 2007) amended EPCA by adding definitions and setting minimum energy conservation standards for single-package vertical air conditioners (SPVACs) and single-package vertical heat pumps (SPVHPs). (42 U.S.C. 6313(a)(10)(A)) The efficiency standards for SPVACs and SPVHPs established by EISA 2007 correspond to the levels contained in ASHRAE Standard 90.1–2004, which originated as addendum ''d'' to ASHRAE Standard 90.1–2001.

In acknowledgement of technological changes that yield energy efficiency benefits, Congress further directed DOE through EPCA to consider amending the existing Federal energy conservation standard for each type of equipment listed, each time ASHRAE Standard 90.1 is amended with respect to such equipment. (42 U.S.C. 6313(a)(6)(A)) For each type of equipment, EPCA directs that if ASHRAE Standard 90.1 is amended, DOE must publish in the **Federal Register** an analysis of the energy savings potential of amended energy efficiency standards within 180 days of the amendment of ASHRAE Standard 90.1. (42 U.S.C. 6313(a)(6)(A)(i)) EPCA further directs that DOE must adopt amended standards at the new efficiency level in ASHRAE Standard 90.1, unless clear and convincing evidence supports a determination that adoption of a more stringent level would produce significant additional energy savings and be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)) If DOE decides to adopt as a national standard the efficiency levels specified in the amended ASHRAE Standard 90.1, DOE must establish such standard not later than 18 months after publication of the amended industry standard. (42 U.S.C. 6313(a)(6)(A)(ii)(I)) However, if DOE determines that a more-stringent standard is justified under 42 U.S.C. 6313(a)(6)(A)(ii)(II), then it must establish such more-stringent standard not later than 30 months after publication of the amended ASHRAE Standard 90.1. (42 U.S.C. 6313(a)(6)(B)) (In addition, DOE notes that pursuant to the EISA 2007 amendments to EPCA, under 42 U.S.C. 6313(a)(6)(C), the agency must periodically review its already-established energy conservation standards for ASHRAE products. 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.)

EISA 2007 also amended EPCA to require that DOE review the most recently published ASHRAE Standard 90.1 (*i.e.,* ASHRAE Standard 90.1–2010) with respect to SPVACs and SPVHPs in accordance with the procedures established for ASHRAE equipment under 42 U.S.C. 6313(a)(6). (42 U.S.C. 6313(a)(10)(B)) However, DOE believes that this one-time requirement is separate and independent from the requirement described in the paragraph above for all ASHRAE products and that it requires DOE to evaluate potential standards higher than the ASHRAE Standard 90.1–2010 level for single-package vertical air conditioners and heat pumps, even if the efficiency levels for SPVACs and SPVHPs have not changed since the last version of ASHRAE Standard 90.1.[6] DOE is conducting a separate rulemaking to further evaluate the efficiency levels for this equipment class.

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

[5] All references to EPCA in this document refer to the statute as amended through the Energy Independence and Security Act of 2007, Public Law 110–140.

[6] Once DOE has completed its rulemaking obligations under 42 U.S.C. 6313(a)(10)(B), SPVACs and SPVHPs will be treated similar to other ASHRAE equipment going forward.

EPCA also requires that if a test procedure referenced in ASHRAE Standard 90.1 is updated, DOE must update its test procedure to be consistent with the amended test procedure in ASHRAE Standard 90.1, unless DOE determines that the amended test procedure is not reasonably designed to produce test results which reflect the energy efficiency, energy use, or estimated operating costs of the ASHRAE product during a representative average use cycle. In addition, DOE must determine that the amended test procedure is not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2) and (4))

Additionally, EISA 2007 amended EPCA to require that at least once every 7 years, DOE must conduct an evaluation of the test procedures for all covered equipment and either amend test procedures (if the Secretary determines that amended test procedures would more accurately or fully comply with the requirements of 42 U.S.C. 6314(a)(2)–(3)) or publish notice in the **Federal Register** of any determination not to amend a test procedure. (42 U.S.C. 6314(a)(1)(A)) Under this requirement, DOE must review the test procedures for the various types of ASHRAE equipment not later than December 19, 2014 (*i.e.,* 7 years after the enactment of EISA 2007). Thus, the final rule resulting from this rulemaking will satisfy the requirement to review the test procedures for the certain types of ASHRAE equipment included in this rule (*i.e.,* those equipment for which DOE has been triggered) within seven years.

On October 29, 2010, ASHRAE officially released and made public ASHRAE Standard 90.1–2010. This action triggered DOE's obligations under 42 U.S.C. 6313(a)(6), as outlined above.

When considering the possibility of a more-stringent standard, DOE's more typical rulemaking requirements under EPCA apply (*i.e.,* a determination of technological feasibility, economic justification, and significant energy savings). For example, EPCA provides that in deciding whether such a standard is economically justified, DOE must determine, after receiving comments on the proposed standard, whether the benefits of the standard exceed its burdens 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 product in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses of the products likely to result from the standard;

(3) The total projected amount of energy savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the products likely to result from 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 standard;

(6) The need for national energy conservation; and

(7) Other factors the Secretary considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i)–(ii); 42 U.S.C. 6316(a))

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 such standard would likely 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 at the time of the Secretary's finding. (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 (and, as applicable, water) savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii) and 42 U.S.C. 6316(a))

Additionally, when a type or class of covered equipment such as ASHRAE equipment, has two or more subcategories, DOE often specifies more than one standard level. DOE generally will adopt a different standard level than that which applies generally to such type or class of products for any group of covered products that have the same function or intended use if DOE determines that products within such group: (A) Consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and which justifies a higher or lower standard. (42 U.S.C. 6295(q)(1); 42 U.S.C. 6316(a)) In determining whether a performance-related feature justifies a different standard for a group of products, DOE generally considers such factors as the utility to the consumer of the feature and other factors DOE deems appropriate. In a rule prescribing such a standard, DOE includes an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2); 6316(a)) DOE plans to follow a similar process in the context of today's rulemaking.

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011 (76 FR 3281 (Jan. 21, 2011)). Executive Order 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.

DOE emphasizes 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 NOPR is consistent with these principles, including the requirement that, to the extent permitted by law, benefits justify costs and that net benefits are maximized.

Consistent with EO 13563, and the range of impacts analyzed in this rulemaking, the energy efficiency standard proposed herein by DOE achieves maximum net benefits.

*B. Background*

1. ASHRAE Standard 90.1–2010

As noted above, ASHRAE released a new version of ASHRAE Standard 90.1 on October 29, 2010. The ASHRAE standard addresses efficiency levels for many types of commercial heating, ventilating, air-conditioning (HVAC), and water-heating equipment covered by EPCA. ASHRAE Standard 90.1–2010 revised its efficiency levels for certain commercial equipment and revised its scope to include additional equipment, but for the remaining equipment, ASHRAE left in place the preexisting levels (*i.e.,* the efficiency levels specified in EPCA or the efficiency levels in ASHRAE Standard 90.1–2007).

Table II.1 below presents the equipment classes for which ASHRAE Standard 90.1–2010 efficiency levels differed from those in the previous version of ASHRAE Standard 90.1 (*i.e.,* ASHRAE Standard 90.1– 2007). Table II.1 also presents the existing Federal energy conservation standards and the corresponding standard levels in both ASHRAE Standard 90.1–2007 and ASHRAE Standard 90.1–2010 for those equipment classes. Section IV of this document assesses each of these equipment types to determine whether the amendments in ASHRAE Standard 90.1–2010 constitute increased energy efficiency levels, as would necessitate further analysis of the potential energy savings from amended Federal energy conservation standards, the conclusions of which are presented in the final column of Table II.1.

TABLE II.1—FEDERAL ENERGY CONSERVATION STANDARDS AND ENERGY EFFICIENCY LEVELS IN ASHRAE STANDARD 90.1–2007 AND ASHRAE STANDARD 90.1–2010 FOR SPECIFIC TYPES OF COMMERCIAL EQUIPMENT *

| ASHRAE equipment class** | Energy efficiency levels in ASHRAE standard 90.1–2007 | Energy efficiency levels in ASHRAE standard 90.1–2010 | Federal energy conservation standards | DOE review triggered? |
|---|---|---|---|---|
| **Commercial Warm-Air Furnaces** | | | | |
| Gas-Fired Commercial Warm-Air furnace | $E_c$ = 80% Interrupted or intermittent ignition device, jacket losses not exceeding 0.75% of input rating, power vent or flue damper*** | $E_t$ = 80% Interrupted or intermittent ignition device, jacket losses not exceeding 0.75% of input rating, power vent or flue damper*** | $E_t$ = 80% | No |
| **Commercial Package Air-Conditioning and Heating Equipment—Water-Cooled** | | | | |
| Water-cooled Air Conditioner, ≥65,000 and <135,000 Btu/h, Electric Resistance Heating or No Heating. | 11.5 EER | 12.1 EER (as of 6/1/11) | 11.5 EER | Yes |
| Water-cooled Air Conditioner, ≥65,000 and <135,000 Btu/h, All Other Heating. | 11.3 EER | 11.9 EER (as of 6/1/11) | 11.3 EER | Yes |
| Water-cooled Air Conditioner, ≥135,000 and <240,000 Btu/h, Electric Resistance Heating or No Heating. | 11.0 EER | 12.5 EER (as of 6/1/11) | 11.0 EER | Yes |
| Water-cooled Air Conditioner, ≥135,000 and <240,000 Btu/h, All Other Heating. | 10.8 EER | 12.3 EER (as of 6/1/11) | 11.0 EER | Yes |
| Water-cooled Air Conditioner, ≥240,000 Btu/h, Electric Resistance Heating or No Heating. | 11.0 EER | 12.4 EER (as of 6/1/11) | 11.0 EER | Yes |
| Water-cooled Air Conditioner, ≥240,000 Btu/h, All Other Heating. | 10.8 EER | 12.2 EER (as of 6/1/11) | 10.8 EER | Yes |
| **Commercial Package Air-Conditioning and Heating Equipment—Evaporatively-Cooled** | | | | |
| Evaporatively-cooled Air Conditioner, ≥65,000 and <135,000 Btu/h, Electric Resistance Heating or No Heating. | 11.5 EER | 12.1 EER (as of 6/1/11) | 11.5 EER | Yes |
| Evaporatively-cooled Air Conditioner, ≥65,000 and <135,000 Btu/h, All Other Heating. | 11.3 EER | 11.9 EER (as of 6/1/11) | 11.3 EER | Yes |
| Evaporatively-cooled Air Conditioner, ≥135,000 and <240,000 Btu/h, Electric Resistance Heating or No Heating. | 11.0 EER | 12.0 EER (as of 6/1/11) | 11.0 EER | Yes |
| Evaporatively-cooled Air Conditioner, ≥135,000 and <240,000 Btu/h, All Other Heating. | 10.8 EER | 11.8 EER (as of 6/1/11) | 11.0 EER | Yes |
| Evaporatively-cooled Air Conditioner, ≥240,000 and <760,000 Btu/h, Electric Resistance Heating or No Heating. | 11.0 EER | 11.9 EER (as of 6/1/11) | 11.0 EER | Yes |
| Evaporatively-cooled Air Conditioner, ≥240,000 and <760,000 Btu/h, All Other Heating. | 10.8 EER | 11.7 EER† (as of 6/1/11) | 10.8 EER | Yes |
| **Commercial Package Air-Conditioning and Heating Equipment—VRF Systems††** | | | | |
| VRF Air Conditioners, Air-cooled, <65,000 Btu/h | N/A | 13.0 SEER | 13.0 SEER | No |
| VRF Air Conditioners, Air-cooled, ≥65,000 and <135,000 Btu/h, Electric Resistance or No Heating. | N/A | 11.2 EER | 11.2 EER | No |
| VRF Air Conditioners, Air-cooled, ≥135,000 and <240,000 Btu/h, Electric Resistance or No Heating. | N/A | 11.0 EER | 11.0 EER | No |
| VRF Air Conditioners, Air-cooled, ≥240,000 Btu/h, Electric Resistance or No Heating. | N/A | 10.0 EER | 10.0 EER | No |
| VRF Heat Pumps, Air-cooled, <65,000 Btu/h | N/A | 13.0 SEER<br>7.7 HSPF | 13.0 SEER<br>7.7 HSPF | No |

TABLE II.1—FEDERAL ENERGY CONSERVATION STANDARDS AND ENERGY EFFICIENCY LEVELS IN ASHRAE STANDARD 90.1–2007 AND ASHRAE STANDARD 90.1–2010 FOR SPECIFIC TYPES OF COMMERCIAL EQUIPMENT *—Continued

| ASHRAE equipment class** | Energy efficiency levels in ASHRAE standard 90.1–2007 | Energy efficiency levels in ASHRAE standard 90.1–2010 | Federal energy conservation standards | DOE review triggered? |
|---|---|---|---|---|
| VRF Heat Pumps, Air-cooled, ≥65,000 and <135,000 Btu/h, without heat recovery, Electric Resistance or No Heating. | N/A | 11.0 EER<br>3.3 COP | 11.0 EER<br>3.3 COP | No |
| VRF Heat Pumps, Air-cooled, ≥65,000 and <135,000 Btu/h, with heat recovery, Electric Resistance or No Heating. | N/A | 10.8 EER<br>3.3 COP | 11.0 EER (electric resistance heating)<br>10.8 EER (no electric resistance heating)†††<br>3.3 COP | No |
| VRF Heat Pumps, Air-cooled, ≥135,000 and <240,000 Btu/h, without heat recovery, Electric Resistance or No Heating. | N/A | 10.6 EER<br>3.2 COP | 10.6 EER<br>3.2 COP | No |
| VRF Heat Pumps, Air-cooled, ≥135,000 and <240,000 Btu/h, with heat recovery, Electric Resistance or No Heating. | N/A | 10.4 EER<br>3.2 COP | 10.6 EER (electric resistance heating)<br>10.4 (no electric resistance heating)†††<br>3.2 COP | No |
| VRF Heat Pumps, Air-cooled, ≥240,000 Btu/h, without heat recovery, Electric Resistance or No Heating. | N/A | 9.5 EER<br>3.2 COP | 9.5 EER<br>3.2 COP | No |
| VRF Heat Pumps, Air-cooled, ≥240,000 Btu/h, with heat recovery, Electric Resistance or No Heating. | N/A | 9.3 EER<br>3.2 COP | 9.5 EER (electric resistance heating)<br>9.3 EER (no electric resistance heating)†††<br>3.2 COP | No |
| VRF Heat Pumps, Water-source, <65,000 Btu/h, without heat recovery. | N/A | 12.0 EER<br>4.2 COP | 11.2 EER (<17,000 Btu/h)‡<br>12.0 EER (≥17,000 Btu/h and <65,000 Btu/h)<br>4.2 COP | Yes✧✧✧<br>for <17,000 Btu<br>No<br>for ≥17,000 Btu/h and <65,000 Btu/h |
| VRF Heat Pumps, Water-source, <65,000 Btu/h, with heat recovery. | N/A | 11.8 EER<br>4.2 COP | 11.2 EER (< 17,000 Btu/h)‡<br>12.0 EER (≥17,000 Btu/h and <65,000 Btu/h)<br>4.2 COP | Yes✧✧✧<br>for <17,000 Btu<br>No<br>for ≥17,000 Btu/h and <65,000 Btu/h |
| VRF Heat Pumps, Water-source, ≥65,000 and <135,000 Btu/h, without heat recovery. | N/A | 12.0 EER<br>4.2 COP | 12.0 EER<br>4.2 COP | No |
| VRF Heat Pumps, Water-source, ≥65,000 and <135,000 Btu/h, with heat recovery. | N/A | 11.8 EER<br>4.2 COP | 12.0 EER<br>4.2 COP | No |
| VRF Heat Pumps, Water-source, ≥135,000 Btu/h, without heat recovery. | N/A | 10.0 EER<br>3.9 COP | N/A | Yes✧✧✧ |
| VRF Heat Pumps, Water-source, ≥135,000 Btu/h, with heat recovery. | N/A | 9.8 EER<br>3.9 COP | N/A | Yes✧✧✧ |
| **Commercial Package Air-Conditioning and Heating Equipment—PTACs and PTHPs‡‡** | | | | |
| Package Terminal Air Conditioner, <7,000 Btu/h, Standard Size (New Construction)‡‡‡. | EER = 11.0 | EER = 11.7 (as of 10/8/12) | EER = 11.7 | No |
| Package Terminal Air Conditioner, ≥7,000 and <15,000 Btu/h, Standard Size (New Construction)‡‡‡. | EER = 12.5—(0.213 x Cap✧) | EER = 13.8—(0.300 x Cap✧) (as of 10/8/12) | EER = 13.8—(0.300 x Cap✧) | No |
| Package Terminal Air Conditioner, >15,000 Btu/h, Standard Size (New Construction)‡‡‡. | EER = 9.3 | EER = 9.3 | EER = 9.3 | No |
| Package Terminal Heat Pump, <7,000 Btu/h, Standard Size (New Construction)‡‡‡. | EER = 10.8<br>COP = 3.0 | EER = 11.9<br>COP = 3.3 (as of 10/8/12) | EER = 11.9<br>COP = 3.3 | No |
| Package Terminal Heat Pump, ≥7,000 and <15,000 Btu/h, Standard Size (New Construction)‡‡‡. | EER = 12.3—(0.213 x Cap✧)<br>COP = 3.2—(0.026 x Cap✧) | EER = 14.0—(0.300 x Cap✧)<br>COP = 3.7—(0.052 x Cap✧) (as of 10/8/12) | EER = 14.0—(0.300 x Cap✧)<br>COP = 3.7—(0.052 x Cap✧) | No |
| Package Terminal Heat Pump, >15,000 Btu/h, Standard Size (New Construction)‡‡‡. | EER = 9.1<br>COP = 2.8 | EER = 9.5<br>COP = 2.9 | EER = 9.5<br>COP = 2.9 | No |
| **Commercial Package Air-Conditioning and Heating Equipment—SDHV and TTW** | | | | |
| Through-the-Wall, Air-cooled Heat Pumps, ≤30,000 Btu/h. | 12.0 SEER<br>7.4 HSPF | 13.0 SEER<br>7.4 HSPF | 13.0 SEER<br>7.7 HSPF | No |
| Small-Duct, High-Velocity, Air-cooled Heat Pumps, <65,000 Btu/h. | 10.0 SEER<br>6.8 HSPF | N/A✧✧ | 13.0 SEER<br>7.7 HSPF | No |
| **Air Conditioners and Condensing Units Serving Computer Rooms** | | | | |
| Air conditioners, air-cooled, <65,000 Btu/h | N/A | 2.20 SCOP (downflow)<br>2.09 SCOP (upflow) | N/A | Yes✧✧✧ |
| Air conditioners, air-cooled, ≥65,000 and <240,000 Btu/h. | N/A | 2.10 SCOP (downflow)<br>1.99 SCOP (upflow) | N/A | Yes✧✧✧ |
| Air conditioners, air-cooled, ≥240,000 Btu/h | N/A | 1.90 SCOP (downflow)<br>1.79 SCOP (upflow) | N/A | Yes✧✧✧ |

TABLE II.1—FEDERAL ENERGY CONSERVATION STANDARDS AND ENERGY EFFICIENCY LEVELS IN ASHRAE STANDARD 90.1–2007 AND ASHRAE STANDARD 90.1–2010 FOR SPECIFIC TYPES OF COMMERCIAL EQUIPMENT *—Continued

| ASHRAE equipment class** | Energy efficiency levels in ASHRAE standard 90.1–2007 | Energy efficiency levels in ASHRAE standard 90.1–2010 | Federal energy conservation standards | DOE review triggered? |
|---|---|---|---|---|
| Air conditioners, water-cooled, <65,000 Btu/h ..... | N/A | 2.60 SCOP (downflow)<br>2.49 SCOP (upflow) | N/A | Yes✧✧✧ |
| Air conditioners, water-cooled, ≥65,000 and <240,000 Btu/h. | N/A | 2.50 SCOP (downflow)<br>2.39 SCOP (upflow) | N/A | Yes✧✧✧ |
| Air conditioners, water-cooled, ≥240,000 Btu/h ..... | N/A | 2.40 SCOP (downflow)<br>2.29 SCOP (upflow) | N/A | Yes✧✧✧ |
| Air conditioners, water-cooled with fluid economizer, <65,000 Btu/h. | N/A | 2.55 SCOP (downflow)<br>2.44 SCOP (upflow) | N/A | Yes✧✧✧ |
| Air conditioners, water-cooled with fluid economizer, ≥65,000 and <240,000 Btu/h. | N/A | 2.45 SCOP (downflow)<br>2.34 SCOP (upflow) | N/A | Yes✧✧✧ |
| Air conditioners, water-cooled with fluid economizer, ≥240,000 Btu/h. | N/A | 2.35 SCOP (downflow)<br>2.24 SCOP (upflow) | N/A | Yes✧✧✧ |
| Air conditioners, glycol-cooled, <65,000 Btu/h ..... | N/A | 2.50 SCOP (downflow)<br>2.39 SCOP (upflow) | N/A | Yes✧✧✧ |
| Air conditioners, glycol-cooled, ≥65,000 and <240,000 Btu/h. | N/A | 2.15 SCOP (downflow)<br>2.04 SCOP (upflow) | N/A | Yes✧✧✧ |
| Air conditioners, glycol-cooled, ≥240,000 Btu/h ..... | N/A | 2.10 SCOP (downflow)<br>1.99 SCOP (upflow) | N/A | Yes✧✧✧ |
| Air conditioners, glycol-cooled with fluid economizer, <65,000 Btu/h. | N/A | 2.45 SCOP (downflow)<br>2.34 SCOP (upflow) | N/A | Yes✧✧✧ |
| Air conditioners, glycol-cooled with fluid economizer, ≥65,000 and <240,000 Btu/h. | N/A | 2.10 SCOP (downflow)<br>1.99 SCOP (upflow) | N/A | Yes✧✧✧ |
| Air conditioners, glycol-cooled with fluid economizer, ≥240,000 Btu/h. | N/A | 2.05 SCOP (downflow)<br>1.94 SCOP (upflow) | N/A | Yes✧✧✧ |

* "$E_c$" means combustion efficiency; "$E_t$" means thermal efficiency; "EER" means energy efficiency ratio; "SEER" means seasonal energy efficiency ratio; "HSPF" means heating seasonal performance factor; "COP" means coefficient of performance; "Btu/h" means British thermal units per hour; and "SCOP" means sensible coefficient of performance.

** ASHRAE Standard 90.1–2010 equipment classes may differ from the equipment classes defined in DOE's regulations, but no loss of coverage will occur (*i.e.,* all previously covered DOE equipment classes remained covered equipment).

*** A vent damper is an acceptable alternative to a flue damper for those furnaces that draw combustion air from conditioned space.

† ASHRAE Standard 90.1–2010 specifies this efficiency level as 12.2 EER. However, as explained in section IV.B.2 of this NOPR, DOE believes this level was a mistake and that the correct level is 11.7 EER.

†† Variable Refrigerant Flow (VRF) systems are newly defined equipment classes in ASHRAE Standard 90.1–2010. As discussed in section IV.B.3 of this NOPR, DOE believes these systems are currently covered by Federal energy conservation standards for commercial package air conditioning and heating equipment.

††† For these equipment classes, ASHRAE sets lower efficiency requirements for equipment with heat recovery systems. DOE believes systems with heat recovery and electric resistance heating would be required to meet the current Federal standard for equipment with electric resistance heating (*i.e.,* the Federal standard level shown in the table). However, for equipment with heat recovery and no electric resistance heating, DOE believes heat recovery would be an "other" heating type allowing for a 0.2 EER reduction in the Federal minimum requirement.

‡ The Federal energy conservation standards for this equipment class are specified differently for equipment with cooling capacity <17,000 Btu/h. However, ASHRAE Standard 90.1–2010 does not distinguish this equipment class.

‡‡ For equipment rated according to the DOE test procedure, all EER values must be rated at 95°F outdoor dry-bulb temperature for air-cooled products and evaporatively-cooled products, and at 85°F entering water temperature for water-cooled products. All COP values must be rated at 47°F outdoor dry-bulb temperature for air-cooled products, and at 70°F entering water temperature for water-source heat pumps.

‡‡‡ "Standard size" refers to PTAC or PTHP equipment with wall sleeve dimensions ≥16 inches high, or ≥42 inches wide.

✧ "Cap" means cooling capacity in kBtu/h at 95°F outdoor dry-bulb temperature.

✧✧ ASHRAE Standard 90.1–2010 includes an efficiency level of 10.0 SEER for these products. However, as explained in section IV.B.5 of this NOPR, DOE believes that ASHRAE did not intend to set an efficiency level for these products.

✧✧✧ An energy-savings analysis for this class of equipment was not conducted for the notice of data availability published on May 5, 2011 due to either a lack of data or because there is no equipment on the market that would fall into this equipment class.

2. Notice of Data Availability

On May 5, 2011, DOE published a notice of data availability (May 2011 NODA) in the **Federal Register** and requested public comment as a preliminary step required pursuant to EPCA when DOE considers amended energy conservation standards for certain types of commercial equipment covered by ASHRAE Standard 90.1. 76 FR 25622. Specifically, the May 2011 NODA presented for public comment DOE's analysis of the potential energy savings estimates for amended national energy conservation standards for types of commercial equipment based on: (1) The modified efficiency levels contained within ASHRAE Standard 90.1–2010; and (2) more-stringent efficiency levels. *Id.* at 25637. DOE has described these analyses and preliminary conclusions and sought input from interested parties, including the submission of data and other relevant information. *Id.*

In addition, DOE presented a discussion in the May 2011 NODA of the changes found in ASHRAE Standard 90.1–2010. *Id.* at 25630–37. The May 2011 NODA includes a description of DOE's evaluation of each ASHRAE equipment type in order for DOE to determine whether the amendments in ASHRAE Standard 90.1–2010 have increased efficiency levels. As an initial matter, DOE sought to determine which requirements for covered equipment in ASHRAE Standard 90.1, if any, have been revised solely to reflect the level of the current Federal energy conservation standard (where ASHRAE is merely "catching up" to the current national standard), have been revised but lowered, have been revised to include design requirements without changes to the efficiency level, or have had any other revisions made that do not increase the standard level, in which case, DOE is not triggered to act under 42 U.S.C. 6313(a)(6) for that particular product type. For those types of equipment in ASHRAE Standard 90.1 for which ASHRAE actually increased efficiency levels above the current Federal standard, DOE subjected that equipment to the potential energy savings analysis discussed above and presented the results in the May 2011 NODA for public comment. 76 FR 25622, 25644–47 (May 5, 2011). Additionally, for single package vertical air conditioners and heat pumps, although the levels in ASHRAE Standard 90.1–2010 were unchanged, DOE performed an analysis of their potential energy savings as required by 42 U.S.C. 6313(a)(10)(B). Lastly, DOE presented an initial assessment of the

test procedure changes included in ASHRAE Standard 90.1–2010.

As a result of the preliminary determination of scope set forth in the May 2011 NODA, DOE found that there were equipment types for which ASHRAE increased the efficiency levels (thereby triggering further analysis) including: (1) Water-cooled and evaporatively-cooled air conditioners; (2) two classes of VRF water-source heat pumps with and without heat recovery; and (3) computer room air conditioners (which were not previously covered). 76 FR 25622, 25644–47 (May 5, 2011). DOE presented its methodology, data, and results for the preliminary energy savings analysis developed for the water-cooled and evaporatively-cooled equipment classes in the May 2011 NODA for public comment. 76 FR 25622, 25637–46 (May 5, 2011). For the remaining equipment classes, DOE requested data and information that would allow it to accurately assess the energy savings potential of those equipment classes.

## III. General Discussion of Comments Regarding the ASHRAE Process and DOE's Interpretation of EPCA's Requirements With Respect to ASHRAE Equipment

In response to its request for comment on the May 2011 NODA, DOE received seven comments from manufacturers, trade associations, utilities, and energy efficiency advocates. As discussed above, these comments are available in the docket for this rulemaking and are available for review by following the instructions in the **ADDRESSES** section. The following section summarizes the issues raised in these comments, along with DOE's responses.

### *A. The ASHRAE Process*

In response to the preliminary determination of scope and analyses set forth in the May 2011 NODA, DOE received several comments regarding the ASHRAE process for considering revised efficiency levels for certain commercial heating, ventilating, air-conditioning, and water heater equipment.

Edison Electric Institute (EEI) stated that it supported the efficiency levels for equipment shown in ASHRAE Standard 90.1–2010, because the efficiency levels were created through a consensus-based process, DOE's analysis shows energy savings for all ASHRAE values analyzed, and adopting ASHRAE values would ensure a streamlined approach. (EEI, No. 7 at p. 1–2) [7] The Air-Conditioning, Heating, and Refrigeration Institute (AHRI) stated that AHRI and its members were participants in the development of ASHRAE Standard 90.1–2010, and that revisions to ASHRAE Standard 90.1 are developed through a consensus process. AHRI encouraged DOE to adopt the efficiency levels in ASHRAE Standard 90.1–2010 as Federal minimum efficiency standards. (AHRI, No. 11 at p. 1, 3)

DOE maintains its position expressed in the March 20, 2009 NOPR, as restated below. While DOE recognizes that efficiency levels in ASHRAE Standard 90.1–2010 are the result of a consensus process, EPCA clearly sets forth DOE's obligations in terms of considering amendments when ASHRAE revises Standard 90.1. Specifically, EPCA directs that if ASHRAE Standard 90.1 is amended, DOE must adopt amended energy conservation standards at the new efficiency level in ASHRAE Standard 90.1, unless clear and convincing evidence supports a determination that adoption of a more-stringent level as a national standard would produce significant additional energy savings and be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)) In order to determine if more-stringent efficiency levels would meet EPCA's criteria, DOE must review the efficiency levels in ASHRAE Standard 90.1–2010 and more-stringent efficiency levels for their energy savings and economic potentials irrespective of whether the efficiency levels were part of a consensus standard. 74 FR 12000, 12006.

### *B. The Definition of ''Amendment'' With Respect to the Efficiency Levels in ASHRAE Standard 90.1*

The Appliance Standards Awareness Project (ASAP), the Natural Resources Defense Council (NRDC), the Northwest Energy Efficiency Alliance (NEEA), and the Northwest Power and Conservation Council (NPCC) submitted a joint comment (hereafter referred to as ''The Advocates'' comment), which argued that although efficiency levels did not change for warm-air furnaces, ASHRAE 90.1–2010 contains design requirements (interrupted or intermittent ignition device, jacket losses not exceeding 0.75 percent of the input rating, and either power venting or a flue damper) that qualify as an amendment that triggers DOE's review. (The Advocates, No. 8 at p. 2–3) The Advocates stated in previous comments attached as Exhibit B, ''The plain language of EPCA ties DOE's duty to review and update Federal standards to ASHRAE's amendment of its own standards regardless of the direction or nature of the ASHRAE change.'' (The Advocates, No. 8 at Exhibit B, p. 3) The Advocates further note that the prescriptive requirements for warm-air furnaces meet DOE's own definition of ''amendment,'' because it increases the level of efficiency for this equipment type. (The Advocates, No. 8 at Exhibit B p. 4, referring to 73 FR 40771) Even if DOE decides it cannot adopt multi-metric standards, the Advocates believe that ASHRAE's action triggers a DOE review of the warm-air furnaces standard. (The Advocates, No. 8 at Exhibit B p. 4)

DOE does not agree with the Advocates' assertion that DOE is required to review changes in ASHRAE Standard 90.1–2010 that do not increase the efficiency level when compared to the current Federal energy conservation standards for a given type of equipment. As it did in the July 2009 Final Rule, DOE views the trigger as attached to an increased efficiency level. 74 FR 36312, 36320 (July 22, 2009). Further, since EPCA does not explicitly define the term ''amended'' in the context of ASHRAE Standard 90.1, DOE provided its interpretation of what would constitute an ''amended standard'' in a final rule published in the **Federal Register** on March 7, 2007. 72 FR 10038. In that rule, DOE stated that the statutory trigger requiring DOE to adopt uniform national standards based on ASHRAE action is for ASHRAE to change a standard for any of the equipment listed in EPCA section 342(a)(6)(A)(i) (42 U.S.C. 6313(a)(6)(A)) by increasing the energy efficiency level for that equipment type. *Id.* at 10042. The section cited above refers to ''the minimum level * * * specified in the amended ASHRAE standard,'' which DOE interprets as referring to an energy efficiency level.

The Advocates also argued that EPCA authorizes DOE to adopt a multi-metric standard. (The Advocates, No. 8 at p. 3) DOE has previously noted that Congress intended 42 U.S.C. 6313 to result in DOE ''maintain[ing] uniform national standards consistent with those set in ASHRAE/IESNA Standard 90.1.'' (The Advocates, No. 8 at p. 3, referring to 72 FR 10038, 10042 (March 7, 2007)) The Advocates, therefore, contend that DOE must read the statute as permitting sufficient authority to harmonize standards with ASHRAE Standard 90.1. (The Advocates, No. 8 at p. 3) The

[7] ''EEI, No. 7 at p. 2'' refers to: (1) To a statement that was submitted by the Edison Electric Institute and is recorded in the docket under ''Energy Conservation Program for Certain Industrial Equipment: Energy Conservation Standards for Commercial Heating, Air-Conditioning, and Water-Heating Equipment,'' Docket Number EERE–2011–BT–STD–0029, as comment number 7; and (2) a passage that appears on pages 1–2 of that statement.

Advocates also state that several products (commercial storage water heaters, instantaneous water heaters, and commercial heat pumps) are already subject to multiple efficiency requirements, some of which are based on multi-part requirements in ASHRAE Standard 90.1. (The Advocates Comment, No. 8 at p. 3) The Advocates asserted that DOE's position that it lacks legal authority to apply more than one requirement in a standard for a given product was developed by DOE during the Bush administration in the residential furnaces rulemaking, and that it reversed the agency position taken previously in the central air conditioner docket. Therefore, the Advocates urged DOE to reconsider the policy. (The Advocates, No. 8 at Exhibit C p. 2)

In response, if ASHRAE adds a prescriptive requirement for equipment where an efficiency level is already specified, DOE does not believe it has the authority to use a dual descriptor for a single equipment type. EPCA authorizes the Secretary to amend the energy conservation standards for specified equipment. (42 U.S.C. 6313(a)(6)), but under 42 U.S.C. 6311(18), the statute's definition of the term ''energy conservation standard'' is limited to: (A) A performance standard that prescribes a minimum level of energy efficiency or a maximum quantity of energy use for a product; or (B) a design requirement for a product.

The language of EPCA authorizes DOE to establish a performance standard *or* a single design standard. As such, DOE maintains its position stated in the July 2009 Final Rule that a standard that establishes both a performance standard and a design requirement is beyond the scope of DOE's legal authority, as would be a standard that included more than one design requirement. 74 FR 36312, 36322 (July 22, 2009). In this case, ASHRAE Standard 90.1–2010 recommends three design requirements, which goes beyond EPCA's limit of one design requirement for the specified covered equipment.

In light of the above, DOE maintains its position (stated in the July 2008 notice of data availability) that if the revised ASHRAE Standard 90.1 leaves the standard level unchanged or lowers the standard, as compared to the level specified by the national standard adopted pursuant to EPCA, DOE does not have the authority to conduct a rulemaking to consider a higher standard for that equipment pursuant to 42 U.S.C. 6313(a)(6)(A). 73 FR 40770, 40771 (July 16, 2008).

*C. DOE's Review of ASHRAE Equipment Independent of the ASHRAE Standards Process*

Pacific Gas and Electric Company, Southern California Gas Company, and San Diego Gas and Electric submitted a joint comment in response to the May 2011 NODA, with Southern California Edison (SCE) submitting an identical comment (hereafter referred to together as the CA IOU comment). Both the CA IOU comment and the Advocates comment argued that DOE should expand the scope of the rulemaking to include additional product classes. (CA IOU, Nos. 10 and 12 at p. 1; The Advocates, No. 8 at p. 1) Both comments specifically recommended considering amended standards for commercial air-cooled unitary air conditioners and heat pumps and commercial water heaters, arguing that higher efficiency levels would be technologically feasible and that potential national energy savings would be significant (commercial air-cooled unitary air conditioners and heat pumps) or would likely be significant (commercial water heaters). (CA IOU, Nos. 10 and 12 at p. 2; The Advocates, No. 8 at p. 5, 9) The Advocates also requested that DOE evaluate whether there are potentially significant savings for unitary water-source heat pumps. (The Advocates, No. 8 at p. 6) In addition, EEI recommended that if DOE reviews products for higher efficiency standards, it should take a fuel-neutral approach and analyze the energy savings potential from increasing energy efficiency standards for gas and oil-fired furnaces and boilers in addition to the electric products triggered by ASHRAE 90.1–2010. (EEI, No. 7 at p. 2)

The Advocates also argued that the six-year look back provision in the Energy Independence and Security Act of 2007 (EISA 2007) [8] compels DOE to review standards for all product classes, including those specifically mentioned above, that are more than five years old. (The Advocates, No. 8 at p. 1, 5–6, 9) The Advocates stated that the plain language of the provision applies to all final rules setting standards, including those issued prior to EISA 2007. (The Advocates, No. 8 at p. 2) These commenters also stated that it would be unreasonable to read the provision to exclude the most out-of-date standards, because the purpose of the provision is to keep standards up-to-date. (The Advocates, No. 8 at p. 2) Further, it was noted that the U.S. Department of Energy May 2011 Strategic Plan commits the Department to reviewing minimum appliance efficiency standards at least every 5 years. (The Advocates, No. 8 at p. 1)

The Advocates argued that EISA 2007 does not provide a temporal limitation on what is included in the ''any final rule'' language used. (The Advocates, No. 8 at Exhibit A p. 7) The Advocates also cited several Supreme Court cases in which ''any'' is interpreted to have an expansive meaning encompassing all species of the category in question. (The Advocates, No. 8 at Exhibit A p. 6–7) Therefore, the Advocates contend that the six-year review must be applied to all products that have a final rule regardless of when it was issued (*i.e.,* including those issued prior to December 19, 2007, the enactment date of EISA 2007). (The Advocates, No. 8 at Exhibit A p. 7) These commenters use this rationale to support their recommendation above for DOE to expand the scope of the present rulemaking to include additional product classes.

In response, DOE previously addressed similar comments in a March 20, 2009 Notice of Proposed Rulemaking related to ASHRAE products. 74 FR 12000. In that document, DOE acknowledged that EISA 2007 directs DOE to assess whether there is a need to update Federal energy conservation standards for certain commercial equipment (*i.e.,* ASHRAE equipment) after a certain amount of time has elapsed. However, DOE also noted that it did not believe it was Congress's intention to apply these requirements retroactively, so that DOE would immediately be in violation of its legal obligations upon passage of the statute, thereby failing from its inception. DOE did not agree that it was late or that it should immediately initiate review of certain commercial equipment. *Id.* at 12007.

DOE largely reiterated its position in the July 22, 2009 Final Rule related to ASHRAE products. 74 FR 36312, 36321. In response to DOE's previously stated position, the Advocates acknowledged that the provision is not retroactive, but rather is prospective as it requires reviews going forward. (The Advocates, No. 8 at Exhibit A p. 8–9) The Advocates also acknowledged that some final rules were already more than six years old when the amendment was enacted, and that Congress did not specifically provide a transition period. (The Advocates, No. 8 at Exhibit A p. 9) However, the Advocates contend that this does not mean DOE was out of

[8] The Energy Independence and Security Act of 2007 incorporated a provision commonly known as the ''six-year look back,'' requiring DOE to review ''any final rule establishing or amending a standard'' every six years and either publish a notice indicating that new standards are not required or begin a rulemaking proposing new standards. (42 U.S.C. 6313(a)(6)(C))

compliance at the time of enactment, but rather that DOE must begin the process of reviewing standards more than six years old. (The Advocates, No. 8 at Exhibit A p. 9)

In response, DOE notes that it has determined previously that it plans to implement the six-year look back provision prospectively and believes that the clock for the six-year look back does not commence until a final rule is published for a given product or equipment after the enactment of EISA 2007 (which occurred on December 19, 2007). As the products in question (*i.e.,* commercial air-cooled unitary air conditioners and heat pumps, commercial water heaters, and unitary water-source heat pumps) have not been the subject of a final rule since before the enactment of EISA 2007, review under the look back provision will not be required until after the next update of standards is completed following a trigger by updates to the corresponding ASHRAE Standard 90.1 efficiency levels. After that point, if ASHRAE does not update standards within six years, DOE will be compelled to review the standards under the six-year look back provision. However, as a matter of policy, DOE's May 2011 Strategic Plan expressed a goal of reviewing appliance standards at least every five years, and, accordingly, DOE will make an effort to review standards for ASHRAE products on a similar schedule, consistent with statutory mandates and available resources.

## IV. General Discussion of the Changes in ASHRAE Standard 90.1–2010 and Determination of Scope for Further Rulemaking Activity

As discussed above, before beginning an analysis of the potential economic impacts and energy savings that would result from adopting the efficiency levels specified by ASHRAE Standard 90.1–2010 or more-stringent efficiency levels, DOE first sought to determine whether or not the ASHRAE Standard 90.1–2010 efficiency levels actually represented an increase in efficiency above the current Federal standard levels. This section discusses each equipment class where the ASHRAE Standard 90.1–2010 efficiency level differs from the current Federal standard level, along with DOE's preliminary conclusion as to the action DOE is taking with respect to that equipment.

### *A. Commercial Warm-Air Furnaces*

Under 42 U.S.C. 6311(11)(A), a ''warm air furnace'' is defined as ''a self-contained oil- or gas-fired furnace designed to supply heated air through ducts to spaces that require it and includes combination warm air furnace/electric air-conditioning units but does not include unit heaters and duct furnaces.'' In its regulations, DOE defines a ''commercial warm air furnace'' as a ''warm air furnace that is industrial equipment, and that has a capacity (rated maximum input) of 225,000 Btu per hour or more.'' 10 CFR 431.72.

Gas-fired commercial warm-air furnaces are fueled by either natural gas or propane. The Federal minimum energy conservation standard for gas-fired commercial warm-air furnaces corresponds to the efficiency level in ASHRAE Standard 90.1–1989, which specifies for equipment with a capacity of 225,000 Btu/h or more, the thermal efficiency at the maximum rated capacity (rated maximum input) must be no less than 80 percent. 10 CFR 431.77(a). The Federal minimum energy conservation standard for gas-fired commercial warm-air furnaces applies to equipment manufactured on or after January 1, 1994. 10 CFR 431.77.

The current Federal standard for gas-fired commercial warm-air furnaces is in terms of ''thermal efficiency,'' which is defined as ''100 percent minus percent flue loss.'' 10 CFR 431.72. The previous version of ASHRAE Standard 90.1 (*i.e.,* ASHRAE Standard 90.1–2007) specified a minimum efficiency level of 80 percent combustion efficiency, but it defined ''combustion efficiency'' as ''100 percent minus flue losses'' in the footnote to the efficiency table for commercial warm-air gas-fired furnaces, which references ANSI Z21.47–2001, ''Standard for Gas-Fired Central Furnaces,'' as the test procedure. In its analysis for the 2009 NOPR regarding standards for ASHRAE equipment in which DOE considered the updates in ASHRAE Standard 90.1–2007, DOE noted that upon reviewing the efficiency levels and methodology specified in ASHRAE Standard 90.1–2007, ASHRAE changed the efficiency metric for gas-fired commercial warm-air furnaces in name only, and not in the actual test or calculation method. 74 FR 12000, 12008–09 (March 20, 2009). Therefore, DOE stated its understanding that despite using the term ''combustion efficiency'' rather than ''thermal efficiency,'' ASHRAE did not intend to change the substance of the metric. Consequently, DOE left the existing Federal energy conservation standards in place for gas-fired commercial warm-air furnaces, which specify a ''thermal efficiency'' of 80 percent using the definition of ''thermal efficiency'' presented at 10 CFR 431.72.

ASHRAE Standard 90.1–2010 updated the tabulated requirements for gas-fired commercial warm-air furnaces to specify a minimum efficiency level of 80 percent ''thermal efficiency'' and references ANSI Z21.47–2006, ''*Standard for Gas-Fired Central Furnaces,''* as the test procedure. ANSI Z21.47–2006 defines ''thermal efficiency'' as ''100 percent minus flue losses,'' which is the same as DOE's definition of ''thermal efficiency'' for this equipment. Because of this, DOE believes that the purpose of the ASHRAE metric change to ''thermal efficiency'' was to clarify the alignment to the existing Federal standards and the ANSI Z21.47–2006 test procedure. As a result, DOE tentatively concluded in the May 2011 NODA that this change does not constitute a revision to the actual efficiency level for gas-fired commercial warm-air furnaces and that no further action by the Department is required.

In response to the preliminary review set forth in the May 2011 NODA, the Advocates commented that DOE must review requirements for warm-air furnaces because ASHRAE Standard 90.1–2010 contains new design requirements that are not included in the Federal standards, which they view as constituting an amendment that triggers DOE review. (The Advocates, No. 8 at p. 2–3) Further, the Advocates urged DOE to adopt all the requirements for gas-fired and oil-fired warm-air furnaces included in ASHRAE 90.1–2010 (*i.e.,* efficiency level and design requirements) as Federal standards, as these requirements are included as part of the Implementation of National Consensus Appliance Agreements Act (INCAAA, S. 398). (The Advocates, No. 8 at p. 2) In addition, the CA IOUs urged DOE to adopt all requirements, including prescriptive (design) requirements, for warm-air furnaces. (CA IOU, Nos. 10 and 12, at p. 2)

For the reasons explained in section III.B, DOE does not view the ASHRAE Standard 90.1 design requirements for warm-air furnaces as triggering DOE review of the efficiency levels for those products. Further, DOE has determined that incorporation of the design requirements in ASHRAE Standard 90.1–2010 for commercial warm-air furnaces is beyond the scope of its legal authority, because the language of EPCA authorizes DOE to establish a performance standard or a single design standard and does not permit DOE to adopt both a performance standard and design standard. The fact that pending legislation, if passed, may convey such authority does not have any bearing on DOE's current authority. Thus, DOE has not changed its preliminary view set

forth in the May 2011 NODA, and consequently, DOE proposes to leave the existing Federal energy conservation standards in place for commercial warm-air furnaces.

