project, and/or potential economic impact if such data are available and relevant to the project.

(5) *Expected measurable outcomes.* For each project, describe at least one distinct, quantifiable, and measurable outcome-oriented objective that directly and meaningfully supports the project's purpose. The measurable outcome-oriented objective must define an event or condition that is external to the project and that is of direct importance to the intended beneficiaries and/or the public. Outcome measures may be long term that exceed the grant period. Describe how performance toward meeting outcomes will be monitored. For each project, include a performance-monitoring plan to describe the process of collecting and analyzing data to meet the outcome-oriented objectives.

(6) *Work plan.* For each project, explain briefly the activities that will be performed to accomplish the objectives of the project. Be clear about who will do the work. Include appropriate time lines.

(7) *Budget narrative.* The limit on indirect costs, not to exceed 10 percent, will be published in a **Federal Register** notice each fiscal year. Provide a justification if indirect costs exceed 10 percent or exceed that fiscal year's limit as announced in the **Federal Register**. Provide in sufficient detail information about the budget categories listed on SF–424A for each project to demonstrate that grant funds are being expended on eligible grant activities that meet the purpose of the program.

(8) *Project oversight.* Describe the oversight practices that provide sufficient knowledge of grant activities to ensure proper and efficient administration for each project.

(9) *Project commitment.* Describe how all grant partners commit to and work toward the goals and outcome measures of each proposed project(s).

(10) *Multi-state projects.* If the project is a multi-state project, describe how the states are going to collaborate effectively with related projects with one state assuming the coordinating role. Indicate the percent of the budget covered by each state.

■ 7. Revise the last sentence of § 1291.10(d) to read as follows:

§ 1291.10 Reporting and oversight requirements.

* * * * *

(d) * * * If AMS, after reasonable notice to a State, and opportunity to be heard, finds that there has been a failure by the State to comply substantially with any provision or requirement of the State plan, AMS may disqualify, for one or more years, the State from receipt of future grants under the SCBGP or SCBGP–FB.

* * * * *

Dated: March 23, 2009.

Robert C. Keeney,

Acting Associate Administrator.

[FR Doc. E9–6816 Filed 3–26–09; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2008–BT–TP–0004]

RIN 1904–AB75

Energy Conservation Program: Test Procedures for Battery Chargers and External Power Supplies (Standby Mode and Off Mode)

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

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending its test procedures for battery chargers (BCs) and external power supplies (EPSs) to include provisions for measuring standby mode and off mode energy consumption, as directed by the Energy Independence and Security Act of 2007 (EISA 2007). Furthermore, DOE is adding to its single-voltage external power supply test procedure specifications for testing switch-selectable external power supplies. Finally, DOE is extending the current certification reporting requirements to the Class A external power supplies for which Congress established energy efficiency standards in EISA 2007.

DATES: This rule is effective April 27, 2009. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register on April 27, 2009.

ADDRESSES: You may review copies of all materials related to this rulemaking at the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room. Please note: The Department's Freedom of Information Reading Room no longer houses rulemaking materials.

FOR FURTHER INFORMATION CONTACT: Mr. Victor Petrolati, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–4549. E-mail: *Victor.Petrolati@ee.doe.gov*.

Ms. Francine Pinto, Esq., or Mr. Michael Kido, Esq., U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: (202) 586–7432, or (202) 586–8145. E-mail: *Francine.Pinto@hq.doe.gov* or *Michael.Kido@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: This final rule incorporates by reference, into part 430 the following industry standard:

• California Energy Commission (CEC), ''Test Method for Calculating the Energy Efficiency of Single-Voltage External AC–DC and AC–AC Power Supplies,'' August 11, 2004.

You can obtain free copies of the CEC Test Method from the California Energy Commission, 1516 Ninth Street, MS–25, Sacramento, CA 95814, (916) 654–4091, or *http://www.efficientpowersupplies.org/methods.asp*.

The following standards are referred to in the DOE test procedures and elsewhere in this part, but are not incorporated by reference. These sources are provided solely for information and guidance.

• IEC 62301, ''Household electrical appliances—Measurement of standby power,'' First Edition, June 13, 2005.

• IEC 60050, ''International Electrotechnical Vocabulary.''

• IEEE 1515–2000, ''IEEE Recommended Practice for Electronic Power Subsystems: Parameter Definitions, Test Conditions, and Test Methods,'' March 30, 2000.

• IEEE 100, ''Authoritative Dictionary of IEEE Standards Terms,'' Seventh Edition, January 1, 2006.

You can purchase copies of IEC Standards 62301 and 60050 from the American National Standards Institute, 11 West 42nd Street, New York, New York 10036, (212) 642–4936, or *http://webstore.iec.ch*.

You can purchase copies of IEEE Standards 1515–2000 and 100 from the Institute of Electrical and Electronics Engineers, Inc., 3 Park Avenue, 17th Floor, New York, NY 10016–5997, (212) 419–7900, or *http://www.ieee.org/web/publications/standards*.

You can also view copies of these standards at the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

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I. Background and Legal Authority

Title III of the Energy Policy and Conservation Act, as amended (42 U.S.C. 6291 *et seq.*; EPCA) sets forth a variety of provisions designed to improve energy efficiency. Part A [1] of title III (42 U.S.C. 6291–6309) establishes the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' The consumer (''covered products'') currently subject to this program include battery chargers and external power supplies (referred to respectively as ''BCs'' and ''EPSs''). Manufacturers of covered products are required to use the relevant DOE test procedures to certify compliance with the energy conservation standards adopted under EPCA.

Section 323(b) of EPCA authorizes DOE to amend or establish new test procedures as appropriate for each of the covered products. (42 U.S.C. 6293(b)) This section provides that ''[a]ny test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use, water use (in the case of showerheads, faucets, water closets and urinals), or estimated annual operating cost of a covered product during a representative average use cycle or period of use, as determined by the Secretary [of Energy], and shall not be unduly burdensome to conduct.'' (42 U.S.C. 6293(b)(3)) In addition, EPCA states that DOE ''shall determine, in the rulemaking carried out with respect to prescribing such procedure, to what extent, if any, the proposed test procedure would alter the measured energy efficiency, measured energy use, or measured water use of any covered product as determined under the existing test procedure.'' (42 U.S.C. 6293(e)(1))

Of particular relevance to the present test procedure rulemaking, section 135 of the Energy Policy Act of 2005 (EPACT), Public Law 109–58, amended sections 321 and 325 of EPCA by providing definitions for BCs and EPSs and directing the Secretary to prescribe ''definitions and test procedures for the power use of battery chargers and external power supplies.'' (42 U.S.C. 6295(u)(1)(A)) DOE complied with this requirement by publishing a test procedure final rule, 71 FR 71340, on December 8, 2006, which included definitions and test procedures for BCs and EPSs. DOE codified the test procedure for BCs in appendix Y to subpart B of part 430 in title 10 of the Code of Federal Regulations (CFR) (''Uniform Test Method for Measuring the Energy Consumption of Battery Chargers'') and the test procedure for EPSs in appendix Z to subpart B of 10 CFR part 430 (''Uniform Test Method for Measuring the Energy Consumption of External Power Supplies'').

On December 19, 2007, the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, amended sections 321, 323, and 325 of EPCA, prompting DOE to propose amendments to its test procedures for BCs and EPSs. These amendments were published in the August 15, 2008, notice of proposed rulemaking (NOPR), 73 FR 48054.