*B. Commercial Package Air-conditioning and Heating Equipment*

EPCA, as amended, defines ''commercial package air conditioning and heating equipment'' as air-cooled, evaporatively-cooled, water-cooled, or water-source (not including ground water-source) electrically operated, unitary central air conditioners and central air conditioning heat pumps for commercial use. (42 U.S.C. 6311(8)(A); 10 CFR 431.92) EPCA also defines ''small,'' ''large,'' and ''very large'' commercial package air conditioning and heating equipment based on the equipment's rated cooling capacity. (42 6311(8)(B)–(D); 10 CFR 431.92) ''Small commercial package air conditioning and heating equipment'' means equipment rated less than 135,000 Btu per hour (cooling capacity). (42 6311(8)(B); 10 CFR 431.92) ''Large commercial package air conditioning and heating equipment'' means equipment rated at or above 135,000 Btu per hour and less than 240,000 Btu per hour (cooling capacity). (42 U.S.C. 6311(8)(C); 10 CFR 431.92) ''Very large commercial package air conditioning and heating equipment'' means equipment rated at or above 240,000 Btu per hour and less than 760,000 Btu per hour (cooling capacity). (42 U.S.C. 6311(8)(D); 10 CFR 431.92)

1. Water-Cooled Equipment

The current Federal energy conservation standards for the six classes of water-cooled commercial package air conditioners for which ASHRAE Standard 90.1–2010 amended efficiency levels are shown in Table II.1. The Federal energy conservation standards for water-cooled equipment are differentiated based on the cooling capacity (*i.e.,* small, large, or very large) and heating type (*i.e.,* electric resistance heating/no heating or some other type of heating). ASHRAE Standard 90.1–2010 increased the energy efficiency levels for all six equipment classes to efficiency levels that surpass the current Federal energy conservation standard levels. Therefore, the Department conducted an analysis of the potential energy savings due to amended standards for these products in the May 2011 NODA.

In response to the May 2011 NODA, the Advocates, the CA IOUs, and EEI recommended that DOE adopt the ASHRAE Standard 90.1–2010 efficiency levels for water-cooled equipment, given that the potential national energy savings from efficiency levels above those in ASHRAE Standard 90.1–2010 are very small. (The Advocates, No. 8 at p. 5; CA IOU, Nos. 10 and 12 at p. 1; EEI, No. 7 at p. 2) Upon reviewing the results of the potential energy savings analysis in the May 2011 NODA, DOE agrees with the submitted comments. Because of the minimal energy savings available from this equipment (see section VIII.B.1), DOE has not conducted further analyses on these products and is proposing in today's NOPR to adopt the energy efficiency levels contained in ASHRAE Standard 90.1–2010 for water-cooled commercial package air conditioning and heating equipment.

2. Evaporatively-Cooled Equipment

The current Federal energy conservation standards for the six classes of evaporatively-cooled commercial package air conditioners for which ASHRAE Standard 90.1–2010 amended efficiency levels are shown in Table II.1 above. Similar to water-cooled equipment, Federal energy conservation standards divide evaporatively-cooled equipment based on the cooling capacity (*i.e.,* small, large, or very large) and heating type (*i.e.,* electric resistance heating/no heating or some other type of heating). ASHRAE Standard 90.1–2010 increased the energy efficiency levels for all six equipment classes to efficiency levels that surpass the current Federal energy conservation standard levels.

DOE reviewed the market for evaporatively-cooled equipment and could not identify any models available on the market in the ''small'' unit product class (*i.e.,* cooling capacity <135,000 Btu/h) and the ''large'' unit product class (*i.e.,* cooling capacity ≥135,000 and <240,000 Btu/h). Because there is currently no equipment in these classes being manufactured, DOE believes there are no energy savings associated with these classes at this time. Therefore, it is not possible to assess the potential for additional energy savings at the levels in ASHRAE Standard 90.1–2010 or more-stringent levels. Thus, DOE did not perform a potential energy-savings analysis for the small and large equipment classes of evaporatively-cooled commercial package air conditioners.

For very large (*i.e.,* cooling capacity ≥240,000 Btu/h) evaporatively-cooled air conditioners, DOE was able to identify a number of models on the market, and, therefore, DOE conducted an analysis of the potential energy savings for these products in the May 2011 NODA. For very large evaporatively-cooled air conditioners, ASHRAE Standard 90.1–2010 set the efficiency level for equipment with electric resistance or no heating at 11.9 EER and for equipment with all other heating at 12.2 EER. However, ASHRAE historically has set the levels for equipment with other heating at 0.2 EER points below the efficiency levels for equipment with electric heating or no heating, which would make the expected efficiency level for very large evaporatively-cooled equipment with other heating 11.7 EER. In February 2011, the Department received a letter from AHRI indicating that the ASHRAE Standard 90.1–2010 efficiency level for very large evaporatively-cooled equipment with other heating is incorrect, and that the correct minimum energy efficiency standard for this category is 11.7 EER, as would be expected given the historical ASHRAE Standard 90.1 efficiency levels for these products. (AHRI, No. 0001 at p. 1) Further, AHRI indicated that at the winter 2011 ASHRAE meeting, the ASHRAE 90.1 committee approved an addendum for public review that corrects this error. In March 2011, ASHRAE released Proposed Addendum j to ASHRAE Standard 90.1–2010, which corrects the value from 12.2 to 11.7 EER. Based on release of the public review draft of this addendum, the Department tentatively decided in the May 2011 NODA to analyze the potential energy savings for this category at an ASHRAE Standard 90.1 level of 11.7 EER.

In response to the May 2011 NODA, the Advocates, CA IOUs, and EEI recommended that DOE adopt the ASHRAE Standard 90.1–2010 levels for evaporatively-cooled equipment, given that the potential national energy savings from efficiency levels above those in ASHRAE Standard 90.1–2010 are very small. (The Advocates, No. 8 at p. 5; CA IOU, Nos. 10 and 12 at p. 1; EEI, No. 7 at p. 2) In addition, AHRI agreed that overall energy savings for evaporatively-cooled units less than 240,000 Btu/h cannot be estimated because none exist on the market, but that DOE should still adopt ASHRAE Standard 90.1–2010 levels for those product classes. (AHRI, No. 11 at p. 2) AHRI also agreed with DOE's recognition of Proposed Addendum j in regards to the EER correction for very large evaporatively-cooled equipment. (AHRI, No. 11 at p. 1)

DOE agrees with these comments, and because of the minimal energy savings associated with more-stringent levels for very large equipment (see section VIII.B.1) and the lack of models on the market for small and large equipment,

DOE has not conducted further analyses on these products. Accordingly, DOE is proposing to adopt the energy efficiency levels contained in ASHRAE Standard 90.1–2010 for evaporatively-cooled commercial package air conditioning and heating equipment.

3. Variable Refrigerant Flow Equipment

ASHRAE Standard 90.1–2010 created a separate product class for variable refrigerant flow (VRF) air-conditioning and heating equipment. These products are currently covered under DOE's standards for commercial air conditioners and heat pumps, but they are not broken out as a separate product class.

In general, a VRF system will have a single condensing unit serving multiple evaporator coils within a building. Specific ''subclasses'' of variable refrigerant flow heat pumps equipped with heat recovery capability have been specified in ASHRAE Standard 90.1–2010 with less-stringent efficiency requirements than specified for VRF systems without heat recovery. (Heat recovery capability provides for shuttling of heat from one part of the building to another and allows for simultaneous cooling and heating of different zones within a building.) Specifically, the efficiency requirements in ASHRAE Standard 90.1–2010 for air-cooled VRF heat pumps with heat recovery are equivalent to the Federal minimum energy conservation standards defined for air-cooled heat pumps with ''all other heating system types that are integrated into the equipment,'' and the efficiency requirements for air-cooled VRF heat pumps without heat recovery are equivalent to the Federal minimum standards for air-cooled heat pumps with electric resistance or no heating.[9] The VRF systems with heat recovery specified by ASHRAE may also be provided with electric resistance heating systems as a back-up. For air-cooled VRF heat pump systems that have both electric resistance heating and heat recovery heating capability, the Department has tentatively concluded that these systems must meet the efficiency requirements contained in EPCA for small, large, and very large air-cooled central air-conditioning heat pumps with electric resistance heating, which are codified at 10 CFR 431.97(b). (42 U.S.C. 6313(a)(7)–(9)) In addition, the Department has tentatively concluded that air-cooled VRF systems without electric resistance heating but with heat recovery can qualify as having an ''other'' means of heating, and that these systems must meet the efficiency requirements contained in EPCA for small, large, and very large air-cooled central air-conditioning heat pumps with other heating, which are codified at 10 CFR 431.97(b). (42 U.S.C. 6313(a)(7)–(9)) The proposed changes to the Code of Federal Regulations can be found at the end of this NOPR.

Table IV.1 shows the ASHRAE Standard 90.1–2010 efficiency levels for VRF water-source heat pumps in comparison to the current Federal minimum energy conservation standards for water-source heat pumps, which DOE has preliminarily determined would apply to VRF systems. For water-source VRF heat pumps, ASHRAE Standard 90.1–2010 generally maintains the existing energy efficiency requirements that apply to commercial package air-conditioning and heating equipment (water-source) for the VRF systems, with several notable exceptions. For VRF water-source heat pumps under 17,000 Btu/h, ASHRAE Standard 90.1–2010 raises the efficiency levels above current Federal energy conservation standards. For VRF water-source heat pumps over 135,000 Btu/h, ASHRAE sets standards for products where DOE did not previously have standards. As a result, the Department conducted further analysis for these classes in the May 2011 NODA. DOE began by reviewing the current market for VRF water-source heat pumps with cooling capacities either less than 17,000 Btu/h or equal to or greater than 135,000 Btu/h and less than 760,000 Btu/h. The Department did not identify any models under 17,000 Btu/h on the market. DOE did identify 19 models greater than 135,000 Btu/h on the market and attempted to contact the manufacturer producing most of these models, but DOE was unable to obtain EER information for most of the models and had no shipment information for this product class. Because DOE could not identify any VRF water-source heat pumps being manufactured with cooling capacities less than 17,000 Btu/h, DOE believes that there are no energy savings associated with this equipment class. Therefore, DOE did not perform a potential energy-savings analysis for this equipment. Due to the lack of information and data on VRF water-source heat pumps with cooling capacities greater than 135,000 Btu/h available at the time of the NODA, the Department did not conduct a preliminary energy saving estimate for the additional energy savings beyond the levels anticipated in ASHRAE Standard 90.1–2010 for these VRF water-source heat pumps.

TABLE IV.1—COMPARISON OF FEDERAL ENERGY CONSERVATION STANDARDS FOR WATER-SOURCE HEAT PUMPS TO ASHRAE STANDARD 90.1–2010 REQUIREMENTS FOR VRF WATER-SOURCE HEAT PUMPS

| Existing federal equipment class | Federal minimum energy conservation standard | ASHRAE standard 90.1–2010 Efficiency level for newly-established VRF equipment class |
|---|---|---|
| Water-source Heat Pump <17,000 Btu/h | 11.2 EER<br>4.2 COP | 12.0 EER (without heat recovery)<br>11.8 EER (with heat recovery)<br>4.2 COP |
| Water-source Heat Pump ≥17,000 and <65,000 Btu/h | 12.0 EER<br>4.2 COP | 12.0 EER (without heat recovery)<br>11.8 EER (with heat recovery)<br>4.2 COP |
| Water-source Heat Pump ≥65,000 and <135,000 Btu/h | 12.0 EER<br>4.2 COP | 12.0 EER (without heat recovery)<br>11.8 EER (with heat recovery)<br>4.2 COP |
| Water-source Heat Pump ≥135,000 and <760,000 Btu/h | N/A | 10.0 EER (without heat recovery)<br>9.8 EER (with heat recovery)<br>3.9 COP |

[9] Section 136 of the Energy Policy Act of 2005 (EPACT 2005; Pub. L. 109–58) amended EPCA to include separate minimum efficiency requirements for commercial package air-cooled air conditioners and heating equipment with ''all other heating system types that are integrated into the equipment'' and with electric resistance or no heating.

In addition to the changes for the equipment classes discussed above, ASHRAE Standard 90.1–2010 includes efficiency levels for VRF water-source heat pumps that provide for a 0.2 EER reduction in the efficiency requirement for systems with heat recovery. However, the current Federal minimum standards for water-source heat pumps do not provide for any reduction in the EER requirements for equipment with ''other'' heating types. Therefore, the 0.2 EER reduction below the current Federal standard levels for the VRF water-source heat pump equipment classes in which ASHRAE did not raise the standard from the existing Federal minimum for water-source heat pumps (*i.e.,* water-source heat pumps with cooling capacities greater than or equal to 17,000 Btu/h and less than 65,000 Btu/h and for water-source heat pumps with cooling capacities greater than or equal to 65,000 Btu/h and less than 135,000 Btu/h) would result in a decrease in stringency in comparison to current standards. As noted in section III.B, if ASHRAE Standard 90.1 lowers its efficiency level as compared to the Federal minimum standard level, DOE does not have the authority to conduct a rulemaking to consider a higher standard for that equipment pursuant to 42 U.S.C. 6313(a)(6)(A). Therefore, DOE did not consider the lower EER requirements for systems with heat recovery and will not perform an analysis of those product classes. The proposed changes to the Code of Federal Regulations to clarify which energy conservation standards VRF water-source heat pumps must meet can be found at the end of this NOPR.

In response to the May 2011 NODA, AHRI agreed that there are no products available on the market in the category of less than 17,000 Btu/h water-source VRF heat pumps. (AHRI, No. 11 at p. 3) AHRI also commented that VRF water-source heat pumps with a cooling capacity greater than 135,000 Btu/h comprise a new equipment class, and as such, DOE should accept that an analysis to estimate energy savings cannot be done because of the unavailability of data. (AHRI, No. 11 at p. 3) AHRI encouraged DOE to adopt the efficiency standards for these products in ASHRAE Standard 90.1–2010. (AHRI, No. 11 at p. 3)

With regard to the 0.2 EER reduction for systems with heat recovery, AHRI noted that DOE should consider this requirement because non-VRF water-source heat pumps are not a proper comparative product for determining appropriate VRF water-source heat pump efficiency levels (in regard to backsliding) because: (1) Non-VRF water-source heat pumps do not use the type of heating components used by VRF systems, and (2) the components that require the 0.2 EER reduction provide overall energy savings in the system that are not reflected in EER calculations. (AHRI, No. 11 at p. 5) Mitsubishi also submitted a comment in which it also noted that DOE's comparison of VRF water-source heat pumps to non-VRF water-source heat pumps is not appropriate because the non-VRF water-source heat pumps do not contain gas-fired heat exchangers like the unitary systems, which Mitsubishi believes would be a better comparison to the VRF system. (Mitsubishi, No. 13 at p. 3) Mitsubishi further noted that regardless of the comparison, DOE should adopt the 0.2 EER reduction because DOE is not legally prohibited from adopting an amendment that is a reduction of EER levels. (Mitsubishi, No. 13 at p. 2, referring to 42 USC 6313(a)(6)(A)) Mitsubishi stated that the 0.2 EER reduction is necessary due to the increased pressure drop in the refrigerant levels due to the BC (branch circuit) controller, which works in unison with the outdoor unit to provide simultaneous cooling and heating needs. (Mitsubishi, No. 13 at p. 2)

In response to comments from AHRI and from Mitsubishi regarding the 0.2 EER deduction for water-source heat pumps with heat recovery, DOE has determined that while there may be certain additional efficiency penalties for the incorporation of heat recovery in VRF water-source heat pumps, DOE believes that under the statutory scheme for commercial equipment standards, the corresponding existing product class is a water-source heat pump in which condenser heat is rejected to water, not air. As such, DOE is prohibited from adopting an efficiency level lower than the current Federal standards for water-source heat pumps less than 135,000 Btu/h cooling capacity under 42 U.S.C. 6295(o)(1) and 42 U.S.C. 6316(a), regardless of the provision in 42 U.S.C. 6313(a)(6)(A)) providing for adoption of ASHRAE Standard 90.1 efficiency levels. For VRF water-source heat pumps less than 17,000 Btu/h, the ASHRAE Standard 90.1–2010 levels with or without heat recovery exceed the current Federal standards. For VRF water-source heat pumps at or greater than 135,000 Btu/h, no current Federal standards exist. In both cases, DOE may adopt the ASHRAE 90.1–2010 efficiency levels for VRF water-source heat pumps with and without heat recovery.

Since the May 2011 NODA, AHRI released a certified product directory for VRF water-source heat pumps, thereby allowing DOE to perform an energy use analysis for VRF water-source heat pumps equal to or greater than 135,000 Btu/h similar to those presented for other products in the May 2011 NODA. This analysis is discussed in detail in section V. The preliminary analysis showed that only minimal energy savings are available for surpassing ASHRAE efficiency levels for these products (see section VIII.B.2), so DOE did not conduct any further energy or economic analysis for these products. DOE agrees with AHRI's suggestion to adopt the ASHRAE Standard 90.1–2010 level for these products and is proposing to do so for VRF water-source heat pumps either less than 17,000 Btu/h or equal to or greater than 135,000 Btu/h with and without heat recovery.

4. Packaged Terminal Air Conditioners and Heat Pumps

EPCA defines a ''packaged terminal air conditioner'' as ''a wall sleeve and a separate unencased combination of heating and cooling assemblies specified by the builder and intended for mounting through the wall. It includes a prime source of refrigeration, separable outdoor louvers, forced ventilation, and heating availability by builder's choice of hot water, steam, or electricity.'' (42 U.S.C. 6311(10)(A)) EPCA defines a ''packaged terminal heat pump'' as ''a packaged terminal air conditioner that utilizes reverse cycle refrigeration as its prime heat source and should have supplementary heat source available to builders with the choice of hot water, steam, or electric resistant heat.'' (42 U.S.C. 6311(10)(B)) DOE codified these definitions at 10 CFR 431.92 in a final rule published in the **Federal Register** on October 21, 2004. 69 FR 61962, 61970.

DOE adopted amended energy conservation standards for this class of equipment in a final rule published in the **Federal Register** on October 7, 2008. 73 FR 58772, 58828–30. The adopted Federal standards exceeded the standards in ASHRAE Standard 90.1–2007. These Federal standards apply to standard size equipment manufactured on or after October 8, 2012, and to non-standard size equipment manufactured on or after October 7, 2010. The CFR currently states that the compliance dates are September 30, 2012, and September 30, 2010, for standard size and non-standard size equipment, respectively. 10 CFR 431.97(c). The compliance dates currently included in the CFR for package terminal air conditioners and heat pumps were calculated from the date of issuance of the final rule for those products (*i.e.,* September 29, 2008), but should have

been calculated from the publication date in the **Federal Register** (*i.e.,* October 7, 2008). Therefore, DOE is proposing in today's notice to correct the compliance dates to October 8, 2012 and October 7, 2010 for compliance with standards for standard size and non-standard size package terminal air conditioners and heat pumps, respectively.

ASHRAE Standard 90.1–2010 increased the efficiency levels for standard size equipment in comparison to the efficiency levels in ASHRAE Standard 90.1–2007. However, the efficiency levels specified by ASHRAE Standard 90.1–2010 for these equipment classes meet but do not exceed the Federal standards established by DOE in the October 2008 final rule. Because ASHRAE seems to be harmonizing the levels in ASHRAE Standard 90.1–2010 with the Federal levels rather than increasing the minimum efficiency, DOE tentatively concluded in the May 2011 NODA that it is not required to take action on these products at this time. DOE did not receive any comments on this subject and is maintaining its position in this NOPR.

5. Small-Duct, High-Velocity, and Through-the-Wall Equipment

EPCA does not separate small-duct high-velocity (SDHV) or through-the-wall (TTW) heat pumps from other types of small commercial package air-conditioning and heating equipment in its definitions. (42 U.S.C. 6311(8)) Therefore, EPCA's definition of ''small commercial package air conditioning and heating equipment'' would include SDHV and TTW heat pumps. (42 U.S.C. 6311(8)(B))

ASHRAE Standard 90.1–2010 increased some of the efficiency levels for these classes of equipment. Specifically, ASHRAE Standard 90.1–2010 increased the efficiency requirements for TTW heat pumps to 13.0 SEER and 7.4 HSPF in comparison to the efficiency levels of 12.0 SEER and 7.4 HSPF in ASHRAE Standard 90.1–2007. However, in March 2011, ASHRAE issued Proposed Addendum h for public review that would correct the minimum SEER for these products to 12.0 SEER.[10] For SDHV heat pumps, ASHRAE Standard 90.1–2010 did not increase the cooling efficiency requirement of 10.0 SEER beyond that in ASHRAE 90.1–2007. In addition, although ASHRAE 90.1–2007 specified a heating efficiency requirement of 6.8 HSPF, ASHRAE 90.1–2010 did not specify any heating efficiency level for SDHV heat pumps.

In the May 2011 NODA, DOE noted that Proposed Addendum h and another Proposed Addendum j,[11] would both remove the SDHV product class from the standards tables entirely, with Addendum j stating: ''In addition the small duct high velocity requirements have been dropped by DOE and they are only allowing such systems under waiver clause so the addendum has also made a change to remove the small duct high velocity systems from table 6.8.1a and table 6.8.1b.'' 76 FR 25622, 25633 (May 5, 2011) (*quoting* ASHRAE Addenda h and j). Therefore, DOE concluded that ASHRAE did not intend to specify any efficiency levels for these products in ASHRAE Standard 90.1–2010. *Id.*

In response, DOE notes that the Federal energy conservation standards for commercial types of TTW and SDHV heat pumps, which are 13.0 SEER and 7.7 HSPF, were established for the overall equipment category of small commercial package air-conditioning and heating equipment by EISA 2007, which amended EPCA. (42 U.S.C. 6313(a)(7)(D)) Because the ASHRAE Standard 90.1–2010 efficiency levels for TTW equipment meet or do not exceed the DOE standards and because DOE believed that through the issuance of Addenda h and j, ASHRAE was removing requirements for this equipment from within ASHRAE 90.1 (and thus also not proposing new, higher efficiency requirements), DOE tentatively concluded in the May 2011 NODA that it was not required to take action on these products at this time. 76 FR 25622, 25633 (May 5, 2011).

In response to the May 2011 NODA, AHRI commented that DOE is incorrect in assuming that Addendum j removes SDHV systems from the scope of coverage of ASHRAE Standard 90.1. (AHRI, No. 11 at p. 2) It stated that the current minimum SEER requirement for SDHV units in ASHRAE Standard 90.1–2010 applies to all models, both single-phase and three-phase electrical power with a cooling capacity less than 65,000 Btu/h. (AHRI, No. 11 at p. 2) AHRI stated that three-phase SDHV with a cooling capacity less than 65,000 Btu/h are still covered by ASHRAE Standard 90.1–2010 despite the omission in Addendum j (which AHRI believed deals only with single-phase SDHV systems covered under the National Appliance Energy Conservation Act (NAECA)). (AHRI, No. 11 at p. 2) AHRI stated that DOE must consider the ASHRAE Standard 90.1 SEER requirement for three-phase SDHVs and adopt it as the Federal standard or propose an alternate requirement. AHRI recommended that DOE consider establishing the minimum requirements for three-phase SDHV models at 11 SEER and 6.8 HSPF. (AHRI, No. 11 at p. 2)

In addition, Unico requested that SDHV be retained as a product class with a minimum efficiency of 11 SEER/6.8 HSPF and that the product manufacturer must have an exception for this as granted by DOE. (Unico, No. 14 at p. 2) (Currently, three manufacturers of SDHV products have been granted exception relief by DOE's Office of Hearings and Appeals (OHA) allowing for the sale of SDHV products meeting efficiency of 11 SEER and 6.8 HSPF.[12]) Unico recommended that DOE create a commercial SDHV product class that mirrors the consumer single-phase product class due to similar operating conditions. (Unico, No. 14 at p. 2)

In response to the AHRI and Unico comments, DOE did not intend to imply that SDHV are removed from the scope of ASHRAE Standard 90.1, but notes that the removal of an efficiency requirement for a covered product within ASHRAE Standard 90.1 is indicative that ASHRAE is not proposing a higher standards for the equipment and that DOE, thus, has no requirement or legal ability to react to ASHRAE Standard 90.1 efficiency levels for the equipment. In both the case of the published ASHRAE Standard 90.1–2010 efficiency levels for SDHV, or the removal of published values as a result of Addendum j, the minimum Federal efficiency standards for three-phase, less than 65,000 Btu/h small commercial package air conditioning and heating equipment, at 13 SEER and 7.7 HSPF, are higher than the levels originally proposed for SDHV in ASHRAE Standard 90.1–2010. DOE cannot adopt lower efficiency levels due to the prohibition against ''backsliding'' found in 42 U.S.C. 6295(o)(1) and 42 U.S.C. 6316(a). As such, DOE is prohibited from adopting the original ASHRAE Standard 90.1–2007 SEER requirement for three-phase SDHVs as the Federal standard, and DOE has no requirement to consider higher levels for three-phase SDHV equipment.

[10] Proposed Addendum h to Standard 90.1–2010, *Energy Standard for Buildings Except Low-Rise Residential Buildings* (First Public Review, March 2011) (Last accessed March 2011) (Available at *: https://osr.ashrae.org/default.aspx*).

[11] Proposed Addendum j to Standard 90.1–2010, *Energy Standard for Buildings Except Low-Rise Residential Buildings* (First Public Review, March 2011) (Last accessed March 2011) (Available at*: https://osr.ashrae.org/default.aspx*).

[12] 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*) and Case #TEE 0026 (2005) (Available at: *http://www.oha.doe.gov/cases/ee/tee0026.pdf*).

DOE did not receive any comments regarding TTW heat pumps and is maintaining its position in today's NOPR. The efficiency levels shown in ASHRAE Standard 90.1–2010 or in Addendum h, meet or do not exceed the current Federal standard for 3-phase, less than 65,000 Btu/h small package cooling and heating equipment, and, thus, DOE is not required to take action on these products at this time. DOE has no authority to set standards for any products of this type lower than the current Federal minimum.

6. Single-Package Vertical Air Conditioners and Single-Package Vertical Heat Pumps

DOE issued standards for single-package vertical air conditioner and heat pump units (SPVUs) as part of the March 23, 2009 final rule technical amendment in response to mandated efficiency levels for SPVUs established in the EISA 2007 legislation. 74 FR 12058, 12073–74. However, SPVUs are subject to a provision established by EISA 2007, which amended the applicable provisions of EPCA such that not later than three years after the date of this statutory provision's enactment (*i.e.,* December 19, 2007), the Secretary must review the most recently published ASHRAE Standard 90.1 with respect to single-package vertical air conditioners and single-package vertical heat pumps using the procedures established under 42 U.S.C. 6313(a)(6). (42 U.S.C. 6313(a)(10)(B))

The Department interprets the provision at 42 U.S.C. 6313(a)(10)(B) as constituting a separate trigger to evaluate standards higher than the ASHRAE Standard 90.1 level. SPVUs are considered classes within the broader scope of small, large, and very large commercial package air-conditioning and heating equipment. EPCA, as amended, directs DOE to conduct a review of the energy savings potential sometime in the three-year interval, and DOE believes this separate trigger is a one-time mechanism, after which SPVUs revert to the normal ''ASHRAE trigger.'' Accordingly, DOE commenced analytical work on these products along with the other equipment that is subject to the current ''ASHRAE trigger'' in the May 2011 NODA.

Upon review of the SPVU market, DOE identified several models of SPVUs in the small equipment class. However, DOE did not identify any models of SPVUs in the very large category or any models of single package vertical heat pumps (SPVHPs) in the large category. The Department identified only five models of single package vertical air conditioners (SPVACs) in the large category, and these were all close to the upper size limit of the small category, at 70,000 Btu/h or less. As a result of the apparent lack of a market for very large SPVUs and large SPVHPs (as demonstrated by the small size of the market (five models) and accompanying lack of shipment estimates for the large SPVACs), for the May 2011 NODA, DOE conducted complete preliminary energy saving estimates for only the small equipment classes. Additionally, DOE used the energy saving results for small SPVACs to derive an estimate of the potential energy savings for large SPVACs.

In response to the May 2011 NODA, the CA IOUs encouraged DOE to conduct additional analysis for SPVUs above the current ASHRAE levels due to DOE's preliminary analysis of higher levels showing potential reduction of national energy consumption of 0.5 quads over 30 years. (CA IOU, Nos. 10 and 12 at p. 2) The Advocates also agreed that the amendments to EISA 2007 compel review of the existing standards for SPVUs and consideration of levels above those contained in ASHRAE 90.1–2010. (The Advocates, No. 8 at p. 7)

DOE concurs with these comments. As a result of the potential for high energy savings from increasing the efficiency levels for SPVUs, and the fact that any of these levels would be higher than the ASHRAE levels, DOE is conducting additional analysis for these products along the 30-month timeline for more-stringent standards, as allowed by EPCA. (42 U.S.C. 6313(a)(6)(B)) No further results regarding these products' efficiency are presented in today's NOPR, and the results of the additional analysis for SPVUs will be presented in a separate NOPR in the future, consistent with that timeline. However, DOE is proposing to adopt AHRI 390 as the DOE test procedure for this equipment.

*C. Air Conditioners and Condensing Units Serving Computer Rooms*

Air conditioners and condensing units serving computer rooms operate similarly to other types of commercial packaged air conditioners in that they provide space conditioning using a refrigeration cycle consisting of a compressor, condenser, expansion valve, and evaporator. However, air conditioners and condensing units serving computer rooms are typically designed to maintain the temperature in the conditioned space within a narrow range (*i.e.,* minimizing temperature swings) and to maintain a specific relative humidity. This equipment is commonly capable of humidifying or dehumidifying the air and then, if necessary, reheating it to maintain a specific humidity.

ASHRAE Standard 90.1–2010 created a separate product class for ''air conditioners and condensing units serving computer rooms,'' and set efficiency levels using the sensible coefficient of performance (SCOP) metric, as measured using the test method in ASHRAE Standard 127–2007, ''Method of Testing for Rating Computer and Data Processing Room Unitary Air Conditioners.'' The product classes and efficiency levels established in ASHRAE Standard 90.1–2010 are set forth in Table II.1 above.

Prior to this equipment having separate efficiency levels and test procedures specified in ASHRAE Standard 90.1, DOE discussed such units using the terminology ''computer room air conditioners'' in an August 9, 2000 NOPR (65 FR 48828, 48830–31) and an October 21, 2004 direct final rule (69 FR 61962, 61967). In the August 2000 NOPR, DOE determined that computer room air conditioners were not covered as part of the commercial packaged air conditioning and heating equipment classes in EPCA and subsequently upheld this position in the October 2004 direct final rule. DOE made this determination because at the time of passage of the Energy Policy Act of 1992 (EPACT 1992, Pub. L. 102–486, which gave DOE the authority to cover commercial package air-conditioning and heating equipment), the statute excluded this equipment, and as a result, DOE concluded that it lacked the authority to regulate this equipment. The basis for DOE's decision stemmed from the scope of ASHRAE Standard 90.1, which at the time specified that the standard did not cover ''equipment and portions of building systems that use energy primarily to provide for industrial, manufacturing, or commercial processes.'' (See section 2.3(c) of ASHRAE 90.1 standards prior to ASHRAE Standard 90.1–2010; cited at 65 FR 48828, 48830 (August 9, 2000)). Further, the House Report on EPACT 1992 (H.R. Rep. No. 474, 102d Cong., 2d Sess., pt. 1 at 175 (1992)) pointed out that the efficiency standards contained in the bill were developed by ASHRAE in ASHRAE Standard 90.1. DOE concluded that this indicated that the efficiency standards for commercial products in EPACT 1992 would have the same scope as the version of ASHRAE Standard 90.1 current at the time of the legislation's enactment (*i.e.,* ASHRAE Standard 90.1–89), which did not cover computer room air conditioners. As a result, DOE

concluded at the time that it did not have the authority to cover computer room air conditioners. However, DOE stated in both the NOPR and direct final rule that ''if some of the relevant circumstances were to change—if, for example, ASHRAE Standard 90.1 were to incorporate efficiency standards and test procedures for this equipment or the equipment was to become widely used for conventional air conditioning applications—the Department might revisit this issue.'' 65 FR 48828, 48831 (August 9, 2000) (supporting this point); 69 FR 61962, 61967 (Oct. 21, 2004) (making the quotation).

ASHRAE Standard 90.1–2010 experienced expanded scope as compared to previous versions of ASHRAE Standard 90.1, including process loads (*e.g.,* computer rooms) and creation of a separate product class for ''air conditioners and condensing units serving computer rooms.'' EPCA generally directs DOE to follow ASHRAE Standard 90.1 when it is amended with respect to certain equipment types, including commercial package air conditioning and heating equipment. Thus, DOE has tentatively concluded that because ASHRAE has expanded the scope of Standard 90.1 to include air conditioners and condensing units serving computer rooms, the scope of DOE's obligations pursuant to EPCA with regard to ASHRAE products has similarly expanded to encompass these products. As such, DOE tentatively concluded in the May 2011 NODA that it had the authority to review the ASHRAE Standard 90.1–2010 efficiency levels for air conditioners and condensing units serving computer rooms and to establish minimum energy conservation standard levels for this equipment. 76 FR 25622, 25634 (May 5, 2011). However, DOE did not perform a potential energy savings analysis for this equipment as a part of the NODA due to the lack of available data, and instead, DOE requested data and information from interested parties that would allow it to conduct a potential energy savings analysis as part of this proceeding.

Lastly, although DOE addressed computer room air conditioners in the August 2000 NOPR and October 2004 direct final rule, DOE never formally defined this term. In reviewing ASHRAE Standard 90.1–2010, DOE noted that ASHRAE does not define a class of equipment in terms of physical characteristics, but rather an application (*i.e.,* ''serving computer rooms''). Because air conditioners and condensing units serving computer rooms have the same basic components as conventional air conditioners, there is some difficulty in defining ''air conditioners and condensing units serving computer rooms'' such that they can be clearly differentiated from conventional commercial packaged air conditioners and heat pumps. DOE reviewed the definitions in both ASHRAE 127–2007, *Method of Testing for Rating Computer and Data Processing Room Unitary Air Conditioners,* (the test procedure specified in ASHRAE Standard 90.1–2010 for air conditioners and condensing units serving computer rooms) and Title 20 in the California Code of Regulations (which establishes California's requirements for this equipment), and found in the May 2011 NODA that the definitions in each of the above sources do not contain criteria that would allow DOE to clearly differentiate this type of equipment from conventional equipment, without overlapping. 76 FR 25622, 25634 (May 5, 2011). DOE revisited the issue of defining ''computer room air conditioners'' for this NOPR, and it is discussed further in section VI.A.1 below.

In response to the May 2011 NODA, the Advocates supported DOE's determination that it has the authority to review the ASHRAE Standard 90.1–2010 efficiency levels for computer room air conditioners and establish energy conservation standards. (The Advocates, No. 8 at p. 7) AHRI suggested that DOE should adopt the ASHRAE Standard 90.1 approach for computer room air conditioners. (AHRI, No. 11 at p. 3) The Advocates stated that potential energy savings for computer room air conditioners may be significant, and the CA IOUs also noted that computer room air conditioners have high potential energy savings, particularly given their market penetration. (The Advocates, No. 8 at p. 7; CA IOU, Nos. 10 and 12 at p. 3–4) The Advocates and the CA IOUs recommended that DOE ensure that any standards established for computer room air conditioners be at least as stringent as the current California standards. (The Advocates, No. 8 at p. 7; CA IOU, Nos. 10 and 12 at p. 3–4)

In response to the suggestions from stakeholders, DOE undertook an analysis to estimate the potential energy savings associated with computer room air conditioners, and to perform a cost-benefit analysis of standard levels above the ASHRAE Standard 90.1–2010 levels. DOE has obtained additional information for this equipment and conducted an energy and economic savings analysis, which is discussed in Section VI. However, as discussed in that section, DOE believes that clear and convincing evidence does not exist as would justify standards beyond those in ASHRAE Standard 90.1–2010. As a result, DOE is proposing to adopt energy efficiency standards for computer room air conditioners at the levels set forth in ASHRAE Standard 90.1–2010. See sections VI and VIII for a summary of DOE's analysis, results, and conclusions for computer room air conditioners.

### *D. Coverage of Commercial Package Air Conditioning and Heating Equipment That Are Exclusively Used as Part of Industrial or Manufacturing Processes*

DOE received an inquiry from an interested party regarding the applicability of DOE's regulatory program for commercial package air conditioning and heating equipment in terms of equipment that is used exclusively for industrial or manufacturing processes. Specifically, Engineered Air asked the Department to clarify it's position on the following three issues: (1) In units where centrifugal condenser fans are required, the specified EERs cannot be met due to the motor horsepower required on the condenser fan; (2) applicability of the regulatory program in applications where the DX unit functions without ANY regard to the comfort of the occupants, the EERs may not be met; and (3) DOE's position on enforcing its regulations since DOE's regulations are broader than the scope of ASHRAE Standard 90.1. (Engineered Air, No. 15 at p. 1)

As mentioned above with regard to air conditioners and condensing units serving computer rooms, ASHRAE Standard 90.1–2010 expanded the scope of its coverage as compared to previous versions of ASHRAE Standard 90.1. Previous versions of ASHRAE Standard 90.1 did not apply to equipment and portions of building systems that use energy primarily to provide for industrial, manufacturing, or commercial processes (see ASHRAE Standard 90.1–2007, section 2.3(c)). While DOE still believes it is ASHRAE's intent to continue to exclude most of those equipment types that are used solely for manufacturing and industrial processes, ASHRAE Standard 90.1–2010 now applies to new equipment or building systems used in manufacturing or industrial processes that are specifically identified in the standard.

In order to aid regulated entities in determining whether their equipment falls within the scope of DOE's definition of ''commercial package air conditioning and heating equipment'' and, thus, is subject to DOE's regulatory requirements, DOE is providing the following guidance. If the equipment

meets the definition of ''commercial package air conditioning and heating equipment'' in 10 CFR 431.92, is used exclusively for manufacturing and/or industrial processes, and is not listed as one of the equipment types specifically added to ASHRAE Standard 90.1, then DOE also believes it is not covered under DOE's regulatory program. Just like manufacturers, DOE will make this determination on a case-by-case basis after considering the facts of the particular model in question. In making such a determination, DOE will consider factors such as how the model is advertised, marketed, and/or sold for use in buildings, the extent to which the equipment provides comfort conditioning to occupants, and how the equipment is designed and manufactured. For equipment that is used in commercial or industrial buildings, that has a design similar to that of equipment used in manufacturing processes, but provides comfort conditioning, DOE considers such equipment to meet the definition of ''commercial package air conditioning and heating equipment'' and consequently to be covered under ASHRAE Standard 90.1–2010. DOE notes that the fact that equipment may be advertised, marketed, and/or sold as part of industrial or manufacturing processes is not a mutually exclusive determination that the models are exempt them from coverage by DOE's standards for equipment in buildings. DOE seeks comments on ways manufacturers currently differentiate commercial package air conditioning and heating equipment used solely for manufacturing and industrial processes from that equipment of the same type that is used in buildings. This is identified as issue 1 in section X.E, ''Issues on Which DOE Seeks Comment.''

With respect to Engineered Air's specific questions, DOE believes the above guidance will help manufacturers like Engineered Air evaluate the applicability of the Department's regulatory equipment to the specific basic models it manufactures. All equipment distributed in commerce in the U.S. that meets DOE's definition of commercial package air conditioning and heating equipment that is not subject to the Department's exclusion guidance set forth above must meet the Federal energy conservation standards regardless of technology or design. DOE actively enforces all of its energy conservation standards for all covered products and equipment.

*E. Test Procedures*

EPCA requires DOE to amend any test procedures for ASHRAE products to the latest version generally accepted by the industry or the rating procedures developed or recognized by industry, as referenced in ASHRAE/IES Standard 90.1, unless the Secretary determines that clear and convincing evidence exists that the latest version of the industry test procedure does not meet the requirements for test procedures described under 42 U.S.C. 6314(a)(2)–(3).[13] (42 U.S.C. 6314(a)(4)(A)–(B)) The latest version of the ASHRAE Standard 90.1, ASHRAE Standard 90.1–2010, updated its referenced test procedures to the latest generally accepted industry test procedures for small commercial package air conditioners and heating equipment (AHRI 210/240–2008, *Performance Rating of Unitary Air-Conditioning & Air-Source Heat Pump Equipment*), large and very large commercial package air conditioners and heating equipment (AHRI 340/360–2007, *Performance Rating of Commercial and Industrial Unitary Air-Conditioning and Heat Pump Equipment*), commercial warm-air furnaces (UL 727–2006, *Standard for Safety for Oil-Fired Central Furnaces,* and ANSI Z21.47–2006, *Standard for Gas-Fired Central Furnaces*), and commercial water heaters (ANSI Z21.10.3–2004, *Gas Water Heaters, Volume III, Storage Water Heaters with Input Ratings Above 75,000 Btu Per Hour, Circulating and Instantaneous*). In the May 2011 NODA, DOE reviewed each of these test procedures and described the changes in comparison to the previous version of the test procedure. 76 FR 25622, 25634–37 (May 5, 2011). These changes are described further in the sections below.

Additionally, ASHRAE Standard 90.1–2010 adopts new test procedures for measuring the efficiency of variable refrigerant flow equipment (AHRI 1230–2010, *Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment*) and air conditioners and condensing units serving computer rooms (ASHRAE 127–2007, *Method of Testing for Rating Computer and Data Processing Room Unitary Air Conditioners*). ASHRAE Standard 90.1–2010 also lists AHRI 390–2003, *Performance Rating of Single Package Vertical Air-Conditioners and Heat Pumps,* as the test procedure for SPVACs and SPVHPs, for which there are currently no DOE test procedures. An initial assessment of these test procedures is presented below.

Lastly, DOE is required to review the test procedures for covered ASHRAE equipment at least once every seven years. (42 U.S.C. 6314(a)(1)(A)) In addition to the updates to the referenced standards (which are discussed in the subsections below), DOE is seeking comments on any other relevant issues that would affect the test procedures for the ASHRAE equipment addressed in today's NOPR (*i.e.,* those equipment for which DOE has been triggered). Interested parties are welcome to comment on any aspect of these test procedures as part of this comprehensive 7-year-review. This is identified as issue 2 in section X.E, ''Issues on Which DOE Seeks Comment.''

1. Small[14] (<65,000 Btu/h Cooling Capacity) Commercial Package Air Conditioners and Heating Equipment

For small commercial package air conditioners and heating equipment, ASHRAE Standard 90.1–2010 updated its referenced test procedure from AHRI 210/240–2003 to AHRI 210/240–2008. Between the 2003 and 2008 versions of AHRI 210/240, AHRI made several updates, which are summarized here and discussed in further detail in the May 2011 NODA. 76 FR 25622, 25635 (May 5, 2011). AHRI 210/240–2008 references DOE's test procedure for residential central air conditioners and heat pumps contained at 10 CFR part 430, subpart B, Appendix M. AHRI updated the 210/240 test procedure for small commercial air conditioners and air-source heat pumps with a cooling capacity less than 65,000 Btu/h to reflect the recent updates the DOE made to its test procedure for residential central air conditioners and heat pumps at 10 CFR part 430, subpart B, Appendix M. In doing so, AHRI updated the definitions for ''heating seasonal

[13] The relevant statutory provisions at 42 U.S.C. 6314(a)(2)–(3) state that test procedure shall be reasonably designed to produce test results which reflect energy efficiency, energy use, and estimated operating costs of a type of industrial equipment and shall not be unduly burdensome to conduct. If the test procedure is a procedure for determining estimated annual operating costs, such costs shall be calculated from measurements of energy use in a representative average-use cycle.

[14] EPCA defines ''small commercial package air conditioning and heating equipment'' as commercial package air conditioning and heating equipment that are rated below 135,000 Btu/h (cooling capacity). (42 U.S.C. 6311(8)(B)) ASHRAE 90.1–2010 generally divides covered commercial package air conditioners into the following class sizes: (1) <65,000 Btu/h; (2) ≥65,000 and <135,000 Btu/h; (3) ≥135,000 and <240,000 Btu/h; and (4) ≥240,000 Btu/h and <760,000 Btu/h. Thus, ''small'' commercial package air conditioners, as defined by EPCA, are split into two size classes in ASHRAE Standard 90.1–2010: (1) <65,000 Btu/h and (2) ≥65,000 and <135,000 Btu/h.

performance factor'' and ''seasonal energy efficiency ratio'' to match the definitions for those terms in DOE's residential central air conditioner and heat pump test procedure. AHRI also added definitions for ''tested combination, ''small duct, high velocity system,'' ''space-constrained product,'' and ''through-the-wall air conditioner and heat pump,'' that match the DOE's definitions at 10 CFR 430.2. Further, AHRI reorganized and added tables specifying the criteria for the standard rating conditions for the various types of equipment to be identical to those contained in the DOE test procedure for residential central air conditioners and heat pumps at 10 CFR part 430, subpart B, Appendix M.

In the NODA, DOE tentatively concluded that these changes did not significantly impact the energy efficiency metric of small commercial air conditioners and heat pumps with a cooling capacity less than 65,000 Btu/h. In response, DOE received comment from AHRI agreeing with DOE's tentative conclusion in the NODA. (AHRI, No. 11 at p. 4) DOE did not receive any comments or information that would cause it to reconsider the adoption of the updated AHRI 210/240–2008 test method. As a result, DOE is proposing to incorporate by reference AHRI 210/240–2008 into the Federal test procedure for small commercial air conditioners and heat pumps with a cooling capacity less than 65,000 Btu/h.

Additionally, through review of the AHRI certification program for commercial unitary equipment, DOE has discovered that the use of a compressor ''break-in'' period is common when testing commercial unitary equipment. By way of explanation, the AHRI certification program provides for an optional ''break-in'' period, which allows a manufacturer to have the testing laboratory run the equipment for a period of time before beginning the test. This break-in period is particularly important for scroll compressors, which may be less efficient when first started and may require time to warm up to achieve optimal performance. Once the compressor is broken in, the performance should be more representative of the actual field performance. EPCA requires that test procedures be reasonably designed to produce test results which reflect energy efficiency, energy use, and estimated operating costs for a typical type of equipment (or class thereof) during a representative use cycle, and shall not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

DOE believes that allowing for an optional break-in period will provide manufacturers more flexibility to produce test results that reflect energy efficiency of their units in a manner that is representative of their average use. At the same time, DOE recognizes that requiring the break-in period may add significant testing costs and burden, and, thus, DOE believes the break-in period should be optional to allow manufacturers to use this period at their discretion. Therefore, DOE is proposing to create a provision in its test procedures at 10 CFR 431.96 that would allow manufacturers the option of a ''break-in'' period not to exceed 16 hours to warm up the equipment's compressor and components. This 16-hour time limit of the ''break-in'' period that DOE is proposing matches the period used by AHRI in its Operations Manual for Unitary Large Equipment Certification Program.[15] DOE believes that this limit is likely common practice in industry. Lastly, if manufacturers choose to use a break-in period when testing their equipment, DOE will be proposing to require that in addition to reporting to DOE the efficiency rating for their products, manufacturers must also report the amount of time (up to 16 hours) used to break in their equipment to achieve the efficiency being represented. Note, DOE will update the certification provisions pending the outcome of this proposal in the upcoming certification, compliance, and enforcement rulemaking. DOE seeks comments on all aspects of this proposal, including the need for an optional break-in period and the length of time that should be allowed for such a period. This is identified as issue 3 in section X.E, ''Issues on Which DOE Seeks Comment.''

2. Small (≥65,000 and <135,000 Btu/h Cooling Capacity), Large (≥135,000 and <240,000 Btu/h Cooling Capacity) and Very Large (≥240,000 and <760,000 Btu/h Cooling Capacity) Commercial Package Air Conditioners and Heating Equipment

ASHRAE Standard 90.1–2010 updated its referenced test procedure for small, large, and very large commercial package air conditioners and heating equipment with a cooling capacity greater than or equal to 65,000 Btu/h (AHRI 340/360) from the 2004 version (currently referenced in DOE's test procedures) to the 2007 version. Between these two versions of AHRI 340/360, AHRI expanded the scope of the standard to include air-cooled packaged unitary air-conditioners with a cooling capacity from 250,000 Btu/h to less than 760,000 Btu/h. AHRI also added a tolerance to the minimum external static pressure measurement (from 0.0 inches of $H_2O$ to 0.05 inches of $H_2O$).

In the May 2011 NODA, DOE concluded that these changes did not significantly impact the measurement of energy efficiency of small (≥65,000 Btu/h), large, and very large commercial package air conditioners and heat pumps. 76 FR 25622, 25636 (May 5, 2011). In response to this conclusion, DOE received comment from AHRI agreeing with DOE's position in the NODA. (AHRI, No. 11 at p. 4) DOE did not receive any other comments on this topic. As a result, DOE is proposing to incorporate by reference AHRI 340/360–2007 into the DOE test procedure for small, large, and very large commercial air conditioners and heat pumps with a cooling capacity greater than or equal to 65,000 Btu/h but less than 760,000 Btu/h.

For small (≥65,000 Btu/h), large, and very large commercial package air conditioning and heating equipment, DOE is also proposing to add the optional ''break-in'' time of no more than 16 hours, as discussed in the small (<65,000 Btu/h) commercial package air conditioners and heating equipment subsection above (section IV.E.1). DOE believes that adding this option will allow the test procedure to be more representative of the actual performance characteristics of small (≥65,000 Btu/h), large, and very large commercial package air conditioners and heating equipment, while not increasing the burden on manufacturers. Note, DOE will update the certification provisions pending the outcome of this proposal in the upcoming certification, compliance, and enforcement rulemaking. DOE seeks comment on the need for an optional break-in period for small, large, and very large commercial package air conditioning and heating equipment, and the length of time that should be allowed for such a period. This is identified as issue 4 in section X.E, ''Issues on Which DOE Seeks Comment.''

3. Commercial Oil-Fired Warm-Air Furnaces

ASHRAE Standard 90.1–2010 updated its reference test procedure for commercial oil-fired warm-air furnaces (UL 727) from the 1994 version of the standard to the 2006 version of the standard. The DOE test procedure for determining the energy efficiency of commercial warm-air furnaces

[15] See: *http://www.ahrinet.org/App_Content/ahri/files/Certification/OM%20pdfs/ULE%20OM%20December%202010.pdf.*

references part of UL 727 for commercial oil-fired warm-air furnaces. 10 CFR 431.76. Within the sections of UL 727 referenced by the DOE test procedure, the only substantive change from the 1994 version to the 2006 version of UL 727 was the removal of a passage from the scope section that allowed manufacturers to propose alternate revisions to the requirements of UL 727 if their product's features, components, materials, or systems are unsafe when used with the UL 727 test procedure.

In the May 2011 NODA, DOE concluded that this change did not significantly impact the energy efficiency metric for commercial oil-fired warm-air furnaces. 76 FR 25622, 25636 (May 5, 2011). In response, DOE received comment from AHRI agreeing with DOE's tentative conclusion. (AHRI, No. 11 at p. 4) DOE did not receive any other comments on this topic. Thus, DOE is proposing to amend its test procedures at 10 CFR 431.76 to reference UL 727–2006 for commercial oil-fired warm-air furnaces.

4. Commercial Gas-Fired Warm-Air Furnaces

ASHRAE Standard 90.1–2010 updated its referenced test procedure for commercial gas-fired warm-air furnaces (ANSI Z21.47) from the 1998 version (currently referenced in DOE's test procedure) to the 2006 version. Between the two versions of ANSI Z21.47, ANSI updated the sections that DOE references in its test procedure for determining the energy efficiency of commercial gas-fired warm-air furnaces. In the relevant sections, ANSI expanded the scope to include optional special construction provisions for furnaces designed to operate at altitudes over 2000 feet. ANSI also added a new section, which is not part of the referenced DOE test procedure but caused the Thermal Efficiency section (which is relevant) to move from section 2.38 to section 2.39. In the May 2010 NODA, DOE summarized these updates and stated its tentative conclusion that they do not substantively impact the measurement of energy efficiency for commercial gas-fired warm-air furnaces. 76 FR 25622, 25636 (May 5, 2011).

In response, DOE received comment from AHRI agreeing with DOE's conclusion in the NODA. (AHRI, No. 11 at p. 4) DOE did not receive any other comments from interested parties pertaining to this issue. Thus, DOE is proposing to amend its test procedure at 10 CFR 431.76 to reference ANSI Z21.47–2006 for commercial gas-fired furnaces warm-air furnaces.

5. Commercial Water Heaters

ASHRAE Standard 90.1–2010 updated its referenced test procedure for commercial gas-fired water heaters (ANSI Z21.10.3) from the 1998 version to the 2004 version. Between these two versions, ANSI moved the relevant sections for thermal efficiency test and standby loss test to Exhibit G and added a provision to limit the duration of the standby loss test to a maximum of 48 hours if there is no cutout (*i.e.,* the thermostat acts to shut off the burner) after the 24-hour mark. This addition closely matches the additional stipulation in DOE's test procedure for commercial gas-fired water heaters at 10 CFR 431.106, which references the ANSI Z21.10.3–1998 test procedure, but adds that the maximum duration of the test should be 48 hours if the water heater is not in heating mode at that time. The difference between the two tests is the ANSI version ends the test immediately at the 48-hour mark, whereas the DOE test procedure would allow time after the 48-hour mark for the water heater to finish its heating cycle. Because DOE's test procedure already includes a provision regarding the duration of the standby test, the provision will supersede this update to ANSI Z21.10.3.

In the May 2010 NODA, DOE tentatively concluded that these updates would not significantly affect the measurement of energy efficiency for commercial gas-fired water heaters. 76 FR 25622, 25636 (May 5, 2011). In response, DOE received comment from AHRI agreeing with DOE's conclusion in the NODA. (AHRI, No. 11 at p. 4) However, the American Gas Association (AGA) expressed concern that water heaters that comply with the version of ANSI Z21.10.3 currently referenced by DOE's test procedure may be found in non-compliance under the revised test method and suggested that DOE do testing in order to provide data on the impact of this change. (AGA, No. 9 at p. 1)

In response, DOE again reviewed the changes to the ANSI Z21.10.3 test procedure for commercial water heating equipment. DOE notes that the only change in the relevant sections of the ANSI Z21.10.3–1998 test procedure is the duration limit for the standby loss test in the event that a cutout does not occur. As noted above, this duration limit is superseded by DOE's duration limit specified in 10 CFR 431.106, which has been in place since the October 21, 2004 direct final rule. 69 FR 61974, 61984. As a result, the standby loss test changes in ANSI Z21.10.3–2004 would similarly be superseded by DOE's requirements for the standby loss test; and for all practical purposes, the test will continue to be required to be conducted in the same manner as before this proposed rule. Thus, DOE does not believe that the new changes to the test procedure will cause any currently-compliant water heaters to be found in noncompliance. Because DOE believes that the incorporated provisions of the water heater test procedure in ANSI Z21.10.3–2004 will be conducted in the same manner as those referenced in the previous test procedure, DOE does not believe that testing is required to support its tentative conclusion that there will be no difference in equipment efficiency as determined by the updated test procedure.

AGA also requested clarification on the current DOE efficiency requirement for electric and oil-fired commercial storage water heaters and was concerned that the standby loss test changes in ANSI Z21.10.3–2004 would also affect the ratings for these equipment classes. AGA stated its interpretation that the current standby loss requirements for these products stem from the 1989 version of ASHRAE Standard 90.1 and that editions of the ASHRAE Standard 90.1 since then contain standby loss requirements that are less stringent for commercial electric water heaters and, accordingly, are not adoptable by DOE. (AGA, No. 9 at p.1) In response, the efficiency requirements for electric and oil-fired commercial storage water heaters are listed at 10 CFR 431.110. Oil-fired storage water heaters must have a minimum thermal efficiency of 78 percent and a maximum standby loss of $Q/800+110(V_r)^{1/2}$ (Btu/h), where Q is the nameplate input rate in Btu/h and $V_r$ is the rated volume. Electric water heaters do not currently have a minimum thermal efficiency but have a maximum standby loss of $0.30+27/V_m$ (%/hr), where $V_m$ is the measured storage volume. The standards for oil-fired commercial storage water heaters were promulgated in a final rule published in the **Federal Register** on January 12, 2001, which adopted the efficiency levels in ASHRAE Standard 90.1–1999 (66 FR 3336), and the Energy Policy Act of 1992 (EPACT 1992) set the standards for electric commercial water heaters (EPACT 1992, Pub. L. 102–486, Oct. 24, 1992). ASHRAE Standard 90.1–1999 did revise the efficiency level for electric water heaters; however, DOE determined that the revised level was a less stringent standard than the current Federal standard (66 FR 3336, 3350 (Jan. 12, 2001)). Subsequent editions of ASHRAE Standard 90.1 still contain this

revised efficiency level, but DOE still maintains that the current Federal standard set by EPACT 1992 is more stringent than the ASHRAE efficiency level.

DOE is proposing to amend its test procedure at 10 CFR 431.106 to incorporate by reference ANSI Z21.10.3–2006 for commercial gas-fired water heaters. DOE seeks additional comment on this proposal to adopt ANSI Z21.10.3–2006, which is identified as issue 5 in section X.E, ''Issues on Which DOE Seeks Comment.''

6. Air Conditioners and Condensing Units Serving Computer Rooms

ASHRAE Standard 90.1–2010 specifies ASHRAE 127–2007, *Method of Testing for Rating Computer and Data Processing Room Unitary Air Conditioners,* as the test procedure for determining the sensible coefficient of performance (SCOP) of air conditioners and condensing units serving computer rooms. ASHRAE 127–2007 defines and establishes a test method for computer room air conditioners. As noted above, EPCA directs DOE to prescribe the generally accepted industry testing procedures or rating procedures developed or recognized by ASHRAE, as referenced in ASHRAE Standard 90.1, unless there is clear and convincing evidence that to do so would not produce test results which reflect the energy efficiency or energy use during an representative average use cycle or that the test procedure would be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)–(4) DOE reviewed ASHRAE 127–2007 to determine whether it meets the requirements of EPCA for incorporation by reference as part of the Federal test method for determining compliance with minimum energy conservation standards.

ASHRAE 127–2007 contains provisions that make it better suited for computer room air conditioners than the current commercial packaged air conditioner test procedures (*i.e.,* AHRI 210/240 and AHRI 340/360). The ASHRAE 127–2007 test procedure places an emphasis on sensible cooling [16] by establishing the SCOP metric, which is a measure of the sensible cooling output divided by the electrical input of all components, excluding reheaters and humidifiers (*e.g.,* the input of the compressors, fans, controls, air-cooled condenser, or air-cooled fluidcooler fans if used). Sensible cooling is important in computer room air conditioners because the cooling load in most server and computer rooms deals almost exclusively with a sensible heat load, meaning that there is very little moisture removed from the air inside the room. There is a very low latent heat load (*i.e.,* heat load associated with the removal of moisture in the air) because very little outside air actually reaches the room, and there is almost no outside water in the room, which would alter the humidity of the computer room. A typical air conditioner used for space conditioning will encounter both a latent load and a sensible load. However, unlike other types of air conditioners, a computer room air conditioner will have an almost exclusively sensible cooling load, so it is reasonable that the metric for measuring energy efficiency would place an emphasis on sensible cooling. DOE believes that the SCOP metric under ASHRAE 127–2007 is a useful metric for measuring the energy efficiency of computer rooms and data rooms due to its emphasis on sensible cooling.

In addition, ASHRAE 127–2007 contains a standard rating test for reheating/dehumidification/humidification systems, which are important functions of computer room air conditioners. The humidity of a computer room is an important aspect to control, as too much humidity can cause condensation on the electronic equipment (which has the potential to render the equipment inoperable) and too little humidity may cause potentially hazardous static discharges.

Because ASHRAE 127–2007 is tailored to computer room air conditioners, DOE believes it will provide a more representative efficiency rating, which is more reflective of the actual efficiency of the unit. DOE believes that ASHRAE 127–2007 is reasonably designed to produce test results that reflect the energy efficiency, energy use, and estimated operating costs during a representative average use cycle and is not unduly burdensome to conduct, as outlined in EPCA. (42 U.S.C. 6314(a)(2)). In response to the May 2011 NODA, AHRI encouraged DOE to adopt ASHRAE 127 as the test procedure for air conditioners and condensing units serving computer rooms. (AHRI, No. 11 at p. 4) DOE did not receive any other comments from interested parties pertaining to this issue. For the reasons above, DOE is proposing to adopt ASHRAE 127–2007 as the test method for computer room air conditioners; however, DOE notes several possible issues with the test procedure in the paragraphs below. DOE seeks comment on this proposal, as well as the need for potential modifications for the computer room air conditioner test procedures, and this is identified as issue 6 in section X.E, ''Issues on Which DOE Seeks Comment.''

DOE notes that on July 14, 2011, ASHRAE published a public draft review of a revision to ASHRAE 127. A preliminary review of this draft revealed that ASHRAE created four different application classes to meet the industry need to modify equipment to accept higher return temperatures. Each application class has a different standard rating condition. ASHRAE also changed the water temperature conditions for water-cooled direct expansion units to match the conditions in AHRI 340/360 plus a typical cooling tower approach. This update also renames the SCOP and adjusted sensible coefficient of performance (ASCOP) metrics as Net Sensible Coefficient of Performance Rating (NSenCOP) and Integrated Net Sensible Rating (iNSenCOP), respectively. The NSenCOP is to be published at five rating conditions as opposed to four for SCOP (the four rating test conditions A–D in addition to iNSenCOP). The public comment period for the review of this draft has closed. DOE is not proposing to adopt the draft revisions to ASHRAE 127 because they have not been finalized yet, but DOE seeks comments about how to treat the revisions. This is identified as issue 6 in section X.E, ''Issues on Which DOE Seeks Comment.''

Lastly, DOE notes that the SCOP metric in ASHRAE 127–2007 does not measure part-load performance, and may not properly account for efficiency features that improve the part-load performance, such as variable speed fan motors and multi-stage compressors. Computer room air conditioners operate virtually all year round with a varying load, depending on how active the computer room is and the outdoor conditions. DOE requests comments on the shortcomings of this test procedure and the SCOP metric, and further improvements that could be made. See Section X.E, ''Issues on Which DOE Seeks Comment.''

For computer room air conditioners, DOE is also requesting comment on the appropriateness of allowing an optional ''break-in'' time of no more than 16 hours, similar to those being proposed for other commercial air conditioning and heating equipment in this notice (as discussed in section IV.E.1). DOE believes that adding this option could

[16] ''Sensible cooling'' is the cooling effect that causes a decrease in the dry-bulb temperature, which is the actual temperature of the air. ''Latent cooling'' is the cooling effect that causes a decrease in the wet-bulb temperature or the moisture content of the air, which is similar to the temperature one feels.

allow the test procedure to be more representative of the actual performance characteristics of computer room air conditioners, while not increasing the burden on manufacturers. DOE seeks comment on the need for an optional break-in period for computer room air conditioners, and the length of time that should be allowed for such a period, if it is needed. This is identified as issue 17 in section X.E, ''Issues on Which DOE Seeks Comment.''

7. Variable Refrigerant Flow Systems

ASHRAE Standard 90.1–2010 specifies AHRI 1230, *Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment,* as the test procedure for variable refrigerant flow systems. As noted previously, EPCA directs DOE to prescribe the ''generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute or by the American Society of Heating, Refrigeration and Air Conditioning Engineers, as referenced in ASHRAE/IES Standard 90.1'' unless there is clear and convincing evidence that to do so would not produce test results which reflect the energy efficiency or energy use during an representative average use cycle or that the test procedure would be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)–(4)) DOE reviewed AHRI 1230–2010 to determine whether it meets the requirements of EPCA for incorporation by reference as part of the Federal test method for determining compliance with minimum energy conservation standards.

DOE first addressed the issue of AHRI 1230 in the October 22, 2007 test procedure final rule for residential air conditioners and heat pumps. 72 FR 59906. In that final rule, DOE decided not to adopt ARI 1230 at the time for residential VRF products, because ARI 1230 had not been finalized yet. DOE also noted that the draft test procedure lacked information on: (1) How to conduct intermediate speed tests; (2) whether any indoor units are to be turned off for part-load test; and (3) how to interpolate EER and COP in the intermediate speed range. *Id.* at 59909.

Since 2008, DOE has issued 13 waivers to 5 different manufacturers exempting them from the commercial air conditioning and heat pump test procedures (AHRI 210/240 or AHRI 340/360).[17] In all 13 cases, the equipment in question was a multi-split variable refrigerant flow air conditioner or heat pump. For these types of equipment, there are multiple indoor units that are paired with a single outdoor unit, and the indoor and outdoor units can be mixed and matched to create different systems with a wide array of possible combinations. For example, one major manufacturer has a product line that can have as many as 38 different interior units connected to a single outdoor unit. Those 38 interior units can be selected in any combination from a pool of 43 unique indoor models. Then, when considering that the indoor units in the system could also be paired with any one of 7 unique outdoor models, the number of possible combinations becomes astronomical. DOE recognized that the vast number of combinations of units that would need to be tested would overwhelm any testing laboratory, so it granted test procedure waivers for these units and required these units to be tested using an alternative test procedure that DOE developed. The only restriction in terms of the number of interior units is that the total capacity of all the indoor units must be comparable to the capacity of the outdoor unit. This alternate test procedure (which is outlined in each test procedure waiver granted by DOE for this equipment) permits the manufacturer to designate a ''tested combination'' for each outdoor unit. Each ''tested combination'' must have between two and five indoor units and must be tested using according to the applicable DOE test procedure. Manufacturers must release the test results for those ''tested combinations,'' and for the non-tested combinations, manufacturers can represent the energy use as equal to the tested combination, provided that the outdoor units are the same.

In addition, manufacturers brought up several other issues in the petitions for test procedure waivers that related to applying the commercial air conditioning test procedure to VRF systems. Manufacturers asserted that: (1) There is no provision to accommodate having indoor units operating at different static pressures; (2) there is no precise number of part-load tests for fully variable speed; and (3) it does not account for simultaneous heating and cooling. DOE notes that the fact that multi-split systems can simultaneously heat and cool a building does not impact the efficiency rating, because the efficiency metric (*i.e.,* EER) is a single point rating metric and does not measure seasonal energy use.

AHRI 1230–2010 contains the same definition and procedures for rating the efficiency of a ''tested combination'' as the alternative DOE test procedure that DOE developed in response to the waivers. AHRI 1230–2010 also contains specific language on how to test multiple indoor units, the number of tests for variable speed compressors, and how to test for simultaneous cooling and heating efficiency, which should mitigate manufacturer complaints regarding the existing DOE test procedure for commercial package air conditioning and heating equipment as it applies to VRF systems. AHRI 1230–2010 also tests for EER and COP at the same rating conditions as AHRI 210/240 and AHRI 340/360. Thus, these systems should test for EER in the same way as other commercial air conditioners and heat pumps once the systems are set up according to AHRI 1230–2010.

In February 2011, AHRI amended the test procedure in Addendum 1 to AHRI 1230 to modify the definition of ''tested combination'' to contain between 2 and 12 indoor units as opposed to between 2 and 5 indoor units. DOE believes this change merely extends the range of a tested combination and has no effect on the efficiency metric of the system. DOE believes this test procedure properly addresses all the concerns of testing VRF systems, results in a rating that reasonably reflects the energy efficiency of these systems, and would not be unduly burdensome to conduct.

In response, DOE received a comment from AHRI which encouraged DOE to adopt AHRI 1230–2010, stating that a deliberate and open process was used to develop this test procedure and that it incorporates the alternative test procedure initially developed by DOE to cover VRF equipment. (AHRI, No. 11 at p. 4) The Advocates and CA IOUs, however, encouraged DOE to conduct a test procedure rulemaking for VRF equipment in order to eliminate the need for manufacturers to seek test procedure waivers for this equipment. (Advocates, No. 8 at p. 5, CA IOUs, No. 10,12 at p. 3) DOE believes that AHRI 1230–2010 incorporates all of the alternative test procedure that DOE developed through its waiver process, is a comprehensive test procedure for VRF systems, and would not be unduly burdensome to conduct. Manufacturers of VRF systems should not need to seek a test procedure waiver from AHRI

[17] Daikin AC (Americas) Inc. (73 FR 39680 (July 10, 2008); 74 FR 15955 (April 8, 2009); 74 FR 16373 (April 10, 2009); 75 FR 22581 (April 29, 2010); 75 FR 25224 (May 7, 2010); 76 FR 34685 (June 14, 2011)).

Mitsubishi Electric and Electronics USA, Inc. (74 FR 35860 (July 21, 2009); 74 FR 66311 (Dec. 15, 2009); 74 FR 66315 (Dec. 15, 2009); 76 FR 40714 (July 11, 2011)).

LG (74 FR 66330 (Dec. 15, 2009)).

Sanyo North America Corporation (75 FR 41845 (July 19, 2010)).

Carrier Corporation (76 FR 31951 (June 2, 2011)).

1230–2010 with Addendum 1. Further, DOE notes that EPCA generally directs DOE to prescribe the industry testing procedures as referenced in ASHRAE Standard 90.1, unless there is clear and convincing evidence that to do so would not produce test results consistent with the requirements of EPCA. (42 U.S.C. 6314(a)(2)–(4)). DOE believes AHRI 1230 meets the requirements of EPCA, and, therefore, is proposing to adopt AHRI 1230–2010 with Addendum 1 as the test procedure for VRF systems. DOE seeks comment on this proposal, and this issue is identified as issue 7 in section X.E, ''Issues on Which DOE Seeks Comment.''

For VRF systems, DOE is also proposing to add the optional ''break-in'' time of no more than 16 hours, as discussed in the small (<65,000 Btu/h) commercial package air conditioners and heating equipment subsection above (section IV.E.1). DOE believes that adding this option will allow the test procedure to be more representative of the actual performance characteristics of VRF systems, while not increasing the burden on manufacturers. Note, DOE will update the certification provisions pending the outcome of this proposal in the upcoming certification, compliance, and enforcement rulemaking. DOE seeks comment on the need for an optional break-in period for VRF systems, and the length of time that should be allowed for such a period. This is identified as issue 7 in section X.E, ''Issues on Which DOE Seeks Comment.''

8. Single Package Vertical Air Conditioners and Single Package Vertical Heat Pumps

For single package vertical air conditioners and single package vertical heat pumps, ASHRAE Standard 90.1–2010 lists AHRI 390–2003, ''Performance Rating of Single Packaged Vertical Air-Conditioners and Heat Pumps,'' as the referenced test procedure. Commercial SPVACs and SPVHPs were not distinguished as separate classes of commercial air conditioning and heating equipment in DOE's regulations until EISA 2007 amended EPCA to set efficiency standards specifically for this equipment (codified at 42 U.S.C. 6313(a)(10)), which DOE subsequently codified in its regulations through a final rule published on March 23, 2009. 74 FR 12058. Although EISA 2007 specified minimum energy conservation standards for SPVACs and SPVHPs, it did not specify the applicable test procedure for measuring the energy efficiency of SPVACs and SPVHPs. As discussed previously, according to EPCA, the test procedures for ASHRAE products shall be those generally accepted industry testing procedures or rating procedures developed or recognized by AHRI or ASHRAE, as referenced in ASHRAE Standard 90.1, and shall be reasonably designed to product test results which reflect energy efficiency or energy use of those products. Further, when a test procedure in ASHRAE Standard 90.1 is amended, EPCA directs DOE to amend its test procedure for the product as necessary to be consistent with the amended industry test procedure, unless doing so would not meet the requirements for test procedures described in 42 U.S.C. 6314(a)(2) and (3). (42 U.S.C. 6314(a)(4)(A)–(B))

DOE reviewed AHRI 390–2003 and believes the procedure is reasonably designed to produce test results which reflect energy efficiency of SPVACs and SPVHPs. In the May 2011 NODA, DOE requested comment about the adoption of AHRI 390–2003 as the test method for SPVACs and SPVHPs. 76 FR 25622, 25635 (May 5, 2011). DOE received a comment from AHRI encouraging DOE to adopt AHRI 390–2003, in which AHRI remarked that this test procedure was developed with input from DOE. (AHRI, No. 11 at p. 4) DOE did not receive any other comments on this topic. As a result, DOE is proposing to adopt AHRI 390–2003 as its test procedure for SPVACs and SPVHPs.

In addition, for this equipment DOE is proposing to add the optional ''break-in'' time of no more than 16 hours, as discussed in the small (<65,000 Btu/h) commercial package air conditioners and heating equipment subsection above (section IV.E.1). DOE believes that adding this option will allow the test procedure to be more representative of the actual performance characteristics of SPVACs and SPVHPs, while not increasing the burden on manufacturers. Note, DOE will update the certification provisions pending the outcome of this proposal in the upcoming certification, compliance, and enforcement rulemaking. DOE seeks comment on the need for an optional break-in period for small, large, and very large commercial package air conditioning and heating equipment, and the length of time that should be allowed for such a period. This is identified as issue 8 in section X.E, ''Issues on Which DOE Seeks Comment.''

9. Additional Specifications for Testing of Commercial Package Air Conditioning and Heating Equipment, Including VRF Systems

As part of its ongoing testing efforts in support of DOE's regulatory program, DOE has encountered situations where the Department has received *ad hoc* requests from manufacturers regarding the need for tailored modifications to the testing set-up or operating conditions for a basic model. The Department is reiterating that DOE will use only the conditions specified in the DOE test procedure for a given covered equipment, along with any additional guidance that is presented in the installation and/or operating manuals shipped with those units for any DOE-initiated testing. For example, the Department typically uses the optimal charge settings in the installation manuals of commercial package air conditioning and heating equipment when they are specified for a given basic model. No additional information (*i.e.,* additional specificity for the placement or types of specific testing sensors) will be used for any DOE verification or enforcement testing that are not part of the aforementioned documents.

DOE does not intend for this clarification to change the way manufacturers currently test their products for the purposes of determining their certified ratings for each basic model. Instead, DOE wishes to harmonize the way it conducts its testing with the testing done by manufacturers. Consequently, DOE seeks comments generally on whether there are additional settings beyond the tolerances in the test procedure or additional specifications for the test set-up that DOE should consider for testing of all types of commercial air conditioning and heating equipment as part of this rulemaking. If such settings are basic-model specific, DOE could, for example, come up with a way for manufacturers to disclose these instructions as part of their initial certifications for a given basic model. With the separation of VRF systems as a separate equipment class and the complexity inherent in testing this type of equipment, DOE specifically seeks comment on the testing conditions, the basic model operating points, and set-up for this equipment. This is identified as issue 9 in section X.E, ''Issues on Which DOE Seeks Comment.''

10. Sampling Plans for Commercial Heating, Ventilating, and Air-Conditioning Equipment

For purposes of certification testing, the determination that a basic model complies with the applicable conservation standard must be based on testing conducted using DOE's testing procedures and the sampling procedures, which are found in 10 CFR Part 429.43 for commercial heating, ventilating, and air conditioning

equipment. The sampling procedures provide that ''a sample of sufficient size shall be tested to insure [compliance].'' A minimum of two units must be tested to certify a basic model as compliant. This minimum is implicit in the requirement to calculate a mean—an average—which requires at least two values. Under no circumstances is a sample size of one (1) authorized. Manufacturers may need to test more than two samples depending on the variability of their sample. Therefore, the sample size can be an important element when evaluating the compliance of a basic model.

DOE uses statistically meaningful sampling procedures for selecting test specimens of commercial and industrial equipment, which would require the manufacturer to select a sample at random from a production line and, after each unit or group of units is tested, either accept the sample or continue sampling and testing additional units until a rating determination can be made. DOE did not propose a specific sample size for each product because the sample size is determined by the validity of the sample and how the mean compares to the standard, factors which cannot be determined in advance.

In this proposed rule, DOE is proposing that the existing sampling procedures in 10 CFR part 429.43 be applied to any new covered equipment being addressed by testing procedures in this NOPR, including VRF systems, SPVUs, and CRACs. DOE believes this type of equipment is similar to the other types of commercial heating, ventilating, and air-conditioning equipment subject to DOE's existing sampling procedures for certification testing and does not warrant differential treatment.

*F. Definitional Changes*

As discussed in the preceding sections, DOE is proposing to include in its regulations separate standards and test procedures for VRF systems, and new standards and test procedures for computer room air conditioners. Additionally, after the enactment of EISA 2007, DOE created separate standards for single package vertical air conditioners and heat pumps in its regulations at 10 CFR 431.97 (74 FR 12058, 12073–74 (March 23, 2009)), and is proposing to adopt a test procedure for those equipment in today's notice. Further, DOE's regulations at 10 CFR 431.97 also include ''very large'' commercial package air conditioning and heating equipment. To be consistent with the treatment of other commercial HVAC equipment and to reduce ambiguity, DOE is proposing to modify the definition of ''Commercial HVAC & WH product'' that was added to 10 CFR 431.2 by a March 7, 2011 final rule for certification, compliance, and enforcement for consumer products and commercial and industrial equipment. 76 FR 12422, 12503. DOE proposes to modify the definition so that it explicitly includes very large commercial package air conditioners and heating equipment, single package vertical air conditioners, single package vertical heat pumps, computer room air conditioners, variable refrigerant flow multi-split air conditioners, and variable refrigerant flow multi-split heat pumps.

## V. Methodology for VRF Water-Source Heat Pumps

This section addresses the analysis DOE has performed for this rulemaking with respect to VRF water-source heat pumps. As mentioned in section IV.B.3, DOE performed a preliminary National Energy Savings analysis for VRF water-source heat pumps greater than 135,000 Btu/h, equivalent to that performed for the May 2011 NODA for other product categories. DOE was unable to perform this analysis at the time of the NODA because AHRI had not yet released a database of efficiency information for these products, and DOE was unable to obtain sufficient EER information from a review of manufacturer Web sites. As a result of the minimal energy savings demonstrated by DOE's analysis for the NOPR (the results of which are summarized in section VIII.B.2), DOE did not conduct further energy savings or economic analyses. In addition, in response to the May 2011 NODA, AHRI confirmed that there are no VRF water-source heat pumps being manufactured with cooling capacities below 17,000 Btu/h, so DOE did not perform a potential energy-savings analysis for this product class.

*A. Definitions of ''VRF Multi-Split Air Conditioners'' and ''VRF Multi-Split Heat Pumps''*

VRF water-source heat pumps are part of the larger VRF system equipment class. VRF systems are a subset of commercial air conditioning and heating equipment, which ASHRAE Standard 90.1–2010 placed into separate equipment classes. As a result, in today's NOPR, DOE is proposing to separate the VRF equipment classes from the other classes of commercial package air conditioning and heating equipment. Neither EPCA nor DOE's regulations in the CFR define ''variable refrigerant flow system.'' DOE examined the definitions for VRF systems in ASHRAE Standard 90.1–2010 and AHRI Standard 1230, the proposed test procedure for this equipment.

ASHRAE Standard 90.1–2010 defines a ''variable refrigerant flow system'' as ''an engineered direct expansion (DX) multi-split system incorporating at least one variable capacity compressor distributing refrigerant through a piping network to multiple indoor fan coil units each capable of individual zone temperature control, through integral zone temperature control devices and common communications network. Variable refrigerant flow utilizes three or more steps of control on common, interconnecting piping.'' AHRI Standard 1230, the test procedure cited by ASHRAE Standard 90.1–2010 for use with this equipment, uses the term ''variable refrigerant flow multi-split system'' and defines it as ''a split system air-conditioner or heat pump incorporating a single refrigerant circuit, with one or more outdoor units, at least one variable speed compressor or an alternative compressor combination for varying the capacity of the system by three or more steps, multiple indoor fan coil units, each of which is individually metered and individually controlled by a proprietary control device and common communications network. The system shall be capable of operating as an air conditioner or a heat pump. Variable refrigerant flow implies three or more steps of control on common, inter-connecting piping.''

In both cases, the definitions use the term ''multi-split'' to distinguish such units from ''mini-split,'' with the indoor units of the latter systems only being able to be controlled by one thermostat (as opposed to multi-split, which can be controlled by multiple thermostats). Because DOE believes that it is important to distinguish VRF systems as multi-split systems, DOE is proposing to formulate these definitions with the term ''multi-split'' in the title for this equipment class based on the definitions above. DOE believes that these proposed definitions incorporate all the unique features of this equipment class, most notably the individually-controlled indoor units which operate independently from other indoor units. DOE proposes the definitions of ''variable refrigerant flow multi-split air conditioner'' and ''variable refrigerant flow multi-split heat pump'' to read as follows:

*Variable refrigerant flow multi-split air conditioner* means a unit of commercial package air conditioning and heating equipment that is configured as a split system air-conditioner incorporating a single refrigerant circuit, with one or more outdoor units, at least one variable-speed compressor or an alternate compressor combination for

varying the capacity of the system by three or more steps, and multiple indoor fan coil units, each of which is individually metered and individually controlled by an integral control device and common communications network and which can operate independently in response to multiple indoor thermostats. Variable refrigerant flow implies three or more steps of capacity control on common, inter-connecting piping.

*Variable refrigerant flow multi-split heat pump* means a unit of commercial package air conditioning and heating equipment that is configured as a split system heat pump that uses reverse cycle refrigeration as its primary heating source and which may include secondary supplemental heating by means of electrical resistance, steam, hot water, or gas. The equipment incorporates a single refrigerant circuit, with one or more outdoor units, at least one variable-speed compressor or an alternate compressor combination for varying the capacity of the system by three or more steps, and multiple indoor fan coil units, each of which is individually metered and individually controlled by a control device and common communications network and which can operate independently in response to multiple indoor thermostats. Variable refrigerant flow implies three or more steps of capacity control on common, inter-connecting piping.

These definitions clearly delineate VRF air conditioners and heat pumps as a sub-category of commercial package air conditioning and heating equipment and are structured in such a way to ensure that there are no overlaps with any other covered equipment class. There is also a subcategory of VRF systems that have heat recovery; therefore, DOE is also proposing to define ''heat recovery'' in the context of variable refrigerant flow multi-split air conditioners or variable refrigerant flow multi-split heat pumps to read as follows:

*Heat recovery* (in the context of variable refrigerant flow multi-split air conditioners or variable refrigerant flow multi-split heat pumps) means that the air conditioner or heat pump is also capable of providing simultaneous heating and cooling operation, where recovered energy from the indoor units operating in one mode can be transferred to one or more other indoor units operating in the other mode. A variable refrigerant flow multi-split heat recovery heat pump is a variable refrigerant flow multi-split heat pump with the addition of heat recovery capability.

DOE is requesting comment on its proposed definitions of ''variable refrigerant flow multi-split air conditioner,'' ''variable refrigerant flow multi-split heat pump,'' and ''heat recovery.'' This is identified as issue 10 in section X.E, ''Issues on Which DOE Seeks Comment.''

*B. Annual Energy Use*

Annual per-unit energy use estimates for VRF water-source heat pumps at or greater than 135,000 Btu/h cooling capacity were developed based on whole building energy simulation of a medium-sized prototype office building in 15 locations around the U.S, with each location representing one of 15 unique climate zones within the U.S.[18] The prototype office building model used two water-source VRF systems in conjunction with a gas-fired boiler and a single cooling tower to serve the condensing water loop for the VRF systems. The simulation tool was a commercial version of the DOE2.1E building simulation tool, with the capability to model water-source VRF equipment using custom DOE2.1E functions. This simulation tool also provides actual performance curves obtained from equipment manufacturers for a number of specific equipment models, including many water-source VRF condensing units and indoor sections.

DOE simulated the medium office building using actual equipment selections corresponding to three different efficiency levels identified in the AHRI certified product directory for VRF multi-split air conditioners and heat pumps.[19] These efficiency levels corresponded to: (1) The lowest efficiency level identified in the directory and close to the ASHRAE baseline; (2) an efficiency level corresponding to the highest efficiency level identified for ducted systems; and (3) an efficiency level near the highest efficiency identified for ductless systems. The AHRI 1230–2010 test procedure provides that each condensing unit be tested as both a ducted system (representing equipment using indoor units that are connected to short distribution ducts) and as a ductless system (representing equipment using ductless indoor sections that provide conditioned air directly to the building space served). Because of a higher external static pressure when testing ducted units, the rated efficiency (EER and COP) of a given condensing unit is lower when tested as a ducted system than when tested as a ductless system. The two higher efficiency levels simulated utilized the same condensing unit but represent ratings as a ducted and as a ductless system respectively. The lowest EER level simulated was represented by a lower-performing condensing unit in a ducted system configuration.

DOE performed simulations of the prototype office building at these three VRF efficiency levels in each climate for systems with and without heat recovery. As the ratings data do not identify the indoor units used, DOE selected a representative ducted indoor section and developed supply fan power estimates based on that unit for ducted systems representing the first two efficiency levels simulated. For non-ducted systems where there was a large variety of indoor sections available, DOE developed an average fan power estimate based on average supply fan power data for five different ductless indoor section designs. DOE then used that average ductless fan power estimate in simulating the building with VRF systems at this third, highest, efficiency level.

The annual electrical energy use for the VRF equipment, including each condensing unit and all associated evaporator units, was extracted from the simulation results for each building simulated and normalized by cooling capacity to provide estimates of annual VRF cooling, heating, and fan energy consumption at the average cooling capacities estimated by DOE for the two VRF product classes. For water-source VRF systems greater than 135,000 Btu/h without heat recovery, DOE estimated the average cooling capacity at 216,000 Btu/h based on the average for available equipment found in the 2011 AHRI certified products directory.[20] For water-source VRF systems with heat recovery, DOE estimated the average cooling capacity at 192,000 Btu/h using the same data source.

DOE calculated the national average energy use for VRF systems with and without heat recovery at each efficiency level using commercial building construction weights previously developed by DOE and assigned to each of the 15 U.S. climate zones. For each equipment class, DOE developed linear relationship between the national average cooling energy use and the reciprocal of the cooling EER for each consecutive pair of three efficiencies modeled. DOE also developed a linear relationship between the national average heating energy use and the

[18] Briggs, R.L., R.G. Lucas, and Z.T. Taylor, *Climate Classification for Building Energy Codes and Standards: Part 1—Development Process* and Part 2—Zone Definitions, Maps, and Comparisons, ASHRAE Transactions (2003) (1) pp. 4610–4611.

[19] Directory of Certified Variable Refrigerant Flow (VRF) Multi-Split Air Conditioning and Heat Pump Equipment: 2011 Edition (Effective Date: Sept. 16, 2011) (Last accessed on Sept. 26, 2011) (Available at: *http://www.ahridirectory.org/ahridirectory/pages/home.aspx*).

[20] See: *http://www.ahridirectory.org/ahridirectory/pages/vrf/VRFDirectory_20110916.pdf.*

reciprocal of the heating COP for each consecutive pair of efficiencies modeled. DOE then used these relationships to estimate the annual average cooling and heating energy use at the ASHRAE baseline efficiency level and at four higher efficiency levels, including the highest EER and COP levels found in the AHRI certified product directory for each product class (identified as max-tech levels for this analysis). Level 2 corresponded to the highest efficiency found for ducted VRF equipment in the AHRI directory. DOE held the fan energy use constant for levels at and below level 2 to that estimated based on the ducted VRF simulations. DOE determined that the max-tech level corresponded to a ductless system and estimated the energy use at the max-tech level using the linear relationship between the higher two efficiencies simulated. Annual energy use at level 3 was calculated based on interpolation between level 2 and the max-tech level. In all, DOE developed annual energy consumption estimates for efficiency levels at EER values of 10.0, 11.0, 12.0, 13.0, and 14.5 for water-source VRF heat pumps without heat recovery. DOE developed annual energy consumption estimates for efficiency levels at EER values of 9.8, 11.0, 12.0, 13.0, and 14.5 for water-source VRF heat pumps with heat recovery.

*C. Shipments*

DOE obtained historical (1989–2009) water-source heat pump shipment data from the U.S. Census.[21] Table V.1 exhibits the shipment data provided for a selection of years, while the full data set can be found in chapter 7 of the NOPR TSD.[22] DOE used these shipment data to extrapolate shipments into the future based on the historical trend.

TABLE V.1—TOTAL SHIPMENTS OF WATER-SOURCE HEAT PUMPS

| Year | Units shipped |
|---|---|
| 1990 | 139,864 |
| 1994 | 99,321 |
| 2000 | 133,654 |
| 2005 | 141,410 |
| 2009 | 180,101 |

As these shipment data represent water-source heat pumps generally and not VRF water-source heat pumps specifically, DOE undertook research to ascertain the number of models of water-source heat pumps in total, and VRF water-source heat pumps specifically. DOE used AHRI's Directories of Certified Product Performance for Water-to-Air and Water-to-Water Heat Pumps (excluding groundwater loop and ground loop) and VRF Multi-Split Water-to-Air Heat Pumps for this purpose.[23] DOE supplemented the AHRI Directory for VRF systems with information from manufacturers' Web sites to capture as much of the market as possible. DOE used the ratio of VRF water-source heat pump greater than 135,000 Btu/h models to all water-source heat pump models on the market (164:4277) to estimate VRF water-source heat pump shipments. DOE also used the ratio of VRF water-source heat pumps greater than 135,000 Btu/h without heat recovery to all VRF water-source heat pumps greater than 135,000 Btu/h to allocate shipments into the two product classes (106:164). The complete historical data set and the projected shipments can be found in chapter 7 of the NOPR TSD.

DOE then reviewed the AHRI Certified Product Directory to determine the distribution of efficiency levels for commercially-available models of VRF water-source heat pumps greater than 135,000 Btu/h. DOE bundled the efficiency levels into ''efficiency ranges'' and determined the percentage of models within each range. The distribution of efficiencies in the base case can be found in chapter 8 of the NOPR TSD. It is important to note that DOE did not identify any models on the market for either class of equipment with an EER below those specified in ASHRAE Standard 90.1–2010.

For the standards case, DOE assumed shipments at lower efficiencies were most likely to roll up into higher efficiency levels in response to more-stringent energy conservation standards. For each efficiency level analyzed within a given equipment class, DOE used a ''roll-up'' scenario to establish the market shares by efficiency level for the year in which compliance with amended standards is required (*i.e.,* 2013). DOE estimated that the efficiencies of equipment in the base case that did not meet the standard level under consideration would roll up to meet the standard level. Available information also suggests that all equipment efficiencies in the base case that were above the standard level under consideration would not be affected. As an example, Table V.2 shows the distribution of efficiencies within the base-case and the roll-up scenarios to establish the distribution of efficiencies in the standards cases for VRF water-source heat pumps without heat recovery.

TABLE V.2—DISTRIBUTION OF EFFICIENCIES IN THE BASE CASE AND STANDARDS CASES FOR VRF WATER-SOURCE HEAT PUMPS >135 KBTU WITHOUT HEAT RECOVERY

| Efficiency level | Efficiency ranges (EER)* | | | | | |
|---|---|---|---|---|---|---|
| | 9.5–9.7 | 9.8–10.4 | 10.5–11.5 | 11.6–12.5 | 12.6–13.4 | 13.5+ |
| Market Baseline | 0% | 3% | 73% | 15% | 3% | 5% |
| Efficiency Level 1—ASHRAE (10.0 EER) | ..... | 3% | 73% | 15% | 3% | 5% |
| Efficiency Level 2—(11.0 EER) | ..... | ..... | 76% | 15% | 3% | 5% |
| Efficiency Level 3—(12.0 EER) | ..... | ..... | ..... | 92% | 3% | 5% |
| Efficiency Level 4—(13.0 EER) | ..... | ..... | ..... | ..... | 95% | 5% |
| Efficiency Level 5—''Max-Tech''—(14.5 EER) | ..... | ..... | ..... | ..... | ..... | 100% |

* DOE binned models into efficiency ranges surrounding the EER of each efficiency level; the specific bins were chosen to maintain the same market average efficiency (when the number of models in each range is multiplied by the efficiency level EER) as calculated using the full distribution of models.

Using the distribution of efficiencies in the base case and in the standards cases, as well as the unit energy consumption (UEC) for each specified EER (discussed previously), DOE calculated market-weighted average

[21] *http://www.census.gov/manufacturing/cir/historical_data/ma333m/index.html, http://permanent.access.gpo.gov/lps38720/.*

[22] *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/ashrae_products_docs_meeting.html.*

[23] See: *www.ahridirectory.org.*

efficiency values. The market-weighted average efficiency value represents the average efficiency of the total units shipped at a specified amended standard level. The market-weighted average efficiency values for the base case and the standards cases for each efficiency level analyzed are provided in chapter 8 of the ASHRAE NOPR TSD.

*D. Other Analytical Inputs*

1. Site-to-Source Conversion

DOE converted the annual site energy savings into the annual amount of energy saved at the source of electric generation (*i.e.,* primary energy), using site-to-source conversion factors over the analysis period (calculated from the Energy Information Agency's (EIA's) *Annual Energy Outlook 2011* (*AEO2011*) projections).[24] DOE derived the annual conversion factors by dividing the delivered electricity to the commercial sector plus loss for each forecast year in the United States, as indicated in *AEO2011,* by the delivered electricity to the commercial sector for each forecasted year.