Section 301 of EISA 2007 amended section 321 of EPCA by modifying definitions concerning EPSs. EPACT had amended EPCA to define an EPS as ''an external power supply circuit that is used to convert household electric current into DC current or lower-voltage AC current to operate a consumer product.'' [2] (42 U.S.C. 6291(36)(A)) Section 301 of EISA 2007 further amended this definition by creating a subset of EPSs called Class A External Power Supplies. EISA 2007 defined this subset as those EPSs that, in addition to meeting several other requirements common to all EPSs,[3] are ''able to convert to only 1 AC or DC output voltage at a time'' and have ''nameplate output power that is less than or equal to 250 watts.'' (42 U.S.C. 6291(36)(C)(i)) Section 301 also amended EPCA to establish minimum standards for these products, which became effective on July 1, 2008 (42 U.S.C. 6295(u)(3)(A)), and directed DOE to publish a final rule by July 1, 2011, to determine whether to amend these energy conservation

[1] This part was originally titled Part B; however, it was redesignated Part A after Part B was repealed by Public Law 109–58.

[2] The terms ''AC'' and ''DC'' refer to the polarity (*i.e.*, direction) and amplitude of current and voltage associated with electrical power. For example, a household wall socket supplies alternating current (AC), which varies in amplitude and reverses polarity. In contrast, a battery or solar cell supplies direct current (DC), which is constant in both amplitude and polarity.

[3] The full EISA 2007 definition of a class A external power supply includes a device that ''(I) is designed to convert line voltage AC input into lower voltage AC or DC output; (II) is able to convert to only 1 AC or DC output voltage at a time; (III) is sold with, or intended to be used with, a separate end-use product that constitutes the primary load; (IV) is contained in a separate physical enclosure from the end-use product; (V) is connected to the end-use product via a removable or hard-wired male/female electrical connection, cable, cord, or other wiring; and (VI) has nameplate output power that is less than or equal to 250 watts.'' (42 U.S.C. 6291(36)(C)(i)).

standards for EPSs. (42 U.S.C. 6295(u)(3)(D))

In addition, section 309 of EISA 2007 amended section 325(u)(1)(E) of EPCA, instructing DOE to issue ''a final rule that determines whether energy conservation standards shall be issued for external power supplies or classes of external power supplies.'' (42 U.S.C. 6295(u)(1)(E)(i)(I)) As explained in the August 15, 2008, NOPR, DOE interpreted this section as a requirement to determine by December 19, 2009, whether energy conservation standards shall be issued for non-Class A EPSs. See 73 FR 48054, 48056.

Section 310 of EISA 2007 amended section 325 of EPCA to establish definitions for active mode, standby mode, and off mode. This section also directed DOE to amend its existing test procedures by December 31, 2008, to measure the energy consumed in standby mode and off mode for both BCs and EPSs. Further, it authorized the Department to amend, by rule, any of the definitions for active, standby, and off mode as long as the Department takes into consideration the most current versions of Standards 62301 (''Household Electrical Appliances—Measurement of Standby Power'') and 62087 (''Methods of Measurement for the Power Consumption of Audio, Video and Related Equipment'') of the International Electrotechnical Commission (IEC). (See EPCA, section 325(gg)(2)(A), codified at 42 U.S.C. 6295(gg)(2)(A).)

DOE's proposals were presented and explained at a public meeting on September 12, 2008. DOE invited written comments, data, and information on the NOPR and accepted such material through October 29, 2008.

II. Summary of the Final Rule

In this final rule, DOE is modifying the current test procedures for BCs and EPSs. The amendments achieve the following objectives:

(1) Address the statutory requirement to expand test procedures to incorporate measurement of standby mode and off mode energy consumption for BCs and single-voltage EPSs, including switch-selectable single-voltage EPSs;

(2) Clarify the existing single-voltage EPS test procedure by revising existing definitions and adopting new ones; and

(3) Incorporate certification requirements for EPSs subject to minimum efficiency standards effective July 1, 2008.

Table 1 lists the sections of 10 CFR part 430 affected by the amendments promulgated in this final rule. The left column in the table cites the locations of the provisions in the CFR that are being changed, while the right lists the changes themselves.

TABLE 1—SUMMARY OF CHANGES PROMULGATED IN THIS FINAL RULE AND AFFECTED SECTIONS OF 10 CFR PART 430

Existing section in 10 CFR part 430	Summary of modifications
Section 430.2 of Subpart A—Definitions	• Defines an external power supply design family.
Section 430.4 of Subpart A—Reference Sources	• Inserts new technical references.
Section 430.23 of Subpart B—Test Procedures for the Measurement of Energy and Water Consumption.	• Modifies ''(aa) battery charger'' and ''(bb) external power supply'' to include energy consumption in standby mode and off mode.
Appendix Y to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Battery Chargers.	
1. Scope	• No change.
2. Definitions	• Modifies the definition for standby mode. • Inserts definitions for cradle, manual on-off switch, and off mode.
3. Test Apparatus and General Instructions	• No change.
4. Test Measurement	• Inserts procedures to measure energy consumption in standby mode and off mode.
Appendix Z to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of External Power Supplies.	
1. Scope	• Modifies scope to encompass all types of energy consumption of external power supplies.
2. Definitions	• Clarifies existing definitions for: Active mode ○ Active mode efficiency ○ No-load mode ○ Total harmonic distortion ○ True power factor • Inserts new definitions for: ○ Active power ○ Ambient temperature ○ Apparent power ○ Instantaneous power ○ Manual on-off switch ○ Minimum output current ○ Multiple-voltage external power supply ○ Nameplate input frequency ○ Nameplate input voltage ○ Nameplate output current ○ Nameplate output power ○ Nameplate output voltage ○ Off mode ○ Output bus ○ Standby mode ○ Switch-selectable single-voltage external power supply ○ Unit under test
3. Test Apparatus and General Instructions	• Divides section 3 into 3(a) for single-voltage EPSs and 3(b) for multiple-voltage EPSs. • Maintains the existing test procedure for single-voltage EPSs in 3(a).

TABLE 1—SUMMARY OF CHANGES PROMULGATED IN THIS FINAL RULE AND AFFECTED SECTIONS OF 10 CFR PART 430—Continued

Existing section in 10 CFR part 430	Summary of modifications
4. Test Measurement	• Reserves section 3(b) for a future multiple-voltage EPS test procedure. • Divides section 4 into 4(a) for single-voltage EPSs and 4(b) for multiple-voltage EPSs. ○ Maintains the existing active and standby mode test procedure for single-voltage EPSs in 4(a)(i). ○ Inserts new off mode test procedure for single voltage EPSs in 4(a)(ii). ○ Reserves section 4(b) for a future multiple-voltage EPS test procedure.
Section 430.62 of Subpart F—Submission of Data	• Inserts submission requirement for active mode efficiency and no-load power consumption data for EPSs and switch-selectable single-voltage EPSs.

DOE believes that today's amendments neither alter the measured energy efficiency of the tested products nor add any burden on the industry because the changes only (1) clarify existing test procedures or (2) insert test procedures for modes that are not regulated by standards. Thus, DOE is amending its test procedures as summarized in the following sections.

A. Standby Mode and Off Mode Definitions and Test Procedures

As explained in the August 15, 2008, NOPR, the standby and off mode definitions created by EISA 2007 do not apply to all BCs and EPSs. Therefore, following the requisite consideration of IEC standards 62301[4] and 62087,[5] DOE proposed amended definitions.

In today's final rule, DOE (1) adopts amended definitions of standby mode and off mode for BCs and EPSs, (2) revises the test procedures to measure standby mode and off mode energy consumption for BCs and EPSs; and (3) includes a definition of a ''manual on-off switch'' to clarify the application of the above test procedures. A detailed discussion of the definitions and test procedures for standby and off mode can be found in sections III.A and III.B below.

B. Clarification of Test Procedure Definitions

In the August 15, 2008, NOPR, DOE proposed amendments to the definitions to improve the clarity of the existing test procedures. Through written and oral comments, stakeholders suggested additional clarifications to the definitions. Accordingly, in today's final rule, DOE is modifying the definitions of numerous terms, listed in Table 1. A detailed discussion of these definitions can be found in section III.C.