2. Product Lifetime

DOE used a product lifetime of 19 years for VRF water-source heat pumps based on the ASHRAE 2011 HVAC Applications Handbook.[25]

3. Compliance Date and Analysis Period

For purposes of calculating the national energy savings (NES), DOE used an analysis period of 2013 (the assumed compliance date if DOE were to adopt the ASHRAE levels as Federal standards for large and very large products) through 2042. This is the standard analysis period of 30 years that DOE typically uses in its NES analysis. While the analysis period remains the same for assessing the energy savings of Federal standard levels higher than the ASHRAE levels, those energy savings would not begin accumulating until 2017 (the assumed compliance date if DOE were to determine that standard levels more stringent than the ASHRAE levels are justified).

If DOE were to propose a rule prescribing energy conservation standards at the efficiency levels contained in ASHRAE Standard 90.1–2010, EPCA states that any such standards shall become effective on or after a date which is two or three years (depending on equipment size) after the effective date of the applicable minimum energy efficiency requirement in the amended ASHRAE standard (*i.e.,* ASHRAE Standard 90.1–2010). (42 U.S.C. 6313(a)(6)(D)) For VRF water-source heat pumps in this rulemaking, ASHRAE Standard 90.1–2010 does not specify an effective date; therefore, the effective date is assumed to be the publication date of ASHRAE Standard 90.1–2010, or October 29, 2010. Thus, if DOE decides to adopt the levels in ASHRAE Standard 90.1–2010, the rule would apply to large and very large equipment (the product class analyzed here) manufactured on or after October 29, 2013, which is three years from the effective date specified in ASHRAE Standard 90.1–2010.

If DOE were to propose a rule prescribing energy conservation standards higher than the efficiency levels contained in ASHRAE Standard 90.1–2010, under EPCA, any such standard would apply to for products manufactured four years after the date of publication of the final rule in the **Federal Register.** (42 U.S.C. 6313(a)(6)(D)) Thus, for products for which DOE might adopt a level more stringent than the ASHRAE efficiency level, the rule would apply to products manufactured on or after a date which is four years from the date of publication of the final rule adopting standards higher than the ASHRAE efficiency levels (30 months after publication of the revised ASHRAE Standard 90.1, which was October 29, 2010). Under this timeline, compliance with such more-stringent standards would be required no later than April 29, 2017.

## VI. Methodology for Computer Room Air Conditioners

This section addresses the analyses DOE has performed for this rulemaking with respect to computer room air conditioners. A separate subsection addresses each analysis. In overview, DOE used a spreadsheet to calculate the life-cycle cost (LCC) and payback periods (PBPs) of potential energy conservation standards. DOE used another spreadsheet to provide shipments forecasts and then calculate national energy savings and net present value impacts of potential amended energy conservation standards.

*A. Market Assessment*

To begin its review of the ASHRAE Standard 90.1–2010 efficiency levels, DOE developed information that provides an overall picture of the market for the equipment concerned, including the purpose of the equipment, the industry structure, and market characteristics. This activity included both quantitative and qualitative assessments based primarily on publicly-available information. The subjects addressed in the market assessment for this rulemaking include equipment classes, manufacturers, quantities, and types of equipment sold and offered for sale. The key findings of DOE's market assessment are summarized below. For additional detail, see chapter 2 of the NOPR TSD.

1. Definitions of ''Computer Room Air Conditioners''

As discussed in the May 2011 NODA, the 2010 version of ASHRAE Standard 90.1 modified the scope of the standard to include air conditioning equipment used for process cooling and set efficiency levels for computer room air conditioners. 76 FR 25622, 25633–34 (May 5, 2011). Given this expansion of scope, DOE tentatively determined that it has the authority to consider and adopt standards for this equipment. *Id.* However, DOE currently does not have a definition for ''computer room air conditioner,'' because DOE's regulations do not currently cover this equipment class. Because ASHRAE Standard 90.1–2010 expanded its scope to include air conditioners and condensing units serving computer rooms and DOE has decided to consider standards for this equipment, DOE must now define this equipment.

As noted in section IV.C, computer room air conditioners operate in a similar manner to other commercial air conditioners, in that they provide space conditioning using a refrigeration cycle with a compressor, condenser, expansion valve, and an evaporator. However, computer room air conditioners are designed to maintain the temperature in a narrow range, to minimize temperature swings, and to maintain a specific relative humidity (usually between 40 and 55 percent). The equipment usually must be able to both humidify and dehumidify the air to maintain humidity at desired levels, and they are sometimes called ''precision air

[24] *AEO2011* can be accessed at: *http://www.eia.gov/forecasts/aeo/.*

[25] 2011 ASHRAE Handbook HVAC Applications. ASHRAE, 2011. Atlanta GA (Available at *www.ashrae.org*). ASHRAE's handbook does not list a service life for VRF equipment specifically, but it does provide service life estimates for water-source heat pumps generally. In this regard, ASHRAE cites two different studies for equipment service life. The first study of this type of equipment reported a service life of 19 years. The second, more-recent study cited suggests a service life of 24 years for all classes of direct expansion cooling systems. This second study relies heavily on extrapolation of a survival curve based on a sample of 1907 DX equipment observations from various equipment classes from which 284 units had actually been replaced and most were still in service. (ASHRAE Research Project 1237–TRP *Interactive Web-based Owning and Operating Cost Database Final Report,* July 2005. Available at www.ashrae.org) However, as VRF products are new to the U.S. with relatively little data on lifetime, DOE has relied on the older, more conservative, 19-year service life estimate for its analysis.

conditioners'' because of this requirement. However, although the characteristics listed above are common among computer room air conditioners, not all computer room air conditioners are equipped with humidity control options; DOE found that typically, such features are optional, as much of the equipment is custom-built for a specific application.

DOE is not aware of any components in computer room air conditioners that are exclusive to only computer room air conditioners and not to commercial air conditioners used for comfort conditioning (or vice versa) that could be used to effectively differentiate the two types of units on the basis of their construction. Further, DOE notes that the class of computer room air conditioners is defined in ASHRAE Standard 90.1 as an application (*i.e.,* units that serve computer rooms), rather than based on a specific physical characteristic or component that differentiates the equipment from other commercial package air conditioning equipment. DOE also examined the definitions in ASHRAE Standard 127–2007 (Method of Testing for Rating Computer and Data Processing Room Unitary Air Conditioners). Specifically, DOE reviewed the definition of ''computer and data processing room (CDPR) unitary air conditioner'' contained in that standard and found that there are no distinct physical characteristics used to differentiate computer room air conditioners from other commercial air conditioning and heating equipment. DOE believes, therefore, that this equipment is typically identified in the marketplace based on its intended application (*i.e.,* how the equipment is marketed), rather than on differentiating physical components.

In the NODA, DOE requested comment on an appropriate approach for establishing a definition for ''computer room air conditioner.'' 76 FR 25622, 25634 (May 5, 2011). In response, AHRI suggested that DOE use the product's rated performance and the relevant rating standard (SCOP and ASHRAE 127, respectively) to distinguish air conditioners and condensing units designed for serving computer rooms from other types of commercial packaged air conditioning and heating equipment covered by EPCA. (AHRI, No. 11 at p. 4) DOE did not receive any other comments on this issue.

As noted above, DOE found that the operating conditions for computer room air conditioners are different from those for air conditioners used for comfort conditioning. Different humidity and temperature conditions and a higher sensible load could lead manufacturers of computer room air conditioners to optimize their equipment to perform best at the rating conditions found in ASHRAE Standard 127 (a test method specifically for computer and data processing room air conditioners), rather than AHRI Standard 210/240 or 340/360 (test methods for commercial package air conditioning equipment used for comfort conditioning). Because of this, DOE believes that manufacturers of computer room air conditioners would likely test those units according to ASHRAE Standard 127, while manufacturers of commercial package air conditioners intended for use in comfort conditioning applications would test those units according to either AHRI Standard 210/240 or AHRI Standard 340/360, depending on the cooling capacity of the unit.

As a result, DOE is proposing in today's NOPR to define a ''computer room air conditioner'' based on how the equipment is marketed exclusively for use and which test standard is used to rate the performance of the equipment. DOE proposes the following definition of ''computer room air conditioner'':

*Computer room air conditioner* means a unit of commercial package air conditioning and heating equipment that is advertised, marketed, and/or sold specifically for use in computer rooms, data processing rooms, or other precision cooling applications, and is rated for performance using ASHRAE Standard 127. Such equipment may not be marketed or advertised as equipment for any other space conditioning applications, and may not be rated for performance using AHRI Standard 210/240 or AHRI Standard 340/360.

DOE seeks comment on its proposed definition of ''computer room air conditioner,'' as well as on alternatives to this proposed definition. DOE is particularly interested in information on physical characteristics or features that could possibly be used to differentiate between computer room air conditioners and other types of commercial package air conditioners. This is identified as issue 11 in Section X.E, ''Issues on Which DOE Seeks Comment.''

2. Equipment Classes

As noted above, there are currently no Federal energy conservation standards for computer room air conditioners. Different classes of computer room air conditioners are distinguished by several factors in ASHRAE Standard 90.1–2010, which include the net sensible cooling capacity (*i.e.,* small, large, or very large), orientation of airflow through the equipment (*i.e.,* upflow or downflow), heat rejection method (*i.e.,* air-cooled, water-cooled, or glycol-cooled), and whether a fluid economizer is used.[26] Using these characteristics, ASHRAE Standard 90.1–2010 divided computer room air conditioners into thirty equipment classes and set the efficiency levels shown in Table VI.1.

TABLE VI.1—ASHRAE STANDARD 90.1–2010 COMPUTER ROOM AIR CONDITIONERS EFFICIENCY LEVELS

| Equipment type | Net sensible cooling capacity | Minimum SCOP efficiency | |
|---|---|---|---|
| | | Downflow units | Upflow units |
| Air Conditioners, Air-Cooled | <65,000 Btu/h | 2.20 | 2.09 |
| | ≥65,000 Btu/h and <240,000 Btu/h | 2.10 | 1.99 |
| | ≥240,000 Btu/h | 1.90 | 1.79 |
| Air Conditioners, Water-Cooled | <65,000 Btu/h | 2.60 | 2.49 |
| | ≥65,000 Btu/h and <240,000 Btu/h | 2.50 | 2.39 |

[26] A ''fluid economizer'' is a system configuration potentially available where an external fluid cooler is utilized for heat rejection (*i.e.,* for glycol-cooled or water-cooled equipment). The fluid economizer utilizes a separate liquid-to-air cooling coil within the CRAC unit and the cooled water or glycol fluid returning from the external fluid cooler to cool return air directly, much like a chilled water air handling unit (*i.e.,* without the use of compressors). The ''economizer'' cooling can either augment or can take the place of compressor cooling, but only when returning water or glycol fluid temperatures are low enough to provide for significant direct coiling from the liquid-to-air cooling coil

TABLE VI.1—ASHRAE STANDARD 90.1–2010 COMPUTER ROOM AIR CONDITIONERS EFFICIENCY LEVELS—Continued

| Equipment type | Net sensible cooling capacity | Minimum SCOP efficiency | |
|---|---|---|---|
| | | Downflow units | Upflow units |
| | ≥240,000 Btu/h | 2.40 | 2.29 |
| Air Conditioners, Water-Cooled with a Fluid Economizer | <65,000 Btu/h | 2.55 | 2.44 |
| | ≥65,000 Btu/h and <240,000 Btu/h | 2.45 | 2.34 |
| | ≥240,000 Btu/h | 2.35 | 2.24 |
| Air Conditioners, Glycol-Cooled (rated at 40% propylene glycol) | <65,000 Btu/h | 2.50 | 2.39 |
| | ≥65,000 Btu/h and <240,000 Btu/h | 2.15 | 2.04 |
| | ≥240,000 Btu/h | 2.10 | 1.99 |
| Air Conditioner, Glycol-Cooled (rated at 40% propylene glycol) with a Fluid Economizer. | <65,000 Btu/h | 2.45 | 2.34 |
| | ≥65,000 Btu/h and <240,000 Btu/h | 2.10 | 1.99 |
| | ≥240,000 Btu/h | 2.05 | 1.94 |

In general, DOE divides equipment classes by the type of energy used or by capacity or other performance-related features that affect efficiency. Different energy conservation standards may apply to different equipment classes. (42 U.S.C. 6295(q)) In the context of the present rulemaking, DOE believes net sensible cooling capacity (*i.e.,* small, large, or very large), orientation (*i.e.,* upflow or downflow), heat rejection method (*i.e.,* air-cooled, water-cooled, or glycol-cooled), and use of a fluid economizer are all performance-related features that affect computer room air conditioner efficiency (*i.e.,* SCOP). By examining the characteristics of equipment available on the market, DOE found computer room air conditioners in a wide range of efficiencies depending on their design and features. Consequently, DOE is proposing to use the same thirty equipment classes in ASHRAE Standard 90.1–2010 to differentiate between types of computer room air conditioners.

3. Review of Current Market for Computer Room Air Conditioners

In order to obtain the information needed for the market assessment for this rulemaking, DOE consulted a variety of sources, including manufacturer literature, manufacturer Web sites, and the California Energy Commission (CEC) Appliance Efficiency Database. The information DOE gathered serves as resource material throughout the rulemaking. The sections below provide an overview of the computer room air conditioner market assessment, and chapter 2 of the NOPR TSD provides additional detail on the market assessment, including citations to relevant sources.

a. Trade Association Information

There is no trade association that represents computer room air conditioner manufacturers. AHRI is the trade association representing most manufacturers of commercial air conditioning and heating equipment; however, AHRI does not have a subsection for computer room air conditioners, and the major manufacturers of computer room air conditioners that DOE identified are not AHRI members.[27]

b. Manufacturer Information

DOE initially identified manufacturers of computer room air conditioners through conversations with industry experts and by examining the California Energy Commission (CEC) appliance efficiency database.[28] Manufacturers that DOE identified include American Power Conversion, Compu-Aire, Data Aire, Liebert, and Stulz. DOE reviewed manufacturer literature to gain insight into product availability, technologies used to improve efficiency, and product characteristics (*e.g.,* cooling capacities) of the models in each equipment class.

c. Market Data

Using the CEC database and manufacturer literature gathered from manufacturer Web sites, DOE compiled a database of 1,364 computer room air conditioner models from the five manufacturers it identified. These units included 452 air-cooled units, 248 water-cooled units without a fluid economizer, 174 water-cooled units with a fluid economizer, 237 glycol-cooled units without a fluid economizer, and 253 glycol-cooled units with a fluid economizer. These units can also be divided by size categories and orientation, and a full breakdown of the number of units in each equipment class can be found in chapter 2 of the NOPR TSD. Of the 1,364 computer room air conditioners in DOE's database, DOE was only able to obtain efficiency data for 208 units, which accounts for approximately 15 percent of the database (see section VI.B.4 of this NOPR for information about how DOE estimated efficiency data). Because computer room air conditioner manufacturers are not currently required to report efficiency information to DOE, most manufacturers do not publish efficiency information in their product literature. DOE gathered available efficiency information for two manufacturers from the CEC database (where manufacturers are required to report efficiency information in if they sell models in California) and one other manufacturer's product literature (which was the only manufacturer that provided efficiency information in their product literature). DOE did not find any efficiency information for equipment from two of the five manufacturers of computer room air conditioners.

The average SCOP for each equipment class where DOE had adequate data is shown in the Table VI.2.

[27] For more information see: *http://www.ahrinet.org/ahri+members.aspx.*

[28] See: *http://www.appliances.energy.ca.gov/.*

TABLE VI.2—AVERAGE SCOP FOR COMPUTER ROOM AIR CONDITIONER EQUIPMENT CLASSES

| Equipment class | Size category | Upflow orientation average SCOP | Downflow orientation average SCOP |
|---|---|---|---|
| Air-Cooled | <65,000 Btu/h | 2.49 | 2.61 |
| | ≥65,000 Btu/h and <240,000 Btu/h | 2.64 | 2.64 |
| | ≥240,000 Btu/h | [1] | 2.25 |
| Water-Cooled | <65,000 Btu/h | 2.76 | 2.90 |
| | ≥65,000 Btu/h and <240,000 Btu/h | 2.76 | 2.78 |
| | ≥240,000 Btu/h | [1] | 2.45 |
| Water-Cooled with a Fluid Economizer | <65,000 Btu/h | [1] | [1] |
| | ≥65,000 Btu/h and <240,000 Btu/h | [1] | [1] |
| | ≥240,000 Btu/h | [1] | [1] |
| Glycol-Cooled | <65,000 Btu/h | 2.66 | 2.71 |
| | ≥65,000 Btu/h and <240,000 Btu/h | [1] | 2.62 |
| | ≥240,000 Btu/h | [1] | 2.49 |
| Glycol-Cooled with a Fluid Economizer | <65,000 Btu/h | [1] | 2.43 |
| | ≥65,000 Btu/h and <240,000 Btu/h | [1] | 2.48 |
| | ≥240,000 Btu/h | [1] | 2.38 |

[1] No information.

Chapter 2 of the NOPR TSD contains additional information drawn from the data that was used to inform DOE's analysis, such as the average sensible capacities for each equipment class. DOE used the information gathered in the market assessment as the foundation for developing the price-efficiency relationship in the engineering analysis. Additionally, DOE used the market data, along with other sources, to estimate the shipments of computer room air conditioners. Further details regarding the development of shipments estimates and forecasts can be found in section VI.F of this NOPR.

*B. Engineering Analysis*

The engineering analysis establishes the relationship between the cost and efficiency of a piece of equipment DOE is evaluating for potential amended energy conservation standards. This relationship serves as the basis for cost-benefit calculations for individual consumers and the Nation. The engineering analysis identifies representative baseline equipment, which is the starting point for analyzing possible energy efficiency improvements. For covered ASHRAE equipment, DOE sets the baseline at the ASHRAE Standard 90.1 efficiency level, because by statute, DOE cannot adopt any level below the revised ASHRAE level. The engineering analysis then identifies higher efficiency levels and the incremental increase in product cost associated with achieving the higher efficiency levels. After identifying the baseline models and cost of achieving increased efficiency, DOE estimates the additional costs to the customer through an analysis of contractor costs and markups, and uses that information in the downstream analyses to examine the costs and benefits associated with increased equipment efficiency.

DOE typically structures its engineering analysis around one of three methodologies: (1) The design-option approach, which calculates the incremental costs of adding specific design options to a baseline model; (2) the efficiency-level approach, which calculates the relative costs of achieving increases in energy efficiency levels without regard to the particular design options used to achieve such increases; and/or (3) the reverse-engineering or cost-assessment approach, which involves a ''bottom-up'' manufacturing cost assessment based on a detailed bill of materials derived from tear-downs of the product being analyzed.

1. Approach

For this analysis, DOE used an efficiency-level approach in conjunction with a pricing survey to develop the price-efficiency relationships for the various classes of computer room air conditioners. An efficiency-level approach allowed DOE to estimate the cost of achieving different SCOP levels in a timely manner (which was necessary to allow DOE to meet the statutorily-required deadlines for ASHRAE equipment in EPCA). The efficiency-level approach allowed DOE to capture a variety of designs available on the market and focused on the price of units at different SCOP ratings. The efficiency levels that DOE considered in the engineering analysis were representative of computer room air conditioners currently produced by manufacturers at the time the engineering analysis was developed. DOE relied on data collected from equipment distributors of three large computer room air conditioner manufacturers to develop its cost-efficiency relationship for computer room air conditioners. (See chapter 3 of the NOPR TSD for further detail.)

Although there are certain benefits to using an efficiency-level approach with a pricing survey (namely the ability to conduct an analysis in a limited amount of time that spans a variety of equipment and technologies), DOE notes there are also drawbacks to this approach. The most significant drawback of such an approach is that equipment pricing is not always based solely on equipment cost and is often influenced by a variety of other factors. Factors such as whether the unit is a high-volume seller, whether the unit has premium features (such as more sophisticated controls or a longer warranty), and the differences in markup between different manufacturers all have an effect on the prices of computer room air conditioners. In certain instances, this can make it difficult to compare prices across manufacturers because of the number of different ways that manufacturers can decide to set pricing based on features that are not part of the basic equipment costs. As a result, the relationship between price and efficiency could be different from the relationship between manufacturer cost

and efficiency that might be revealed through other engineering methods such as a design-option approach or using reverse-engineering. However, given the limited analysis time allowed by EPCA, DOE proceeded with an efficiency-level approach in which it gathered the price of equipment at various efficiency levels. Nonetheless, DOE believes this approach provides a reasonable approximation of the cost increases associated with efficiency increases and could be conducted in a timely manner that would allow DOE to meet the deadlines specified in EPCA for ASHRAE products. The approach allowed DOE to provide an estimate of equipment prices at different efficiencies and spanned a range of technologies currently on the market that are used to achieve the increased efficiency levels.

2. Representative Input Capacities for Analysis

Computer room air conditioners are separated into three size categories based upon the equipment's net sensible cooling capacity: (1) <65,000 Btu/h; (2) ≥65,000 Btu/h and <240,000 Btu/h; and (3) ≥240,000 Btu/h and <760,000 Btu/h. For each equipment size category, DOE chose a representative capacity for analysis. The representative capacity chosen was the average sensible capacity (rounded to the nearest ton [29]) of all models that DOE found on the market in a given product class. DOE collected pricing data as close to the representative capacity as possible; however, given the limited amount of data available, it was not always possible for DOE to obtain pricing information for models exactly at the representative capacity. Consequently, DOE obtained pricing for units as close as possible to the representative capacity (generally within 15 percent of the representative capacity) and then normalized the price in order to estimate the price at the representative capacity by calculating the price based on the price per Btu per hour and adjusting it accordingly.

For computer room air conditioners with a sensible cooling capacity less than 65,000 Btu/h, DOE collected data at the representative size of 36,000 Btu/h and normalized the cost to that capacity. For computer room air conditioners with a sensible cooling capacity greater than 65,000 Btu/h and less than 240,000 Btu/h, DOE collected data at the representative size of 132,000 Btu/h and normalized the cost to that capacity. For computer room air conditioners with a sensible cooling capacity greater than 240,000 Btu/h, DOE collected data for five total units with efficiency data in these equipment classes and normalized it to a representative capacity of 288,000 Btu/h. See chapter 2 of the NOPR TSD for information about the capacity information that DOE found for equipment on the market and chapter 3 of the TSD for more detail about the representative capacities selected.

3. Baseline Equipment

DOE selected baseline efficiency levels as reference points for each equipment class, against which it measured changes resulting from potential amended energy conservation standards. DOE defined the baseline efficiency levels in the engineering analysis and the LCC and PBP analyses as reference points to compare the technology, energy savings, and cost of equipment with higher energy efficiency levels. A baseline piece of equipment refers to a model having features and technologies typically found in equipment currently offered for sale. The baseline model in each equipment class represents the typical characteristics of equipment in that class. Typically, units at the baseline efficiency level just meet Federal energy conservation standards and provide basic consumer utility. However, since computer room air conditioners are a new equipment class, there are no current Federal standards for these units. Further, EPCA requires that DOE must adopt either the ASHRAE Standard 90.1–2010 levels or more stringent levels. Therefore, because the ASHRAE Standard 90.1–2010 levels were the lowest levels that DOE could adopt, DOE used those levels as the baseline efficiency level for the purposes of its analysis. Table VI.3 shows the baseline efficiency level for each computer room air conditioner equipment class in the downflow orientation.[30]

TABLE VI.3—BASELINE SCOP EFFICIENCY LEVEL

| Equipment class | Size category | Downflow orientation baseline SCOP |
|---|---|---|
| Air-Cooled | <65,000 Btu/h | 2.2 |
| | ≥65,000 Btu/h and <240,000 Btu/h | 2.1 |
| | ≥240,000 Btu/h | 1.9 |
| Water-Cooled | <65,000 Btu/h | 2.6 |
| | ≥65,000 Btu/h and <240,000 Btu/h | 2.5 |
| | ≥240,000 Btu/h | 2.4 |
| Water-Cooled with a Fluid Economizer | <65,000 Btu/h | 2.55 |
| | ≥65,000 Btu/h and <240,000 Btu/h | 2.45 |
| | ≥240,000 Btu/h | 2.35 |
| Glycol-Cooled | <65,000 Btu/h | 2.5 |
| | ≥65,000 Btu/h and <240,000 Btu/h | 2.15 |
| | ≥240,000 Btu/h | 2.1 |
| Glycol-Cooled with a Fluid Economizer | <65,000 Btu/h | 2.45 |
| | ≥65,000 Btu/h and <240,000 Btu/h | 2.1 |
| | ≥240,000 Btu/h | 2.05 |

[29] One ton of cooling capacity is equivalent to 12,000 Btu/h.

[30] As discussed in section VI.B.6, DOE focused its analysis on downflow models to reduce the total number of product classes requiring analysis. The SCOP for upflow models were reduced by 0.11 SCOP, and the upflow class was combined with the downflow class.

4. Identification of Efficiency Information and Efficiency Levels for Analysis

Since DOE does not currently regulate computer room air conditioners, manufacturers are not required to report or rate the efficiency of their equipment. Therefore, DOE relied on efficiency information found in manufacturer literature (for those manufacturers who voluntarily rate their equipment efficiency) and in the CEC database (as CEC does require manufacturers to certify the efficiency ratings for their computer room air conditioners being sold in California). Because SCOP is a new efficiency metric in ASHRAE 127–2007, all efficiency data DOE gathered were in the form of EER, as measured by the previous version of ASHRAE 127 (*i.e.,* ASHRAE 127–2001). DOE only found EER data for three of the five manufacturers. ASHRAE 127–2007 contains a ''rule-of-thumb'' method for determining SCOP using the EER as measured by ASHRAE 127–2001 and the sensible heat ratio (SHR).[31] DOE used the ''rule-of-thumb'' method to approximate SCOP ratings based on EER information contained in the CEC database and manufacturer literature, as well as SHR information found in manufacturer specification sheets. As noted above, this method allowed DOE to estimate SCOP ratings for 15 percent of the total units in its database, for which this information was available. Upon examining the market, DOE concluded that only four equipment classes contained enough models with efficiency information to adequately select efficiency levels based on the efficiency of models on the market. For the equipment classes where DOE did not have enough SCOP data to select efficiency levels, DOE translated the efficiency levels from one of the four previously mentioned equipment classes based on the SCOP differences between the different equipment classes as specified by ASHRAE Standard 90.1–2010. The efficiency levels selected for analysis for each equipment class are shown in Table VI.4. Chapter 3 of the NOPR TSD shows additional details on the efficiency levels selected for analysis.

TABLE VI.4—EFFICIENCY LEVELS FOR ANALYSIS OF COMPUTER ROOM AIR CONDITIONERS

| Equipment | Efficiency levels (SCOP) | | | | |
|---|---|---|---|---|---|
| | Baseline level | Level 1 | Level 2 | Level 3 | Level 4 |
| Air-Cooled, <65,000 Btu/h | 2.20 | 2.40 | 2.60 | 2.80 | 3.00 |
| Air-Cooled, ≥65,000 Btu/h and <240,000 Btu/h | 2.10 | 2.35 | 2.60 | 2.85 | 3.10 |
| Air-Cooled, ≥240,000 Btu/h and <760,000 Btu/h | 1.90 | 2.15 | 2.40 | 2.65 | 2.90 |
| Water-Cooled, <65,000 Btu/h | 2.60 | 2.80 | 3.00 | 3.20 | 3.40 |
| Water-Cooled, ≥65,000 Btu/h and <240,000 Btu/h | 2.50 | 2.70 | 2.90 | 3.10 | 3.30 |
| Water-Cooled, ≥240,000 Btu/h and <760,000 Btu/h | 2.40 | 2.60 | 2.80 | 3.00 | 3.20 |
| Water-Cooled with a Fluid Economizer, <65,000 Btu/h | 2.55 | 2.75 | 2.95 | 3.15 | 3.35 |
| Water-Cooled with a Fluid Economizer, ≥65,000 Btu/h and <240,000 Btu/h | 2.45 | 2.65 | 2.85 | 3.05 | 3.25 |
| Water-Cooled with a Fluid Economizer, ≥240,000 Btu/h and <760,000 Btu/h | 2.35 | 2.55 | 2.75 | 2.95 | 3.15 |
| Glycol-Cooled, <65,000 Btu/h | 2.50 | 2.70 | 2.90 | 3.10 | 3.30 |
| Glycol-Cooled, ≥65,000 Btu/h and <240,000 Btu/h | 2.15 | 2.35 | 2.55 | 2.75 | 2.95 |
| Glycol-Cooled, ≥240,000 Btu/h and <760,000 Btu/h | 2.10 | 2.30 | 2.50 | 2.70 | 2.90 |
| Glycol-Cooled with a Fluid Economizer, <65,000 Btu/h | 2.45 | 2.65 | 2.85 | 3.05 | 3.25 |
| Glycol-Cooled with a Fluid Economizer, ≥65,000 Btu/h and <240,000 Btu/h | 2.10 | 2.30 | 2.50 | 2.70 | 2.90 |
| Glycol-Cooled with a Fluid Economizer, ≥240,000 Btu/h and <760,000 Btu/h | 2.05 | 2.25 | 2.45 | 2.65 | 2.85 |

5. Pricing Data

Once DOE identified representative capacities and baseline units, and selected equipment classes and efficiency levels to analyze, DOE contacted three of the manufacturers of computer room air conditioners [32] to obtain pricing information for individual models in quantities of 10 units. DOE used 10 as a standard request that would be typical of a contractor installing the units in an office space. DOE received pricing information for 32 models total. DOE then used the pricing information in conjunction with the SCOP data (estimated from EER data) to build price-efficiency curves. See chapter 3 of the NOPR TSD for additional details about the pricing data DOE received.

6. Equipment Classes for Analysis and Extrapolation to Unanalyzed Equipment Classes

Due to a lack of efficiency data and small number of models on the market for certain equipment classes, DOE did not analyze each of the 30 equipment classes created by ASHRAE Standard 90.1 separately. Rather, DOE analyzed the equipment classes with the largest numbers of models on the market (and as a result the most data available) and used a variety of assumptions to extrapolate that analysis to the equipment classes with less information available.

DOE only considered downflow units in its engineering analysis. In reviewing the models available in its database, DOE found that each given equipment model (characterized by a product line and model number) was generally available in both an upflow and downflow configuration, and review of specific equipment indicated that the internal components could be optionally arranged by the manufacturer for either an upflow or downflow orientation. Therefore, DOE assumed that downflow units and upflow units generally have the same major components, but that those components are arranged differently. DOE assumed that the price of the units would likely be nearly the same and that the incremental cost of increasing efficiency would also be the same. However, DOE observed the 0.11 SCOP reduction in the ASHRAE Standard 90.1–2010 efficiency levels for upflow units as compared to downflow units. DOE believes this difference is a result of the additional static pressure that the blower fan must overcome in the upflow orientation, as required in the ASHRAE 127 test

[31] ''Sensible heat ratio'' is the ratio of a unit's sensible cooling capacity to its total (*i.e.,* sensible and latent) cooling capacity.

[32] As noted in section VI.B.4, only three manufacturers provided efficiency data. DOE obtained pricing from all manufacturers for which it had efficiency data.

procedure. By assuming that the results of a cost-benefit analysis for the upflow classes for a given incremental change in SCOP would have the same results as the downflow class (because the incremental cost and efficiency gains would be the same), DOE was able to focus on the downflow equipment classes where more data were available.

Among the downflow equipment classes, DOE found there was only enough efficiency information to analyze four equipment classes: (1) Small (*i.e.,* sensible capacity less than 65,000 Btu/h) air-cooled; (2) large (*i.e.,* sensible capacity greater than or equal to 65,000 Btu/h but less than 240,000 Btu/h) air-cooled; (3) small (*i.e.,* sensible capacity less than 65,000 Btu/h) water-cooled; and (4) large (*i.e.,* sensible capacity greater than or equal to 65,000 Btu/h but less than 240,000 Btu/h) water-cooled. For the other 11 downflow equipment classes, DOE had to extrapolate the analysis based on these four primary equipment classes due to a lack of efficiency and pricing data for those equipment classes.

To extrapolate the data and generate a price-efficiency relationship for the very large (*i.e.,* sensible capacity greater than or equal to 240,000 Btu/h but less than 760,000 Btu/h) air-cooled and very large water-cooled equipment classes, DOE modified the price-efficiency curves for the large air-cooled and large water-cooled equipment classes, respectively. In each case, DOE shifted the relationship down by the difference in SCOP specified between the equipment classes in ASHRAE Standard 90.1–2010. Then, using the limited pricing data collected in the very large equipment classes, DOE found the percent difference between a large unit and very large unit for a given manufacturer (or manufacturers if multiple points were available). DOE multiplied the prices by the average percentage difference between a very large unit and a large unit of the same model line to estimate the price-efficiency relationship for the very large equipment classes.

For the three glycol-cooled equipment classes (*i.e.,* small, large, and very large), DOE was able to collect a limited amount of pricing data, and DOE found that the prices of glycol-cooled units were identical to those for water-cooled units in the same product line. Therefore, DOE modeled the cost-efficiency curves for glycol-cooled units after the water-cooled equipment by maintaining the same pricing, but shifting the curves to account for the decrease in SCOP that DOE believes results from a decrease in heat transfer for glycol-cooled units as compared to water-cooled units. DOE shifted the curves by the same amount as the difference in the ASHRAE Standard 90.1–2010 efficiency levels between each respective equipment class.

For the six computer room air conditioner equipment classes with a fluid economizer (*i.e.,* small, large, and very large water-cooled, and small, large, and very large glycol-cooled), DOE translated the efficiency data and prices from the corresponding water-cooled or glycol-cooled equipment classes. Because a fluid economizer adds additional external static pressure that must be overcome by the blower fan, DOE believes these units generally will require more fan power and have lower SCOP ratings than equivalent models without an economizer. Therefore, DOE shifted the efficiency down 0.05 SCOP, which was the efficiency difference for computer room air conditioners with fluid economizers versus those without an economizer in ASHRAE Standard 90.1–2010. From the limited pricing data that DOE was able to collect for units with fluid economizers, DOE found the percentage difference in price for equipment with a fluid economizer compared to the same model without a fluid economizer. DOE then increased the pricing in the price-efficiency relationships for each equipment class by the percentage difference found for adding a fluid economizer to generate the price-efficiency relationship for the equipment classes with fluid economizers.

7. Engineering Analysis Results

The result of the engineering analysis is a set of price-efficiency curves. Creating the price-efficiency curves involved plotting the manufacturer price versus efficiency and using an exponential regression analysis to fit a curve that best defines the aggregated data. When DOE examined the pricing data for each individual manufacturer, DOE found there was no correlation between pricing and efficiency. Only when the manufacturer data points were aggregated across all manufacturers for each equipment class did a correlation appear. Generally, there were manufacturers who sold lower-priced, lower-SCOP equipment and those who sold higher-priced, higher-SCOP equipment. DOE used an exponential regression to determine the relationship between price and efficiency across the three manufacturers. Table VI.5 and Table VI.6 below show the price-efficiency data for the four primary equipment classes, for which DOE had enough information to do a regression analysis. The results for the equipment classes where DOE had to extrapolate the price-efficiency relationship are contained in chapter 3 of the NOPR TSD.

TABLE VI.5—AIR-COOLED COMPUTER ROOM AIR CONDITIONERS PRICE-EFFICIENCY DATA

| <65,000 Btu/h | | ≥65,000 Btu/h and <240,000 Btu/h | |
|---|---|---|---|
| SCOP | Price | SCOP | Price |
| 2.20 | $6,681.09 | 2.10 | $22,621.45 |
| 2.40 | 7,853.51 | 2.35 | 24,383.30 |
| 2.60 | 9,231.68 | 2.60 | 26,282.38 |
| 2.80 | 10,851.69 | 2.85 | 28,329.36 |
| 3.00 | 12,755.99 | 3.10 | 30,535.77 |

TABLE VI.6—WATER-COOLED COMPUTER AIR CONDITIONERS PRICE-EFFICIENCY DATA

| <65,000 Btu/h | | ≥65,000 Btu/h and <240,000 Btu/h | |
|---|---|---|---|
| SCOP | Price | SCOP | Price |
| 2.60 | $14,232.84 | 2.50 | $12,883.01 |
| 2.80 | 11,527.69 | 2.70 | 17,315.28 |
| 3.00 | 9,336.69 | 2.90 | 23,272.43 |

TABLE VI.6—WATER-COOLED COMPUTER AIR CONDITIONERS PRICE-EFFICIENCY DATA—Continued

| <65,000 Btu/h | | ≥65,000 Btu/h and <240,000 Btu/h | |
|---|---|---|---|
| SCOP | Price | SCOP | Price |
| 3.20 | 7,562.12 | 3.10 | 31,279.07 |
| 3.40 | 6,124.84 | 3.30 | 42,040.32 |

DOE notes that the results for the small (< 65,000 Btu/h) water-cooled equipment class are counter-intuitive, because the correlation between price and efficiency showed a decrease in price for increased efficiency for that equipment class. This result is likely the result of not having enough data points to develop a statistically significant trend between price and efficiency. In addition, as discussed above, manufacturers might have different reasons for pricing the different features other than equipment efficiency, and, thus, there would be no correlation between efficiency and price for individual manufacturers. In DOE's experience, an inverse correlation between price and efficiency is not typical, and thus, DOE believes additional data and analysis would possibly reveal a different relationship than the pricing analysis. DOE seeks comment on the results of the pricing analysis and requests information and data regarding price-efficiency trends for computer room air conditioners. This is identified as issue 12 in section X.E, ''Issues on Which DOE Seeks Comments.''

C. Markups To Determine Equipment Price

DOE understands that the price of CRAC equipment depends on the distribution channel the customer uses to purchase the equipment. Typical distribution channels for most commercial HVAC equipment include shipments which may pass through manufacturers' national accounts, or through entities including wholesalers, mechanical contractors, and/or general contractors; however, DOE understands that the typical distribution channel for CRAC equipment for either new construction or replacement is that a mechanical contractor orders the equipment from a manufacturer or distributor who provides the equipment at a price delivered to the job site. The mechanical contractor then adds his own markup and provides installation services. Because of the specialized nature of the equipment, general contractors are not involved in the transaction, nor did DOE find any evidence of wholesaler involvement or national accounts for distribution of this specialized CRAC equipment. DOE developed equipment costs for mechanical contractors directly in the engineering analysis and estimated cost to customers using a markup chain beginning with the mechanical contractor cost. Because of the complexity of installation, DOE estimated most sales of CRAC equipment involved mechanical contractors. Consequently, DOE did not develop separate markups for other distribution chains.

DOE developed supply chain markups in the form of multipliers that represent increases above the mechanical contractor cost. DOE applied these markups (or multipliers) to the mechanical contractor costs it developed from the engineering analysis. DOE then added sales taxes and installation costs to arrive at the final installed equipment prices for baseline and higher-efficiency equipment. See chapter 5 of the ASHRAE NOPR TSD for additional details on markups. DOE identified two separate distribution channels for CRAC equipment to describe how the equipment passes from the mechanical contractor to the customer (Table VI.7).

TABLE VI.7—DISTRIBUTION CHANNELS FOR CRAC EQUIPMENT

| Channel 1 (replacements) | Channel 2 (New construction) |
|---|---|
| Mechanical Contractor. | Mechanical Contractor |
| Customer | Customer |

DOE estimated a baseline markup and an incremental markup. DOE defined a ''baseline markup'' as a multiplier that converts the mechanical contractor cost of equipment with baseline efficiency to the customer purchase price for the equipment at the same baseline efficiency level. An ''incremental markup'' is defined as the multiplier to convert the incremental increase in mechanical contractor cost of higher-efficiency equipment to the customer purchase price for the same equipment. Both baseline and incremental markups are independent of the CRAC equipment efficiency levels.

DOE developed the markups based on available financial data. DOE based the mechanical contractor markups on data from the 2007 U.S. Census Bureau financial data [33] for the plumbing, heating, and air conditioning industry.

The overall markup is the product of all the markups (baseline or incremental) for the different steps within a distribution channel plus sales tax. DOE calculated sales taxes based on 2010 State-by-State sales tax data reported by the Sales Tax Clearinghouse.[34] Because both contractor costs and sales tax vary by State, DOE developed distributions of markups within each distribution channel by State. No information was available to develop State-by-State distribution of CRAC equipment by building type or business type, so the percentage distribution of sales by business type are assumed to be the same in all States. The National distribution of the markups varies among business types. Chapter 5 of the ASHRAE NOPR TSD provides additional detail on markups.

*D. Energy Use Characterization*

DOE's building energy use characterization assesses the annual energy use for each of the 15 classes of computer room air conditioners at the efficiency levels established in the engineering analysis. Because of the fixed 0.11 EER difference between upflow and downflow CRAC units established in ASHRAE Standard 90.1–2010 and presumed in the engineering analysis for all higher efficiency levels, DOE determined that the per-unit energy savings benefits for corresponding upflow computer room air conditioners at higher efficiency levels could be adequately represented using these 15 downflow equipment classes. The energy use characterization assessed the energy use of computer room air conditioners using a purpose-built spreadsheet which estimates the annual energy consumption for each

[33] The 2007 U.S. Census Bureau financial data for the plumbing, heating, and air conditioning industry is the latest version data set and was issued in August 2009. Available at: *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-ds_name=EC0723I1&-_lang=en.*

[34] The Sales Tax Clearinghouse. Table of State sales tax rates along with combined city and county rates. (Last accessed Nov. 2, 2011) (Available at: *https://thestc.com/STRates.stm*).

equipment class at each efficiency level. The spreadsheet uses a modified outside temperature bin analysis. For each air-cooled equipment class, the spreadsheet calculates fan energy and condensing unit power consumption at each 5 °F outdoor air dry bulb temperature bin. For water-cooled and glycol-cooled equipment, the spreadsheet first estimates the condensing water supply temperature from either an evaporative cooling tower or a dry cooler for water-cooled and for glycol-cooled CRAC equipment, respectively, based on binned weather data. Using these results, DOE then estimates the condensing unit power consumption and adds to this the estimated fan power. The sum of the CRAC condensing unit power and the CRAC fan power is the estimated average CRAC total power consumption for each temperature bin. Annual estimates of energy use are developed by multiplying the power consumption at each temperature bin by the number of hours in that bin for each climate analyzed.

To implement DOE's analysis methodology, DOE estimated the average heat load on each type and size of CRAC equipment based on an average thermal load set at 65 percent of the nominal sensible capacity based on an estimate provided in an Australian energy performance standards report.[35] As CRAC equipment is used to cool internally-generated thermal loads and is generally not climate dependent, DOE believes that this figure would also apply to CRAC equipment in the U.S. DOE did not have manufacturer efficiency or performance data as a function of the outdoor temperature or the fraction of full load. Accordingly, DOE used an example of the variation in full-load performance as a function of ambient air temperature (for air-cooled equipment) or entering fluid temperature (for water-cooled and glycol-cooled equipment) provided in the ASHRAE 127–2007 test procedure and based on computer simulations to adjust full-load performance from the SCOP rating condition. A part-load performance degradation was also included, based on the methodology outlined for unitary direct-expansion air conditioning equipment presented in the DOE EnergyPlus simulation tool documentation.[36] For water-cooled and glycol-cooled equipment with economizer coils, DOE reduced the thermal load on the condensing unit during hours when the economizer would be expected to meet some or all of the sensible cooling load. Because the primary heat load met for computer room air conditioners is a sensible load and because DOE did not have data to adequately estimate the relative sensible load versus latent load during the year for computer rooms, DOE did not separately examine the latent load on the equipment as a function of conditions, but determined that the total energy use could be based on the SCOP performance.

DOE estimated the annual energy consumption for each equipment class at each efficiency level for 239 climate locations using typical meteorological year (TMY3) weather data.[37] DOE relied on population-based climate location weights to map the results for individual TMY locations to State-level annual energy consumption estimates for each U.S. State. DOE used the resulting State-by-State annual energy consumption estimates for each efficiency level in the subsequent life-cycle cost analysis.

*E. Life-Cycle Cost and Payback Period Analyses*

DOE conducted the life-cycle cost (LCC) and payback period (PBP) analyses to estimate the economic impacts of potential standards on individual customers of CRAC equipment. DOE first analyzed these impacts for CRAC equipment by calculating the change in customers' LCCs likely to result from higher efficiency levels compared with the ASHRAE baseline efficiency levels for the 15 downflow CRAC classes discussed in the engineering analysis. DOE determined that the LCC benefits for higher efficiency levels for each downflow class of CRAC equipment would adequately represent LCC benefits for the corresponding upflow class. The LCC calculation considers total installed cost (contractor cost, sales taxes, distribution chain markups, and installation cost), operating expenses (energy, repair, and maintenance costs), equipment lifetime, and discount rate. DOE calculated the LCC for all customers as if each would purchase a new CRAC unit in the year the standard takes effect. Since DOE is considering both the efficiency levels in ASHRAE Standard 90.1–2007 and more-stringent efficiency levels, the compliance date for a new DOE energy conservation standard for any equipment class would depend upon the efficiency level adopted. This is because the statutory lead times for DOE adoption of the ASHRAE Standard 90.1–2010 efficiency levels and the adoption of more-stringent efficiency levels are different. (See section V.H.1 below for additional explanation regarding compliance dates.) However, the LCC benefits to the customer of standards higher than those in ASHRAE Standard 90.1–2010 can only begin to accrue after the compliance date for such higher standard once adopted by DOE. To account for this difference and to facilitate comparison, DOE presumes that the purchase year for all CRAC equipment for purposes of the LCC calculation is 2017, the earliest year in which DOE can establish an amended energy conservation level at an efficiency level more stringent than the ASHRAE efficiency level. To compute LCCs, DOE discounted future operating costs to the time of purchase and summed them over the lifetime of the equipment.

Next, DOE analyzed the effect of changes in installed costs and operating expenses by calculating the PBP of potential standards relative to baseline efficiency levels. The PBP estimates the amount of time it would take the customer to recover the incremental increase in the purchase price of more-efficient equipment through lower operating costs. The PBP is the change in purchase price divided by the change in annual operating cost that results from the energy conservation standard. DOE expresses this period in years. Similar to the LCC, the PBP is based on the total installed cost and the operating expenses. However, unlike the LCC, DOE only considers the first year's operating expenses in the PBP calculation. Because the PBP does not account for changes in operating expense over time or the time value of money, it is also referred to as a simple PBP.

DOE conducted the LCC and PBP analyses using a commercially-available spreadsheet tool and a purpose-built spreadsheet model, available online.[38] This spreadsheet model developed by DOE accounts for variability in energy use and prices, installation costs, repair and maintenance costs, and energy costs. It uses weighting factors to account for distributions of shipments

[35] EnergyConsult Pty Ltd., Equipment Energy Efficiency Committee Regulatory Impact Statement Consultation Draft: Minimum Energy Performance Standards and Alternative Strategies for Close Control Air Conditioners, Report No 2008/11 (Sept. 2008) (Available at: *www.energyrating.gov.au*).

[36] EnergyPlus Engineering Reference included with EnergyPlus simulation software version 6.0 (Available at: *http://apps1.eere.energy.gov/buildings/energyplus*).

[37] S. Wilcox and W. Marion, *Users Manual for TMY3 Data Sets,* NREL/TP–581–43156 (May 2008).

[38] DOE's Life-Cycle Cost spreadsheet model can be found on the DOE's ASHRAE Products Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/ashrae_products_docs_meeting.html.*

to different building types and States to generate national LCC savings by efficiency level. The results of DOE's LCC and PBP analyses are summarized in section VI and described in detail in chapter 6 of the ASHRAE NOPR TSD.

1. Approach

Recognizing that each business that uses CRAC equipment is unique, DOE analyzed variability and uncertainty by performing the LCC and PBP calculations assuming a correspondence between business types and market segments (characterized as building types) for customers located in three types of commercial buildings (health care, education, and office). DOE developed financial data appropriate for the customers in each building type. Each type of building has typical customers who have different costs of financing because of the nature of the business. DOE derived the financing costs based on data from the Damodaran Online site.[39]

The LCC analysis used the estimated annual energy use for each CRAC equipment unit described in section V.D. Because energy use of CRAC equipment is sensitive to climate, energy use varies by State. Aside from energy use, other important factors influencing the LCC and PBP analyses are energy prices, installation costs, equipment distribution markups, and sales tax. All of these are assumed to vary by State. At the national level, the LCC spreadsheets explicitly modeled both the uncertainty and the variability in the model's inputs, using probability distributions based on the shipment of CRAC equipment to different States.

As mentioned above, DOE generated LCC and PBP results by building type and State and used developed weighting factors to generate national average LCC savings and PBP for each efficiency level. As there is a unique LCC and PBP for each calculated value at the building type and State level, the outcomes of the analysis can also be expressed as probability distributions with a range of LCC and PBP results. A distinct advantage of this type of approach is that DOE can identify the percentage of customers achieving LCC savings or attaining certain PBP values due to an increased efficiency level, in addition to the average LCC savings or average PBP for that efficiency level.

2. Life-Cycle Cost Inputs

For each efficiency level DOE analyzed, the LCC analysis required input data for the total installed cost of the equipment, its operating cost, and the discount rate. Table VI.8 summarizes the inputs and key assumptions DOE used to calculate the customer economic impacts of all energy efficiency levels analyzed in this rulemaking. A more detailed discussion of the inputs follows.

TABLE VI.8—SUMMARY OF INPUTS AND KEY ASSUMPTIONS USED IN THE LCC AND PBP ANALYSES

| Inputs | Description |
|---|---|
| **Affecting Installed Costs** | |
| Equipment Price | Equipment price was derived by multiplying manufacturer sales price or MSP (distributor's price delivered to a mechanical contractor at the job site, calculated in the engineering analysis) by mechanical contractor markups, as needed, plus sales tax from the markups analysis. |
| Installation Cost | Installation cost includes installation labor, installer overhead, and any miscellaneous materials and parts, derived from *RS Means CostWorks 2011*.[40] |
| **Affecting Operating Costs** | |
| Annual Energy Use | Annual unit energy consumption for each class of equipment at each efficiency level estimated in a per-State basis using a spreadsheet model and a population-based mapping of climate locations to States. |
| Electricity Prices | DOE developed average electricity prices based on EIA's Form 861 data for 2010.[41] |
| Maintenance Cost | DOE estimated annual maintenance costs based on *RS Means CostWorks 2011* for CRAC equipment. Annual maintenance cost did not vary as a function of efficiency. |
| Repair Cost | DOE estimated the annualized repair cost for baseline efficiency CRAC equipment based on cost data from *RS Means CostWorks 2011* (2010 data). DOE assumed that the materials components portion of the repair costs would vary in direct proportion with the MSP at higher efficiency levels because it generally costs more to replace components that are more efficient. |
| **Affecting Present Value of Annual Operating Cost Savings** | |
| Equipment Lifetime | DOE estimated CRAC equipment lifetime ranged between 10 and 25 years, with an average lifespan of 15 years, based on estimates cited in available CRAC literature. |
| Discount Rate | Mean real discount rates for all buildings range from 2.7 percent for education buildings to 4.5 percent for office building owners. |

[39] Damodaran Online, Leonard N. Stern School of Business, New York University (Jan. 2011) (Available at: *www.stern.nyu.edu/~adamodar/New_Home_Page/data.html*).

TABLE VI.8—SUMMARY OF INPUTS AND KEY ASSUMPTIONS USED IN THE LCC AND PBP ANALYSES—Continued

| Inputs | Description |
|---|---|
| Analysis Start Year | Start year for LCC is 2017, which is the earliest compliance date that DOE can set for new standards if it adopts any efficiency level for energy conservation standards higher than that shown in ASHRAE Standard 90.1–2010. |
| **Analyzed Efficiency Levels** | |
| Analyzed Efficiency Levels | DOE analyzed the baseline efficiency levels (ASHRAE Standard 90.1–2010) and four higher efficiency levels for all 15 equipment classes. See the engineering analysis for additional details on selections of efficiency levels and cost. |

[40] *RS Means CostWorks 2011,* R.S. Means Company, Inc. (2011) (Available at: *http://www.meanscostworks.com/*).
[41] Electric Sales, Revenue, and Average Price 2009 (Data accessed on May 10, 2011 at *http://www.eia.doe.gov/cneaf/electricity/esr/esr_sum.html*). Inflator—2009 to 2010 dollars from EIA *AEO 2011* GDP Price Index (Accessed on 4/27/2011 at *http://www.eia.doe.gov/oiaf/aeo/tablebrowser/#release=AEO2011&subject=0-AEO2011&table=18-AEO2011&region=0-0&cases=ref2011-d020911a*).

a. Equipment Prices

The price of CRAC equipment reflects the application of distribution channel markups (mechanical contractor markups) and sales tax to the manufacturer sales price (distributor's price, delivered to the job site), which is the cost established in the engineering analysis. As described in section VI.B, DOE determined mechanical contractor costs and markup for air conditioning equipment. For each equipment class, the engineering analysis provided contractor costs for the baseline equipment and up to four higher equipment efficiencies.

The markup is the percentage increase in price as the CRAC equipment passes through the distribution channel. As explained in section VI.C, all CRAC equipment is assumed to be delivered by the manufacturer through a distributor to the mechanical contractor at the job site for installation without the involvement of a general contractor. This is assumed to happen whether the equipment is being purchased for the new construction market or to replace existing equipment.

To forecast a price trend for the NOPR, DOE derived an inflation-adjusted index of the PPI for miscellaneous refrigeration and air-conditioning equipment over 1990–2010. These data show a general price index decline from 1990 to 2004, followed by a sharp increase, primarily due to rising prices of copper and steel products that go into this equipment. Given the slowdown in global economic activity in 2011, DOE believes that the extent to which the trends of the past couple of years will continue is very uncertain and that the observed data provide a firm basis for projecting future costs trends for CRAC equipment. Therefore DOE used a constant price assumption as the default price factor index to project future computer room air conditioner prices in 2017. Thus, prices forecast for the LCC and PBP analysis are equal to the 2011 values for each efficiency level in each equipment class. Appendix 8–D of the NOPR TSD describes the historic data and the derivation of the price forecast.

DOE requests comments on the most appropriate trend to use for real (inflation-adjusted) computer room air conditioner prices.

b. Installation Costs

DOE derived national average installation costs for CRAC equipment from data provided in *RS Means CostWorks 2011* (RS Means) specifically for CRAC equipment.[42] RS Means provides estimates for installation costs for CRAC units by equipment capacity, as well as cost indices that reflect the variation in installation costs for 295 cities in the United States. The RS Means data identifies several cities in all 50 States and the District of Columbia. DOE incorporated location-based cost indices into the analysis to capture variation in installation cost, depending on the location of the customer.

For more-stringent efficiency levels, DOE recognized that installation costs could potentially be higher with larger units and higher-efficiency CRAC equipment due to larger sizes and more complex setup requirements. DOE utilized RS Means installation cost data from *RS Means CostWorks 2011* to derive installation cost curves by size of unit for the base-efficiency unit. DOE did not have data to calibrate the extent to which installation cost might change as efficiency increased. For purposes of the NOPR LCC analysis, DOE assumed that installation cost would not increase as a function of increased efficiency. This is identified as Issue 13 under ''Issues on Which DOE Seeks Comment'' in section X.E of today's NOPR.

c. Annual Energy Use

DOE estimated the annual electricity consumed by each class of CRAC equipment, by efficiency level, based on the energy use characterization described in section V.D and in chapter 4 of the NOPR TSD.

d. Electricity Prices

Electricity prices are used to convert the electric energy savings from higher-efficiency equipment into energy cost savings. Because of the variation in annual electricity consumption savings and equipment costs across the country, it is important to consider regional differences in electricity prices. DOE used average effective commercial electricity prices at the State level from Energy Information Administration (EIA) data for 2010. This approach captured a wide range of commercial electricity prices across the United States. Furthermore, different kinds of businesses typically use electricity in different amounts at different times of the day, week, and year, and therefore, face different effective prices. To make this adjustment, DOE used EIA's 2003 CBECS [43] data set to identify the average prices the three building types paid and compared them with the average prices all commercial customers paid.[44] DOE used the ratios of prices paid by the three types of businesses to the national average commercial prices seen in the 2003 CBECS as multipliers to adjust the

[42] RS Means CostWorks 2011, R.S. Means Company, Inc. 2011, Kingston, Massachusetts (Available at: *http://www.meanscostworks.com/*).

[43] EIA's Commercial Buildings Energy Consumption Survey, Energy Information Agency (Public use microdata available at: *http://www.eia.doe.gov/emeu/cbecs/cbecs2003/public_use_2003/cbecs_pudata2003.html*).

[44] EIA's 2003 CBECS is the most recent version of the data set.

average commercial 2010 State price data.

DOE weighted the prices each building type paid in each State by the estimated sales of CRAC equipment to each building type to obtain a weighted-average national electricity price for 2010. The State/building type weights reflect the probabilities that a given unit of CRAC equipment shipped will operate with a given fuel price. The original State-by-State average commercial prices (adjusted to 2011$) range from approximately $0.066 per kWh to approximately $0.216 per kWh. (See chapter 6 of the ASHRAE NOPR TSD for further details.)

The electricity price trends provide the relative change in electricity costs for future years. DOE applied the *AEO2011* reference case as the default scenario and extrapolated the trend in values at the Census Division level from 2025 to 2035 of the forecast to establish prices in 2030 to 2060. This method of extrapolation is in line with methods the EIA uses to forecast fuel prices for the Federal Energy Management Program. DOE provides a sensitivity analysis of the LCC savings and PBP results to different fuel price scenarios using both the *AEO2011* high-price and low-price forecasts in the ASHRAE NOPR TSD.

e. Maintenance Costs

Maintenance costs are the costs to the customer of maintaining equipment operation. Maintenance costs include services such as cleaning heat-exchanger coils and changing air filters. DOE estimated annual routine maintenance costs for CRAC equipment as $84 per year for capacities up to 288 kBtu per hr and $102 per year for larger capacities, reported in the *RS Means CostWorks 2011* database. Because data were not available to indicate how maintenance costs vary with equipment efficiency, DOE decided to use preventive maintenance costs that remain constant as equipment efficiency increases.

f. Repair Costs

The repair cost is the cost to the customer of replacing or repairing components that have failed in the CRAC equipment. DOE estimated the one-time repair cost in *RS Means CostWorks 2011* as a percentage of MSP for capacities between 5 tons (T) (60,000 Btu/hr) and 15 T (180,000 Btu/hr), with the curve flattening at the 15 T percentage thereafter. DOE applied the percentage to the MSP for more-efficient equipment at each capacity for the one-time repair, then annualized the resulting repair costs. DOE determined that annualized repair costs would increase in direct proportion with increases in equipment prices. Because the price of CRAC equipment increases with efficiency, the cost for component repair will also increase as the efficiency of equipment increases. See chapter 6 of the ASHRAE NOPR TSD for details on the development of repair costs.

g. Equipment Lifetime

DOE defines ''equipment lifetime'' as the age when a unit of CRAC equipment is retired from service. DOE reviewed available literature to establish typical equipment lifetimes. The literature offered a wide range of typical equipment lifetimes ranging from 10 years to 25 years. The data did not distinguish between classes of CRAC equipment. Consequently, DOE used a distribution of lifetimes between 10 and 25 years, with an average of 15 years based on review of a range of CRAC lifetime estimates found in published studies and online documents and applied this distribution to all classes of CRAC equipment analyzed. Chapter 6 of the ASHRAE NOPR TSD contains a discussion of equipment lifetime.

h. Discount Rate

The discount rate is the rate at which future expenditures are discounted to establish their present value. DOE determined the discount rate by estimating the cost of capital for purchasers of CRAC equipment. Most purchasers use both debt and equity capital to fund investments. Therefore, for most purchasers, the discount rate is the weighted-average cost of debt and equity financing, or the weighted-average cost of capital (WACC), less the expected inflation.

To estimate the WACC of CRAC equipment purchasers, DOE used a sample of over 2000 companies grouped to be representative of operators of each of three commercial building types (health care, education, and office) drawn from a database of 7,369 U.S. companies presented on the Damodaran Online Web site.[45] This database includes most of the publicly-traded companies in the United States. For most educational buildings and a portion of the office buildings occupied by public schools, universities, and State and local government agencies, DOE estimated the cost of capital based on composite tax exempt bond rates for AA-rated municipal bonds. Federal office space was assumed to use the Federal bond rate, derived as the 40-year geometric average of long term (> 10 years) U.S. government securities. When one or more of the variables needed to estimate the discount rate in the Damodaran dataset were missing or could not be obtained, DOE discarded the firm from the analysis. DOE further reduced the sample to exclude firms that were unlikely to use the computer rooms served by CRAC equipment. The WACC approach for determining discount rates accounts for the current tax status of individual firms on an overall corporate basis. DOE did not evaluate the marginal effects of increased costs, and, thus, depreciation due to more expensive equipment, on the overall tax status.

DOE used the final sample of companies to represent purchasers of CRAC equipment. For each company in the sample, DOE derived the cost of debt, percent debt financing, and systematic company risk from information on the Damodaran Online Web site. Damodaran estimated the cost of debt financing from the long-term Federal government bond rate (6.74 percent) and the standard deviation of the stock price. DOE then determined the weighted average values for the cost of debt, range of values, and standard deviation of WACC for each category of the sample companies. Deducting expected inflation from the cost of capital provided estimates of real discount rate by ownership category. Based on this database, DOE calculated the weighted average after-tax discount rate for CRAC equipment purchases, adjusted for inflation, in each of the three building types used in the analysis. Chapter 6 of the ASHRAE NOPR TSD contains the detailed calculations on the discount rate.

3. Payback Period

DOE also determined the economic impact of potential amended energy conservation standards on customers by calculating the PBP of more-stringent efficiency levels relative to a baseline efficiency level. The PBP measures the amount of time it takes the commercial customer to recover the assumed higher purchase expense of more-efficient equipment through lower operating costs. Similar to the LCC, the PBP is based on the total installed cost and the operating expenses for each building type and State, weighted on the probability of shipment to each market. Because the simple PBP does not take into account changes in operating expense over time or the time value of money, DOE considered only the first

[45] Damodaran financial data used for determining cost of capital available at: *http://pages.stern.nyu.edu/~adamodar/* for commercial businesses. Data for determining financing for public buildings available at: *http://finance.yahoo.com/bonds/composite_bond_rates.*

year's operating expenses to calculate the PBP, unlike the LCC which is calculated over the lifetime of the equipment. Chapter 6 of the ASHRAE NOPR TSD provides additional details about the PBP.

*F. National Impact Analysis—National Energy Savings and Net Present Value Analysis*

The national impact analysis (NIA) evaluates the effects of a proposed energy conservation standard from a national perspective rather than from the customer perspective represented by the LCC. This analysis assesses the net present value (NPV) (future amounts discounted to the present) and the National Energy Savings (NES) of total commercial customer costs and savings, which are expected to result from amended standards at specific efficiency levels. For each efficiency level analyzed, DOE calculated the NPV and NES for adopting more-stringent standards than the efficiency levels specified in ASHRAE Standard 90.1–2010. The NES refers to cumulative energy savings from 2012 through 2041 or 2013 through 2042, depending on the product class. DOE calculated new energy savings in each year relative to a base case, defined as DOE adoption of the efficiency levels specified by ASHRAE Standard 90.1–2010. DOE also calculated energy savings from adopting efficiency levels specified by ASHRAE Standard 90.1–2010 compared to the current market base case. The NPV refers to cumulative monetary savings. DOE calculated net monetary savings in each year relative to the base case (ASHRAE Standard 90.1–2010) as the difference between total operating cost savings and increases in total installed cost. Cumulative savings are the sum of the annual NPV over the specified period. DOE accounted for operating cost savings until 2055 or 2056, when the equipment installed in the 30th year after the compliance date of the amended standards should be retired.

1. Approach

The NES and NPV are a function of the total number of units in use and their efficiencies. Both the NES and NPV depend on annual shipments and equipment lifetime. Both calculations start by using the shipments estimate and the quantity of units in service derived from the shipments model.

With regard to estimating the NES, because more-efficient computer room air conditioners are expected to gradually replace less-efficient ones, the energy per unit of capacity used by the computer room air conditioners in service gradually decreases in the standards case relative to the base case. DOE calculated the NES by subtracting energy use under a standards-case scenario from energy use in a base-case scenario.

Unit energy savings for each equipment class are taken from the LCC spreadsheet for each efficiency level and weighted based on market efficiency distributions. To estimate the total energy savings for each efficiency level, DOE first calculated the national site energy consumption (*i.e.,* the energy directly consumed by the units of equipment in operation) for each class of computer room air conditioners for each year of the analysis period. The NES and NPV analysis periods begin with the earliest expected compliance date of amended Federal energy conservation standards (*i.e.,* 2012 or 2013), assuming DOE adoption of the baseline ASHRAE Standard 90.1–2010 efficiency levels. For the analysis of DOE's potential adoption of more-stringent efficiency levels, the earliest compliance date would be 2017, four years after DOE would likely issue a final rule requiring such standards. Second, DOE determined the annual site energy savings, consisting of the difference in site energy consumption between the base case and the standards case for each class of computer room air conditioner. Third, DOE converted the annual site energy savings into the annual amount of energy saved at the source of electricity generation (the source energy), using a site-to-source conversion factor. Finally, DOE summed the annual source energy savings from 2012 to 2041 or 2013 to 2042 to calculate the total NES for that period. DOE performed these calculations for each efficiency level considered for computer room air conditioners in this rulemaking.

DOE considered whether a rebound effect is applicable in its NES analysis. A rebound effect occurs when an increase in equipment efficiency leads to an increased demand for its service. EIA in its National Energy Modeling System (NEMS) model assumes a certain elasticity factor to account for an increased demand for service due to the increase in cooling (or heating) efficiency.[46] EIA refers to this as an efficiency rebound. For the computer room air conditioning equipment market, there are two ways that a rebound effect could occur: (1) increased use of the air conditioning equipment within the commercial buildings they are installed in; and (2) additional instances of air conditioning computer rooms where it was not being cooled before.

The first instance does not occur often because computer rooms are generally cooled to the level required for safe operation of the servers and other equipment. As inanimate objects, computers have no desire for further cooling, and persons maintaining the equipment have no reason to deviate from the optimal range of environmental conditions. With regard to the second instance, computer room air conditioners are unlikely to be installed in previously uncooled computer rooms, because servers and other equipment that need to be cooled or otherwise space conditioned to the degree of precision that requires a computer room air conditioner already would be. Given the potential for computer equipment damage or diminished performance, running a computer room without the appropriate environmental controls from the outset is highly unlikely. Therefore, DOE did not assume a rebound effect in the present NOPR analysis. DOE seeks input from interested parties on whether there will be a rebound effect for improvements in the efficiency of computer room air conditioners. If interested parties believe a rebound effect would occur, DOE is interested in receiving data quantifying the effects, as well as input regarding how should DOE quantify this in its analysis. This is identified as Issue 14 under ''Issues on Which DOE Seeks Comment'' in section X.E of today's NOPR.

To estimate NPV, DOE calculated the net impact as the difference between total operating cost savings (including electricity cost savings) and increases in total installed costs (including customer prices). DOE calculated the NPV of each considered standard level over the life of the equipment using the following three steps. First, DOE determined the difference between the equipment costs under the standard-level case and the base case in order to obtain the net equipment cost increase resulting from the higher standard level. As noted in section VI.E.2.a, DOE used a constant price assumption as the default price forecast. Second, DOE determined the difference between the base-case operating costs and the standard-level operating costs in order to obtain the net operating cost savings from each higher efficiency level. Third, DOE determined the difference between the net operating cost savings and the net equipment cost increase in order to obtain the net savings (or expense) for each year. DOE then discounted the annual net savings (or expenses) to 2012 for computer room

[46] An overview of the NEMS model and documentation is found at *http://www.eia.doe.gov/oiaf/aeo/overview/index.html.*

air conditioners bought on or after 2012 or 2013, depending on product class, and summed the discounted values to provide the NPV of an efficiency level. An NPV greater than zero shows net savings (*i.e.,* the efficiency level would reduce customer expenditures relative to the base case in present value terms). An NPV that is less than zero indicates that the efficiency level would result in a net increase in customer expenditures in present value terms.

To make the analysis more transparent to all interested parties, DOE used a commercially-available spreadsheet tool to calculate the energy savings and the national economic costs and savings from potential amended standards. Chapter 8 of the NOPR TSD explains the models and how to use them. Interested parties can review DOE's analyses by changing various input quantities within the spreadsheet.

Unlike the LCC analysis, the NES spreadsheet does not use distributions for inputs or outputs, but relies on national average first costs and energy costs developed from the LCC spreadsheet. DOE used the NES spreadsheet to perform calculations of energy savings and NPV using the annual energy consumption and total installed cost data from the LCC analysis. DOE forecasted the energy savings, energy cost savings, equipment costs, and NPV of benefits for equipment sold in each computer room air conditioner class from 2012 through 2041 or 2013 through 2042, depending on the product class. The forecasts provided annual and cumulative values for all four output parameters described above.

2. Shipments Analysis

Equipment shipments are an important element in the estimate of the future impact of a potential standard. DOE developed shipment projections and, in turn, calculated equipment stock by assuming that in each year, each existing computer room air conditioner either ages by one year or breaks down after a 15-year equipment life. DOE used the shipments projection and the equipment stock to determine the NES. The shipments portion of the spreadsheet model forecasts computer room air conditioner shipments from 2012 or 2013 to 2041 or 2042, depending on the product class.

Data on computer room air conditioner shipments in the U.S. were not available. To estimate U.S. shipments, DOE obtained historical and projected (2000–2020) computer room air conditioner shipment data from an Australian energy performance standards report.[47] DOE then used the ratio of business establishments in the United States compared to Australia to inflate Australia shipments to the U.S. market. The inflator used was 13.2. Table VI.9 exhibits the shipment data provided for a selection of years, while the full data set and the complete discussion of energy use indicators can be found in chapter 7 of the NOPR TSD. DOE used these shipments data to extend a shipments trend into the future.

TABLE VI.9—TOTAL SHIPMENTS OF COMPUTER ROOM AIR CONDITIONERS (UNITS)

| Year | Units shipped (Australian data) | Units shipped (U.S. estimate) |
|---|---|---|
| 2000 | 850 | 11,228 |
| 2005 | 985 | 13,011 |
| 2010 | 1140 | 15,058 |
| 2015 | 1320 | 17,436 |
| 2020 | 1526 | 20,157 |

DOE allocated overall shipments into product classes using a two-step process. First, DOE used Australian market share to allocate shipments to six broad product classes. DOE then used the relative fraction of models for each equipment class reflected in DOE's market database to allocate shipments further into the 15 product classes analyzed. The complete discussion of shipment allocation can be found in chapter 7 of the ASHRAE NOPR TSD.

Table VI.10 shows the forecasted shipments for the different equipment classes of computer room air conditioners for selected years from 2012 to 2042 (with start and end years dependent on the product class), as well as the cumulative shipments. As equipment purchase price and repair costs increase with efficiency, DOE recognizes that higher first costs and repair costs can result in a drop in shipments. However, DOE had no basis for estimating the elasticity of shipments for computer room air conditioners as a function of first costs, repair costs, or operating costs. In addition, because computer room air conditioners are necessary for their application, DOE believes shipments would not change as a result of higher first costs and repair costs. Therefore, DOE presumed that the shipments projection does not change with higher standard levels. DOE seeks input on this assumption. This is identified as Issue 15 under ''Issues on Which DOE Seeks Comment'' in section X.E of today's NOPR. Chapter 7 of the NOPR TSD provides additional details on the shipments forecasts.

TABLE VI.10—SHIPMENTS FORECAST FOR COMPUTER ROOM AIR CONDITIONERS

| Equipment | Units shipped by year and equipment class | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | 2012/2013 | 2015 | 2020 | 2025 | 2030 | 2035 | 2040 | 2041/2042 | Cumulative shipments (2012/2013–2041/2042) |
| Air conditioners, air-cooled, <65,000 Btu/h | 671 | 732 | 847 | 922 | 1,015 | 1,109 | 1,202 | 1,221 | 28,518 |
| Air conditioners, air-cooled, ≥65,000 to <240,000 Btu/h | 7,499 | 7,951 | 9,192 | 10,009 | 11,023 | 12,038 | 13,052 | 13,457 | 315,793 |

[47] EnergyConsult Pty Ltd., Equipment Energy Efficiency Committee Regulatory Impact Statement Consultation Draft: Minimum Energy Performance Standards and Alternative Strategies for Close Control Air Conditioners, Report No 2008/11 (Sept. 2008) (Available at: *www.energyrating.gov.au*).

TABLE VI.10—SHIPMENTS FORECAST FOR COMPUTER ROOM AIR CONDITIONERS—Continued

| Equipment | Units shipped by year and equipment class | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | 2012/2013 | 2015 | 2020 | 2025 | 2030 | 2035 | 2040 | 2041/2042 | Cumulative shipments (2012/2013–2041/2042) |
| Air conditioners, air-cooled, ≥240,000 Btu/h | 1,677 | 1,778 | 2,056 | 2,239 | 2,466 | 2,693 | 2,919 | 3,010 | 70,636 |
| Air conditioners, water-cooled, <65,000 Btu/h | 74 | 81 | 94 | 102 | 112 | 122 | 133 | 135 | 3,152 |
| Air conditioners, water-cooled, ≥65,000 to <240,000 Btu/h | 1,233 | 1,308 | 1,512 | 1,646 | 1,813 | 1,980 | 2,147 | 2,213 | 51,940 |
| Air conditioners, water-cooled, ≥240,000 Btu/h | 470 | 498 | 576 | 627 | 690 | 754 | 817 | 843 | 19,780 |
| Air conditioners, water-cooled with fluid economizers, <65,000 Btu/h | 46 | 50 | 58 | 63 | 70 | 76 | 82 | 84 | 1,954 |
| Air conditioners, water-cooled with fluid economizers, ≥65,000 to <240,000 Btu/h | 1,036 | 1,098 | 1,270 | 1,383 | 1,523 | 1,663 | 1,803 | 1,859 | 43,628 |
| Air conditioners, water-cooled with fluid economizers, ≥240,000 Btu/h | 180 | 190 | 220 | 240 | 264 | 288 | 313 | 322 | 7,563 |
| Air conditioners, glycol-cooled, <65,000 Btu/h | 69 | 75 | 87 | 95 | 104 | 114 | 124 | 126 | 2,935 |
| Air conditioners, glycol-cooled, ≥65,000 to <240,000 Btu/h | 1,233 | 1,308 | 1,512 | 1,646 | 1,813 | 1,980 | 2,147 | 2,213 | 51,940 |
| Air conditioners, glycol-cooled, ≥240,000 Btu/h | 387 | 410 | 474 | 516 | 569 | 621 | 673 | 694 | 16,288 |
| Air conditioners, glycol-cooled with fluid economizers, <65,000 Btu/h | 69 | 75 | 87 | 95 | 104 | 114 | 124 | 126 | 2,935 |
| Air conditioners, glycol-cooled with fluid economizers, ≥65,000 to <240,000 Btu/h | 1,431 | 1,517 | 1,754 | 1,910 | 2,103 | 2,297 | 2,490 | 2,567 | 60,250 |
| Air conditioners, glycol-cooled with fluid economizers, ≥240,000 Btu/h | 345 | 366 | 423 | 461 | 508 | 554 | 601 | 620 | 14,542 |
| Total | 16,420 | 17,437 | 20,162 | 21,954 | 24,177 | 26,403 | 28,627 | 29,490 | 691,854 |

**Note:** Total shipments shown in this table may not exactly match those in Table VI.9 as a result of rounding during allocation to product classes.

3. Base-Case and Standards-Case Forecasted Distribution of Efficiencies

DOE reviewed the distribution of efficiency levels for commercially-available models within each equipment class in order to develop base-case efficiency distributions. DOE bundled the efficiency levels into ''efficiency ranges'' and determined the percentage of models within each range. DOE applied the percentages of models within each efficiency range to the total unit shipments for a given equipment class to estimate the distribution of shipments within the base case. Then, from those market shares and projections of shipments by equipment class, DOE extrapolated future equipment efficiency trends both for a base-case scenario and for standards-case scenarios. The difference in equipment efficiency between the base case and standards cases was the basis for determining the reduction in per-unit annual energy consumption that could result from amended standards.

For the base case, DOE had no basis to estimate potential change in efficiency market shares. Therefore, DOE assumed that, absent amended standards, forecasted market shares would remain frozen until the end of the forecast period (30 years after the compliance date). This prediction could cause DOE to overestimate the savings associated with the higher efficiency levels discussed in this notice because computer room air conditioner efficiencies or relative efficiency class preferences may change voluntarily over time.

For each efficiency level analyzed, DOE used a ''roll-up'' scenario to establish the market shares by efficiency level for the year that compliance would be required with amended standards (*i.e.*, 2017 if DOE adopts more-stringent efficiency levels than those in ASHRAE Standard 90.1–2010). DOE collected information that suggests the efficiencies of equipment in the base case that did not meet the standard level under consideration would roll up to meet the standard level. This information also suggests that equipment efficiencies in the base case that were above the standard level under consideration would not be affected.

The base-case efficiency distributions for each equipment class are presented in chapter 7 of the TSD. DOE seeks input on its basis for the NES-forecasted base-case distribution of efficiencies and its prediction of how amended energy conservation standards would affect the distribution of efficiencies in the standards case. This is identified as Issue 16 under ''Issues on Which DOE Seeks Comment'' in section X.E of today's NOPR.

4. National Energy Savings and Net Present Value

The computer room air conditioner equipment stock is the total number of computer room air conditioners in each equipment class purchased or shipped from previous years that have survived until the point at which stock is taken. The NES spreadsheet,[48] through use of the shipments model, keeps track of the total number of computer room air conditioners shipped each year. For purposes of the NES and NPV analyses, DOE assumes that shipments of CRAC units survive for 15 years, at the end of which time they are removed from stock.

The national annual energy consumption is the product of the annual unit energy consumption and the number of computer room air conditioner units of each vintage in the stock, summed over all vintages. This approach accounts for differences in unit energy consumption from year to year. In determining national annual energy consumption, DOE calculated the annual energy consumption at the site (*i.e.*, million kWh consumed by computer room air conditioners) and

[48] The NES spreadsheet can be found on the DOE's ASHRAE Products Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/ashrae_products_docs_meeting.html.*

multiplied that by a conversion factor to account for generation and distribution losses, resulting in annual energy consumption at the source (or primary energy). DOE then summed the source or primary energy savings over a 30-year period to arrive at NES.

Table VI.11 summarizes the inputs to the NES spreadsheet model along with a brief description of the data sources. The results of DOE's NES and NPV analysis are summarized in section VIII.B.3.b below and described in detail in chapter 7 of the NOPR TSD.

TABLE VI.11—SUMMARY OF NES AND NPV MODEL INPUTS

| Inputs | Description |
|---|---|
| Shipments | Annual shipments based on Australian data adjusted to the U.S. (see chapter 7 of the NOPR TSD). |
| Compliance Date of Standard | 2017 for adoption of a more-stringent efficiency level than those specified by ASHRAE Standard 90.1–2010.<br>2012 or 2013 for adoption of the efficiency levels specified by ASHRAE Standard 90.1–2010. |
| Base-Case Efficiencies | Distribution of base-case shipments by efficiency level. |
| Standards-Case Efficiencies | Distribution of shipments by efficiency level for each standards case. Standards-case annual shipment-weighted market shares remain the same as in the base case and each standard level for all efficiencies above the efficiency level being analyzed. All other shipments are at the efficiency level. |
| Annual Energy Use per Unit | Annual national weighted-average values are a function of efficiency level. (See chapter 4 of the NOPR TSD.) |
| Total Installed Cost per Unit | Annual weighted-average values are a function of efficiency level. (See chapter 5 of the NOPR TSD.) |
| Annualized Maintenance and Repair Costs per Unit. | Annual weighted-average values are a function of efficiency level. (See chapter 5 of the NOPR TSD.) |
| Escalation of Fuel Prices | *AEO2011* forecasts (to 2035) and extrapolation for beyond 2035. (See chapter 8 of the NOPR TSD.) |
| Site-Source Conversion | *AEO2011* forecasts (to 2035) and extrapolation for beyond 2035. (See chapter 8 of the NOPR TSD.) |
| Discount Rate | 3 percent and 7 percent real. |
| Present Year | Future costs are discounted to 2012. |

*G. Other Issues*

1. Compliance Date of the Proposed Amended Energy Conservation Standards

Generally, covered equipment to which a new or amended energy conservation standard applies must comply with the standard if such equipment is manufactured or imported on or after a specified date. In today's NOPR, DOE is evaluating whether more-stringent efficiency levels than those in ASHRAE Standard 90.1–2010 would be technologically feasible, economically justified, and result in a significant amount of energy savings. If DOE were to propose a rule prescribing energy conservation standards at the efficiency levels contained in ASHRAE Standard 90.1–2010, EPCA states that compliance with any such standards shall be required on or after a date which is two or three years (depending on equipment size) after the compliance date of the applicable minimum energy efficiency requirement in the amended ASHRAE/IES standard. (42 U.S.C. 6313(a)(6)(D)) DOE has applied this two-year or three-year implementation period to determine the compliance date of any energy conservation standard equal to the efficiency levels specified by ASHRAE Standard 90.1–2010 proposed by this rulemaking. Thus, if DOE decides to adopt the efficiency levels in ASHRAE Standard 90.1–2010, the compliance date of the rulemaking would be dependent upon the date specified in ASHRAE Standard 90.1–2010 or its publication date, if none is specified.

The rule would apply to equipment <65,000 Btu/h (10 product classes [49]) manufactured on or after October 29, 2012, which is two years after the publication date of ASHRAE Standard 90.1–2010, and to equipment ≥65,000 Btu/h (20 product classes [50]) manufactured on or after October 29, 2013, which is three years after the publication date of ASHRAE Standard 90.1–2010. Typically, equipment equal to or greater than 65,000 Btu/h and less than 135,000 Btu/h would have a compliance date two years after the publication of ASHRAE Standard 90.1. However, because ASHRAE Standard 90.1–2010 established a product class for computer room air conditioners that combines traditional small and large categories, DOE has decided to assign the later compliance date of three years after the publication of ASHRAE 90.1–2010 to all computer room air conditioner product classes that cover products between 65,000 Btu/h and 240,000 Btu/h.

If DOE were to propose a rule prescribing energy conservation standards higher than the efficiency levels contained in ASHRAE Standard 90.1–2010, EPCA states that compliance with any such standards is required for products manufactured on or after a date which is four years after the date the rule is published in the **Federal Register**. (42 U.S.C. 6313(a)(6)(D)) DOE has applied this 4-year implementation period to determine the compliance date for any energy conservation standard higher than the efficiency levels specified by ASHRAE Standard 90.1–2010 that might be prescribed in a future rulemaking. Thus, for products for which DOE might adopt a level more stringent than the ASHRAE efficiency levels, the rule would apply to products manufactured on or after a date four years from the date of publication of the final rule, which the statute requires to be completed by April 29, 2013 (thereby resulting in a compliance date no later than April 29, 2017).[51]

Table VI.12 presents the anticipated compliance dates of an amended energy conservation standard for each equipment class for which DOE

[49] The analysis only shows five product classes for this equipment size because DOE was able to analyze downflow and upflow units in combination. These units are nearly identical, but ASHRAE Standard 90.1–2010 identifies a 0.11 SCOP reduction in efficiency levels for upflow units as compared to downflow units (likely as a result of the additional static pressure that the blower fan must overcome in the upflow orientation). By adjusting the upflow units by 0.11 SCOP, DOE could analyze upflow and downflow units in combination.

[50] The analysis only shows ten product classes for this equipment size for the same reasons mentioned for equipment <65,000 Btu/h.

[51] Since ASHRAE published ASHRAE Standard 90.1–2010 on October 29, 2010, EPCA requires that DOE publish a final rule adopting more-stringent standards than those in ASHRAE Standard 90.1–2010, if warranted, within 30 months of ASHRAE action (*i.e.*, by April 2013). Thus, four years from April 2013 would be April 2017, which would be the anticipated complaince date for DOE adoption of more-stringent standards.

developed a potential energy savings analysis.

TABLE VI.12—COMPLIANCE DATES OF AN AMENDED ENERGY CONSERVATION STANDARD FOR EACH EQUIPMENT CLASS OF COMPUTER ROOM AIR CONDITIONERS

| Equipment class | Compliance date for adopting the efficiency levels in ASHRAE standard 90.1–2010 | Compliance date for adopting more-stringent efficiency levels than those in ASHRAE standard 90.1–2010 (no later than) |
|---|---|---|
| Air conditioners, air-cooled, <65,000 Btu/h | October 29, 2012 | April 29, 2017. |
| Air conditioners, air-cooled, ≥65,000 to <240,000 Btu/h | October 29, 2013 | April 29, 2017. |
| Air conditioners, air-cooled, ≥240,000 Btu/h | October 29, 2013 | April 29, 2017. |
| Air conditioners, water-cooled, <65,000 Btu/h | October 29, 2012 | April 29, 2017. |
| Air conditioners, water-cooled, ≥65,000 to <240,000 Btu/h | October 29, 2013 | April 29, 2017. |
| Air conditioners, water-cooled, ≥240,000 Btu/h | October 29, 2013 | April 29, 2017. |
| Air conditioners, water-cooled with fluid economizers, <65,000 Btu/h | October 29, 2012 | April 29, 2017. |
| Air conditioners, water-cooled with fluid economizers, ≥65,000 to <240,000 Btu/h | October 29, 2013 | April 29, 2017. |
| Air conditioners, water-cooled with fluid economizers, ≥240,000 Btu/h | October 29, 2013 | April 29, 2017. |
| Air conditioners, glycol-cooled, <65,000 Btu/h | October 29, 2012 | April 29, 2017. |
| Air conditioners, glycol-cooled, ≥65,000 to <240,000 Btu/h | October 29, 2013 | April 29, 2017. |
| Air conditioners, glycol-cooled, ≥240,000 Btu/h | October 29, 2013 | April 29, 2017. |
| Air conditioners, glycol-cooled with fluid economizers, <65,000 Btu/h | October 29, 2012 | April 29, 2017. |
| Air conditioners, glycol-cooled with fluid economizers, ≥65,000 to <240,000 Btu/h | October 29, 2013 | April 29, 2017. |
| Air conditioners, glycol-cooled with fluid economizers, ≥240,000 Btu/h | October 29, 2013 | April 29, 2017. |

## VII. Methodology for Emissions Analysis and Monetizing Carbon Dioxide and Other Emissions Impacts

### *A. Emissions Analysis*

In the emissions analysis, DOE estimated the reduction in power sector emissions of carbon dioxide ($CO_2$), nitrogen oxides ($NO_X$), and mercury (Hg) from amended energy conservation standards for ASHRAE equipment. DOE used the NEMS–BT computer model,[52] which is run similarly to the *AEO* NEMS, except that equipment energy use is reduced by the amount of energy saved (by fuel type) at each efficiency level. 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 efficiency level in today's proposed rule is the difference between the forecasted emissions estimated by NEMS–BT at each efficiency level and the *AEO 2011* Reference case, which incorporates projected effects of all emissions regulations promulgated as of January 31, 2011. NEMS–BT tracks $CO_2$ emissions using a detailed module that provides results with broad coverage of all sectors and inclusion of interactive effects. For today's NOPR, DOE used the version of NEMS–BT based on *AEO 2011.* For the final rule, DOE intends to revise the emissions analysis using the most current version of NEMS–BT, which may be based on *AEO 2012.*

$SO_2$ emissions from affected electric generating units (EGUs) are subject to nationwide and regional emissions cap-and-trade programs, and DOE has preliminarily determined that these programs create uncertainty about the impact of energy conservation standards on $SO_2$ emissions. Title IV of the Clean Air Act sets an annual emissions cap on $SO_2$ for affected EGUs in the 48 contiguous States and the District of Columbia (DC). $SO_2$ emissions from 28 eastern States and DC are also limited under the Clean Air Interstate Rule (CAIR, 70 FR 25162 (May 12, 2005)), which created an allowance-based trading program. Although CAIR was remanded to the Environmental Protection Agency (EPA) by the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit) (see *North Carolina* v. *EPA,* 550 F.3d 1176 (DC Cir. 2008)), it remained in effect temporarily, consistent with the D.C. Circuit's earlier opinion in *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008). On July 6, 2010, EPA issued the Transport Rule proposal, a replacement for CAIR (75 FR 45210 (Aug. 2, 2010)), and on July 6, 2011, EPA issued the final Transport Rule, titled the Cross-State Air Pollution Rule. 76 FR 48208 (August 8, 2011) (See *http://www.epa.gov/crossstaterule/*). Because the *AEO 2011* NEMS used for today's NOPR assumes the implementation of CAIR, DOE has not been able to take into account the effects of the Transport Rule for this rulemaking.[53]

The attainment of emissions caps typically is flexible among EGUs and is enforced through the use of emissions allowances and tradable permits. Under existing EPA regulations, any excess $SO_2$ emissions allowances resulting from the lower electricity demand caused by the imposition of an energy conservation standard could be used to permit offsetting increases in $SO_2$ emissions by any regulated EGU. However, if the new and amended standards resulted in a permanent increase in the quantity of unused emissions allowances, there would be an overall reduction in $SO_2$ emissions from the standards. While there remains some uncertainty about the ultimate effects of energy conservation 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 $SO_2$.

As discussed above, the *AEO 2011* NEMS used for today's NOPR assumes the implementation of CAIR, which established a cap on $NO_X$ emissions in 28 eastern States and the District of Columbia. With CAIR in effect, the

[52] EIA approves the use of the name ''NEMS'' to describe only an *AEO* version of the model without any modification to code or data. Because the present analysis entails some minor code modifications and runs the model under various policy scenarios that deviate from *AEO* assumptions, the name ''NEMS–BT'' refers to the model as used here. (BT stands for DOE's Building Technologies Program.)

[53] DOE notes that future iterations of the NEMS–BT model will incorporate any changes necessitated by issuance of the Transport Rule.

energy conservation standards that are the subject of today's NOPR are expected to have little or no physical effect on $NO_X$ emissions in those States covered by CAIR, for the same reasons that they may have little effect on $SO_2$ emissions. However, the proposed standards would be expected to reduce $NO_X$ emissions in the 22 States not affected by CAIR. For these 22 States, DOE is using the NEMS–BT to estimate $NO_X$ emissions reductions from the standards considered in today's NOPR.

In the absence of caps, a DOE energy conservation standard could reduce Hg emissions, and DOE used NEMS–BT to estimate these reductions. Although at present there are no national, Federally binding regulations for mercury from EGUs, on March 16, 2011, EPA proposed national emissions standards for hazardous air pollutants (NESHAPs) for mercury and certain other pollutants emitted from coal and oil-fired EGUs. 76 FR 24976. The NESHAPs do not include a trading program and, as such, DOE's energy conservation standards would likely reduce Hg emissions. However, for the emissions analysis for this rulemaking, DOE estimated mercury emissions reductions using NEMS–BT based on *AEO2011,* which does not incorporate the NESHAPs. DOE expects that future versions of the NEMS–BT model will reflect the implementation of the NESHAPs.

*B. Monetizing Carbon Dioxide and Other Emissions Impacts*

As part of the development of this proposed 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 considered efficiency levels. In order to make this calculation similar to the calculation of the NPV of customer benefit, DOE considered the reduced emissions expected to result over the lifetime of products shipped in the forecast period for each efficiency level. This section summarizes the basis for the monetary values used for each of these emissions and presents the values considered in this rulemaking.

For today's NOPR, DOE is relying on a set of values for the social cost of carbon (SCC) that was developed by an interagency process. A summary of the basis for those values is provided below, and a more detailed description of the methodologies used is provided as an appendix to chapter 10 of the NOPR TSD.

1. Social Cost of Carbon

Under section 1(b)(6) 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 the 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 [54] points out that any assessment will suffer from uncertainty, speculation, and lack of information about: (1) Future emissions of greenhouse gases; (2) the effects of past and future emissions on the climate system; (3) the impact of changes in climate on the physical and biological environment; and (4) the translation of these environmental impacts into economic damages. As a result, any effort to quantify and monetize the harms associated with climate change will raise serious questions of science, economics, and ethics and should be viewed as provisional.

Despite the serious limits of both quantification and monetization, SCC estimates can be useful in estimating the social benefits of reducing carbon dioxide emissions. Consistent with the directive in Executive Order 12866 discussed 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. This concern is not applicable to this notice, and 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 2010$, were $4.9, $22.3, $36.5, and $67.6 per metric ton avoided. For emissions 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

[54] National Research Council, ''Hidden Costs of Energy: Unpriced Consequences of Energy Production and Use,'' National Academies Press: Washington, DC (2009).

effects,[55] although preference is given to consideration of the global benefits of reducing $CO_2$ emissions.