C. Switch-Selectable Single-Voltage EPSs

DOE proposed in the August 15, 2008, NOPR a method for testing single-voltage EPSs that incorporate a switch-selectable output voltage. For these EPSs, DOE proposed that testing be conducted twice: first with the output voltage set to the highest voltage and then with the output voltage set to the lowest voltage. Stakeholders did not oppose this proposal; therefore, DOE is including it in this final rule. Section III.D provides a brief discussion of testing requirements for switch-selectable EPSs.

D. Certification Requirements for EPSs

Manufacturers of covered and regulated products must report to DOE that the products they manufacture comply with applicable energy conservation standards. To demonstrate compliance with EISA 2007 standards for Class A EPSs manufacturers must: (1) Select a representative sample of units, (2) test them according to the DOE test procedure, and (3) certify the compliance of the EPS model(s) based on the test results of the sample.

DOE proposed sampling requirements for BCs and EPSs on July 25, 2006. 71 FR 42178, 42204. While some of the provisions from that proposal were finalized in the December 8, 2006, final rule, 71 FR 71340, the sampling requirements are in the process of being finalized in a separate rulemaking proceeding. Manufacturers are not required to certify compliance with EISA 2007 standards to DOE until these sampling requirements are finalized; however, manufacturers are required to be in compliance with the standards.

DOE also proposed test procedures for measuring the energy efficiency of BCs (appendix Y) and EPSs (appendix Z) in the July 25, 2006, NOPR. 71 FR 42178, 42206–42207. These were finalized in the December 8, 2006, final rule, 71 FR 71340, 71368. Amendments to these test procedures are discussed in sections III.A, III.B, III.C, and III.D.

Finally, DOE proposed definitions of ''basic model'' and ''covered product'' as they apply to BCs and EPSs in the July 25, 2006, NOPR. 71 FR 42178, 42203. The December 8, 2006, final rule inserted these definitions into 10 CFR 430.2. 71 FR 71340, 71365–71366. However, because of the absence of standards, DOE did not propose certification requirements for EPSs or BCs in the July 25, 2006 NOPR. Following the passage of EISA 2007 on December 19, 2007, and the establishment of mandatory standards for Class A EPSs, DOE proposed certification requirements for Class A EPSs in the August 15, 2008, NOPR. 73 FR 48054, 48072–48076. In addition, DOE considered an alternate methodology by which manufacturers would certify the compliance of each basic model, but only submit test results for the highest- and lowest-voltage basic models within a design family (*i.e.*, a group of similar models that differ only by output voltage). 73 FR 48054, 48073–48074 (August 15, 2008). Based on stakeholder comments, DOE is including this methodology in today's final rule, as discussed further in section III.E.

E. Proposed Amendments Not Adopted in the Final Rule

DOE also proposed several other amendments to the EPS test procedure. Due to the number of stakeholder comments and the limited timeframe for this rulemaking, DOE has decided to postpone consideration of these

[4] IEC 62301, ''Household Electrical Appliances—Measurement of Standby Power,'' International Electrotechnical Commission, First edition, June 2005.

[5] IEC 62087, ''Methods of Measurement for the Power Consumption of Audio, Video and Related Equipment,'' International Electrotechnical Commission, Second edition, October 2008.

proposals and exclude them from this final rule.

The August 15, 2008, NOPR proposed to amend the EPS test procedure to allow for testing of multiple-voltage EPSs, a type of EPS subject to the non-Class A determination analysis. Because no test procedure currently exists to measure the efficiency or energy consumption of multiple-voltage EPSs, DOE developed a proposed test procedure. See 73 FR 48054, 48064–48068 (August 15, 2008). Due to the limited time provided by EISA 2007 and limited resources available prior to the publication of this final rule, DOE was unable to address the large number of stakeholder comments received and decided to defer action on multiple-voltage EPSs to a 2009 rulemaking.

In the August 15, 2008, NOPR, DOE also considered making limited changes to the test setup and measurement instructions for single-voltage EPSs that would have been modeled on its proposed test procedure for multiple-voltage EPSs. These changes were intended to reduce the testing burden and improve the accuracy and repeatability of measurement by accounting for the limitations of test equipment and laboratory conditions. Stakeholders from environmental and consumer groups as well as other standard-setting organizations, however, were concerned that modifying the EPS single-voltage test procedure would undo international efforts to enact consistent test procedures and standards for single-voltage EPSs. Because of these negative comments, DOE decided to exclude any amendments affecting the measurement of single-voltage EPSs in active and no-load modes from this final rule.

Lastly, this final rule does not include an active mode test procedure for BCs. Because DOE did not include an active mode BC test procedure in the August 15, 2008, NOPR, including one in this particular final rule would have prevented the public from having an opportunity to comment on this issue. (42 U.S.C. 6293(b)(3)) DOE does, however, intend to propose an active mode BC test procedure in 2009 and solicit comments to address this issue in greater detail.

III. Discussion

A. Standby Mode and Off Mode Definitions

In the August 15, 2008, NOPR, DOE proposed that for BCs, standby mode (or no-load mode)[6] is ''the condition in which (1) the battery charger is connected to the main electricity supply; (2) the battery is not connected to the charger; and (3) for battery chargers with manual on-off switches, all switches are turned on.'' 73 FR 48054, 48060. Off mode is the condition, for battery chargers with manual on-off switches, ''in which the battery charger is (1) connected to the main electricity supply; (2) is not connected to the battery; and (3) all switches are turned off.'' 73 FR 48054, 48061 (August 15, 2008).

DOE proposed similar definitions for EPSs, except that in standby and off modes, EPSs were to be disconnected from their loads rather than from a battery. DOE proposed to define standby mode to mean ''the condition in which the EPS is in no-load mode and, for external power supplies with on-off switches, all switches are turned on,'' 73 FR 48054, 48062 (August 15, 2008), and no-load mode to mean ''the mode of operation when an EPS is connected to the main electricity supply and the output is (or ''all outputs are'' for a multiple-voltage external power supply) not connected to a load (or ''loads'' for a multiple-voltage external power supply.),'' 73 FR 48054, 48062 (August 15, 2008). DOE also proposed to define off mode as ''the condition, applicable only to units having on-off switches, in which the external power supply is (1) connected to the main electricity supply; (2) the output is not connected to any load; and (3) all switches are turned off.'' 73 FR 48054, 48063 (August 15, 2008).

DOE received comments on three issues related to the proposed definitions for standby and off mode: (1) Harmonization of the standby and off mode definitions with international standards; (2) differentiation between EPS no-load mode and BC no-battery mode; and (3) clarification of the definition of the on-off switch used to distinguish standby mode from off mode for both BCs and EPSs. A discussion of stakeholder comments on these issues is presented below.

1. Harmonization of Standby and Off Mode Definitions

During the test procedure public meeting held on September 12, 2008, Microsoft recommended that DOE harmonize with standby and off mode definitions and test procedures proposed in the European Union. (Pub. Mtg. Tr., No. 17 at p. 71)[7] Similarly, the U.S. Environmental Protection Agency (EPA) and the Australian Department of the Environment, Water, Heritage, and the Arts (Australia) commented that DOE should not develop a separate definition for standby mode, lest it interfere with a forthcoming version of IEC Standard 62301 on standby power measurement. (EPA, No. 31 at p. 1; Australia, No. 20 at p. 2)[8] The Association of Home Appliance Manufacturers (AHAM), however, noted that although DOE is correct to consider IEC Standard 62301 in defining standby mode, it should not include it by reference, because the IEC standard is a ''living document'' and subject to change. (Pub. Mtg. Tr., No. 17 at p. 82)

As required by the EISA 2007 amendments to section 323 of EPCA (62 U.S.C. 6295(gg)(B)), the proposed definitions of standby and off mode were developed after considering IEC Standards 62301 and 62087. However, as described in the August 15, 2008, NOPR, these international standards apply to a variety of electronic products, and do not provide the specific guidance necessary for repeatable measurement of BC and EPS standby and off mode energy consumption. Also, the differing scope between IEC Standard 62301 and DOE's EPS test procedure should allay Australia's concern with conflicts between the two. Therefore, today's final rule maintains the structure of the definitions and test procedures presented in the August 15, 2008 NOPR and does not incorporate IEC Standard 62301.