It is important to emphasize that the interagency process is committed to updating these estimates as the science and economic understanding of climate change and its impacts on society improves over time. Specifically, the interagency group has set a preliminary goal of revisiting the SCC values within 2 years or at such time as substantially updated models become available, and to continue to support research in this area. In the meantime, the interagency group will continue to explore the issues raised by this analysis and consider public comments as part of the ongoing interagency process.

b. Social Cost of Carbon Values Used in Past Regulatory Analyses

To date, economic analyses for Federal regulations have used a wide range of values to estimate the benefits associated with reducing carbon dioxide emissions. In the model year 2011 CAFE final 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$), increasing both values at 2.4 percent per year. It also included a sensitivity analysis at $80 per ton of $CO_2$. 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*). 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$) for 2011 emission reductions (with a range of $0 to $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$). 73 FR 58772, 58814 (Oct. 7, 2008). In addition, EPA's 2008 Advance Notice of Proposed Rulemaking on Regulating Greenhouse Gas Emissions Under the Clean Air Act identified what it described as ''very preliminary'' SCC estimates subject to revision. 73 FR 44354 (July 30, 2008). EPA's global mean values were $68 and $40 per ton $CO_2$ for discount rates of approximately 2 percent and 3 percent, respectively (in 2006$ for 2007 emissions).

In 2009, an interagency process was initiated to offer a preliminary assessment of how best to quantify the benefits from reducing carbon dioxide emissions. To ensure consistency in how benefits are evaluated across agencies, the Administration sought to develop a transparent and defensible method, specifically designed for the rulemaking process, to quantify avoided climate change damages from reduced $CO_2$ emissions. The interagency group did not undertake any original analysis. Instead, it combined SCC estimates from the existing literature to use as interim values until a more comprehensive analysis could be conducted. The outcome of the preliminary assessment by the interagency group was a set of five interim values: global SCC estimates for 2007 (in 2006$) 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.

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 for this proposed rule. Specifically, the group considered public comments and further explored the technical literature in relevant fields. The interagency group relied on three integrated assessment models (IAMs) commonly used to estimate the SCC: the FUND, DICE, and PAGE models.[56] These models are frequently cited in the peer-reviewed literature and were used in the last assessment of the Intergovernmental Panel on Climate Change. Each model was given equal weight in the SCC values that were developed.

Each model takes a slightly different approach to model how changes in emissions result in changes in economic damages. A key objective of the interagency process was to enable a consistent exploration of the three models while respecting the different approaches to quantifying damages taken by the key modelers in the field. An extensive review of the literature was conducted to select three sets of input parameters for these models: climate sensitivity, socio-economic and emissions trajectories, and discount rates. A probability distribution for climate sensitivity was specified as an input into all three models. In addition, the interagency group used a range of scenarios for the socio-economic parameters and a range of values for the discount rate. All other model features were left unchanged, relying on the model developers' best estimates and judgments.

The interagency group selected four SCC values for use in regulatory analyses. Three values are based on the average SCC from three integrated assessment models, at discount rates of 2.5 percent, 3 percent, 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 VII.1.

[55] 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.

[56] The models are described in appendix 15–A of the NOPR TSD.

TABLE VII.1—SOCIAL COST OF $CO_2$, 2010–2050

[In 2007 dollars per metric ton]

| Year | Discount rate (%) | | | |
|---|---|---|---|---|
| | 5 | 3 | 2.5 | 3 |
| | Average | Average | Average | 95th percentile |
| 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 Federal agencies participating in the interagency process to estimate the SCC.

DOE recognizes the uncertainties embedded in the estimates of the SCC used for cost-benefit analyses. As such, DOE and others in the U.S. Government intend to periodically review and reconsider those estimates 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.

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 2010$ using the GDP price deflator. For each of the four cases specified, the values used for emissions in 2010 were $4.9, $22.3, $36.5, and $67.6 per metric ton avoided (values expressed in 2010$).[57] To monetize the $CO_2$ emissions reductions expected to result from new or amended standards for the product classes in today's NOPR, DOE used the values identified in Table A1 of the ''Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866,'' which is reprinted in appendix 16–A of the NOPR TSD, appropriately escalated to 2010$. 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 efficiency levels it considered. As noted above, DOE has taken into account how new or amended energy conservation standards would reduce $NO_X$ emissions in those 22 States not affected by the CAIR. DOE estimated the monetized value of $NO_X$ emissions reductions resulting from each of the efficiency levels considered for today's NOPR based on environmental damage estimates found in the relevant scientific 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 $450 to $4,623 per ton in 2010$).[58] In accordance with OMB guidance, DOE conducted two calculations of the monetary benefits derived using each of the economic values used for $NO_X$, one using a real discount rate of 3 percent and the other using a real discount rate of 7 percent.[59]

DOE is aware of multiple agency efforts to determine the appropriate range of values used in evaluating the potential economic benefits of reduced Hg emissions. DOE has decided to await further guidance regarding consistent valuation and reporting of Hg emissions before it once again monetizes Hg in its rulemakings.

## VIII. Analytical Results

### *A. Efficiency Levels Analyzed*

1. Water-Cooled and Evaporatively-Cooled Products

The methodology for water-cooled and evaporatively-cooled products was presented in the May 2011 NODA. 76 FR 25622, 25637–40 (May 5, 2011). Table VIII.1 presents the baseline efficiency level and the higher efficiency levels analyzed for each equipment class of water-cooled and evaporatively-cooled products subject to today's proposed rule. The baseline efficiency levels correspond to the lowest efficiency levels currently available on the market. The efficiency levels above the baseline represent efficiency levels specified in ASHRAE Standard 90.1–2010 and higher efficiency levels where equipment is currently available on the market.

[57] Table A1 presents SCC values through 2050. For DOE's calculation, it derived values after 2050 using the 3-percent per year escalation rate used by the interagency group.

[58] For additional information, refer to U.S. Office of Management and Budget, Office of Information and Regulatory Affairs, *2006 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities,* Washington, DC.

[59] OMB, Circular A–4: Regulatory Analysis (Sept. 17, 2003).

TABLE VIII.1—EFFICIENCY LEVELS ANALYZED FOR WATER-COOLED AND EVAPORATIVELY-COOLED PRODUCTS

| Equipment class | Representative capacity *(tons)* | Efficiency levels analyzed (EER) |
|---|---|---|
| Small Water-Cooled Air Conditioners Electric or No Heat ≥65,000–<135,000 Btu/h | 8 | Baseline—11.5<br>ASHRAE—12.1<br>13.0<br>14.0<br>15.0<br>Max-Tech—16.4 |
| Small Water-Cooled Air Conditioners, Other Heat, ≥65,000–<135,000 Btu/h | 8 | Baseline—11.3<br>ASHRAE—11.9<br>13.0<br>14.0<br>15.0<br>Max-Tech—16. 4 |
| Large Water-Cooled Air Conditioners, Electric or No Heat, ≥135,000–<240,000 Btu/h | 15 | Baseline—11.0<br>ASHRAE—12.5<br>13.0<br>14.0<br>15.0<br>Max-Tech—16.1 |
| Large Water-Cooled Air Conditioners, Other Heat, ≥135,000–<240,000 Btu/h | 15 | Baseline—11.0<br>ASHRAE—12.3<br>13.0<br>14.0<br>15.0<br>Max-Tech—16.1 |
| Very Large Water-Cooled Air Conditioners, Electric or No Heat, ≥240,000–<760,000 Btu/h | 35 | Baseline—11.0<br>ASHRAE—12.4<br>13.0<br>14.0<br>Max-Tech—14.8 |
| Very Large Water-Cooled Air Conditioners, Other Heat, ≥240,000–<760,000 Btu/h | 35 | Baseline—10.8<br>ASHRAE—12.2<br>13.0<br>14.0<br>Max-Tech—14.8 |
| Very Large Evaporatively-Cooled Air Conditioner, Electric or No Heat, ≥240,000–<760,000 Btu/h | 40 | Baseline—11.0<br>ASHRAE—11.9<br>12.5<br>Max-Tech—13.1 |
| Very Large Evaporatively-Cooled Air Conditioner, Other Heat, ≥240,000–<760,000 Btu/h | 40 | Baseline—10.8<br>ASHRAE—11.7<br>12.5<br>Max-Tech—13.1 |

2. VRF Water-Source Heat Pumps

Table VIII.2 presents the baseline efficiency level and the higher efficiency levels analyzed for each equipment class of VRF water-source heat pumps subject to today's proposed rule and with equipment on the market. The baseline efficiency levels correspond to the lowest efficiency levels currently available on the market. The efficiency levels above the baseline represent efficiency levels specified in ASHRAE Standard 90.1–2010 and higher efficiency levels where equipment is currently available on the market.

TABLE VIII.2—EFFICIENCY LEVELS ANALYZED FOR VRF WATER-SOURCE HEAT PUMPS

| Equipment class | Representative capacity *kBtu/h* | Efficiency levels analyzed (EER) |
|---|---|---|
| VRF Water-Source Heat Pumps, ≥135,000 Btu/h without heat recovery | 242 | Baseline—9.5<br>ASHRAE—10<br>11<br>12<br>13<br>Max-Tech—14.5 |
| VRF Water-Source Heat Pumps, ≥135,000 Btu/h with heat recovery | 215 | Baseline—9.5<br>ASHRAE—9.8<br>11<br>12<br>13<br>Max-Tech—14.5 |

3. Computer Room Air Conditioners

Table VIII.3 presents the market baseline efficiency level and the higher efficiency levels analyzed for each equipment class of computer room air conditioners subject to today's proposed rule. The market baseline efficiency levels correspond to the lowest efficiency levels currently available on the market. The efficiency levels above the baseline represent efficiency levels specified by ASHRAE Standard 90.1–2010 and efficiency levels above those specified in ASHRAE Standard 90.1–2010 where equipment is currently available on the market. Note that for the economic analysis, efficiency levels above those specified in ASHRAE Standard 90.1–2010 are compared to ASHRAE Standard 90.1–2010 as the baseline rather than the market baseline.

TABLE VIII.3—EFFICIENCY LEVELS ANALYZED FOR COMPUTER ROOM AIR CONDITIONERS

| Equipment class | Representative capacity *kBtu/h* | Efficiency levels analyzed (SCOP–127) |
|---|---|---|
| Air conditioners, air-cooled, <65,000 Btu/h | 40 | Market Baseline—2.00<br>ASHRAE—2.20<br>2.40<br>2.60<br>Max-Tech—2.80 |
| Air conditioners, air-cooled, ≥65,000 to <240,000 Btu/h | 100 | Market Baseline—2.10<br>ASHRAE—2.10<br>2.35<br>2.60<br>2.85<br>Max-Tech—3.10 |
| Air conditioners, air-cooled, ≥240,000 Btu/h | 280 | Market Baseline—1.90<br>ASHRAE—1.90<br>2.15<br>2.40<br>2.65<br>Max-Tech—2.90 |
| Air conditioners, water-cooled, <65,000 Btu/h | 30 | Market Baseline—2.40<br>ASHRAE—2.60<br>2.80<br>3.00<br>3.10<br>Max-Tech—3.30 |

TABLE VIII.3—EFFICIENCY LEVELS ANALYZED FOR COMPUTER ROOM AIR CONDITIONERS—Continued

| Equipment class | Representative capacity *kBtu/h* | Efficiency levels analyzed (SCOP–127) |
|---|---|---|
| Air conditioners, water-cooled, ≥65,000 to <240,000 Btu/h | 106 | Market Baseline—2.30<br>ASHRAE—2.50<br>2.70<br>2.90<br>3.10<br>Max-Tech—3.30 |
| Air conditioners, water-cooled, ≥240,000 Btu/h | 260 | Market Baseline—2.20<br>ASHRAE—2.40<br>2.60<br>2.80<br>3.00<br>Max-Tech—3.20 |
| Air conditioners, water-cooled with fluid economizers, <65,000 Btu/h | 30 | Market Baseline—2.35<br>ASHRAE—2.55<br>2.75<br>2.95<br>3.15<br>Max-Tech—3.35 |
| Air conditioners, water-cooled with fluid economizers, ≥65,000 to <240,000 Btu/h | 118 | Market Baseline—2.25<br>ASHRAE—2.45<br>2.65<br>2.85<br>3.05<br>Max-Tech—3.25 |
| Air conditioners, water-cooled with fluid economizers, ≥240,000 Btu/h | 280 | Market Baseline—2.15<br>ASHRAE—2.35<br>2.55<br>2.75<br>2.95<br>Max-Tech—3.15 |
| Air conditioners, glycol-cooled, <65,000 Btu/h | 32 | Market Baseline—2.30<br>ASHRAE—2.50<br>2.70<br>2.90<br>3.10<br>Max-Tech—3.30 |
| Air conditioners, glycol-cooled, ≥65,000 to <240,000 Btu/h | 100 | Market Baseline—1.95<br>ASHRAE—2.15<br>2.35<br>2.55<br>2.75<br>Max-Tech—2.95 |
| Air conditioners, glycol-cooled, ≥240,000 Btu/h | 260 | Market Baseline—1.90<br>ASHRAE—2.10<br>2.30<br>2.50<br>2.70<br>Max-Tech—2.90 |

TABLE VIII.3—EFFICIENCY LEVELS ANALYZED FOR COMPUTER ROOM AIR CONDITIONERS—Continued

| Equipment class | Representative capacity *kBtu/h* | Efficiency levels analyzed (SCOP–127) |
|---|---|---|
| Air conditioners, glycol-cooled with fluid economizers, <65,000 Btu/h | 20 | Market Baseline—2.25<br>ASHRAE—2.45<br>2.65<br>2.85<br>3.05<br>Max-Tech—3.25 |
| Air conditioners, glycol-cooled with fluid economizers, ≥65,000 to <240,000 Btu/h | 118 | Market Baseline—1.90<br>ASHRAE—2.10<br>2.30<br>2.50<br>2.70<br>Max-Tech—2.90 |
| Air conditioners, glycol-cooled with fluid economizers, ≥240,000 Btu/h | 280 | Market Baseline—1.85<br>ASHRAE—2.05<br>2.25<br>2.45<br>2.65<br>Max-Tech—2.85 |

*B. Energy Savings and Economic Justification*

1. Water-Cooled and Evaporatively-Cooled Equipment

DOE estimated the potential primary energy savings in quads (*i.e.,* $10^{15}$ Btu) for each efficiency level considered within each equipment class analyzed. Table VIII.4 to Table VIII.11 show the potential energy savings resulting from the analyses conducted as part of the May 2011 NODA. 76 FR 25622, 25637 (May 5, 2011). As mentioned in section IV.B.1 and IV.B.2, DOE did not conduct an economic analysis for this equipment category, because of the minimal energy savings.

TABLE VIII.4—POTENTIAL ENERGY SAVINGS FOR SMALL WATER-COOLED EQUIPMENT WITH ELECTRIC RESISTANCE OR NO HEAT

| Efficiency level | Primary energy savings estimate * (quads) | |
|---|---|---|
| | Historical shipment trend | Shipments fixed to 2009 |
| Level 1—ASHRAE—12.1 EER | 0.000005 | 0.000011 |
| Level 2—13 EER | 0.000018 | 0.000060 |
| Level 3—14 EER | 0.000044 | 0.000144 |
| Level 4—15 EER | 0.000074 | 0.000238 |
| Level 5—"Max-Tech"—16.4 EER | 0.000121 | 0.000388 |

* The potential energy savings for efficiency levels more stringent than those specified by ASHRAE Standard 90.1–2010 were calculated relative to the efficiency levels that would result if ASHRAE Standard 90.1–2010 standards were adopted.

TABLE VIII.5—POTENTIAL ENERGY SAVINGS ESTIMATES FOR SMALL WATER-COOLED EQUIPMENT WITH OTHER HEAT

| Efficiency level | Primary energy savings estimate * (quads) | |
|---|---|---|
| | Historical shipment trend | Shipments fixed to 2009 |
| Level 1—ASHRAE—11.9 EER | 0.0000005 | 0.0000013 |
| Level 2—13 EER | 0.0000024 | 0.0000082 |
| Level 3—14 EER | 0.0000053 | 0.0000174 |
| Level 4—15 EER | 0.0000085 | 0.0000276 |
| Level 5—"Max-Tech"—16.4 EER | 0.0000137 | 0.0000441 |

* The potential energy savings for efficiency levels more stringent than those specified by ASHRAE Standard 90.1–2010 were calculated relative to the efficiency levels that would result if ASHRAE Standard 90.1–2010 standards were adopted.

TABLE VIII.6—POTENTIAL ENERGY SAVINGS ESTIMATES FOR LARGE WATER-COOLED EQUIPMENT WITH ELECTRIC RESISTANCE OR NO HEAT

| Efficiency level | Primary energy savings estimate * (quads) | |
|---|---|---|
| | Historical shipment trend | Shipments fixed to 2009 |
| Level 1—ASHRAE—12.5 EER | 0.00014 | 0.00027 |
| Level 2—13 EER | 0.00002 | 0.00008 |
| Level 3—14 EER | 0.00013 | 0.00032 |
| Level 4—15 EER | 0.00024 | 0.00056 |
| Level 5—"Max-Tech"—16.1 EER | 0.00039 | 0.00089 |

* The potential energy savings for efficiency levels more stringent than those specified by ASHRAE Standard 90.1–2010 were calculated relative to the efficiency levels that would result if ASHRAE Standard 90.1–2010 standards were adopted.

TABLE VIII.7—POTENTIAL ENERGY SAVINGS ESTIMATES FOR LARGE WATER-COOLED EQUIPMENT WITH OTHER HEAT

| Efficiency level | Primary energy savings estimate * (quads) | |
|---|---|---|
| | Historical shipment trend | Shipments fixed to 2009 |
| Level 1—ASHRAE—12.3 EER | 0.00001 | 0.00003 |
| Level 2—13 EER | 0.00001 | 0.00001 |
| Level 3—14 EER | 0.00002 | 0.00004 |
| Level 4—15 EER | 0.00003 | 0.00007 |
| Level 5—"Max-Tech"—16.1 EER | 0.00005 | 0.00010 |

* The potential energy savings for efficiency levels more stringent than those specified by ASHRAE Standard 90.1–2010 were calculated relative to the efficiency levels that would result if ASHRAE Standard 90.1–2010 standards were adopted.

TABLE VIII.8—POTENTIAL ENERGY SAVINGS ESTIMATES FOR VERY LARGE WATER-COOLED EQUIPMENT WITH ELECTRIC RESISTANCE OR NO HEAT

| Efficiency level | Primary energy savings estimate * (quads) | |
|---|---|---|
| | Historical shipment trend | Shipments fixed to 2009 |
| Level 1—ASHRAE—12.4 EER | 0.0002 | 0.0001 |
| Level 2—13 EER | 0.0001 | 0.0001 |
| Level 3—14 EER | 0.0005 | 0.0003 |
| Level 4—"Max-Tech"—14.8 EER | 0.0008 | 0.0005 |

* The potential energy savings for efficiency levels more stringent than those specified by ASHRAE Standard 90.1–2010 were calculated relative to the efficiency levels that would result if ASHRAE Standard 90.1–2010 standards were adopted.

TABLE VIII.9—POTENTIAL ENERGY SAVINGS ESTIMATES FOR VERY LARGE WATER-COOLED EQUIPMENT WITH OTHER HEAT

| Efficiency level | Primary energy savings estimate * (quads) | |
|---|---|---|
| | Historical shipment trend | Shipments fixed to 2009 |
| Level 1—ASHRAE—12.2 EER | 0.002 | 0.001 |
| Level 2—13 EER | 0.001 | 0.001 |
| Level 3—14 EER | 0.005 | 0.003 |
| Level 4—"Max-Tech"—14.8 EER | 0.008 | 0.005 |

* The potential energy savings for efficiency levels more stringent than those specified by ASHRAE Standard 90.1–2010 were calculated relative to the efficiency levels that would result if ASHRAE Standard 90.1–2010 standards were adopted.

TABLE VIII.10—POTENTIAL ENERGY SAVINGS ESTIMATES FOR VERY LARGE EVAPORATIVELY-COOLED EQUIPMENT WITH ELECTRIC RESISTANCE OR NO HEAT

| Efficiency level | Primary energy savings estimate * (quads) | |
|---|---|---|
| | Historical shipment trend | Shipments fixed to 2009 |
| Level 1—ASHRAE—11.9 EER | 0.00013 | 0.00009 |
| Level 2—12.5 EER | 0.00008 | 0.00005 |
| Level 3—"Max-Tech"—13.1 EER | 0.00017 | 0.00011 |

* The potential energy savings for efficiency levels more stringent than those specified by ASHRAE Standard 90.1–2010 were calculated relative to the efficiency levels that would result if ASHRAE Standard 90.1–2010 standards were adopted.

TABLE VIII.11—POTENTIAL ENERGY SAVINGS ESTIMATES FOR VERY LARGE EVAPORATIVELY-COOLED EQUIPMENT WITH OTHER HEAT

| Efficiency level | Primary energy savings estimate * (quads) | |
|---|---|---|
| | Historical shipment trend | Shipments fixed to 2009 |
| Level 1—ASHRAE—11.7 EER | 0.0011 | 0.0007 |
| Level 2—12.5 EER | 0.0010 | 0.0007 |
| Level 3—"Max-Tech"—13.1 EER | 0.0019 | 0.0012 |

* The potential energy savings for efficiency levels more stringent than those specified by ASHRAE Standard 90.1–2010 were calculated relative to the efficiency levels that would result if ASHRAE Standard 90.1–2010 standards were adopted.

2. VRF Water-Source Heat Pumps

DOE estimated the potential primary energy savings in quads (*i.e.,* $10^{15}$ Btu) for each efficiency level considered within the two equipment classes of VRF water-source heat pumps at or greater than 135,000 Btu/h. Table VIII.12 and Table VIII.13 show the potential energy savings resulting from the analyses conducted as part of today's NOPR (see section V). Because there appear to be no models on the market below ASHRAE Standard 90.1–2010 levels, there are no energy savings from adopting ASHRAE. However, there are also extremely minimal energy savings from adopting a higher standard. As mentioned in section IV.B.3, DOE did not conduct an economic analysis for this equipment category.

TABLE VIII.12—POTENTIAL ENERGY SAVINGS FOR VRF WATER-SOURCE HEAT PUMPS >135,000 BTU/H WITHOUT HEAT RECOVERY

| Efficiency level | Primary energy savings estimate * (quads) |
|---|---|
| Level 1—ASHRAE—10.0 EER | ..... |
| Level 2—11 EER | 0.0009 |
| Level 3—12 EER | 0.0174 |
| Level 4—13 EER | 0.0416 |
| Level 5—"Max-Tech"—14.5 EER | 0.0761 |

* The potential energy savings for efficiency levels more stringent than those specified by ASHRAE Standard 90.1–2010 were calculated relative to the efficiency levels that would result if ASHRAE Standard 90.1–2010 standards were adopted.

TABLE VIII.13—POTENTIAL ENERGY SAVINGS FOR VRF WATER-SOURCE HEAT PUMPS >135,000 BTU/H WITH HEAT RECOVERY

| Efficiency level | Primary energy savings estimate * (quads) |
|---|---|
| Level 1—ASHRAE—9.8 EER | ..... |
| Level 2—11 EER | 0.0008 |
| Level 3—12 EER | 0.0083 |
| Level 4—13 EER | 0.0195 |
| Level 5—"Max-Tech"—14.5 EER | 0.0358 |

* The potential energy savings for efficiency levels more stringent than those specified by ASHRAE Standard 90.1–2010 were calculated relative to the efficiency levels that would result if ASHRAE Standard 90.1–2010 standards were adopted.

3. Computer Room Air Conditioners

a. Economic Impacts on Commercial Customers

i. Life-Cycle Cost and Payback Period

To evaluate the economic impact of the efficiency levels on commercial customers, DOE conducted an LCC analysis for each efficiency level. More-efficient computer room air conditioners would affect these customers in two ways: (1) Annual operating expense would decrease; and (2) purchase price would increase. Inputs used for calculating the LCC include total installed costs (*i.e.,* equipment price plus installation costs), operating expenses (*i.e.,* annual energy savings, energy prices, energy price trends, repair costs, and maintenance costs), equipment lifetime, and discount rates.

The output of the LCC model is a mean LCC savings (or cost [60]) for each equipment class, relative to the baseline computer room air conditioner efficiency level. The LCC analysis also provides information on the percentage of customers that are negatively affected by an increase in the minimum efficiency standard.

DOE also performed a PBP analysis as part of the LCC analysis. The PBP is the number of years it would take for the customer to recover the increased costs of higher-efficiency equipment as a result of energy savings based on the operating cost savings. The PBP is an economic benefit-cost measure that uses benefits and costs without discounting. Chapter 5 of the NOPR TSD provides detailed information on the LCC and PBP analyses.

DOE's LCC and PBP analyses provided five key outputs for each efficiency level above the baseline (*i.e.,* efficiency levels more stringent than those in ASHRAE Standard 90.1–2010), as reported in Table VIII.14 through Table VIII.23 below. These outputs include the proportion of computer room air conditioner purchases in which the purchase of a computer room air conditioner that is compliant with the amended energy conservation standard creates a net LCC increase, no impact, or a net LCC savings for the customer. Another output is the average net LCC savings from standard-compliant equipment, as well as the average PBP for the customer investment in standard-compliant equipment.

TABLE VIII.14—SUMMARY LCC AND PBP RESULTS FOR COMPUTER ROOM AIR CONDITIONERS, AIR-COOLED, <65,000 BTU/H

| Efficiency level | Life-cycle cost (2011$) | | | Life-cycle cost savings (2011$) | | | | Payback period (years) |
|---|---|---|---|---|---|---|---|---|
| | Installed cost | Discounted operating cost | LCC | Average savings | % of consumers that experience | | | |
| | | | | | Net cost | No impact | Net benefit | Median |
| Baseline | 11,982 | 32,039 | 44,021 | | | | | |
| 1 | 13,471 | 29,822 | 43,294 | 809 | 3 | 89 | 8 | 8.5 |
| 2 | 15,222 | 28,140 | 43,362 | 212 | 17 | 68 | 14 | 10.2 |
| 3 | 17,281 | 26,756 | 44,037 | (587) | 65 | 23 | 12 | 12.1 |
| 4 | 19,700 | 25,623 | 45,323 | (1,761) | 90 | 5 | 6 | 14.5 |

* Numbers in parentheses indicate negative LCC savings.

TABLE VIII.15—SUMMARY LCC AND PBP RESULTS FOR COMPUTER ROOM AIR CONDITIONERS, AIR-COOLED, ≥65,000 TO <240,000 BTU/H

| Efficiency level | Life-cycle cost (2011$) | | | Life-cycle cost savings (2011$) | | | | Payback period (years) |
|---|---|---|---|---|---|---|---|---|
| | Installed cost | Discounted operating cost | LCC | Average savings | % of consumers that experience | | | |
| | | | | | Net cost | No impact | Net benefit | Median |
| Baseline | 39,412 | 121,532 | 160,945 | | | | | |
| 1 | 41,651 | 110,885 | 152,536 | 9,334 | 0 | 98 | 2 | 2.6 |
| 2 | 44,063 | 102,936 | 146,999 | 6,406 | 0 | 78 | 22 | 3.0 |
| 3 | 46,664 | 96,523 | 143,187 | 5,895 | 0 | 33 | 67 | 3.5 |
| 4 | 49,467 | 91,289 | 140,756 | 6,437 | 1 | 2 | 97 | 4.0 |

TABLE VIII.16—SUMMARY LCC AND PBP RESULTS FOR COMPUTER ROOM AIR CONDITIONERS, AIR-COOLED, ≥240,000 BTU/H

| Efficiency level | Life-cycle cost (2011$) | | | Life-cycle cost savings (2011$) | | | | Payback period (years) |
|---|---|---|---|---|---|---|---|---|
| | Installed cost | Discounted operating cost | LCC | Average savings | % of consumers that experience | | | |
| | | | | | Net cost | No impact | Net benefit | Median |
| Baseline | 56,879 | 286,458 | 343,337 | | | | | |
| 1 | 60,102 | 258,403 | 318,505 | 27,198 | 0 | 98 | 2 | 1.4 |
| 2 | 63,577 | 237,739 | 301,316 | 19,713 | 0 | 78 | 22 | 1.7 |
| 3 | 67,322 | 221,326 | 288,648 | 19,071 | 0 | 33 | 67 | 1.9 |
| 4 | 71,358 | 208,099 | 279,458 | 22,152 | 0 | 2 | 98 | 2.2 |

[60] An LCC cost is shown as a negative savings in the results presented.

TABLE VIII.17—SUMMARY LCC AND PBP RESULTS FOR COMPUTER ROOM AIR CONDITIONERS, WATER-COOLED, <65,000 BTU/H

| Efficiency level | Life-cycle cost (2011$) | | | Life-cycle cost savings (2011$) | | | | Payback period (years) |
|---|---|---|---|---|---|---|---|---|
| | Installed cost | Discounted operating cost | LCC | Average savings | % of consumers that experience | | | |
| | | | | | Net cost | No impact | Net benefit | Median |
| Baseline | 23,748 | 29,266 | 53,014 | ..... | ..... | ..... | ..... | ..... |
| 1 | 20,311 | 27,237 | 47,548 | 5,455 | 0 | 72 | 28 | (21.5) |
| 2 | 17,527 | 25,621 | 43,148 | 7,389 | 0 | 49 | 51 | (20.9) |
| 3 | 15,273 | 24,215 | 39,488 | 8,003 | 0 | 13 | 87 | (20.3) |
| 4 | 13,447 | 22,984 | 36,430 | 10,213 | 0 | 3 | 97 | (19.7) |

* Numbers in parentheses indicate negative payback period due to a declining installed cost at higher efficiency levels.

TABLE VIII.18—SUMMARY LCC AND PBP RESULTS FOR COMPUTER ROOM AIR CONDITIONERS, WATER-COOLED, ≥65,000 TO <240,000 BTU/H

| Efficiency level | Life-cycle cost (2011$) | | | Life-cycle cost savings (2011$) | | | | Payback period (years) |
|---|---|---|---|---|---|---|---|---|
| | Installed cost | Discounted operating cost | LCC | Average savings | % of consumers that experience | | | |
| | | | | | Net cost | No impact | Net benefit | Median |
| Baseline | 22,983 | 109,615 | 132,598 | ..... | ..... | ..... | ..... | ..... |
| 1 | 28,614 | 104,631 | 133,245 | (672) | 20 | 72 | 8 | 15.4 |
| 2 | 36,183 | 101,867 | 138,049 | (5,118) | 54 | 42 | 4 | 22.4 |
| 3 | 46,355 | 100,831 | 147,186 | (12,844) | 79 | 20 | 1 | 35.9 |
| 4 | 60,027 | 101,734 | 161,761 | (25,278) | 96 | 4 | 0 | 64.6 |

* Numbers in parentheses indicate negative LCC savings.

TABLE VIII.19—SUMMARY LCC AND PBP RESULTS FOR COMPUTER ROOM AIR CONDITIONERS, WATER-COOLED, ≥240,000 BTU/H

| Efficiency level | Life-cycle cost (2011$) | | | Life-cycle cost savings (2011$) | | | | Payback period (years) |
|---|---|---|---|---|---|---|---|---|
| | Installed cost | Discounted operating cost | LCC | Average savings | % of consumers that experience | | | |
| | | | | | Net cost | No impact | Net benefit | Median |
| Baseline | 42,217 | 239,903 | 282,120 | ..... | ..... | ..... | ..... | ..... |
| 1 | 52,902 | 227,027 | 279,929 | 2,133 | 13 | 72 | 15 | 11.1 |
| 2 | 67,262 | 219,010 | 286,272 | (5,292) | 49 | 42 | 9 | 15.4 |
| 3 | 86,562 | 214,580 | 301,142 | (18,696) | 77 | 20 | 3 | 22.4 |
| 4 | 112,498 | 214,030 | 326,528 | (40,964) | 96 | 4 | 0 | 36.0 |

* Numbers in parentheses indicate negative LCC savings.

TABLE VIII.20—SUMMARY LCC AND PBP RESULTS FOR AIR CONDITIONERS, WATER-COOLED WITH FLUID ECONOMIZERS, <65,000 BTU/H

| Efficiency level | Life-cycle cost (2011$) | | | Life-cycle cost savings (2011$) | | | | Payback period (years) |
|---|---|---|---|---|---|---|---|---|
| | Installed cost | Discounted operating cost | LCC | Average savings | % of consumers that experience | | | |
| | | | | | Net cost | No impact | Net benefit | Median |
| Baseline | 25,059 | 19,565 | 44,624 | ..... | ..... | ..... | ..... | ..... |
| 1 | 21,422 | 18,442 | 39,864 | 4,759 | 0 | 72 | 28 | (40.3) |
| 2 | 18,476 | 17,541 | 36,017 | 6,459 | 0 | 49 | 51 | (39.3) |
| 3 | 16,090 | 16,763 | 32,853 | 6,960 | 0 | 13 | 87 | (38.3) |
| 4 | 14,158 | 16,086 | 30,244 | 8,832 | 0 | 3 | 97 | (37.3) |

* Numbers in parentheses indicate negative payback period due to a declining installed cost at higher efficiency levels.

TABLE VIII.21—SUMMARY LCC AND PBP RESULTS FOR COMPUTER ROOM AIR CONDITIONERS, WATER-COOLED WITH FLUID ECONOMIZERS, ≥65,000 TO <240,000 BTU/H

| Efficiency level | Life-cycle cost (2011$) | | | Life-cycle cost savings (2011$) | | | | Payback period (years) |
|---|---|---|---|---|---|---|---|---|
| | Installed cost | Discounted operating cost | LCC | Average savings | % of consumers that experience | | | |
| | | | | | Net cost | No impact | Net benefit | Median |
| Baseline | 24,169 | 73,475 | 97,645 | ..... | ..... | ..... | ..... | ..... |
| 1 | 30,129 | 71,967 | 102,095 | (4,439) | 25 | 72 | 3 | 41.5 |
| 2 | 38,138 | 71,937 | 110,075 | (10,105) | 58 | 42 | 0 | 34.1 |
| 3 | 48,903 | 73,290 | 122,193 | (19,437) | 80 | 20 | 0 | (66.1) |
| 4 | 63,372 | 76,298 | 139,669 | (33,672) | 96 | 4 | 0 | (75.0) |

* Numbers in parentheses indicate either negative LCC savings or show a negative payback due to increased annual operating costs.

TABLE VIII.22—SUMMARY LCC AND PBP RESULTS FOR COMPUTER ROOM AIR CONDITIONERS, WATER-COOLED WITH FLUID ECONOMIZERS, ≥240,000 BTU/H

| Efficiency level | Life-cycle cost (2011$) | | | Life-cycle cost savings (2011$) | | | | Payback period (years) |
|---|---|---|---|---|---|---|---|---|
| | Installed cost | Discounted operating cost | LCC | Average savings | % of consumers that experience | | | |
| | | | | | Net cost | No impact | Net benefit | Median |
| Baseline | 44,469 | 157,416 | 201,886 | ..... | ..... | ..... | ..... | ..... |
| 1 | 55,777 | 152,704 | 208,481 | (6,568) | 25 | 72 | 3 | 30.5 |
| 2 | 70,973 | 151,095 | 222,068 | (16,717) | 57 | 42 | 1 | 40.7 |
| 3 | 91,397 | 152,234 | 243,631 | (33,664) | 80 | 20 | 0 | 43.1 |
| 4 | 118,844 | 156,568 | 275,412 | (59,831) | 96 | 4 | 0 | (57.8) |

* Numbers in parentheses indicate either negative LCC savings or show a negative payback due to increased annual operating costs.

TABLE VIII.23—SUMMARY LCC AND PBP RESULTS FOR COMPUTER ROOM AIR CONDITIONERS, GLYCOL-COOLED, <65,000 BTU/H

| Efficiency level | Life-cycle cost (2011$) | | | Life-cycle cost savings (2011$) | | | | Payback period (years) |
|---|---|---|---|---|---|---|---|---|
| | Installed cost | Discounted operating cost | LCC | Average savings | % of consumers that experience | | | |
| | | | | | Net cost | No impact | Net benefit | Median |
| Baseline | 24,353 | 29,757 | 54,110 | ..... | ..... | ..... | ..... | ..... |
| 1 | 20,916 | 27,643 | 48,559 | 5,540 | 0 | 72 | 28 | (20.2) |
| 2 | 18,132 | 25,962 | 44,094 | 7,501 | 0 | 49 | 51 | (19.7) |
| 3 | 15,878 | 24,509 | 40,387 | 8,117 | 0 | 13 | 87 | (19.2) |
| 4 | 14,052 | 23,241 | 37,293 | 10,350 | 0 | 3 | 97 | (18.6) |

* Numbers in parentheses indicate negative payback period due to a declining installed cost at higher efficiency levels.

TABLE VIII.24—SUMMARY LCC AND PBP RESULTS FOR COMPUTER ROOM AIR CONDITIONERS, GLYCOL-COOLED, ≥65,000 TO <240,000 BTU/H

| Efficiency level | Life-cycle cost (2011$) | | | Life-cycle cost savings (2011$) | | | | Payback period (years) |
|---|---|---|---|---|---|---|---|---|
| | Installed cost | Discounted operating cost | LCC | Average savings | % of consumers that experience | | | |
| | | | | | Net cost | No impact | Net benefit | Median |
| Baseline | 24,377 | 123,088 | 147,465 | ..... | ..... | ..... | ..... | ..... |
| 1 | 30,001 | 116,846 | 146,847 | 594 | 15 | 72 | 13 | 11.9 |
| 2 | 37,559 | 113,489 | 151,048 | (3,901) | 52 | 42 | 6 | 17.8 |
| 3 | 47,717 | 112,428 | 160,145 | (11,921) | 78 | 20 | 2 | 29.1 |
| 4 | 61,368 | 113,891 | 175,258 | (25,047) | 96 | 4 | 0 | 50.4 |

* Numbers in parentheses indicate negative LCC savings.

TABLE VIII.25—SUMMARY LCC AND PBP RESULTS FOR COMPUTER ROOM AIR CONDITIONERS, GLYCOL-COOLED, ≥240,000 BTU/H

| Efficiency level | Life-cycle cost (2011$) | | | Life-cycle cost savings (2011$) | | | | Payback period (years) |
|---|---|---|---|---|---|---|---|---|
| | Installed cost | Discounted operating cost | LCC | Average savings | % of consumers that experience | | | |
| | | | | | Net cost | No impact | Net benefit | Median |
| Baseline | 42,217 | 266,128 | 308,345 | | | | | |
| 1 | 52,902 | 250,960 | 303,862 | 4,429 | 10 | 72 | 18 | 9.2 |
| 2 | 67,262 | 242,073 | 309,336 | (3,308) | 44 | 42 | 14 | 13.2 |
| 3 | 86,562 | 238,019 | 324,581 | (17,633) | 76 | 20 | 4 | 20.2 |
| 4 | 112,498 | 239,151 | 351,650 | (41,761) | 95 | 4 | 1 | 35.1 |

* Numbers in parentheses indicate negative LCC savings.

TABLE VIII.26—SUMMARY LCC AND PBP RESULTS FOR AIR CONDITIONERS, GLYCOL-COOLED WITH FLUID ECONOMIZERS, <65,000 BTU/H

| Efficiency level | Life-cycle cost (2011$) | | | Life-cycle cost savings (2011$) | | | | Payback period (years) |
|---|---|---|---|---|---|---|---|---|
| | Installed cost | Discounted operating cost | LCC | Average savings | % of consumers that experience | | | |
| | | | | | Net cost | No impact | Net benefit | Median |
| Baseline | 25,664 | 24,815 | 50,479 | | | | | |
| 1 | 22,027 | 23,156 | 45,183 | 5,295 | 0 | 72 | 28 | (28.2) |
| 2 | 19,081 | 21,851 | 40,932 | 7,159 | 0 | 49 | 51 | (27.6) |
| 3 | 16,695 | 20,727 | 37,422 | 7,717 | 0 | 13 | 87 | (26.9) |
| 4 | 14,763 | 19,751 | 34,514 | 9,808 | 0 | 3 | 97 | (26.3) |

* Numbers in parentheses indicate negative payback period due to a declining installed cost at higher efficiency levels.

TABLE VIII.27—SUMMARY LCC AND PBP RESULTS FOR COMPUTER ROOM AIR CONDITIONERS, GLYCOL-COOLED WITH FLUID ECONOMIZERS, ≥65,000 TO <240,000 BTU/H

| Efficiency level | Life-cycle cost (2011$) | | | Life-cycle cost savings (2011$) | | | | Payback period (years) |
|---|---|---|---|---|---|---|---|---|
| | Installed cost | Discounted operating cost | LCC | Average savings | % of consumers that experience | | | |
| | | | | | Net cost | No impact | Net benefit | Median |
| Baseline | 25,563 | 102,580 | 128,143 | | | | | |
| 1 | 31,514 | 98,451 | 129,965 | (1,802) | 23 | 72 | 5 | 21.0 |
| 2 | 39,512 | 96,813 | 136,325 | (7,200) | 55 | 42 | 3 | 33.4 |
| 3 | 50,261 | 97,235 | 147,496 | (16,388) | 79 | 20 | 1 | 40.8 |
| 4 | 64,708 | 99,990 | 164,697 | (30,857) | 96 | 4 | 0 | 22.4 |

* Numbers in parentheses indicate negative LCC savings.

TABLE VIII.28—SUMMARY LCC AND PBP RESULTS FOR COMPUTER ROOM AIR CONDITIONERS, GLYCOL-COOLED WITH FLUID ECONOMIZERS, ≥240,000 BTU/H

| Efficiency level | Life-cycle cost (2011$) | | | Life-cycle cost savings (2011$) | | | | Payback period (years) |
|---|---|---|---|---|---|---|---|---|
| | Installed cost | Discounted operating cost | LCC | Average savings | % of consumers that experience | | | |
| | | | | | Net cost | No impact | Net benefit | Median |
| Baseline | 44,469 | 220,328 | 264,797 | | | | | |
| 1 | 55,777 | 209,958 | 265,735 | (891) | 21 | 72 | 7 | 15.4 |
| 2 | 70,973 | 204,967 | 275,941 | (10,569) | 53 | 42 | 5 | 23.3 |
| 3 | 91,397 | 204,265 | 295,662 | (27,375) | 77 | 20 | 3 | 32.3 |
| 4 | 118,844 | 208,311 | 327,156 | (54,306) | 95 | 4 | 1 | 34.8 |

* Numbers in parentheses indicate negative LCC savings.

b. National Impact Analysis

i. Amount and Significance of Energy Savings

To estimate the energy savings through 2041 or 2042 due to amended energy conservation standards, DOE compared the energy consumption of computer room air conditioners under the ASHRAE Standard 90.1–2010 efficiency levels to energy consumption of computer room air conditioners under higher efficiency standards. DOE also compared the energy consumption of computer room air conditioners under the ASHRAE Standard 90.1–2010 efficiency levels to energy consumption of computer room air conditioners under the current market base case. DOE examined up to four efficiency levels higher than those of ASHRAE Standard

90.1–2010. Table VIII.29 shows the forecasted national energy savings at each of the considered standard levels. (See chapter 8 of the NOPR TSD.) As mentioned in section VI.B, DOE adjusted the efficiency rating (SCOP) upward for all upflow units in order to analyze the energy savings from only 15 classes of computer room air conditioners, with upflow and downflow units combined.

TABLE VIII.29—SUMMARY OF CUMULATIVE NATIONAL ENERGY SAVINGS FOR COMPUTER ROOM AIR CONDITIONERS

[Energy savings for units sold from 2012 to 2041 or 2013 to 2042]

| Equipment class | National energy savings (quads) * | | | | |
|---|---|---|---|---|---|
| | ASHRAE level | Efficiency level 1 | Efficiency level 2 | Efficiency level 3 | Efficiency level 4 |
| Air conditioners, air-cooled, <65,000 Btu/h | 0.00018 | 0.0006 | 0.0021 | 0.0052 | 0.0086 |
| Air conditioners, air-cooled, ≥65,000 to <240,000 Btu/h | – ** | 0.006 | 0.059 | 0.196 | 0.364 |
| Air conditioners, air-cooled, ≥240,000 Btu/h | – ** | 0.004 | 0.034 | 0.112 | 0.206 |
| Air conditioners, water-cooled, <65,000 Btu/h | 0.00003 | 0.0001 | 0.0003 | 0.0007 | 0.0010 |
| Air conditioners, water-cooled, ≥65,000 to <240,000 Btu/h | 0.0009 | 0.0088 | 0.0246 | 0.0435 | 0.0634 |
| Air conditioners, water-cooled, ≥240,000 Btu/h | 0.0008 | 0.0079 | 0.0220 | 0.0388 | 0.0565 |
| Air conditioners, water-cooled with fluid economizers, <65,000 Btu/h | 0.00001 | 0.00004 | 0.00011 | 0.00021 | 0.00031 |
| Air conditioners, water-cooled with fluid economizers, ≥65,000 to <240,000 Btu/h | 0.0004 | 0.0038 | 0.0106 | 0.0187 | 0.0273 |
| Air conditioners, water-cooled with fluid economizers, ≥240,000 Btu/h | 0.0002 | 0.0016 | 0.0043 | 0.0076 | 0.0111 |
| Air conditioners, glycol-cooled, <65,000 Btu/h | 0.00003 | 0.00013 | 0.00033 | 0.00063 | 0.00092 |
| Air conditioners, glycol-cooled, ≥65,000 to <240,000 Btu/h | 0.001 | 0.011 | 0.031 | 0.054 | 0.078 |
| Air conditioners, glycol-cooled, ≥240,000 Btu/h | 0.0008 | 0.0080 | 0.0220 | 0.0384 | 0.0554 |
| Air conditioners, glycol-cooled with fluid economizers, <65,000 Btu/h | 0.00002 | 0.0001 | 0.0002 | 0.0005 | 0.0007 |
| Air conditioners, glycol-cooled with fluid economizers, ≥65,000 to <240,000 Btu/h | 0.001 | 0.010 | 0.027 | 0.047 | 0.067 |
| Air conditioners, glycol-cooled with fluid economizers, ≥240,000 Btu/h | 0.0005 | 0.0054 | 0.0147 | 0.0257 | 0.0369 |

* All energy savings from efficiency levels above ASHRAE Standard 90.1–2010 are calculated with those ASHRAE levels as a baseline.
** For these equipment classes, no models were identified below the efficiency levels shown in ASHRAE Standard 90.1–2010, so there are no energy savings for the ASHRAE Standard 90.1–2010 efficiency levels.

ii. Net Present Value

The NPV analysis is a measure of the cumulative benefit or cost of standards to the Nation. In accordance with OMB's guidelines on regulatory analysis (OMB Circular A–4, section E (Sept. 17, 2003)), DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. The 7-percent rate is an estimate of the average before-tax rate of return on 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, because recent OMB analysis has found the average rate of return on capital to be near this rate. DOE also used the 3-percent rate to capture the potential effects of standards on private customers' consumption (*e.g.,* reduced purchasing of equipment due to higher prices for equipment and 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 (*e.g.,* yield on Treasury notes minus annual rate of change in the Consumer Price Index), which has averaged about 3 percent on a pre-tax basis for the last 30 years. Table VIII.30 and Table VIII.31 provide an overview of the NPV results. (See chapter 7 of the NOPR TSD for further detail.)

TABLE VIII.30—SUMMARY OF CUMULATIVE NET PRESENT VALUE FOR COMPUTER ROOM AIR CONDITIONERS

[Discounted at seven percent]

| Equipment class | Net present value (billion 2011$) | | | |
|---|---|---|---|---|
| | Efficiency level 1 ($) | Efficiency level 2 ($) | Efficiency level 3 ($) | Efficiency level 4 ($) |
| Air conditioners, air-cooled, <65,000 Btu/h | 0.0003 | (0.0005) | (0.0060) | (0.0174) |
| Air conditioners, air-cooled, ≥65,000 to <240,000 Btu/h | 0.01 | 0.10 | 0.29 | 0.44 |
| Air conditioners, air-cooled, ≥240,000 Btu/h | 0.01 | 0.07 | 0.22 | 0.37 |
| Air conditioners, water-cooled, <65,000 Btu/h | 0.001 | 0.003 | 0.006 | 0.009 |
| Air conditioners, water-cooled, ≥65,000 to <240,000 Btu/h | (0.008) | (0.053) | (0.166) | (0.377) |
| Air conditioners, water-cooled, ≥240,000 Btu/h | (0.001) | (0.026) | (0.097) | (0.239) |
| Air conditioners, water-cooled with fluid economizers, <65,000 Btu/h | 0.001 | 0.002 | 0.003 | 0.005 |
| Air conditioners, water-cooled with fluid economizers, ≥65,000 to <240,000 Btu/h | (0.02) | (0.08) | (0.20) | (0.41) |
| Air conditioners, water-cooled with fluid economizers, ≥240,000 Btu/h | (0.005) | (0.023) | (0.061) | (0.127) |
| Air conditioners, glycol-cooled, <65,000 Btu/h | 0.001 | 0.003 | 0.006 | 0.008 |
| Air conditioners, glycol-cooled, ≥65,000 to <240,000 Btu/h | (0.003) | (0.044) | (0.157) | (0.375) |
| Air conditioners, glycol-cooled, ≥240,000 Btu/h | 0.002 | (0.017) | (0.077) | (0.200) |
| Air conditioners, glycol-cooled with fluid economizers, <65,000 Btu/h | 0.001 | 0.003 | 0.005 | 0.008 |
| Air conditioners, glycol-cooled with fluid economizers, ≥65,000 to <240,000 Btu/h | (0.01) | (0.08) | (0.24) | (0.53) |

TABLE VIII.30—SUMMARY OF CUMULATIVE NET PRESENT VALUE FOR COMPUTER ROOM AIR CONDITIONERS—Continued

[Discounted at seven percent]

| Equipment class | Net present value (billion 2011$) | | | |
|---|---|---|---|---|
| | Efficiency level 1 ($) | Efficiency level 2 ($) | Efficiency level 3 ($) | Efficiency level 4 ($) |
| Air conditioners, glycol-cooled with fluid economizers, ≥240,000 Btu/h | (0.004) | (0.031) | (0.10) | (0.23) |

* Numbers in parentheses indicate negative NPV.

TABLE VIII.31—SUMMARY OF CUMULATIVE NET PRESENT VALUE FOR COMPUTER ROOM AIR CONDITIONERS

(Discounted at three percent)

| Equipment class | Net present value (Billion 2011$) | | | |
|---|---|---|---|---|
| | Efficiency level 1 ($) | Efficiency level 2 ($) | Efficiency level 3 ($) | Efficiency level 4 ($) |
| Air conditioners, air-cooled, <65,000 Btu/h | 0.001 | 0.002 | (0.004) | (0.021) |
| Air conditioners, air-cooled, ≥65,000 to <240,000 Btu/h | 0.03 | 0.26 | 0.76 | 1.25 |
| Air conditioners, air-cooled, ≥240,000 Btu/h | 0.02 | 0.18 | 0.54 | 0.93 |
| Air conditioners, water-cooled, <65,000 Btu/h | 0.003 | 0.006 | 0.012 | 0.017 |
| Air conditioners, water-cooled, ≥65,000 to <240,000 Btu/h | (0.006) | (0.079) | (0.280) | (0.671) |
| Air conditioners, water-cooled, ≥240,000 Btu/h | 0.006 | (0.028) | (0.150) | (0.407) |
| Air conditioners, water-cooled with fluid economizers, <65,000 Btu/h | 0.001 | 0.003 | 0.006 | 0.009 |
| Air conditioners, water-cooled with fluid economizers, ≥65,000 to <240,000 Btu/h | (0.03) | (0.14) | (0.37) | (0.77) |
| Air conditioners, water-cooled with fluid economizers, ≥240,000 Btu/h | (0.008) | (0.039) | (0.110) | (0.235) |
| Air conditioners, glycol-cooled, <65,000 Btu/h | 0.002 | 0.006 | 0.011 | 0.016 |
| Air conditioners, glycol-cooled, ≥65,000 to <240,000 Btu/h | 0.004 | (0.058) | (0.258) | (0.665) |
| Air conditioners, glycol-cooled, ≥240,000 Btu/h | 0.01 | (0.01) | (0.12) | (0.34) |
| Air conditioners, glycol-cooled with fluid economizers, <65,000 Btu/h | 0.002 | 0.006 | 0.011 | 0.015 |
| Air conditioners, glycol-cooled with fluid economizers, ≥65,000 to <240,000 Btu/h | (0.02) | (0.14) | (0.43) | (0.97) |
| Air conditioners, glycol-cooled with fluid economizers, ≥240,000 Btu/h | (0.003) | (0.047) | (0.17) | (0.41) |

* Numbers in parentheses indicate negative NPV.

*C. Need of the Nation to Conserve Energy*

Enhanced energy efficiency, where economically justified, improves the Nation's energy security, strengthens the economy, and reduces the environmental impacts or costs of energy production. Reduced electricity demand from energy conservation standards is also likely to reduce the cost of maintaining the reliability of the electricity system, particularly during peak-load periods. As a measure of this reduced demand, Table VIII.32 presents the estimated reduction in generating capacity in 2042 attributable to the efficiency levels that DOE considered in this rulemaking.

TABLE VIII.32—REDUCTION IN NATIONAL ELECTRIC GENERATING CAPACITY IN 2042 UNDER EVALUATED EFFICIENCY LEVELS

| | Efficiency level | | | | |
|---|---|---|---|---|---|
| | ASHRAE (baseline) | 1 | 2 | 3 | 4 |
| Water-Cooled and Evaporatively-Cooled Products | 0.00 | 0.01 | 0.01 | 0.02 | 0.02 |
| VRF Water-Source Heat Pumps | 0.00 | 0.00 | 0.05 | 0.12 | 0.23 |
| Computer Room Air Conditioners | 0.01 | 0.12 | 0.47 | 1.09 | 1.81 |

Energy savings from standards for the product classes covered in today's NOPR could also produce environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with electricity production. Table VIII.33 provides DOE's estimate of cumulative $CO_2$, $NO_X$, and Hg emissions reductions projected to result from the efficiency levels considered in this rulemaking. DOE reports annual $CO_2$, $NO_X$, and Hg emissions reductions for each efficiency level in chapter 9 of the NOPR TSD.

As discussed in section VII.A, DOE did not report $SO_2$ emissions reductions from power plants because there is uncertainty about the effect of energy conservation standards on the overall level of $SO_2$ emissions in the United States due to $SO_2$ emissions caps. DOE also did not include $NO_X$ emissions reduction from power plants in States subject to CAIR, because an energy conservation standard would not affect the overall level of $NO_X$ emissions in those States due to the emissions caps mandated by CAIR.

TABLE VIII.33—SUMMARY OF EMISSIONS REDUCTION ESTIMATED FOR PRODUCT EFFICIENCY LEVELS

[Cumulative in 2012 or 2013 through 2042 or 2043]

| | Efficiency level | | | | |
|---|---|---|---|---|---|
| | ASHRAE (baseline) | 1 | 2 | 3 | 4 |
| Water-Cooled and Evaporatively-Cooled Products: | | | | | |
| $CO_2$ *(million metric tons)* | 0.10 | 0.10 | 0.25 | 0.36 | 0.37 |
| $NO_X$ *(thousand tons)* | 0.08 | 0.08 | 0.21 | 0.30 | 0.31 |
| Hg *(tons)* | 0.001 | 0.001 | 0.003 | 0.004 | 0.004 |
| VRF Water-Source Heat Pumps: | | | | | |
| $CO_2$ *(million metric tons)* | 0.00 | 0.05 | 0.82 | 1.96 | 3.58 |
| $NO_X$ *(thousand tons)* | 0.00 | 0.04 | 0.68 | 1.60 | 2.93 |
| Hg *(tons)* | 0.000 | 0.001 | 0.009 | 0.022 | 0.040 |
| Computer Room Air Conditioners:. | | | | | |
| $CO_2$ *(million metric tons)* | 0.18 | 2.14 | 8.06 | 18.7 | 31.1 |
| $NO_X$ *(thousand tons)* | 0.14 | 1.76 | 6.62 | 15.4 | 25.6 |
| Hg *(tons)* | 0.001 | 0.023 | 0.087 | 0.203 | 0.337 |

As part of the analysis for this proposed rule, DOE estimated monetary benefits likely to result from the reduced emissions of $CO_2$ and $NO_X$ that DOE estimated for each of the efficiency levels considered. As discussed in section VII.B, DOE used values for the SCC developed by an interagency process. The four values for $CO_2$ emissions reductions resulting from that process (expressed in 2010$) are $4.9/ton (the average value from a distribution that uses a 5-percent discount rate), $22.3/ton (the average value from a distribution that uses a 3-percent discount rate), $36.5/ton (the average value from a distribution that uses a 2.5-percent discount rate), and $67.6/ton (the 95th-percentile value from a distribution that uses a 3-percent discount rate). These values correspond to the value of emission reductions in 2010; the values for later years are higher due to increasing damages as the magnitude of climate change increases.

Table VIII.34 presents the global value of $CO_2$ emissions reductions at each efficiency level. 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. DOE calculated domestic values as a range from 7 percent to 23 percent of the global values, and these results are presented in chapter 10 of the NOPR TSD.

TABLE VIII.34—ESTIMATES OF GLOBAL PRESENT VALUE OF $CO_2$ EMISSIONS REDUCTION UNDER PRODUCT EFFICIENCY LEVELS

| Eff level | 5% Discount rate, average | 3% Discount rate, average | 2.5% Discount rate, average | 3% Discount rate, 95th percentile |
|---|---|---|---|---|
| | *Million 2011$* | | | |
| Water-Cooled and Evaporatively-Cooled Products: | | | | |
| ASHRAE (baseline) | 0.5 | 2.4 | 4.1 | 7.4 |
| 1 | 0.5 | 2.5 | 4.3 | 7.7 |
| 2 | 1.2 | 6.3 | 10.6 | 19.1 |
| 3 | 1.8 | 9.0 | 15.2 | 27.4 |
| 4 | 1.8 | 9.2 | 15.6 | 28.1 |
| VRF Water-Source Heat Pumps: | | | | |
| ASHRAE (baseline) | 0.0 | 0.0 | 0.0 | 0.0 |
| 1 | 0.3 | 1.4 | 2.3 | 4.2 |
| 2 | 4.3 | 22.5 | 38.1 | 68.4 |
| 3 | 10.3 | 53.7 | 91.1 | 163.4 |
| 4 | 18.9 | 98.1 | 166.5 | 298.5 |
| Computer Room Air Conditioners: | | | | |
| ASHRAE (baseline) | 0.9 | 4.7 | 7.9 | 14.4 |
| 1 | 11.2 | 57.5 | 97.4 | 175.2 |
| 2 | 48.2 | 246.7 | 417.5 | 751.4 |
| 3 | 119.9 | 613.9 | 1038.7 | 1869.3 |
| 4 | 214.6 | 1099.0 | 1859.6 | 3346.6 |

DOE is well aware that scientific and economic knowledge about the contribution of $CO_2$ and other GHG emissions to changes in the future global climate and the potential resulting damages to the world economy continues to evolve rapidly. Thus, any value placed in this rulemaking on reducing $CO_2$ emissions is subject to change. DOE, together with other Federal agencies, will continue to review various methodologies for estimating the monetary value of reductions in $CO_2$ and other GHG emissions. This ongoing review will consider the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues. However, consistent with DOE's legal obligations, and taking into account the uncertainty involved with this particular issue, DOE has included in this NOPR 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 the equipment that is the subject of today's NOPR. The low and high dollar-per-ton values that DOE used are discussed in section VII.B.2. Table VIII.35 presents the cumulative present values of $NO_X$ emissions reductions for each efficiency level calculated using seven-percent and three-percent discount rates.

TABLE VIII.35—ESTIMATES OF PRESENT VALUE OF $NO_X$ EMISSIONS REDUCTION IN 2012–2042 UNDER PRODUCT EFFICIENCY LEVELS

| Efficiency level | 3% Discount rate | 7% Discount rate |
|---|---|---|
| | *Million 2011$* | |
| Water-Cooled and Evaporatively-Cooled Products: | | |
| ASHRAE (baseline) | 0.02 to 0.25 | 0.01 to 0.12. |
| 1 | 0.02 to 0.24 | 0.01 to 0.10. |
| 2 | 0.06 to 0.64 | 0.03 to 0.28. |
| 3 | 0.09 to 0.92 | 0.04 to 0.40. |
| 4 | 0.09 to 0.95 | 0.04 to 0.42. |
| VRF Water-Source Heat Pumps: | | |
| ASHRAE (baseline) | 0.0 to 0.0 | 0.0 to 0.0. |
| 1 | 0.01 to 0.13 | 0.01 to 0.05. |
| 2 | 0.2 to 2.2 | 0.1 to 0.9. |
| 3 | 0.5 to 5.2 | 0.2 to 2.2. |
| 4 | 0.9 to 9.5 | 0.4 to 4.0. |
| Computer Room Air Conditioners: | | |
| ASHRAE (baseline) | 0.04 to 0.46 | 0.02 to 0.22. |
| 1 | 0.6 to 6.1 | 0.3 to 2.7. |
| 2 | 2.4 to 24.6 | 1.0 to 10.7. |
| 3 | 6.0 to 61.4 | 2.6 to 26.6. |
| 4 | 10.7 to 109.8 | 4.6 to 47.6. |

*D. Proposed Standards*

1. Water-Cooled and Evaporatively-Cooled Equipment

EPCA specifies that, for any commercial and industrial equipment addressed under 42 U.S.C. 6313(a)(6)(A)(i), DOE may prescribe an energy conservation standard more stringent than the level for such equipment in ASHRAE Standard 90.1, as amended, only if ''clear and convincing evidence'' shows that a more-stringent standard would result in significant additional conservation of energy and is technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)(II))

In evaluating more-stringent efficiency levels for water-cooled and evaporatively-cooled equipment than those specified by ASHRAE Standard 90.1–2010, DOE reviewed the results in terms of the significance of their energy savings. For the reasons discussed in section IV.B, DOE agrees with commenters that the energy savings from increasing national energy conservation standards for water-cooled and evaporatively-cooled equipment above the levels specified by ASHRAE Standard 90.1–2010 would be very minimal. As such, DOE does not have ''clear and convincing evidence'' that significant additional conservation of energy would result from adoption of more-stringent standard levels. Therefore, DOE did not examine whether the levels are economically justified, and DOE is proposing to adopt the energy efficiency levels for these products as set forth in ASHRAE Standard 90.1–2010. Table VIII.36 presents the proposed energy conservation standards and compliance dates for water-cooled and evaporatively-cooled equipment.

TABLE VIII.36—PROPOSED ENERGY CONSERVATION STANDARDS FOR WATER-COOLED AND EVAPORATIVELY-COOLED EQUIPMENT

| Equipment type | Subcategory | Size category (input) | Efficiency level (EER) | Compliance date |
|---|---|---|---|---|
| Small Water-Cooled Air Conditioners | Electric or No Heat | ≥65,000 Btu/h and <135,000 Btu/h | 12.1 | June 1, 2013. |
| Small Water-Cooled Air Conditioners | Other Heat | ≥65,000 Btu/h and <135,000 Btu/h | 11.9 | June 1, 2013. |
| Large Water-Cooled Air Conditioners. | Electric or No Heat | ≥135,000 Btu/h and <240,000 Btu/h | 12.5 | June 1, 2014. |
| Large Water-Cooled Air Conditioners. | Other Heat | ≥135,000 Btu/h and <240,000 Btu/h | 12.3 | June 1, 2014. |
| Very Large Water-Cooled Air Conditioners. | Electric or No Heat | ≥240,000 Btu/h and <760,000 Btu/h | 12.4 | June 1, 2014. |
| Very Large Water-Cooled Air Conditioners. | Other Heat | ≥240,000 Btu/h and <760,000 Btu/h | 12.2 | June 1, 2014. |
| Small Evaporatively-Cooled Air Conditioners. | Electric or No Heat | ≥65,000 Btu/h and <135,000 Btu/h | 12.1 | June 1, 2013. |
| Small Evaporatively-Cooled Air Conditioners. | Other Heat | ≥65,000 Btu/h and <135,000 Btu/h | 11.9 | June 1, 2013. |

TABLE VIII.36—PROPOSED ENERGY CONSERVATION STANDARDS FOR WATER-COOLED AND EVAPORATIVELY-COOLED EQUIPMENT—Continued

| Equipment type | Subcategory | Size category (input) | Efficiency level (EER) | Compliance date |
|---|---|---|---|---|
| Large Evaporatively-Cooled Air Conditioners. | Electric or No Heat | ≥135,000 Btu/h and <240,000 Btu/h | 12.0 | June 1, 2014. |
| Large Evaporatively-Cooled Air Conditioners. | Other Heat | ≥135,000 Btu/h and <240,000 Btu/h | 11.8 | June 1, 2014. |
| Very Large Evaporatively-Cooled Air Conditioners. | Electric or No Heat | ≥240,000 Btu/h and <760,000 Btu/h | 11.9 | June 1, 2014. |
| Very Large Evaporatively-Cooled Air Conditioners. | Other Heat | ≥240,000 Btu/h and <760,000 Btu/h | *11.7 | June 1, 2014. |

*ASHRAE Standard 90.1–2010 specifies this efficiency level as 12.2 EER. However, as explained in section IV.B.2 of this NOPR, DOE has determined that this level was mistakenly reported and that the correct level is 11.7 EER.

2. VRF Water-Source Heat Pumps

As noted previously, EPCA specifies that, for any commercial and industrial equipment addressed under 42 U.S.C. 6313(a)(6)(A)(i), DOE may prescribe an energy conservation standard more stringent than the level for such equipment in ASHRAE Standard 90.1, as amended, only if ''clear and convincing evidence'' shows that a more-stringent standard would result in significant additional conservation of energy and is technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)(II))

In evaluating more-stringent efficiency levels for VRF water-source heat pumps than those specified by ASHRAE Standard 90.1–2010, DOE reviewed the results in terms of the significance of their energy savings. For the reasons discussed in section VIII.B.2, the energy savings for more-stringent efficiency levels for VRF water-source heat pumps greater than 135,000 Btu/h would be minimal. In addition, there are no models on the market of VRF water-source heat pumps less than 17,000 Btu/h, so there are no energy savings predicted for this product class. As such, DOE does not have ''clear and convincing evidence'' that significant additional conservation of energy would result from adoption of more-stringent efficiency levels than those specified in ASHRAE Standard 90.1–2010. Therefore, DOE did not examine whether the levels are economically justified, and DOE is proposing to adopt the energy efficiency levels for these products as set forth in ASHRAE Standard 90.1–2010.[61] Table VIII.37 presents the proposed amended energy conservation standards and compliance dates for VRF water-source heat pumps.

TABLE VIII.37—PROPOSED ENERGY CONSERVATION STANDARDS FOR VRF WATER-SOURCE HEAT PUMPS

| Equipment type | Subcategory | Size category (input) | Efficiency level | Compliance date** |
|---|---|---|---|---|
| VRF Water-Source Heat Pumps. | Without Heat Recovery | <17,000 Btu/h | 12.0 EER 4.2 COP* | October 29, 2012. |
| VRF Water-Source Heat Pumps. | With Heat Recovery | <17,000 Btu/h | 11.8 EER 4.2 COP* | October 29, 2012. |
| VRF Water-Source Heat Pumps. | Without Heat Recovery | ≥135,000 Btu/h | 10.0 EER 3.9 COP | October 29, 2013. |
| VRF Water-Source Heat Pumps. | With Heat Recovery | ≥135,000 Btu/h | 9.8 EER 3.9 COP | October 29, 2013. |

*4.2 COP is the existing Federal minimum energy conservation standard for water-source heat pumps <17,000 Btu/h.
**ASHRAE Standard 90.1–2010 did not provide an effective date for these products, so it is assumed to be publication of ASHRAE Standard 90.1–2010, or October 29, 2010. As discussed in Section V.D.3, compliance dates for Federal standards would be two or three years after the effective date in ASHRAE, depending on product size.

3. Computer Room Air Conditioners

As noted previously, EPCA specifies that, for any commercial and industrial equipment addressed under 42 U.S.C. 6313(a)(6)(A)(i), DOE may prescribe an energy conservation standard more stringent than the level for such equipment in ASHRAE Standard 90.1, as amended, only if ''clear and convincing evidence'' shows that a more-stringent standard would result in significant additional conservation of energy and is technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)(II))

In evaluating more-stringent efficiency levels for computer room air conditioner than those specified by ASHRAE Standard 90.1–2010, DOE reviewed the results in terms of their technological feasibility, significance of energy savings, and economic justification.

DOE has tentatively concluded that all of the SCOP levels considered by DOE are technologically feasible, as units with equivalent efficiency appeared to be available in the current market at all levels examined. As noted in section VI.B.4, manufacturers are currently not reporting CRAC equipment efficiencies in terms of SCOP as defined and tested for in ASHRAE 127–2007. As a result, the efficiency data used to determine the SCOP levels for analysis were obtained using a rule-of-thumb method to convert EER (as determined using ASHRAE Standard 127–2001) to an estimate of the SCOP

[61] For other classes of VRF systems introduced by ASHRAE Standard 90.1–2010, DOE is not proposing new standards but is clarifying that existing standards for air-cooled or water-source heat pumps continue to apply. In addition, DOE is tentatively proposing a new test procedure for all classes of VRF equipment. The proposed changes to the Code of Federal Regulations are found at the end of this NOPR.

(as determined by ASHRAE Standard 127–2007), which lends some uncertainty to the SCOP ratings of computer room air conditioners. However, based on this mapping between EER and SCOP, DOE believes that all SCOP levels analyzed are technically feasible.

DOE examined the potential energy savings that would result from the efficiency levels specified in ASHRAE Standard 90.1–2010 and compared these to the potential energy savings that would result from efficiency levels more stringent than those in ASHRAE Standard 90.1–2010. DOE estimates that 0.01 quads of energy would be saved if DOE adopts the efficiency levels set in ASHRAE Standard 90.1–2010 for each computer room air conditioner equipment class specified in that standard. If DOE were to adopt efficiency levels more stringent than those specified by ASHRAE Standard 90.1–2010, the potential additional energy savings range from 0.07 quads to 0.98 quads. Associated with proposing more-stringent efficiency levels is a three-and-a-half to four-and-a-half-year delay in implementation (depending on equipment size) compared to the adoption of energy conservation standards at the levels specified in ASHRAE Standard 90.1–2010 (see section VI.G.1). This delay in implementation of amended energy conservation standards would result in a small amount of energy savings being lost in the first years (2012 through 2016) compared to the savings from adopting the levels in ASHRAE Standard 90.1–2010 (approximately 0.0001 quad); however, this loss may be compensated for by increased savings in later years. Taken in isolation, the energy savings associated with more-stringent standards might be considered significant enough to warrant adoption of such standards. However, as noted above, energy savings are not the only factor which DOE must consider.

In considering whether potential standards are economically justified, DOE also examined the NPV that would result from adopting efficiency levels more stringent than those set forth in ASHRAE Standard 90.1–2010. With a 7-percent discount rate, all of the efficiency levels examined by DOE resulted in negative NPV. With a 3-percent discount rate, Level 1 creates positive NPV, while Levels 2 through 4 create negative NPV. These results indicate that adoption of efficiency levels more stringent than those in ASHRAE Standard 90.1–2010 as Federal energy conservation standards would likely lead to negative economic outcomes for the nation. Consequently, this criterion for adoption of more-stringent standard levels does not appear to have been met.

Furthermore, although DOE based it analyses on the best available data when examining the potential energy savings and the economic justification of efficiency levels more stringent than those specified in ASHRAE Standard 90.1–2010, DOE believes there are several limitations regarding that data which should be considered before proposing amended energy conservation standards for computer room air conditioners. As explained below, none of these concerns are likely to run in the direction of more-stringent standards.

First, DOE reexamined the uncertainty in its analysis of computer room air conditioners. As noted in section VI.B.4, due to the lack of current coverage and certification requirements, no manufacturers currently test for the SCOP of their computer room air conditioner models, nor do they all report such information in their literature. DOE's efficiency information used in the analysis was the result of a ''rule-of-thumb'' method that provides an approximation of SCOP, but DOE did not obtain any actual SCOP efficiency information that resulted from testing, leading to uncertainty over whether the levels considered (particularly at the max-tech level) are technologically feasible and also adding uncertainty in the energy savings estimates. In addition, for certain equipment classes, DOE was unable to obtain enough information even to estimate SCOP for a useful portion of the models on the market. For those equipment classes, DOE had to analyze various efficiency levels above the ASHRAE Standard 90.1–2010 levels using SCOP levels that were estimated based on the SCOP differences established by ASHRAE Standard 90.1 between the different equipment classes. The combination of these factors leads to concerns about the viability of using the estimated SCOP data for the basis of this analysis. Such concerns are heightened the further one moves away from the efficiency levels in ASHRAE Standard 90.1–2010 in the context of this rulemaking.

Second, to assess the cost of increasing efficiency, DOE conducted a pricing survey in which DOE collected contractor price data across a range of efficiency levels, and examined the trend in price as efficiency increased. As noted in section VI.B.1, the primary drawback to this approach is that contractor pricing can be based on a variety of factors, some of which have little or nothing to do with changes in equipment efficiency (*e.g.,* differences in manufacturer markups). This leads to unexpected results for certain equipment classes, including an observed trend of decreasing price with increasing efficiency for small water-cooled equipment based on the data collected, which reduces the certainty of the analysis in terms of economic justification. Therefore, the trends developed through such analyses may not be representative of the actual relationship between manufacturer cost and efficiency, or of what DOE would find if it used a design option approach with reverse engineering analysis (which is more time-intensive). Further, although there was generally a trend of increasing price with increased efficiency across all manufacturers for most product classes, there was little discernable trend between price and efficiency for each individual manufacturer, leading to additional doubts about the role of equipment efficiency in determining pricing. As a result, DOE believes the results of this analysis are highly uncertain, and that a more in-depth analysis of the relationship between cost of manufacturing and efficiency could lead to different results.

Third, due to the limited data on the existing distribution of shipments by efficiency level or historical efficiency trends, DOE was not able to assess possible future changes in either the available efficiencies of equipment in the computer room air conditioner market or the sales distribution of shipments by efficiency level in the absence of setting more-stringent standards. DOE recognizes that manufacturers may continue to make future improvements in the computer room air conditioner efficiencies even in the absence of mandated energy conservation standards. This possibility increases the uncertainty of the energy savings estimates. To the extent that manufacturers improve product efficiency and customers choose to purchase improved products in the absence of standards, the energy savings estimates would likely be reduced.

Fourth, as a result of a lack of shipment information for the United States, DOE's shipment analysis rests primarily on a single market report from Australia. While DOE attempted to use an appropriate inflator to adjust Australian shipments to the United States market, DOE recognizes the uncertainty inherent in this approach. DOE also based its equipment class allocations on market share for a few classes from the Australian report, as well as model availability in the United States. It is unknown whether the United States market mirrors the Australian market or whether model

availability approximates shipment distributions. Any inaccuracy in the shipment forecast in total or by product class contributes to the uncertainty of the energy savings results and thus makes it difficult for DOE to determine that any energy savings are significant.

In light of the above, DOE would again restate the statutory test for adopting energy conservation standards more stringent than the levels in ASHRAE Standard 90.1. DOE must have ''clear and convincing'' evidence in order to propose efficiency levels more stringent than those specified in ASHRAE Standard 90.1–2010, and for the reasons explained in this notice, the totality of information does not meet the level necessary to support these more-stringent efficiency levels for computer room air conditioners. Consequently, DOE has tentatively decided to propose the efficiency levels in ASHRAE Standard 90.1–2010 as amended energy conservation standards for all 30 computer room air conditioner equipment classes. Table VIII.38 presents the proposed energy conservation standards for computer room air conditioners.

By proposing to adopt the efficiency levels in ASHRAE Standard 90.1–2010 as amended energy conservation standards, DOE would be setting a minimum floor for these previously unregulated products. This would allow the industry time to transition to coverage of these products, would require manufacturers to begin submitting efficiency data, and would spur the tracking of shipments. These data would improve DOE's future analysis of computer room air conditioners. DOE notes that it will be able to undertake such an analysis without waiting for the trigger of a subsequent amendment of ASHRAE Standard 90.1, because of the six-year look back provision in the relevant EISA 2007 amendments to EPCA. (42 U.S.C. 6313(a)(6)(C))

DOE seeks comments from interested parties on its proposed amended energy conservation standards for computer room air conditioners, as well as the other efficiency levels considered. Although DOE currently believes that it would be appropriate to adopt the efficiency levels in ASHRAE Standard 90.1–2010 for computer room air conditioners, DOE may consider the possibility of setting standards at more-stringent efficiency levels if public comments and additional data supply clear and convincing evidence in support of such an approach.

TABLE VIII.38—PROPOSED ENERGY CONSERVATION STANDARDS FOR COMPUTER ROOM AIR CONDITIONERS

| Equipment type | Subcategory | Size category (Input) | Efficiency level (SCOP–127) | Compliance date |
|---|---|---|---|---|
| Air conditioners, air-cooled | Downflow | <65,000 Btu/h | 2.20 | October 29, 2012. |
| Air conditioners, air-cooled | Upflow | <65,000 Btu/h | 2.09 | October 29, 2012. |
| Air conditioners, air-cooled | Downflow | ≥65,000 Btu/h and <240,000 Btu/h | 2.10 | October 29, 2013. |
| Air conditioners, air-cooled | Upflow | ≥65,000 Btu/h and <240,000 Btu/h | 1.99 | October 29, 2013. |
| Air conditioners, air-cooled | Downflow | ≥240,000 Btu/h | 1.90 | October 29, 2013. |
| Air conditioners, air-cooled | Upflow | ≥240,000 Btu/h | 1.79 | October 29, 2013. |
| Air conditioners, water-cooled | Downflow | <65,000 Btu/h | 2.60 | October 29, 2012. |
| Air conditioners, water-cooled | Upflow | <65,000 Btu/h | 2.49 | October 29, 2012. |
| Air conditioners, water-cooled | Downflow | ≥65,000 Btu/h and <240,000 Btu/h | 2.50 | October 29, 2013. |
| Air conditioners, water-cooled | Upflow | ≥65,000 Btu/h and <240,000 Btu/h | 2.39 | October 29, 2013. |
| Air conditioners, water-cooled | Downflow | ≥240,000 Btu/h | 2.40 | October 29, 2013. |
| Air conditioners, water-cooled | Upflow | ≥240,000 Btu/h | 2.29 | October 29, 2013. |
| Air conditioners, water-cooled with fluid economizer. | Downflow | <65,000 Btu/h | 2.55 | October 29, 2012. |
| Air conditioners, water-cooled with fluid economizer. | Upflow | <65,000 Btu/h | 2.44 | October 29, 2012. |
| Air conditioners, water-cooled with fluid economizer. | Downflow | ≥65,000 Btu/h and <240,000 Btu/h | 2.45 | October 29, 2013. |
| Air conditioners, water-cooled with fluid economizer. | Upflow | ≥65,000 Btu/h and <240,000 Btu/h | 2.34 | October 29, 2013. |
| Air conditioners, water-cooled with fluid economizer. | Downflow | ≥240,000 Btu/h | 2.35 | October 29, 2013. |
| Air conditioners, water-cooled with fluid economizer. | Upflow | ≥240,000 Btu/h | 2.24 | October 29, 2013. |
| Air conditioners, glycol-cooled | Downflow | <65,000 Btu/h | 2.50 | October 29, 2012. |
| Air conditioners, glycol-cooled | Upflow | <65,000 Btu/h | 2.39 | October 29, 2012. |
| Air conditioners, glycol-cooled | Downflow | ≥65,000 Btu/h and <240,000 Btu/h | 2.15 | October 29, 2013. |
| Air conditioners, glycol-cooled | Upflow | ≥65,000 Btu/h and <240,000 Btu/h | 2.04 | October 29, 2013. |
| Air conditioners, glycol-cooled | Downflow | ≥240,000 Btu/h | 2.10 | October 29, 2013. |
| Air conditioners, glycol-cooled | Upflow | ≥240,000 Btu/h | 1.99 | October 29, 2013. |
| Air conditioners, glycol-cooled with fluid economizer. | Downflow | <65,000 Btu/h | 2.45 | October 29, 2012. |
| Air conditioners, glycol-cooled with fluid economizer. | Upflow | <65,000 Btu/h | 2.34 | October 29, 2012. |
| Air conditioners, glycol-cooled with fluid economizer. | Downflow | ≥65,000 Btu/h and <240,000 Btu/h | 2.10 | October 29, 2013. |
| Air conditioners, glycol-cooled with fluid economizer. | Upflow | ≥65,000 Btu/h and <240,000 Btu/h | 1.99 | October 29, 2013. |
| Air conditioners, glycol-cooled with fluid economizer. | Downflow | ≥240,000 Btu/h | 2.05 | October 29, 2013. |
| Air conditioners, glycol-cooled with fluid economizer. | Upflow | ≥240,000 Btu/h | 1.94 | October 29, 2013. |

## IX. 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 commercial equipment 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 water-cooled and evaporatively-cooled commercial package air conditioners, variable refrigerant flow air conditioners, and computer room air conditioners that are not captured by the users of such equipment. These benefits include externalities related to environmental protection and energy security that are not reflected in energy prices, such as reduced emissions of greenhouse gases.

In addition, DOE has determined that today's regulatory action is not an ''economically significant regulatory action'' under section 3(f)(1) of Executive Order 12866. Accordingly, DOE has not prepared a regulatory impact analysis (RIA) for today's rule, and the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) has not reviewed this rule.

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011 (76 FR 3281 (Jan. 21, 2011)). Executive Order 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.

DOE emphasizes 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 NOPR is consistent with these principles, including the requirement 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 maximize net benefits.

Consistent with Executive Order 13563, and the range of impacts analyzed in this rulemaking, the energy conservation standards proposed in this NOPR maximize net benefits to the extent permitted by EPCA.

### *B. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment and a final regulatory flexibility analysis (FRFA) for any such rule that an agency adopts as a final rule, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. 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: (*www.gc.doe.gov*).

For manufacturers of water-cooled and evaporatively-cooled air conditioners, computer room air conditioners, and VRF water-source heat pumps with a cooling capacity equal to or greater than 135,000 Btu/h, 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/sites/default/files/Size_Standards_Table.pdf*. The ASHRAE equipment covered by this rule are 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 fewer for an entity to be considered as a small business for this category.

DOE examined each of the manufacturers it found during its market assessment and used publicly-available information to determine if any manufacturers identified qualify as a small business under the SBA guidelines discussed above. (For a list of all manufacturers of ASHRAE equipment covered by this rule, see Chapter 2 of the TSD.) DOE's research involved individual company Web sites, marketing research tools (*e.g.,* Hoovers reports [62]), and contacting individual companies to create a list of companies that manufacture the types of ASHRAE equipment affected by this rule. DOE screened out companies that do not have domestic manufacturing operations for ASHRAE equipment (*i.e.,* manufacturers that produce all of their ASHRAE equipment internationally). DOE also did not consider manufacturers which are subsidiaries of parent companies that exceed the 750-employee threshold set by the SBA to be small businesses. DOE identified 3

[62] For more information see: *http://www.hoovers.com/.*

manufacturers that qualify as a small business: 2 computer room air conditioner manufacturers (out of the 5 total identified) and 1 water-cooled air conditioner manufacturer (of the 8 total identified). DOE did not identify any small business manufacturers of evaporatively-cooled air conditioners or water-source VRF heat pump manufacturers.

DOE has reviewed today's proposed rule under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. 68 FR 7990. As part of this rulemaking, DOE examined not only the impacts on manufacturers of revised standard levels, but also the existing compliance costs manufacturers already bear as compared to the revised compliance costs, based on the proposed revisions to the test procedures. Since DOE is proposing to adopt the efficiency levels in ASHRAE Standard 90.1–2010, which are part of the prevailing industry standard, DOE believes that manufacturers of water-cooled and evaporatively-cooled commercial package air conditioners and heating equipment, computer room air conditioners, and VRF water-source heat pumps with a cooling capacity equal to or greater than 135,000 Btu/h are already producing equipment at these efficiency levels. For VRF water-source heat pumps with a cooling capacity below 17,000 Btu/h, DOE believes the efficiency levels being proposed in today's NOPR are also part of the prevailing industry standard and that manufacturers would experience no impacts, because no such equipment is currently manufactured. Furthermore, DOE believes the industry standard was developed through a process which would attempt to mitigate the impacts on manufacturers, including any impacted small business manufacturers, while increasing the efficiency of this equipment.

In addition, DOE does not find that the costs associated with the adoption of updated test procedures for commercial package air conditioning and heating equipment, commercial water heating equipment, or commercial warm-air furnaces in this document would result in any significant increase in testing or compliance costs. For these types of equipment, DOE already has testing requirements, which have only minor differences from those being adopted in this notice. DOE notes that this document proposes adoption of new test procedures for VRF systems and computer room air conditioners. However, VRF systems currently must be tested using the DOE test procedures for commercial package air conditioners and heating equipment. The procedure proposed for adoption in this NOPR is tailored to VRF systems, and DOE does not believe this procedure is more burdensome than the currently applicable test procedures. For computer room air conditioners, this notice proposes the use of a new test procedure where none was previously required. However, for all equipment types (including computer room air conditioners) the proposed test procedures are part of the prevailing industry standard to test and rate equipment. DOE believes that manufacturers generally already use the accepted industry test procedures when testing their equipment, and that given its inclusion in ASHRAE Standard 90.1–2010, they would continue to use it in the future. Therefore, DOE does not believe the additional burden imposed by today's proposal will have a significant adverse impact on a large number of small manufacturers. DOE requests public comment on the impact of this proposed rule on small entities. This is identified as issue 18 in section X.E, ''Issues on Which DOE Seeks Comment.''

For the reasons stated above, DOE certifies that the proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. Therefore, DOE did not prepare an initial regulatory flexibility analysis for the proposed rule. DOE will transmit its certification and a supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review pursuant to 5 U.S.C. 605(b).

### *C. Review Under the Paperwork Reduction Act of 1995*

Manufacturers of the ASHRAE equipment addressed in today's NOPR must certify to DOE that their equipment comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their equipment according to the applicable DOE test procedures for the given equipment type, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including the ASHRAE equipment at issue in this NOPR. (76 FR 12422 (March 7, 2011)). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 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*

Pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), DOE has determined that the proposed rule fits within the category of actions included in Categorical Exclusion (CX) B5.1 and otherwise meets the requirements for application of a CX. See 10 CFR part 1021, App. B, B5.1(b); 1021.410(b), and Appendix B, B(1)–(5). The proposed rule fits within the category of actions because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, and for which none of the exceptions identified in CX B5.1(b) apply. Therefore, DOE has made a CX determination for this rulemaking, and DOE does not need to prepare an Environmental Assessment or Environmental Impact Statement for this proposed rule. DOE's CX determination for this proposed rule is available at *http://cxnepa.energy.gov/.*

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

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has

examined this proposed rule and has tentatively determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the equipment that are the subject of today's proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, as set forth in EPCA. (42 U.S.C. 6297(d) and 6316(b)(2)(D)) 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'' (61 FR 4729 (Feb. 7, 1996)) imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

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

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a ''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 *www.gc.doe.gov.*

Today's proposed rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year. Accordingly, no assessment or analysis is required under the UMRA.

*H. Review Under the Treasury and General Government Appropriations Act, 1999*

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

*I. Review Under Executive Order 12630*

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this regulation would not result in any takings that 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 NOPR 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 provide a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has tentatively concluded that today's regulatory action, which sets forth energy conservation standards for certain types of ASHRAE equipment, is not a significant energy action because the proposed standards are not a significant regulatory action under Executive Order 12866 and 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 proposed 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. 70 FR 2667.

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

## X. Public Participation

### *A. Attendance at the Public Meeting*

The time, date, and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this notice. If you plan to attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945 or *Brenda.Edwards@ee.doe.gov.* As explained in the **ADDRESSES** section, foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise DOE of this fact as soon as possible by contacting Ms. Brenda Edwards to initiate the necessary procedures.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/ashrae_products_docs_meeting.html.* Participants are responsible for ensuring their systems are compatible with the webinar software.

### *B. Procedure for Submitting Request To Speak and Prepared General Statements for Distribution*

Any person who has an interest in the topics addressed in this notice, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the public meeting. Such persons may hand-deliver requests to speak to the address show in the **ADDRESSES** section at the beginning of this notice between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Requests may also be sent by mail or email to Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121, or *Brenda.Edwards@ee.doe.gov.* Persons who wish to speak should include in their request a computer diskette or CD–ROM in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

DOE requests persons selected to make an oral presentation to submit an advance copy of their statements at least one week before the public meeting. DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Program. As necessary, request to give an oral presentation should ask for such alternative arrangements.

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this notice. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make follow-up contact, if needed.

### *C. Conduct of the Public Meeting*

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the public meeting, interested parties may submit further comments on the proceedings, as well as on any aspect of the rulemaking, until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will allow, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be posted on the DOE Web site and will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this notice. In addition, any person may buy a copy

of the transcript from the transcribing reporter.

*D. Submission of Comments*

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than 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 www.regulations.gov.* The *www.regulations.gov* Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment 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 *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *www.regulations.gov* 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 *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

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

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery/courier, please provide all items on a compact disc (CD), if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (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.* Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, 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 email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

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

*E. Issues on Which DOE Seeks Comment*

Although DOE welcomes comment on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. How manufacturers currently differentiate commercial package air conditioning and heating equipment used solely for manufacturing and industrial processes from that equipment of the same type that is used in buildings.

2. Any aspect of the test procedures affected by this rule as part of DOE's comprehensive 7-year-review requirement.

3. DOE's proposed adoption of AHRI 210/240–2008 as the test procedure for small (<65,000 Btu/h) commercial package air conditioning and heating equipment. DOE is also interested in receiving comment on the need for an optional ''break-in'' period for this equipment, and whether 16 hours is an appropriate maximum length for the break-in period.

4. DOE's proposed adoption of AHRI 340/360–2007 as the test procedure for small (≥65,000 Btu/h and <135,000 Btu/h), large, and very large commercial package air conditioning and heating equipment. DOE is also interested in receiving comment on the need for an optional ''break-in'' period for this equipment, and whether 16 hours is an appropriate maximum length for the break-in period.

5. DOE's proposed adoption of ANSI Z21.10.3–2006 for commercial water heating equipment, and DOE's finding that the updated test method will not impact measured efficiency.

6. DOE's proposed adoption of ASHRAE Standard 127–2007 for computer room air conditioners. DOE is also interested in receiving comment on how to treat the draft revisions that ASHRAE has made to standard 127, and on any shortcomings with the test procedure that may require modification.

7. DOE's proposed adoption of AHRI 1230–2010 with Amendment 1 for VRF systems. DOE is also interested in receiving comment on the need for an optional ''break-in'' period for this equipment, and whether 16 hours is an appropriate maximum length for the break-in period.

8. DOE's proposed adoption of AHRI 390–2003 as the test procedure for single package vertical air conditioners and single package vertical heat pumps. DOE is also interested in receiving comment on the need for an optional ''break-in'' period for this equipment, and whether 16 hours is an appropriate maximum length for the break-in period.

9. The testing conditions, the basic model operating points, and set-up for variable refrigerant flow multi-split air conditioners and heat pumps.

10. DOE's proposed definitions of ''variable refrigerant flow multi-split air conditioner,'' ''variable refrigerant flow multi-split heat pump,'' and ''heat recovery.''

11. DOE's proposed definition of ''computer room air conditioner.'' DOE is specifically interested in whether there are any physical features or components that could allow DOE to differentiate between computer room air conditioners and commercial package air conditioners used for comfort conditioning

12. The results of DOE's pricing analysis, and any data or information on the price-efficiency relationship for computer room air conditioners

13. Does computer room air conditioner installation cost increase as a function of increased efficiency? If so, how should the increase in cost be estimated or derived?

14. Is there a rebound effect in computer room air conditioner equipment energy use as a result of improvements in the efficiency of such units?

15. Would shipments of computer room air conditioners change with higher standard levels?

16. The NES-forecasted base-case distribution of efficiencies and DOE's prediction of how amended energy conservation standards might affect the distribution of efficiencies in the standards case.

17. The need for an optional ''break-in'' period for computer room air conditioners, similar to the period being proposed for other types of commercial air conditioning and heating equipment.

18. The impact of DOE's proposed standards on small business manufacturers.

## XI. Approval of the Office of the Secretary

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

## List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation, Incorporation by reference, Reporting and recordkeeping requirements.

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

**Kathleen B. Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

For the reasons set forth in the preamble, DOE proposes to amend part 431 of Chapter II, Subchapter D, of Title 10 of the Code of Federal Regulations to read as set forth below:

## PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

1. The authority citation for part 431 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6317.

2. Section 431.2 is amended by revising the definition of ''Commercial HVAC & WH product'' to read as follows:

### § 431.2 Definitions.

* * * * *

*Commercial HVAC & WH product* means any small, large, or very large commercial package air-conditioning and heating equipment, packaged terminal air conditioner, packaged terminal heat pump, single package vertical air conditioner, single package vertical heat pump, computer room air conditioner, variable refrigerant flow multi-split air conditioner, variable refrigerant flow multi-split heat pump, commercial packaged boiler, hot water supply boiler, commercial warm air furnace, instantaneous water heater, storage water heater, or unfired hot water storage tank.