The standby mode definition in today's final rule references the no-load mode definition, which comes from EPA's internationally recognized ''Test Method for Calculating the Energy Efficiency of Single-Voltage External AC–DC and AC–AC Power Supplies.''[9]

[6] For BCs, the two modes were proposed to be equivalent; however, in the final rule, DOE is dropping the term ''no-load mode'' in favor of ''no-battery mode.'' For EPSs, the two modes are *similar:* standby mode is no-load mode, except with all manual on-off switches turned on. However, because the no-load mode test procedure already requires that the EPS be tested with all manual on-off switches turned on, the test procedure for no-load mode and standby mode are the *same.*

[7] A notation in the form ''Pub. Mtg. Tr., No. 17 at p. 71'' identifies an oral comment that DOE received during the September 12, 2008, NOPR public meeting. This comment was recorded in the public meeting transcript in the docket for this rulemaking (Docket No. EERE–2008–BT–TP–0004), maintained in the Resource Room of the Building Technologies Program. This particular notation refers to a comment (1) recorded in document number 17, which is the public meeting transcript filed in the docket of this rulemaking and (2) appearing on page 71 of document number 17.

[8] A notation in the form ''EPA, No. 31 at p. 1'' identifies a written comment that DOE has received and has included in the docket of this rulemaking. This particular notation refers to (1) a comment submitted by the Environmental Protection Agency (EPA), (2) in document number 31 in the docket of this rulemaking, and (3) appearing on page 1 of document number 37.

[9] The development of this test procedure was funded by the California Energy Commission's Public Interest Energy Research Program (PIER),

Accordingly, the adoptionof today's test procedure, which is based on EPA's internationally recognized protocol for EPSs, fosters continued international harmonization of energy efficiency testing procedures.

2. Differentiation Between EPS No-Load Mode and BC No-Battery Mode

Ecos Consulting and the Power Tool Institute (PTI) and AHAM commented that BC ''no-load mode'' (included as an alternate name for ''standby mode'' in the ''Definitions'' section of the BC test procedure, section 2 of appendix Y) was confusing and Ecos suggested that it be renamed to ''no-battery mode'' to avoid confusion when testing BCs with wall adapters. (Pub. Mtg. Tr., No. 17 at pp. 74–76)

The amendments to the definition of BC standby mode proposed in the August 15, 2008, NOPR also referred to the BC mode in question as ''no load mode.'' 73 FR 48054, 48080. Nonetheless, DOE recognizes that using this term for BCs may cause unnecessary confusion. Furthermore, because the term ''no-load'' is used nowhere else in the existing BC test procedure in appendix Y, the EPA BC test procedure that it references, or the other amendments promulgated by today's final rule, there is no benefit to maintaining it in the definitions section. Therefore, DOE is renaming BC ''no-load mode'' to ''no-battery mode'' in the definition of BC standby mode. Today's final rule will insert this amended definition into section 2.l of appendix Y.

3. Clarification of the Definition of the On-Off Switch

As the above discussion illustrates, the definitions for standby and off modes that DOE proposed in the August 15, 2008, NOPR depend on the state of the on-off switch used to control the BC or EPS. User-activated on-off switches are not common in BCs and EPSs, and in their comments, stakeholders expressed some confusion regarding the meaning of the term ''on-off switch'' in the context of the standby and off mode definitions.

For example, products with integral batteries typically have some battery charging circuits inside the products, and it may be unclear which switches should be turned on for standby mode testing. Because the on-off switches of integral battery products control end-use product operation and not battery charging, testers have traditionally turned them off while testing the BC portion of the product, so that end-use product power consumption is not measured in addition to BC power consumption. But since the definition of standby mode proposed in the August 15, 2008, NOPR would reverse this longstanding practice by asking testers to turn all on-off switches on, adopting this change without further clarification could create confusion for testers.

Ecos commented that the on-off switch referenced in the definitions could be mistaken for an automatic switch that the user activates inadvertently when removing the battery. Ecos stressed that because DOE is introducing a new mode, it should define the on-off switch carefully to avoid confusion. (Pub. Mtg. Tr., No. 17 at pp. 80–81) Pacific Gas and Electric (PG&E) and the American Council for an Energy-Efficient Economy (ACEEE) also recommended that DOE provide a definition for a manual on-off switch and provided a sample definition. (PG&E & ACEEE, No. 21 at p. 2)

ADT Security Services, Sensormatic Electronics Corporation, and Tyco Safety Products Canada (all three are subsidiaries of Tyco Fire & Security and will be referred to throughout the document as ''Tyco'') sought clarification about which portions of the standby mode definition apply to products without on-off switches (Pub. Mtg. Tr., No. 17 at p. 73), while Australia commented that off mode should only be applicable to products with an appropriately defined on-off switch. (Australia, No. 20 at p. 2)

Despite these additional comments, DOE believes that the definitions, as proposed, are unambiguous: The off mode definitions are only applicable to BCs and EPSs with on-off switches, while the standby mode definitions are applicable to BCs and EPSs with or without on-off switches. The final clause of the standby mode definitions—''all switches are turned on''—applies only to BCs and EPSs with on-off switches. The only necessary clarification is an appropriately narrow definition of ''on-off switch'' to eliminate confusion with switches used to control end-use product function and automatic switches that are inadvertently activated by the user during battery or load disconnection. Therefore, in today's final rule, DOE is adopting the definition of ''manual on-off switch'' based on the one provided by PG&E and ACEEE and modifying the proposed definitions of standby and off mode to reference this new definition. This final rule inserts the definitions of manual on-off switch, off mode, and standby mode into sections 2.h, 2.k, and 2.l of appendix Y for BCs and sections 2.g, 2.p, and 2.t of appendix Z for EPSs.

B. Standby Mode and Off Mode Test Procedures

In the August 15, 2008, NOPR, DOE proposed two new subsections for standby and off mode measurement under the ''Test Measurement'' section of the BC test procedure (section 4 of appendix Y). 73 FR 48054, 48060. The amendments would also insert a section for off mode measurement under the ''Test Measurement'' section of the EPS test procedure (section 4 of appendix Z). 73 FR 48054, 48062–48063 (August 15, 2008).

The ''Test Measurement'' section of the EPS test procedure already included a test procedure for active mode and no-load mode measurement, which required testing of the EPS with ''any built-in switch in the UUT [unit under test] * * * in the 'on' position.'' (See section 5.a of EPA's ''Test Method for Calculating the Energy Efficiency of Single-Voltage External AC–DC and AC–AC Power Supplies,'' incorporated by reference in section 4 of appendix Z.) DOE leveraged the existing test procedure by proposing to define EPS standby mode as ''the condition in which the external power supply is in no-load mode and, for external power supplies with on-off switches, all switches are turned on.'' 73 FR 48054, 48062 (August 15, 2008), and to use the no-load test procedure as the standby mode test procedure. 73 FR 48054, 48063 (August 15, 2008).

Stakeholders commented on the following issues: (1) Specifying the duration of the BC standby and off mode tests; (2) clarifying the BC standby mode test for integral-battery products; (3) obviating EPS standby mode testing through end-use product testing; (4) modifying the stability requirement for measuring EPS energy consumption; (5) clarifying the assessment point for AC input power into the EPS; (6) clarifying the disconnection point for standby mode testing for systems with more than two enclosures; (7) specifying and reporting the shunt resistance value used during EPS measurement; and (8) excluding EPSs that do not operate in standby or no-load modes from testing under the standby mode test procedure.

1. Specifying the Duration of the BC Standby and Off Mode Tests

In the August 15, 2008, NOPR, DOE proposed a 1-hour duration for the BC standby and off mode energy

and the test procedure is also known as the ''CEC single-voltage EPS test procedure.'' (EPA, Test Method for Calculating the Energy Efficiency of Single-Voltage External AC–DC and AC–AC Power Supplies,'' p. 1. See *http://www.energystar.gov/ia/partners/prod_development/downloads/power_supplies/EPSupplyEffic_TestMethod_0804.pdf*).

consumption measurement. However, the EPA BC test procedure—incorporated by reference in the existing BC test procedure (sections 3 and 4 of appendix Y) and upon which these proposed amendments were based—requires a 12-hour test duration in certain circumstances. DOE raised this issue in the August 15, 2008 NOPR, soliciting stakeholder comments on the appropriate duration of the standby and off mode measurements. 73 FR 48054, 48062.

Ecos commented that the 12-hour option was too long and supported a test duration of 1 hour as necessary to ''achieve a measure of thermal stability'' and to ensure repeatability of measurements. (Pub. Mtg. Tr., No. 17 at p. 98) Hewlett-Packard (HP) and the Information Technology Industry Council (ITI), however, commented that a test duration of 1 hour is unnecessarily long and will result in higher testing costs than necessary. According to ITI, tests can be conducted in as little as 10 seconds using modern measurement equipment, and warmup could be performed prior to the beginning of the test. (HP, No. 30 at p. 2; ITI, No. 6 at p. 3, No. 28 at pp. 2–3; Pub. Mtg. Tr., No. 17 at pp. 36–37)

DOE is concerned with minimizing the testing burden on manufacturers. Notwithstanding, to be repeatable, a test procedure for measuring the energy consumption of consumer electronics must allow time for the components to warm up, a process that takes significantly longer than 10 seconds. Also, a severely shortened test procedure may not accurately measure the energy consumption of BCs with low-frequency pulsed operation,[10] an issue DOE raised in its August 15, 2008, NOPR.

Because of the need for a repeatable and accurate test procedure that accounts for both warm-up time and pulsed operation, DOE is adopting a 1-hour measurement period for both the BC standby mode and off mode measurements. This final rule inserts the measurement period requirement, and the remaining instructions for BC standby and off mode energy consumption measurement, into sections 4(c) and 4(d) of appendix Y.

2. Clarifying the BC Standby Mode Test for Integral-Battery Products

PTI and AHAM commented that care should be taken when specifying standby mode test conditions for integral-battery BCs. Testers should not attempt to disassemble BCs, but rather remove the entire product (with battery) from the charging cradle. (Pub. Mtg. Tr., No. 17 at pp. 15, 74–75, and 77) AHAM further commented that the definitions of standby and off mode should explicitly address integral-battery BCs. (AHAM, No. 10 at p. 4)

DOE acknowledges the commenters' concern about appropriately testing BCs where the charging circuitry and the battery are inside one enclosure and therefore cannot be separated during typical use. To ensure that testers do not disassemble the integral-battery consumer product during standby and off mode testing, DOE has inserted a clarification within both the standby and off mode test procedure amendments specifying that in the case of products with integral batteries, '' 'disconnecting the battery from the charger' will require disconnection of the end-use product'' itself and that standby mode or off mode ''power consumption will equal that of the cradle and/or adapter alone.'' This final rule inserts this clarification as well as a mention of plug blades—the metal prongs that connect a wall-mounted adapter to an outlet—as parts of the standby and off mode test procedure amendments, into sections 4(c) and 4(d) of appendix Y.

3. Obviating EPS Standby Mode Testing Through End-Use Product Testing

Microsoft commented that some end-use products powered by EPSs must already meet standby mode power consumption standards. Because an EPS-powered product is tested together with its EPS, standby mode testing of the EPS by itself would be ''redundant and possibly in conflict with the other requirements * * *'' (Pub. Mtg. Tr., No. 17 at p. 118)

Although there may be international standards that regulate the standby mode power consumption of end-use products powered by EPSs, these products (*e.g.*, video-game consoles, printers, networking equipment, etc.) are not covered under 10 CFR part 430 and therefore not subject to any mandatory testing or standards in the United States. Furthermore, even if these products were subject to standards under 10 CFR part 430, EISA 2007 states that a ''standard for external power supplies shall not constitute * * * [a] standard for the separate end-use product * * *'' Standards for the end-use product should not preclude standards (and, by extension, test procedures) for the EPS itself. Therefore, this final rule inserts an EPS standby mode test procedure into section 4(a)(i) of appendix Z.

4. Modifying the Stability Requirement for Measuring EPS Energy Consumption

In the August 15, 2008, NOPR, DOE proposed amending the EPS test procedure to accommodate the testing of multiple-voltage EPSs. Due to the large number of stakeholder comments received and the limited time for publication of this final rule, DOE has decided to postpone consideration of multiple-voltage amendments until it issues a NOPR focusing on a BC active mode test procedure in 2009. Nonetheless, DOE is including in today's final rule the stability requirement from the multiple-voltage EPS test procedure it proposed in August 15, 2008.

According to the EPA single-voltage EPS test procedure, an EPS can be deemed stable if the input ''power level does not drift by more than 5% from the maximum value observed'' over a 5-minute period. If an EPS meets this stability requirement, instantaneous measurements of input power, output voltage, and output current can be taken. Otherwise, the instantaneous measurements must be averaged over a subsequent 5-minute period. (EPA, ''Test Method for Calculating the Energy Efficiency of Single-Voltage External AC–DC and AC–AC Power Supplies,'' section 5.d) Given that elsewhere in the EPA test procedure, the power measurements uncertainty is required to be less than or equal to 2 percent, DOE proposed that the multiple-voltage EPS be deemed stable if the input power does not drift by more than 1 percent from the maximum value observed over a 5-minute period. 73 FR 48054, 48072 (August 15, 2008).

Stakeholders were generally receptive to this change in the stability criterion. Australia agreed with the proposed 1-percent stability requirement, but commented that samples should also be taken every second. (Australia, No. 20 at p. 3) Wahl Clipper Corporation (Wahl) suggested that DOE consider opening up the proposed 1-percent stability requirement at lower output powers, where 1 percent of input power may be insignificant. (Pub. Mtg. Tr., No. 17 at p. 166)

In the August 15, 2008, NOPR, DOE stated that it would consider making equivalent changes to the existing active and no-load mode test procedure for single-voltage EPSs based on departures from the stability criterion and other requirements, but declined to include these changes in today's final rule because of resistance to modifying the previously adopted and internationally accepted active and no-load mode EPS test procedure. (EPA, ''Test Method for

[10] Some BCs in standby mode operate periodically, consuming power in short pulses or bursts to lower overall energy consumption.

Calculating the Energy Efficiency of Single-Voltage External AC–DC and AC–AC Power Supplies'') Nonetheless, because of stakeholder support for a more stringent stability criterion and the lack of an internationally accepted off mode test procedure, DOE is including the 1-percent stability requirement in today's final rule as part of the new off mode test procedure for single-voltage EPSs.

Furthermore, today's rule addresses Wahl's comment by deeming EPS as stable at input powers less than 5 watts if the power does not vary by more than 50 milliwatts. DOE has tested EPSs with output parameters of 1 watt at 5 volts. At such low output powers, the output ripple and other noise may indeed surpass the 1-percent stability requirement, as Wahl claims. Therefore, today's final rule inserts the modified stability criterion, which was originally part of the proposed multiple-voltage EPS test procedure, into section 4(a)(ii) of appendix Z (single-voltage EPSs).