* * * * *

3. Section 431.75 is revised to read as follows:

### § 431.75 Materials incorporated by reference.

(a) *General.* DOE incorporates by reference the following test procedures into subpart D of part 431. The materials listed have been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Any subsequent amendment to the listed materials by the standard-setting organization will not affect the DOE regulations unless and until amended by DOE. Materials are incorporated as they exist on the date of the approval and a notice of any changes in the materials will be published in the **Federal Register**. All approved materials are available for inspection 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_federalregulations/ibr_locations.html.* Also, these materials are available for inspection at U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza SW., Washington, DC 20024, (202) 586–2945, or go to: *http://www1.eere.energy.gov/buildings/appliance_standards/.* The referenced test procedure standards are listed below by relevant standard-setting organization, along with information on how to obtain copies from those sources.

(b) *ANSI.* American National Standards Institute. 25 W. 43rd Street, 4th Floor, New York, NY 10036, (212) 642–4900, or go to *http://www.ansi.org.*

(1) ANSI Z21.47–2006, ''*Gas-Fired Central Furnaces,*'' approved on July 27, 2006, IBR approved for § 431.76.

(2) Reserved.

(c) *ASHRAE.* American Society of Heating, Refrigerating and Air-Conditioning Engineers Inc., 1791 Tullie Circle, NE., Atlanta, Georgia 30329, (404) 636–8400, or go to *http://www.ashrae.org.*

(1) ASHRAE Standard 103–1993, sections 7.2.2.4, 7.8, 9.2, and 11.3.7, ''*Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers,*'' approved on June 26, 1993, IBR approved for § 431.76.

(2) Reserved.

(d) *HI.* Hydronics Institute Division of AHRI, 35 Russo Place, P.O. Box 218, Berkeley Heights, NJ 07922, (703) 600–0350, or go to *http://www.ahrinet.org/hydronics+institute+section.aspx.*

(1) HI BTS–2000, sections 8.2.2, 11.1.4, 11.1.5, and 11.1.6.2, ''*Method to*

*Determine Efficiency of Commercial Space Heating Boilers,*'' approved January 2001, IBR approved for § 431.76.

(2) Reserved.

(e) *UL.* Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, IL 60062, (847) 272–8800, or go to *http://www.ul.com.*

(1) UL Standard 727–2006, ''*Standard for Safety Oil-Fired Central Furnaces,*'' approved April 7, 2006, IBR approved for § 431.76.

(2) Reserved.

4. Section 431.76 is revised to read as follows:

**§ 431.76 Uniform test method for the measurement of energy efficiency of commercial warm air furnaces.**

(a) This section covers the test procedures you must follow if, pursuant to EPCA, you are measuring the steady-state thermal efficiency of a gas-fired or oil-fired commercial warm air furnace with a rated maximum input of 225,000 Btu per hour or more. Where this section prescribes use of ANSI Standard Z21.47–2006 or UL Standard 727–2006, (incorporated by reference, see § 431.75), perform only the procedures pertinent to the measurement of the steady-state efficiency.

(b) *Test setup.* (1) *Test setup for gas-fired commercial warm air furnaces.* The test setup, including flue requirement, instrumentation, test conditions, and measurements for determining thermal efficiency is as specified in sections 1.1 (Scope), 2.1 (General), 2.2 (Basic Test Arrangements), 2.3 (Test Ducts and Plenums), 2.4 (Test Gases), 2.5 (Test Pressures and Burner Adjustments), 2.6 (Static Pressure and Air Flow Adjustments), 2.39 (Thermal Efficiency), and 4.2.1 (Basic Test Arrangements for Direct Vent Control Furnaces) of ANSI Standard Z21.47–2006 (incorporated by reference, see § 431.75). The thermal efficiency test must be conducted only at the normal inlet test pressure, as specified in Section 2.5.1 of ANSI Standard Z21.47–2006, and at the maximum hourly Btu input rating specified by the manufacturer for the product being tested.

(2) *Test setup for oil-fired commercial warm air furnaces.* The test setup, including flue requirement, instrumentation, test conditions, and measurement for measuring thermal efficiency is as specified in sections 1 (Scope), 2 (Units of Measurement), 3 (Glossary), 37 (General), 38 and 39 (Test Installation), 40 (Instrumentation, except 40.4 and 40.6.2 through 40.6.7, which are not required for the thermal efficiency test), 41 (Initial Test Conditions), 42 (Combustion Test—Burner and Furnace), 43.2 (Operation Tests), 44 (Limit Control Cutout Test), 45 (Continuity of Operation Test), and 46 (Air Flow, Downflow or Horizontal Furnace Test), of UL Standard 727–2006 (incorporated by reference, see § 431.75). You must conduct a fuel oil analysis for heating value, hydrogen content, carbon content, pounds per gallon, and American Petroleum Institute (API) gravity as specified in Section 8.2.2 of HI BTS–2000 (incorporated by reference, see § 431.75). The steady-state combustion conditions, specified in Section 42.1 of UL Standard 727–2006, are attained when variations of not more than 5 °F in the measured flue gas temperature occur for three consecutive readings taken 15 minutes apart.

(c) *Additional test measurements.* (1) *Measurement of flue $CO_2$* (carbon dioxide) for oil-fired commercial warm air furnaces. In addition to the flue temperature measurement specified in Section 40.6.8 of UL Standard 727–2006, (incorporated by reference, see § 431.75) you must locate one or two sampling tubes within six inches downstream from the flue temperature probe (as indicated on Figure 40.3 of UL Standard 727–2006). If you use an open end tube, it must project into the flue one-third of the chimney connector diameter. If you use other methods of sampling $CO_2$, you must place the sampling tube so as to obtain an average sample. There must be no air leak between the temperature probe and the sampling tube location. You must collect the flue gas sample at the same time the flue gas temperature is recorded. The $CO_2$ concentration of the flue gas must be as specified by the manufacturer for the product being tested, with a tolerance of ±0.1 percent. You must determine the flue $CO_2$ using an instrument with a reading error no greater than ±0.1 percent.

(2) *Procedure for the measurement of condensate for a gas-fired condensing commercial warm air furnace.* The test procedure for the measurement of the condensate from the flue gas under steady state operation must be conducted as specified in sections 7.2.2.4, 7.8 and 9.2 of ASHRAE Standard 103–1993 (incorporated by reference, see § 431.75) under the maximum rated input conditions. You must conduct this condensate measurement for an additional 30 minutes of steady state operation after completion of the steady state thermal efficiency test specified in paragraph (b) of this section.

(d) *Calculation of thermal efficiency.* (1) *Gas-fired commercial warm air furnaces.* You must use the calculation procedure specified in Section 2.39, Thermal Efficiency, of ANSI Standard Z21.47–2006 (incorporated by reference, see § 431.75).

(2) *Oil-fired commercial warm air furnaces.* You must calculate the percent flue loss (in percent of heat input rate) by following the procedure specified in sections 11.1.4, 11.1.5, and 11.1.6.2 of the HI BTS–2000 (incorporated by reference, see § 431.75). The thermal efficiency must be calculated as:

Thermal Efficiency (percent) = 100 percent − flue loss (in percent).

(e) *Procedure for the calculation of the additional heat gain and heat loss, and adjustment to the thermal efficiency, for a condensing commercial warm air furnace.* (1) You must calculate the latent heat gain from the condensation of the water vapor in the flue gas, and calculate heat loss due to the flue condensate down the drain, as specified in sections 11.3.7.1 and 11.3.7.2 of ASHRAE Standard 103–1993, (incorporated by reference, see § 431.75), with the exception that in the equation for the heat loss due to hot condensate flowing down the drain in section 11.3.7.2, the assumed indoor temperature of 70 °F and the temperature term $T_{OA}$ must be replaced by the measured room temperature as specified in Section 2.2.8 of ANSI Standard Z21.47–2006 (incorporated by reference, see § 431.75).

(2) Adjustment to the Thermal Efficiency for Condensing Furnace. You must adjust the thermal efficiency as calculated in paragraph (d)(1) of this section by adding the latent gain, expressed in percent, from the condensation of the water vapor in the flue gas, and subtracting the heat loss (due to the flue condensate down the drain), also expressed in percent, both as calculated in paragraph (e)(1) of this section, to obtain the thermal efficiency of a condensing furnace.

5. Section 431.92, is amended by adding the definitions ''Computer room air conditioner,'' ''Heat Recovery,'' ''Sensible Coefficient of Performance, or SCOP,'' ''Variable Refrigerant Flow Multi-Split Air Conditioner'' and ''Variable Refrigerant Flow Multi-Split Heat Pump,'' in alphabetical order to read as follows:

**§ 431.92 Definitions concerning commercial air conditioners and heat pumps.**

* * * * *

*Computer Room Air Conditioner* means a unit of commercial package air conditioning and heating equipment

that is advertised, marketed, and/or sold specifically for use in computer rooms, data processing rooms, or other precision cooling applications, and is rated for performance using ASHRAE Standard 127, (incorporated by reference, see § 431.95). Such equipment may not be marketed or advertised as equipment for any other space conditioning applications, and may not be rated for performance using AHRI Standard 210/240 or AHRI Standard 340/360. (incorporated by reference, see § 431.95).

* * * * *

*Heat Recovery* (in the context of variable refrigerant flow multi-split air conditioners or variable refrigerant flow multi-split heat pumps) means that the air conditioner or heat pump is also capable of providing simultaneous heating and cooling operation, where recovered energy from the indoor units operating in one mode can be transferred to one or more other indoor units operating in the other mode. A variable refrigerant flow multi-split heat recovery heat pump is a variable refrigerant flow multi-split heat pump with the addition of heat recovery capability.

* * * * *

*Sensible Coefficient of Performance, or SCOP* means the net sensible cooling capacity in watts divided by the total power input in watts (excluding reheaters and humidifiers).

* * * * *

*Variable Refrigerant Flow Multi-Split Air Conditioner* means a unit of commercial package air conditioning and heating equipment that is configured as a split system air-conditioner incorporating a single refrigerant circuit, with one or more outdoor units, at least one variable-speed compressor or an alternate compressor combination for varying the capacity of the system by three or more steps, and multiple indoor fan coil units, each of which is individually metered and individually controlled by an integral control device and common communications network and which can operate independently in response to multiple indoor thermostats. Variable refrigerant flow implies three or more steps of capacity control on common, inter-connecting piping.

*Variable Refrigerant Flow Multi-Split Heat Pump* means a unit of commercial package air conditioning and heating equipment that is configured as a split system heat pump that uses reverse cycle refrigeration as its primary heating source and which may include secondary supplemental heating by means of electrical resistance, steam, hot water, or gas. The equipment incorporates a single refrigerant circuit, with one or more outdoor units, at least one variable-speed compressor or an alternate compressor combination for varying the capacity of the system by three or more steps, and multiple indoor fan coil units, each of which is individually metered and individually controlled by a control device and common communications network and which can operate independently in response to multiple indoor thermostats. Variable refrigerant flow implies three or more steps of capacity control on common, inter-connecting piping.

* * * * *

6. Section 431.95 is revised to read as follows:

**§ 431.95 Materials incorporated by reference.**

(a) *General.* DOE incorporates by reference the following test procedures into subpart F of part 431. The materials listed have been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Any subsequent amendment to the listed materials by the standard-setting organization will not affect the DOE regulations unless and until amended by DOE. Materials are incorporated as they exist on the date of the approval and a notice of any changes in the materials will be published in the **Federal Register**. All approved materials are available for inspection 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_federalregulations/ibr_locations.html*. Also, this material is available for inspection at U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza SW., Washington, DC 20024, (202) 586–2945, or go to: *http://www1.eere.energy.gov/buildings/appliance_standards/*. The referenced test procedure standards are listed below by relevant standard-setting organization, along with information on how to obtain copies from those sources.

(b) *AHRI.* Air-Conditioning, Heating, and Refrigeration Institute, 2111 Wilson Blvd., Suite 500, Arlington, VA 22201, (703) 524–8800, or go to *http://www.ahrinet.org*.

(1) AHRI Standard 210/240–2008, ''*Performance Rating of Unitary Air-Conditioning & Air-Source Heat Pump Equipment,*'' approved April 21, 2008, IBR approved for § 431.96.

(2) AHRI Standard 310/380–2004 (CSA C744–04), ''*Standard for Packaged Terminal Air-Conditioners and Heat Pumps,*'' approved September 2004, IBR approved for § 431.96.

(3) AHRI Standard 340/360–2007, ''*Performance Rating of Commercial and Industrial Unitary Air-Conditioning and Heat Pump Equipment,*'' approved September 2007, IBR approved for § 431.96.

(4) AHRI Standard 390–2003, ''*Performance Rating of Single Package Vertical Air-Conditioners and Heat Pumps,*'' approved December 2003, IBR approved for § 431.96.

(5) AHRI Standard 1230–2010, ''*Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment,*'' approved August 2, 2010 and updated by addendum 1 in March 2011, IBR approved for § 431.96.

(6) Reserved.

(c) *ASHRAE.* American Society of Heating, Refrigerating and Air-Conditioning Engineers, 1791 Tullie Circle NE., Atlanta, Georgia 30329, (404) 636–8400, or go to *http://www.ashrae.org*.

(1) ASHRAE Standard 127–2007, ''*Method of Testing for Rating Computer and Data Processing Room Unitary Air Conditioners,*'' approved on June 28, 2007, IBR approved for § 431.96.

(2) Reserved.

(d) *ISO.* International Organization for Standardization, 1, ch. De la Voie-Creuse, Case Postale 56, CH–1211 Geneva 20, Switzerland, +41 22 749 01 11 or *http://www.iso.ch/*.

(1) ISO Standard 13256–1, ''*Water-source heat pumps—Testing and rating for performance—Part 1: Water-to-air and brine-to-air heat pumps,*'' approved 1998, IBR approved for § 431.96.

(2) Reserved.

7. Section 431.96 is revised to read as follows:

**§ 431.96 Uniform test method for the measurement of energy efficiency of commercial air conditioners and heat pumps.**

(a) *Scope.* This section contains test procedures for measuring, pursuant to EPCA, the energy efficiency of any small, large, or very large commercial package air-conditioning and heating equipment, packaged terminal air conditioners and packaged terminal heat pumps, computer room air conditioners, and variable refrigerant flow systems.

(b) *Testing and calculations.* Determine the energy efficiency of each covered product by conducting the test

procedure(s) listed in the rightmost column of Table 1 of this section, that apply to the energy efficiency descriptor for that product, category, and cooling capacity.

TABLE 1 TO § 431.96—TEST PROCEDURES FOR COMMERCIAL AIR CONDITIONERS AND HEAT PUMPS

| Product | Category | Cooling capacity | Energy efficiency descriptor | Use tests, conditions and procedures [1] in |
|---|---|---|---|---|
| Small Commercial Packaged Air Conditioning and Heating Equipment. | Air-Cooled, 3 Phase, AC and HP. | <65,000 Btu/h | SEER and HSPF | AHRI Standard 210/240–2008 |
| | Air-Cooled AC and HP. | ≥65,000 Btu/h and <135,000 Btu/h. | EER and COP | AHRI Standard 340/360–2004 |
| | Water-Cooled and Evaporatively-Cooled. | <65,000 Btu/h | EER | AHRI Standard 210/240–2008 |
| | | ≥65,000 Btu/h and <135,000 Btu/h. | EER | AHRI Standard 340/360–2004 |
| | Water-Source HP | <135,000 Btu/h | EER and COP | ISO Standard 13256–1 (1998) |
| Large Commercial Packaged Air-Conditioning and Heating Equipment. | Air-Cooled AC and HP. | ≥135,000 Btu/h and <240,000 Btu/h. | EER and COP | AHRI Standard 340/360–2004 |
| | Water-Cooled and Evaporatively-Cooled AC. | ≥135,000 Btu/h and <240,000 Btu/h. | EER | AHRI Standard 340/360–2004 |
| Very Large Commercial Packaged Air-Conditioning and Heating Equipment. | Air-Cooled AC and HP. | ≥240,000 Btu/h and <760,000 Btu/h. | EER and COP | AHRI Standard 340/360–2004 |
| | Water-Cooled and Evaporatively-Cooled AC. | ≥240,000 Btu/h and <760,000 Btu/h. | EER | AHRI Standard 340/360–2004 |
| Packaged Terminal Air-Conditioners and Heat Pumps. | AC and HP | <760,000 Btu/h | EER and COP | AHRI Standard 310/380–2004 |
| Computer Room Air Conditioners | AC | <760,000 Btu/h | SCOP | ASHRAE Standard 127–2007 |
| Variable Refrigerant Flow Multi-split Systems. | AC and HP | <760,000 Btu/h | EER and COP | AHRI Standard 1230–2010 |
| Single Package Vertical Air Conditioners and Single Package Vertical Heat Pumps. | AC and HP | <760,000 Btu/h | EER and COP | AHRI Standard 390–2003 |

[1] Incorporated by reference, see § 431.95.

(c) *Optional break-in period for tests conducted using AHRI 210/240–2008, AHRI 340/360–2004, AHRI 1230–2010, and AHRI 390–2003.* Manufacturers may optionally specify a ''break-in'' period, not to exceed 16 hours, to operate the equipment under test prior to conducting the test method specified by AHRI 210/240–2008, AHRI 340/360–2004, AHRI 1230–2010, or AHRI 390–2003.

8. Section 431.97 is revised to read as follows:

**§ 431.97 Energy efficiency standards and their compliance dates.**

(a) Each commercial air conditioner or heat pump (not including single package vertical air conditioners and single package vertical heat pumps, packaged terminal air conditioners and packaged terminal heat pumps, computer room air conditioners, and variable refrigerant flow systems) manufactured on or after the compliance date listed in the corresponding table must meet the applicable minimum energy efficiency standard level(s) set forth in Tables 1, 2, and 3 of this section.

TABLE 1 TO § 431.97—MINIMUM COOLING EFFICIENCY STANDARDS FOR AIR CONDITIONING AND HEATING EQUIPMENT (NOT INCLUDING SINGLE PACKAGE VERTICAL AIR CONDITIONERS AND SINGLE PACKAGE VERTICAL HEAT PUMPS, PACKAGED TERMINAL AIR CONDITIONERS AND PACKAGED TERMINAL HEAT PUMPS, COMPUTER ROOM AIR CONDITIONERS, AND VARIABLE REFRIGERANT FLOW MULTI-SPLIT AIR CONDITIONERS AND HEAT PUMPS)

| Product | Cooling capacity | Sub-category | Heating type | Efficiency level | Compliance date: Products manufactured on and after |
|---|---|---|---|---|---|
| Small Commercial Packaged Air Conditioning and Heating Equipment (Air-Cooled, 3 Phase). | <65,000 Btu/h | AC | All | SEER = 13 | June 16, 2008. |
| | | HP | All | SEER = 13 | June 16, 2008. |
| Small Commercial Packaged Air Conditioning and Heating Equipment (Air-Cooled). | ≥65,000 Btu/h and <135,000 Btu/h. | AC | No Heating or Electric Resistance Heating. | EER = 11.2 | January 1, 2010. |

TABLE 1 TO § 431.97—MINIMUM COOLING EFFICIENCY STANDARDS FOR AIR CONDITIONING AND HEATING EQUIPMENT (NOT INCLUDING SINGLE PACKAGE VERTICAL AIR CONDITIONERS AND SINGLE PACKAGE VERTICAL HEAT PUMPS, PACKAGED TERMINAL AIR CONDITIONERS AND PACKAGED TERMINAL HEAT PUMPS, COMPUTER ROOM AIR CONDITIONERS, AND VARIABLE REFRIGERANT FLOW MULTI-SPLIT AIR CONDITIONERS AND HEAT PUMPS)—Continued

| Product | Cooling capacity | Sub-category | Heating type | Efficiency level | Compliance date: Products manufactured on and after |
|---|---|---|---|---|---|
| | | | All Other Types of Heating. | EER = 11.0 ..... | January 1, 2010. |
| | | HP ..... | No Heating or Electric Resistance Heating. | EER = 11.0 ..... | January 1, 2010. |
| | | | All Other Types of Heating. | EER = 10.8 ..... | January 1, 2010. |
| Large Commercial Packaged Air Conditioning and Heating Equipment (Air-Cooled). | ≥135,000 Btu/h and <240,000 Btu/h. | AC ..... | No Heating or Electric Resistance Heating. | EER = 11.0 ..... | January 1, 2010. |
| | | | All Other Types of Heating. | EER = 10.8 ..... | January 1, 2010. |
| | | HP ..... | No Heating or Electric Resistance Heating. | EER = 10.6 ..... | January 1, 2010. |
| | | | All Other Types of Heating. | EER = 10.4 ..... | January 1, 2010. |
| Very Large Commercial Packaged Air Conditioning and Heating Equipment (Air-Cooled). | ≥240,000 Btu/h and <760,000 Btu/h. | AC ..... | No Heating or Electric Resistance Heating. | EER = 10.0 ..... | January 1, 2010. |
| | | | All Other Types of Heating. | EER = 9.8 ..... | January 1, 2010. |
| | | HP ..... | No Heating or Electric Resistance Heating. | EER = 9.5 ..... | January 1, 2010. |
| | | | All Other Types of Heating. | EER = 9.3 ..... | January 1, 2010. |
| Small Commercial Packaged Air Conditioning and Heating Equipment (Water-Cooled, Evaporatively-Cooled, and Water-Source). | <17,000 Btu/h ..... | AC ..... | All ..... | EER = 12.1 ..... | October 29, 2003. |
| | | HP ..... | All ..... | EER = 11.2 ..... | October 29, 2003. |
| | ≥17,000 Btu/h and <65,000 Btu/h. | AC ..... | All ..... | EER = 12.1 ..... | October 29, 2003. |
| | | HP ..... | All ..... | EER = 12.0 ..... | October 29, 2003. |
| | ≥65,000 Btu/h and <135,000 Btu/h. | AC ..... | No Heating or Electric Resistance Heating. | EER = 11.5 ..... | October 29, 2003 [1]. |
| | | | All Other Types of Heating. | EER = 11.3 ..... | October 29, 2003[1]. |
| | | HP ..... | All ..... | EER = 12.0 ..... | October 29, 2003 [1]. |
| Large Commercial Packaged Air Conditioning and Heating Equipment (Water-Cooled, Evaporatively-Cooled, and Water-Source). | ≥135,000 Btu/h and <240,000 Btu/h. | AC ..... | All ..... | EER = 11.0 ..... | October 29, 2004 [2]. |
| | | HP ..... | All ..... | EER = 11.0 ..... | October 29, 2004 [2]. |
| Very Large Commercial Packaged Air Conditioning and Heating Equipment (Water-Cooled, Evaporatively-Cooled, and Water-Source). | ≥240,000 Btu/h and <760,000 Btu/h. | AC ..... | No Heating or Electric Resistance Heating. | EER = 11.0 ..... | January 10, 2011 [2]. |
| | | | All Other Types of Heating. | EER = 10.8 ..... | January 10, 2011 [2]. |
| | | HP ..... | No Heating or Electric Resistance Heating. | EER = 11.0 ..... | January 10, 2011 [2]. |

TABLE 1 TO § 431.97—MINIMUM COOLING EFFICIENCY STANDARDS FOR AIR CONDITIONING AND HEATING EQUIPMENT (NOT INCLUDING SINGLE PACKAGE VERTICAL AIR CONDITIONERS AND SINGLE PACKAGE VERTICAL HEAT PUMPS, PACKAGED TERMINAL AIR CONDITIONERS AND PACKAGED TERMINAL HEAT PUMPS, COMPUTER ROOM AIR CONDITIONERS, AND VARIABLE REFRIGERANT FLOW MULTI-SPLIT AIR CONDITIONERS AND HEAT PUMPS)—Continued

| Product | Cooling capacity | Sub-category | Heating type | Efficiency level | Compliance date: Products manufactured on and after |
|---|---|---|---|---|---|
| | | | All Other Types of Heating. | EER = 10.8 ..... | January 10, 2011 [2]. |

[1] And manufactured before June 1, 2013. See Table 3 of this section for updated efficiency standards.
[2] And manufactured before June 1, 2014. See Table 3 of this section for updated efficiency standards.

TABLE 2 TO § 431.97—MINIMUM HEATING EFFICIENCY STANDARDS FOR AIR CONDITIONING AND HEATING EQUIPMENT (HEAT PUMPS)

| Product | Cooling capacity | Efficiency level | Compliance date: Products manufactured on and after |
|---|---|---|---|
| Small Commercial Packaged Air Conditioning and Heating Equipment (Air-Cooled, 3 Phase). | <65,000 Btu/h ..... | HSPF = 7.7 ..... | June 16, 2008. |
| Small Commercial Packaged Air Conditioning and Heating Equipment (Air-Cooled). | ≥65,000 Btu/h and <135,000 Btu/h. | COP = 3.3 ..... | January 1, 2010. |
| Large Commercial Packaged Air Conditioning and Heating Equipment (Air-Cooled). | ≥135,000 Btu/h and <240,000 Btu/h. | COP = 3.2 ..... | January 1, 2010. |
| Very Large Commercial Packaged Air Conditioning and Heating Equipment (Air-Cooled). | ≥240,000 Btu/h and <760,000 Btu/h. | COP = 3.2 ..... | January 1, 2010. |
| Small Commercial Packaged Air Conditioning and Heating Equipment (Water-Source). | <135,000 Btu/h ..... | COP = 4.2 ..... | October 29, 2003. |

TABLE 3 TO § 431.97—UPDATES TO THE MINIMUM COOLING EFFICIENCY STANDARDS FOR WATER-COOLED AND EVAPORATIVELY-COOLED AIR CONDITIONING AND HEATING EQUIPMENT

| Product | Cooling capacity | Heating type | Efficiency level | Compliance date: Products manufactured on and after |
|---|---|---|---|---|
| Small Commercial Packaged Air Conditioning and Heating Equipment (Water-Cooled). | ≥65,000 Btu/h and <135,000 Btu/h. | No Heating or Electric Resistance Heating. | EER = 12.1 ..... | June 1, 2013. |
| | | All Other Types of Heating. | EER = 11.9 ..... | June 1, 2013. |
| Large Commercial Packaged Air Conditioning and Heating Equipment (Water-Cooled). | ≥135,000 Btu/h and <240,000 Btu/h. | No Heating or Electric Resistance Heating. | EER = 12.5 ..... | June 1, 2014. |
| | | All Other Types of Heating. | EER = 12.3 ..... | June 1, 2014. |
| Very Large Commercial Packaged Air Conditioning and Heating Equipment (Water-Cooled). | ≥240,000 Btu/h and <760,000 Btu/h. | No Heating or Electric Resistance Heating. | EER = 12.4 ..... | June 1, 2014. |
| | | All Other Types of Heating. | EER = 12.2 ..... | June 1, 2014. |
| Small Commercial Packaged Air Conditioning and Heating Equipment (Evaporatively-Cooled). | ≥65,000 Btu/h and <135,000 Btu/h. | No Heating or Electric Resistance Heating. | EER = 12.1 ..... | June 1, 2013. |
| | | All Other Types of Heating. | EER = 11.9 ..... | June 1, 2013. |
| Large Commercial Packaged Air Conditioning and Heating Equipment (Evaporatively-Cooled). | ≥135,000 Btu/h and <240,000 Btu/h. | No Heating or Electric Resistance Heating. | EER = 12.0 ..... | June 1, 2014. |
| | | All Other Types of Heating. | EER = 11.8 ..... | June 1, 2014. |
| Very Large Commercial Packaged Air Conditioning and Heating Equipment (Evaporatively-Cooled). | ≥240,000 Btu/h and <760,000 Btu/h. | No Heating or Electric Resistance Heating. | EER = 11.9 ..... | June 1, 2014. |
| | | All Other Types of Heating. | EER = 11.7 ..... | June 1, 2014. |

(b) Each packaged terminal air conditioner (PTAC) and packaged terminal heat pump (PTHP) manufactured on or after January 1, 1994, and before October 8, 2012 (for standard size PTACs and PTHPs) and before October 7, 2010 (for non-standard size PTACs and PTHPs) must meet the applicable minimum energy efficiency standard level(s) set forth in Table 4 of this section. Each PTAC and PTHP manufactured on or after October 8, 2012 (for standard size PTACs and PTHPs) and on or after October 7, 2010 (for non-standard size PTACs and PTHPs) must meet the applicable minimum energy efficiency standard level(s) set forth in Table 5 of this section.

TABLE 4 TO § 431.97—MINIMUM EFFICIENCY STANDARDS FOR PTAC AND PTHP

| Product | Cooling capacity | Efficiency level | Compliance date: Products manufactured on and after * * * |
|---|---|---|---|
| PTAC | <7,000 Btu/h | EER = 8.88 | January 1, 1994. |
| | ≥7,000 Btu/h and <15,000 Btu/h | EER = 10.0 − (0.16 × Cap [1]) | January 1, 1994. |
| | ≥15,000 Btu/h | EER = 7.6 | January 1, 1994. |
| PTHP | <7,000 Btu/h | EER = 8.88<br>COP = 2.72 | January 1, 1994. |
| | ≥7,000 Btu/h and <15,000 Btu/h | EER = 10.0 − (0.16 × Cap [1])<br>COP = 1.3 + (0.16 × EER) [2] | January 1, 1994. |
| | ≥15,000 Btu/h | EER = 7.6<br>COP = 2.52 | January 1, 1994. |

[1] Cap means cooling capacity in thousand Btu/h at 95 °F outdoor dry-bulb temperature.
[2] The applicable minimum cooling EER prescribed in this table.

TABLE 5 TO § 431.97—UPDATED MINIMUM EFFICIENCY STANDARDS FOR PTAC AND PTHP

| Product | Cooling capacity | Sub-category | Efficiency level | Compliance date: Products manufactured on and after * * * |
|---|---|---|---|---|
| PTAC | Standard Size | <7,000 Btu/h | EER = 11.7 | October 8, 2012. |
| | | ≥7,000 Btu/h and <15,000 Btu/h. | EER = 13.8 − (0.3 × Cap [1]) | October 8, 2012. |
| | | ≥15,000 Btu/h | EER = 9.3 | October 8, 2012. |
| | Non-Standard Size | <7,000 Btu/h | EER = 9.4 | October 7, 2010. |
| | | ≥7,000 Btu/h and <15,000 Btu/h. | EER = 10.9 − (0.213 × Cap [1]) | October 7, 2010. |
| | | ≥15,000 Btu/h | EER = 7.7 | October 7, 2010. |
| PTHP | Standard Size | <7,000 Btu/h | EER = 11.9<br>COP = 3.3 | October 8, 2012. |
| | | ≥7,000 Btu/h and <15,000 Btu/h. | EER = 14.0 − (0.3 × Cap [1])<br>COP = 3.7 − (0.052 × Cap [1]) | October 8, 2012. |
| | | ≥15,000 Btu/h | EER = 9.5<br>COP = 2.9 | October 8, 2012. |
| | Non-Standard Size | <7,000 Btu/h | EER = 9.3<br>COP = 2.7 | October 7, 2010. |
| | | ≥7,000 Btu/h and <15,000 Btu/h. | EER = 10.8 − (0.213 × Cap [1])<br>COP = 2.9 − (0.026 × Cap [1]) | October 7, 2010. |
| | | ≥15,000 Btu/h | EER = 7.6<br>COP = 2.5 | October 7, 2010. |

[1] Cap means cooling capacity in thousand Btu/h at 95 °F outdoor dry-bulb temperature.

(c) Each single package vertical air conditioner and heat pump manufactured on or after January 1, 2010, must meet the applicable minimum energy efficiency standard level(s) set forth in this section.

TABLE 6 TO § 431.97—MINIMUM EFFICIENCY STANDARDS FOR SINGLE PACKAGE VERTICAL AIR CONDITIONERS AND SINGLE PACKAGE VERTICAL HEAT PUMPS

| Product | Cooling capacity | Sub-category | Efficiency level | Compliance date: Products manufactured on and after * * * |
|---|---|---|---|---|
| Single package vertical air conditioners and single package vertical heat pumps, single-phase and three-phase. | <65,000 Btu/h | AC | EER = 9.0 | January 1, 2010. |
| | | HP | EER = 9.0<br>COP = 3.0 | January 1, 2010. |
| Single package vertical air conditioners and single package vertical heat pumps. | ≥65,000 Btu/h and <135,000 Btu/h. | AC | EER = 8.9 | January 1, 2010. |

TABLE 6 TO § 431.97—MINIMUM EFFICIENCY STANDARDS FOR SINGLE PACKAGE VERTICAL AIR CONDITIONERS AND SINGLE PACKAGE VERTICAL HEAT PUMPS—Continued

| Product | Cooling capacity | Sub-category | Efficiency level | Compliance date: Products manufactured on and after * * * |
|---|---|---|---|---|
| Single package vertical air conditioners and single package vertical heat pumps. | ≥135,000 Btu/h and <240,000 Btu/h. | HP | EER = 8.9<br>COP = 3.0 | January 1, 2010. |
| | | AC | EER = 8.6 | January 1, 2010. |
| | | HP | EER = 8.6<br>COP = 2.9 | January 1, 2010. |

(d) Each computer room air conditioner with a net sensible cooling capacity less than 65,000 Btu/h manufactured on or after October 29, 2012, and each computer room air conditioner with a net sensible cooling capacity greater than or equal to 65,000 Btu/h manufactured on or after October 29, 2013, must meet the applicable minimum energy efficiency standard level(s) set forth in this section.

TABLE 7 TO § 431.97—MINIMUM EFFICIENCY STANDARDS FOR COMPUTER ROOM AIR CONDITIONERS

| Equipment type | Net sensible cooling capacity | Minimum SCOP efficiency | | Compliance date: Products manufactured on and after |
|---|---|---|---|---|
| | | Downflow unit | Upflow unit | |
| Computer Room Air Conditioners, Air-Cooled | <65,000 Btu/h | 2.20 | 2.09 | October 29, 2012. |
| | ≥65,000 Btu/h and <240,000 Btu/h. | 2.10 | 1.99 | October 29, 2013. |
| | ≥240,000 Btu/h and <760,000 Btu/h. | 1.90 | 1.79 | October 29, 2013. |
| Computer Room Air Conditioners, Water-Cooled | <65,000 Btu/h | 2.60 | 2.49 | October 29, 2012. |
| | ≥65,000 Btu/h and <240,000 Btu/h. | 2.50 | 2.39 | October 29, 2013. |
| | ≥240,000 Btu/h and <760,000 Btu/h. | 2.40 | 2.29 | October 29, 2013. |
| Computer Room Air Conditioners, Water-Cooled with a Fluid Economizer. | <65,000 Btu/h | 2.55 | 2.44 | October 29, 2012. |
| | ≥65,000 Btu/h and <240,000 Btu/h. | 2.45 | 2.34 | October 29, 2013. |
| | ≥240,000 Btu/h and <760,000 Btu/h. | 2.35 | 2.24 | October 29, 2013. |
| Computer Room Air Conditioners, Glycol-Cooled | <65,000 Btu/h | 2.50 | 2.39 | October 29, 2012. |
| | ≥65,000 Btu/h and <240,000 Btu/h. | 2.15 | 2.04 | October 29, 2013. |
| | ≥240,000 Btu/h and <760,000 Btu/h. | 2.10 | 1.99 | October 29, 2013. |
| Computer Room Air Conditioner, Glycol-Cooled with a Fluid Economizer. | <65,000 Btu/h | 2.45 | 2.34 | October 29, 2012. |
| | ≥65,000 Btu/h and <240,000 Btu/h. | 2.10 | 1.99 | October 29, 2013. |
| | ≥240,000 Btu/h and <760,000 Btu/h. | 2.05 | 1.94 | October 29, 2013. |

(e) Each variable refrigerant flow air conditioner or heat pump manufactured on or after the effective date listed in this table must meet the applicable minimum energy efficiency standard level(s) set forth in this section.

TABLE 8 TO § 431.97—MINIMUM EFFICIENCY STANDARDS FOR VARIABLE REFRIGERANT FLOW MULTI-SPLIT AIR CONDITIONERS AND HEAT PUMPS

| Product | Cooling capacity | Heating type [1] | Efficiency level | Compliance date: Products manufactured and after |
|---|---|---|---|---|
| VRF Multi-Split Air Conditioners (Air-Cooled). | <65,000 Btu/h | All | 13.0 SEER | June 16, 2008. |
| | ≥65,000 and <135,000 Btu/h. | No Heating or Electric Resistance Heating. | 11.2 EER | January 1, 2010. |

TABLE 8 TO § 431.97—MINIMUM EFFICIENCY STANDARDS FOR VARIABLE REFRIGERANT FLOW MULTI-SPLIT AIR CONDITIONERS AND HEAT PUMPS—Continued

| Product | Cooling capacity | Heating type [1] | Efficiency level | Compliance date: Products manufactured and after |
|---|---|---|---|---|
| | | All Other Types of Heating. | 11.0 EER | January 1, 2010. |
| | ≥135,000 and <240,000 Btu/h. | No Heating or Electric Resistance Heating. | 11.0 EER | January 1, 2010. |
| | | All Other Types of Heating. | 10.8 EER | January 1, 2010. |
| | ≥240,000 and <760,000 Btu/h. | No Heating or Electric Resistance Heating. | 10.0 EER | January 1, 2010. |
| | | All Other Types of Heating. | 9.8 EER | January 1, 2010. |
| VRF Multi-Split Heat Pumps (Air-Cooled) .. | <65,000 Btu/h | All | 13.0 SEER<br>7.7 HSPF | June 16, 2008. |
| | ≥65,000 and <135,000 Btu/h. | No Heating or Electric Resistance Heating. | 11.0 EER<br>3.3 COP | January 1, 2010. |
| | | All Other Types of Heating. | 10.8 EER<br>3.3 COP | January 1, 2010. |
| | ≥135,000 and <240,000 Btu/h. | No Heating or Electric Resistance Heating. | 10.6 EER<br>3.2 COP | January 1, 2010. |
| | | All Other Types of Heating. | 10.4 EER<br>3.2 COP | January 1, 2010. |
| | ≥240,000 and <760,000 Btu/h. | No Heating or Electric Resistance Heating. | 9.5 EER<br>3.2 COP | January 1, 2010. |
| | | All Other Types of Heating. | 9.3 EER<br>3.2 COP | January 1, 2010. |
| VRF Multi-Split Heat Pumps (Water-Source). | <17,000 Btu/h | Without heat recovery. | 12.0 EER | October 29, 2012. |
| | | | 4.2 COP | October 29, 2003. |
| | | With heat recovery .. | 11.8 EER | October 29, 2012. |
| | | | 4.2 COP | October 29, 2003. |
| | ≥17,000 and <65,000 Btu/h. | All | 12.0 EER<br>4.2 COP | October 29, 2003. |
| | ≥65,000 and <135,000 Btu/h. | All | 12.0 EER<br>4.2 COP | October 29, 2003. |
| | ≥135,000 and <760,000 Btu/h. | Without heat recovery. | 10.0 EER<br>3.9 COP | October 29, 2013. |
| | | With heat recovery .. | 9.8 EER<br>3.9 COP | October 29, 2013. |

[1] VRF Multi-Split Heat Pumps (Air-Cooled) with heat recovery fall under the category of ''All Other Types of Heating'' unless they also have electric resistance heating, in which case it falls under the category for ''No Heating or Electric Resistance Heating.''

9. Add a new section 431.104 to read as follows:

**§ 431.104 Sources for information and guidance.**

(a) *General.* The standards listed in this paragraph are referred to in the DOE test procedures and elsewhere in this part but are not incorporated by reference. These sources are given here for information and guidance.

(b) *ASTM.* American Society for Testing and Materials, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA, 19438–2959, 1 (877) 909–2786, or go to *http://www.astm.org/index.shtml.*

(1) ASTM Standard Test Method C177–97, ''Standard Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Guarded-Hot-Plate Apparatus.''

(2) ASTM Standard Test Method C518–91, ''Standard Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus.''

(3) ASTM Standard Test Method D2156–80, ''Method for Smoke Density in Flue Gases from Burning Distillate Fuels.''

10. Section 431.105 is revised to read as follows:

**§ 431.105 Materials incorporated by reference.**

(a) *General.* DOE incorporates by reference the following test procedures into subpart G of part 431. The materials listed have been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Any subsequent amendment to the listed materials by the standard-setting organization will not affect the DOE regulations unless and until amended by DOE. Materials are incorporated as they exist on the date of the approval and a notice of any change in the materials will be published in the **Federal Register.** All approved materials are available for

inspection 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_federalregulations/ibr_locations.html.* Also, this material is available for inspection at U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza SW., Washington, DC 20024, (202) 586–2945, or go to: *http://wwww.eere.energy.gov/buildings/appliance_standards/.* The referenced test procedure standards are listed below by relevant standard-setting organization, along with information on how to obtain copies from those sources.

(b) *ANSI.* American National Standards Institute, 25 W. 43rd Street, 4th Floor, New York, NY 10036, (212) 642–4900, or go to *http://www.ansi.org.*

(1) ANSI Z21.10.3–2004, CSA 4.3–2004, Sections 2.1.7, 2.3.3, 2.3.4, 2.30, Figure 3, and Exhibit G, *Volume III, ''Storage Water Heaters With Input Ratings Above 75,000 Btu Per Hour, Circulating and Instantaneous,''* approved on July 2, 2004, IBR approved for § 431.106.

(2) Reserved.

11. Section 431.106 is revised to read as follows:

**§ 431.106 Uniform test method for the measurement of energy efficiency of commercial water heaters and hot water supply boilers (other than commercial heat pump water heaters).**

(a) *Scope.* This section covers the test procedures you must follow if, pursuant to EPCA, you are measuring the thermal efficiency or standby loss, or both, of a storage or instantaneous water heater or hot water supply boiler (other than a commercial heat pump water heater).

(b) *Testing and Calculations.* Determine the energy efficiency of each covered product by conducting the test procedure(s), set forth in the two rightmost columns of the following table, that apply to the energy efficiency descriptor(s) for that product:

| Product | Energy efficiency descriptor | Use test setup, equipment and procedures in subsection labeled "Method of Test" of | With these additional stipulations |
|---|---|---|---|
| Gas-fired Storage and Instantaneous Water Heaters and Hot Water Supply Boilers.* | Thermal Efficiency<br>Standby Loss | ANSI Z21.10.3–2004, Exhibit G1<br>ANSI Z21.10.3–2004, Exhibit G2 | A. For all products, the duration of the standby loss test shall be until whichever of the following occurs first after you begin to measure the fuel and/or electric consumption: (1) The first cutout after 24 hours or (2) 48 hours, if the water heater is not in the heating mode at that time.<br>B. For oil and gas products, the standby loss in Btu per hour must be calculated as follows: SL (Btu per hour) = S (% per hour) × 8.25 (Btu/gal-F) × Measured Volume (gal) × 70 (degrees F).<br>C. For oil-fired products, apply the following in conducting the thermal efficiency and standby loss tests: (1) Venting Requirements—Connect a vertical length of flue pipe to the flue gas outlet of sufficient height so as to meet the minimum draft specified by the manufacturer. (2) Oil Supply—Adjust the burner rate so that: (a) The hourly Btu input rate lies within ±2 percent of the manufacturer's specified input rate, (b) the $CO_2$ reading shows the value specified by the manufacturer, (c) smoke in the flue does not exceed No. 1 smoke as measured by the procedure in ASTM–D–2156–80, and (d) fuel pump pressure lies within ±10 percent of manufacturer's specifications.<br>D. For electric products, apply the following in conducting the standby loss test:<br>(1) Assume that the thermal efficiency (Et) of electric water heaters with immersed heating elements is 98 percent.<br>(2) Maintain the electrical supply voltage to within ±5 percent of the center of the voltage range specified on the water heater nameplate.<br>(3) If the set up includes multiple adjustable thermostats, set the highest one first to yield a maximum water temperature in the specified range as measured by the topmost tank thermocouple. Then set the lower thermostat(s) to yield a maximum mean tank temperature within the specified range. |
| Oil-fired Storage and Instantaneous Water Heaters and Hot Water Supply Boilers.* | Thermal Efficiency<br>Standby Loss | ANSI Z21.10.3–2004, Exhibit G1<br>ANSI Z21.10.3–2004, Exhibit G2 | |
| Electric Storage and instantaneous Water Heaters | Standby Loss | ANSI Z21.10.3–2004, Exhibit G2 | |

* As to hot water supply boilers with a capacity of less than 10 gallons, these test methods become mandatory on October 21, 2005. Prior to that time, you may use for these products either (1) these test methods if you rate the product for thermal efficiency, or (2) the test methods in Subpart E if you rate the product for combustion efficiency as a commercial packaged boiler.

** Incorporated by reference, *see* § 431.105.

[FR Doc. 2012–327 Filed 1–13–12; 8:45 am]

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**H.R. 515/P.L. 112–82**

Belarus Democracy and Human Rights Act of 2011 (Jan. 3, 2012; 125 Stat. 1863)

**H.R. 789/P.L. 112–83**

To designate the facility of the United States Postal Service located at 20 Main Street in Little Ferry, New Jersey, as the ''Sergeant Matthew J. Fenton Post Office''. (Jan. 3, 2012; 125 Stat. 1869)

**H.R. 1059/P.L. 112–84**

To protect the safety of judges by extending the authority of the Judicial Conference to redact sensitive information contained in their financial disclosure reports, and for other purposes. (Jan. 3, 2012; 125 Stat. 1870)

**H.R. 1264/P.L. 112–85**

To designate the property between the United States Federal Courthouse and the Ed Jones Building located at 109 South Highland Avenue in Jackson, Tennessee, as the ''M.D. Anderson Plaza'' and to authorize the placement of a historical/identification marker on the grounds recognizing the achievements and philanthropy of M.S. Anderson. (Jan. 3, 2012; 125 Stat. 1871)

**H.R. 1801/P.L. 112–86**

Risk-Based Security Screening for Members of the Armed Forces Act (Jan. 3, 2012; 125 Stat. 1874)

**H.R. 1892/P.L. 112–87**

Intelligence Authorization Act for Fiscal Year 2012 (Jan. 3, 2012; 125 Stat. 1876)

**H.R. 2056/P.L. 112–88**

To instruct the Inspector General of the Federal Deposit Insurance Corporation to study the impact of insured depository institution failures, and for other purposes. (Jan. 3, 2012; 125 Stat. 1899)

**H.R. 2422/P.L. 112–89**

To designate the facility of the United States Postal Service located at 45 Bay Street, Suite 2, in Staten Island, New York, as the ''Sergeant Angel Mendez Post Office''. (Jan. 3, 2012; 125 Stat. 1903)

**H.R. 2845/P.L. 112–90**

Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (Jan. 3, 2012; 125 Stat. 1904)

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