5. Clarifying the Assessment Point for AC Input Power Into the EPS

Regarding DOE's proposed test procedure for multiple-voltage EPSs, Texas Instruments (TI), PTI, and AHAM commented that DOE should specify on which side of the input power meter to measure the input voltage to ensure compliance with source voltage, total harmonic distortion, and other requirements. The input power meter can have an impact on those parameters. (Pub. Mtg. Tr., No. 17 at pp. 138–139 and 140).

The existing EPA single-voltage EPS test procedure already specifies that ''the input to the UUT [unit under test] shall be the specified voltage ±1% and the specified frequency ±1%'' (EPA, ''Test Method for Calculating the Energy Efficiency of Single-Voltage External AC–DC and AC–AC Power Supplies,'' section 4.d). Because the unit under test is defined as the EPS itself, the point of measurement is between the EPS and the input power meter. This is in accordance with longstanding testing practice, which dictates that testing conditions should be verified as close to the unit under test as possible. Today's final rule therefore does not insert any clarifications into appendix Z.

6. Clarifying the Disconnection Point for Standby Mode Testing for Systems With More Than Two Major Enclosures

In the August 15, 2008, NOPR, DOE proposed applying the active mode and no-load mode test procedure as its standby mode test procedure. PTI and AHAM commented that in systems with more than two major enclosures, the disconnection point for no-load mode can be unclear, possibly leading to a lack of repeatable test results. For instance, if one considers a wall adapter for a cradle-charged integral-battery BC (*e.g.*, a cordless telephone) as an EPS, it is unclear whether the disconnection point would be located between the wall adapter and cradle, or between the cradle and the integral-battery product. (Pub. Mtg. Tr., No. 17 at p. 112)

The August 15, 2008, NOPR instructed that if the multiple-enclosure, cradle-charger system is tested as a BC, the disconnection point during standby mode should be between the end-use product and the cradle, reflecting typical user behavior. 73 FR 48054, 48080. However, if the system is to be tested as an EPS, the disconnection point during standby mode should be between the wall adapter and the cradle. This interpretation is based on EISA 2007, which defines a Class A EPS as ''designed to convert line voltage AC input into lower voltage AC or DC output'' and ''contained in a separate physical enclosure from the end-use product. (42 U.S.C. 6291(36)(C)(i)(I) and (IV)) It is also consistent with other, non-portable EPS applications where only the wall adapter is subject to EPS testing. Accordingly, it is not necessary to insert any language clarifying this issue into appendices Y and Z.

7. Specifying and Reporting the Shunt Resistance Value Used During EPS Measurement

In response to DOE's proposed test procedures for BC and EPS standby and off mode measurement, TI commented that the shunt resistance used by the input power meter for current measurement could affect measured power values in some cases. (TI, No. 18 at pp. 5–6) TI also commented that the test procedure should require that a record of the maximum shunt resistance value be kept (perhaps by the manufacturer) so that the measurement can be repeated in the event of an audit. (TI, No. 18 at p. 6)

TI focused its analysis on an EPS without power-factor correction (PFC),[11] but did not demonstrate that shunt resistance will significantly affect the average measured standby or off mode power consumption of EPSs without PFC. TI also speculated, but did not demonstrate, that shunt resistance will significantly affect the power consumption of EPSs with PFC.

Because of a lack of evidence that shunt resistance will significantly affect the power consumption of EPSs with or without PFC, today's final rule does not require reporting the shunt resistance value used during BC and EPS standby or off mode measurement.

8. Excluding EPSs That Do Not Operate in Standby or No-Load Modes From Standby Mode Testing

AHAM and PTI voiced general agreement with DOE's proposed changes to the EISA 2007 standby and off mode definitions and proposed test procedures for these two modes (AHAM & PTI, No. 24 at pp. 1–2), while the Security Industry Association (SIA), Tyco, Uniden, the Consumer Electronics Association (CEA), Brink's, and the National Burglar and Fire Alarm Association (NBFAA) commented that DOE should exempt EPSs for security and telephony applications from being tested in no-load, standby,[12] and off modes. Such products never operate in these modes during actual use, and regulation would result in no energy savings, only added costs. (SIA, No. 7 at pp. 1–2, No. 22 at pp. 3–4; Pub. Mtg. Tr., No. 17 at pp. 19–21, 23–26, 42–43; Tyco, No. 4 at p. 2, No. 29 at pp. 3–4; CEA, No. 26 at p. 2; Brink's, No. 19 at p. 1; NBFAA, No. 32 at p. 2) ITI recommended that DOE consider allowing exclusions from the test procedure for some products. (Pub. Mtg. Tr., No. 17 at pp. 37–38)

Tyco further noted that surveillance equipment typically uses 60 Hz waveform from AC–AC EPS to synchronize images. These adapters may need to be modified if subject to EISA 2007 no-load mode requirements, affecting the utility of the systems. (Tyco, No. 29 at p. 4)

Tyco also commented that DOE previously found that standby mode does not apply to fluorescent lamps, which, like security systems, are either on or completely powered off. (Tyco, No. 4 at p. 2, No. 29 at pp. 4–6; Pub. Mtg. Tr., No. 17 at p. 25) Because standby mode does not apply, Tyco and SIA suggested instead that EPSs for security applications be marked ''IVa,'' where ''IV'' indicates the international efficiency level, while ''a'' indicates active mode only. (Tyco, No. 4 at p. 5; SIA, No. 7 at p. 3)

In the above comments, manufacturers in the security and telephony industries argue that EPSs for security applications be exempted from

[11] Manufacturers use PFC circuits to decrease resistive losses in the transmission and distribution wiring by correcting distortions in the shape of the EPS input current waveform.

[12] For EPSs, standby mode is no-load mode, except with all manual on-off switches turned on. However, because the no-load mode test procedure already requires that the EPS be tested with all manual on-off switches turned on, the test procedure for no-load mode and standby mode are the same.

testing under the off mode test procedure proposed in the August 15, 2008, NOPR. The commenters further argue that EPSs for security applications be exempted from testing under the new standby mode test procedure—*i.e.*, the existing no-load mode test procedure—so that they will not have to meet the EISA 2007 no-load standards effective on July 1, 2008.

Regarding exempting EPSs for security applications from testing under the off mode test procedure, the off mode definition proposed in the August 15, 2008, NOPR applies only to EPSs with manual on-off switches. Therefore, EPSs without manual on-off switches cannot be tested under the new off mode test procedure. 73 FR 48054, 48063 (August 15, 2008). According to the comments, EPSs for security applications do not have on-off switches, and therefore would not be tested under the off mode test procedure.

Regarding exempting EPSs for security applications from testing under the standby mode (*i.e.*, no-load mode) test procedure, it appears that manufacturers are also requesting that EPSs for home security and other applications that do not operate in standby or no-load modes be exempt. Although EISA 2007 gave DOE discretion in developing standby and off mode test procedures and definitions, (42 U.S.C. 6295(gg)(1)(B) and (2)(A)), the proposed standby mode test procedure is the existing no-load test procedure, and EISA 2007 does not allow DOE to modify the existing no-load definition and test procedure. More specifically, section 301 of EISA 2007 modified section 325 of EPCA to set a no-load mode power consumption standard (42 U.S.C. 6295(u)(3)(A)), and further modified section 323 to specify that DOE must continue using a test procedure based on the EPA's single-voltage EPS test procedure. (42 U.S.C. 6293(b)(17))

In addition to mandating an energy conservation standard for Class A EPSs, Congress provided exclusions from the standard for specific classes of EPSs (*e.g.*, EPSs for medical applications) by placing them outside of Class A. (42 U.S.C. 6291(36)(C)(ii)) If DOE were to modify the no-load test procedure to exempt EPSs for home security applications, DOE would in effect be granting an additional exclusion from the Class A standard, contravening EISA 2007. In the case of statutory standards, DOE does not have the authority to grant a request for a waiver from the test procedure or for an exception from the standard; under 10 CFR 1003.20(a), DOE can only grant exceptions from rules or regulations promulgated by DOE, not those mandated by Congress.

Therefore, today's final rule does not include any exemptions from the standby or off mode test procedures for EPSs that do not operate in these modes, such as those for home security or telephony applications. Instead, it inserts the definitions and test procedures for EPS standby and off modes that were discussed previously into appendix Z.

To test EPSs that do not operate in standby or no-load modes and that in some cases cannot be easily removed from their end-use products, manufacturers need to follow the DOE EPS test procedure. ''If the power supply is attached directly to the product that it is powering, [manufacturers must] cut the cord immediately adjacent to the powered product and connect output measurement probes at that point.'' (EPA, ''Test Method for Calculating the Energy Efficiency of Single-Voltage External AC–DC and AC–AC Power Supplies,'' section 5.a; incorporated by reference into section 4 of appendix Z)

C. Clarification of Test Procedure Definitions

In the August 15, 2008, NOPR, DOE proposed amending the EPS test procedure in appendix Z by modifying some existing definitions and adding new ones to improve clarity and consistency with industry standards. 73 FR 48054, 48068.

Following publication of the August 15, 2008, NOPR, stakeholders commented on the definitions DOE proposed. These commenters suggested that DOE provide additional clarification in the application of its test procedure. In particular, stakeholders submitted comments on the proposed (1) clarification of the definition of ''consumer product'' and (2) insertions of additional definitions identifying specific BC configurations.

1. Clarification of the Definition of ''Consumer Product''

PG&E and ACEEE commented that DOE should clarify the definition of ''consumer product'' along the lines presented during the September 2008 public meeting, where DOE indicated that consumer products are products that are to any significant extent distributed in commerce for use by individuals. Similarly, DOE indicated at the meeting that the only things that are not consumer products are those that are distributed only to commercial and industrial customers. (PG&E & ACEEE, No. 21 at p. 2)

Tyco and SIA commented that regardless of common application in residential homes, security, surveillance, and life-safety systems should not be considered consumer products. (Tyco, No. 29 at p. 2; SIA, No. 22 at p. 2) SIA added that residential users of security systems are ''simply the beneficiaries of this commercial service.'' (SIA, No. 22 at p. 2)

In response to the request for clarification, the term ''consumer product'' is defined as any energy-consuming product other than an automobile, ''which, to any significant extent, is distributed in commerce for personal use or consumption by individuals.'' (42 U.S.C. 6291(1)) This definition, which determines the scope of the EISA 2007 Class A EPS standards that came into effect on July 1, 2008, is consistent with the guidance DOE presented during the September 12, 2008, public meeting. DOE also indicated at the meeting that although it could not quantify the term ''to any significant extent,'' it was clear that any product that was only distributed in the commercial and industrial sectors was not a consumer product. (Pub. Mtg. Tr., No. 17 at pp. 85–90) This DOE clarification of the definition of consumer product is different from the interpretation that was received in comments from PG&E and ACEEE.

In response to the comments on the scope of the consumer product definition, DOE notes that cellular telephones are consumer products and security systems are no different. In both cases, consumers purchase the product with a service contract and pay monthly fees for the service, without which the product itself does not function. In both cases, the consumer also pays the energy cost associated with operating the product.

Therefore, in today's final rule, DOE is not including any additional clarification of the term ''consumer product'' or excluding any products from the test procedure on the grounds that they may not be consumer products.

2. Insertion of Additional Definitions Identifying Specific BC Configurations

In the modifications to the BC test procedure incorporating standby and off mode measurement presented in the August 15, 2008, NOPR, DOE relied on terms such as ''cradle'' and ''detachable'' to clarify the application of the proposed standby and off mode definitions to various configurations of BCs. In comments submitted following publication of the NOPR, PTI, and AHAM recommended that DOE include definitions for integral, detachable, and

cradle-type BCs. (Pub. Mtg. Tr., No. 17 at p. 15) They further noted that these definitions should be consistent with those proposed for inclusion in the ''Energy Efficiency Battery Charger System Test Procedure'' currently in development by the California Energy Commission (CEC). (PTI, No. 17 at p. 15; AHAM & PTI, No. 24 at pp. 2 and 4–5; AHAM, No. 10 at p. 4)

Section 2 of appendix Y already contains definitions of detachable and integral batteries, and DOE believes the existing definitions provide sufficient clarity for these two battery configurations. However, to further clarify the application of standby and off mode, DOE is including the following definition of ''cradle'' in today's final rule:

Cradle is an electrical interface between an integral battery product and the rest of the battery charger designed to hold the product between uses.

This definition is consistent with that included by the CEC in its BC test procedure. Today's final rule inserts this definition in section 2.f of appendix Y.

D. Switch-Selectable Single-Voltage EPSs

In the August 15, 2008, NOPR, DOE proposed language clarifying the testing required of switch-selectable single-voltage EPSs. These devices have a single output but incorporate a switch that enables users to vary the voltage at that output. Because these EPSs have a single output, they fall within the scope of EISA 2007 Class A standards, but the existing EPS test procedure is unclear at which setting they should be tested. Therefore, DOE proposed that a switch-selectable EPS be tested at both its lowest and highest selectable output voltage.

In written comments, Australia agreed with the DOE proposal to test switch-selectable EPSs at their highest and lowest output voltages. (Australia, No. 20 at p. 3) Because no stakeholders opposed this proposal, DOE is including requirements that switch-selectable EPSs have their active-mode efficiency, standby mode power consumption, and off mode power consumption tested at their highest and lowest voltages in today's final rule. Today's final rule will insert these requirements into sections 4(a)(i) and 4(a)(ii) of appendix Z and into the certification requirements in 10 CFR 430.62(a)(4)(xxiii) and (xxiv). The certification requirements are discussed further in section III.E.

E. Certification Requirements for EPSs

Manufacturers of covered and regulated products must file testing documentation with DOE and certify that the products they are distributing into commerce in the United States comply with Federal energy conservation standards. Because EISA 2007 modified EPCA by establishing standards for Class A EPSs, DOE proposed in its August 15, 2008, NOPR to modify the certification requirements to cover the submission of data on EPSs. 73 FR 48054, 48072. These certification requirements work in concert with the EPS test procedure in appendix Z and the sampling plan proposed in the July 25, 2006, NOPR, 71 FR 42178, 42204, instructing manufacturers how to demonstrate compliance with EISA 2007 standards for Class A EPSs.[13]

In the August 15, 2008, NOPR, DOE included requirements that for each ''basic model'' of EPS, manufacturers provide the active-mode efficiency and no-load-mode power consumption as well as general information about that basic model. However, because of the extent of customization within the EPS industry and the expected burden associated with certifying the compliance of each basic model, DOE noted that it was also considering certification requirements based on design families. The ENERGY STAR program uses such a structure for EPSs. Manufacturers need only submit data on the lowest- and highest-voltage unit of each design family, which is a collection of basic models that share the same output power and fundamental design but may have different output voltages. Despite this reduced requirement, manufacturers would nonetheless be responsible for the compliance of all basic models within the design family.

Following publication of the August 15, 2008, NOPR, stakeholders commented on the option of certifying compliance by design family. Stakeholders raised the following issues: (1) The data reporting method; (2) clarification of ''certification'' versus ''declaration''; (3) exemption from certification requirements of products that had qualified under the ENERGY STAR program; (4) the data necessary to certify compliance; (5) reporting of additional data absent a complete nameplate; and (6) definitions of ''basic model'' and ''design family.'' These issues are discussed below.

1. Data Reporting Method

ITI commented that requiring manufacturers to report efficiency of EPSs may be more burdensome than maintaining readily available records at their facilities and stated that Congress did not mandate reporting requirements as part of EISA 2007. (ITI, No. 6 at p. 2, No. 28 at pp. 1–2; Pub. Mtg. Tr., No. 17 at pp. 34–35 and 209) However, Ecos responded that the DOE reporting requirements are no more burdensome than the requirements under the voluntary ENERGY STAR program and mandatory State efficiency programs (Pub. Mtg. Tr., No. 17 at p. 211)

AHAM commented that reporting instills in manufacturers a realization of their compliance obligations and that there are mechanisms for easing the burdens of compliance, such as centralized submissions of data to several agencies through a trade association. (Pub. Mtg. Tr., No. 17 at pp. 213–214) AHAM and PTI also expressed their preference for the family approach to reporting. (AHAM & PTI, No. 24 at p. 5)

While the reporting requirements proposed in the August 15, 2008, NOPR are typical of the requirements of other products covered by 10 CFR part 430, allowing manufacturers to certify results for only the lowest- and highest-voltage models within a design family may be the least burdensome approach for achieving the objectives of certification. Such an approach would also be consistent with the approach of other EPS efficiency programs, such as ENERGY STAR.

Based on these considerations and the comments provided by stakeholders, DOE is including in this final rule a requirement that manufacturers certify the compliance of design families, supported by submissions of active-mode efficiency and no-load power consumption data for the highest- and lowest-voltage models within the families. Today's final rule inserts these requirements into 10 CFR 430.62(a)(4)(xxiii).

2. Clarification of ''Certification'' Versus ''Declaration''

During the September 2008 public meeting, Microsoft recommended that DOE use the term ''declaration'' when referring to claims made by a manufacturer and ''certification'' when an independent third party verifies such claims, as is common industry practice. (Pub. Mtg. Tr., No. 17 at pp. 201–202)

Despite industry custom, the term ''certification'' is used unambiguously throughout subpart F of 10 CFR part 430 to refer to manufacturer self-certification of their products. For instance, paragraph (a)(1) of 10 CFR 430.62 states that ''each manufacturer * * * shall certify by means of a compliance

[13] Because the sampling requirements proposed in the July 25, 2006, NOPR have not yet been finalized, manufacturers cannot and need not submit certification reports for EPSs at this time.

statement and certification report,'' which is to be ''signed by the company official submitting the statement.'' Paragraph (e), ''Third party representation,'' of the same section permits, but does not require, manufacturers to use a third party to submit compliance statements or certification data on the manufacturer's behalf. Because the term ''certification'' is used unambiguously throughout 10 CFR part 430, DOE is not changing ''certification'' to ''declaration'' in today's final rule.

3. Exemption From Certification Requirements of Products that Previously Qualified Under the ENERGY STAR Program

ITI recommended that DOE deem ENERGY STAR-qualified EPSs compliant with EISA 2007 requirements and not require manufacturers to certify their compliance in a separate submission to DOE. (ITI, No. 6 at pp. 4–5, No. 28 at p. 2)

Although DOE is sensitive to the reporting burden on manufacturers, it requires that the compliance of products subject to energy conservation standards under 10 CFR part 430 be certified and reported to DOE, regardless of whether the products have qualified under the requirements of the ENERGY STAR program. 10 CFR 430.62(a). Because EPSs are covered products under 10 CFR 430.2 and subject to standards included in EISA 2007 by Congress, (42 U.S.C. 6295(u)(3)(A)), manufacturers will have to demonstrate the compliance of their EPSs [14] according to 10 CFR 430.62.

Furthermore, the sampling plans of DOE (presented in the July 25, 2006, NOPR) and ENERGY STAR will most likely differ. This could impact the compliance of models when the differences between ENERGY STAR guidelines and EISA 2007 standards are small enough (or nonexistent, as for the no-load power consumption for AC–AC EPSs) and manufacturing variations lead to significant differences in EPS efficiency or no-load power from one unit to the next of a single model.

ENERGY STAR requires manufacturers to test three randomly chosen units of the same model and self-certify the compliance of all three units for the model to qualify. (EPA, ''ENERGY STAR Program Requirements for Single Voltage External AC–DC and AC–AC Power Supplies: Eligibility Criteria,'' Version 2.0, sections 4.B and 4.E). In contrast in the July 25, 2006, NOPR, DOE proposed that ''a sample of sufficient size shall be selected at random and tested to ensure that * * * (2) Any represented value of the estimated energy consumption of a basic model for which consumers would favor higher values [*e.g.*, active mode efficiency] shall be no greater than the lower of: (i) The mean of the sample, or (ii) The lower 97.5 percent confidence limit of the true mean divided by 0.95.'' 71 FR 42178, 42204.

If adopted by DOE in a final rule, this different sampling requirement could result in manufacturers certifying lower active mode efficiency and higher no-load power consumption results—for the same model—to DOE than to ENERGY STAR. Therefore, today's final rule does not exempt ENERGY STAR-qualified EPSs from DOE certification requirements.

4. Data Necessary to Certify Compliance

Ecos commented that the August 15, 2008, NOPR was unclear whether manufacturers should, for each unit tested, submit to DOE the efficiency values measured at each of the four active mode loading conditions (25 percent, 50 percent, 75 percent, and 100 percent of nameplate output current) or only submit their average. (Pub. Mtg. Tr., No. 17 at p. 203) PG&E and ACEEE commented that manufacturers should submit to DOE the efficiency values measured at each loading condition, and not just the average, as the additional detail may aid DOE in developing future standards. (PG&E & ACEEE, No. 21 at p. 4)

However, ITI commented that data submission and certification are burdensome and requested that DOE not require data submission out of convenience and consider ways of minimizing the manufacturer reporting burden. (ITI, No. 28 at pp. 1–2) HP suggested that DOE allow manufacturers to self-test and certify without requiring extensive reporting of test results. (HP, No. 30 at p. 2)

There does not appear to be a significant regulatory or analytical benefit to systematically collecting intermediate efficiency values at each of the loading conditions in addition to their average. Therefore, today's final rule requires that only average active-mode efficiency be reported.[15] Nonetheless, manufacturers ''shall establish, maintain, and retain the records of the underlying test data'' (*e.g.*, the efficiency values measured at each active-mode loading condition) and make them available to DOE upon request. 10 CFR 430.62(d).

Manufacturers shall report the average active-mode efficiency as a percentage and the no-load mode power consumption in watts. Today's final rule inserts this requirement into 10 CFR 430.62(c)(4)(xxiii) for the highest- and lowest-voltage models in a design family (discussed further in section III.E.6) and into 430.62(c)(4)(xxiv) for the highest and lowest selectable output voltage for each switch-selectable EPS model. Separate active-mode efficiency and no-load mode power consumption metrics will be reported for each of the units tested [16] and, in the case of the switch-selectable models, for each of the output voltage settings.

5. Reporting of Data Absent a Complete Nameplate

During the September 2008 public meeting, DOE noted that some EPSs (*e.g.*, high-power EPSs with output power greater than 250 watts) have nameplates that do not list all output parameters necessary to calculate the loading conditions specified in the test procedure in appendix Z.

Microsoft commented that dedicated-use EPSs, which are intended for operation only with a particular end-use product load, may be another category of EPSs without output power, current, or voltage information on the nameplate. For these products, the output power may be listed on the end-use product. (Pub. Mtg. Tr., No. 17 at p. 161) As an alternative, Ecos, PG&E, and ACEEE commented that DOE could require manufacturers to provide all required information on the product label. (Pub. Mtg. Tr., No. 17 at p. 162; PG&E & ACEEE, No. 21 at p. 3), while AHAM suggested direct reporting of the ratings to DOE as a way to forgo an additional labeling requirement. (Pub. Mtg. Tr., No. 17 at pp. 162–163)

In today's final rule, DOE is adopting the solution proposed by AHAM and amending the certification requirements to require reporting of the output power for all EPSs and of the output current for EPSs that omit it from the nameplate.

Because the EISA 2007 standard levels depend on output power, (42 U.S.C. 6295(u)(3)(A)), DOE must require

[14] Manufacturers are not required to certify compliance with EISA 2007 standards to DOE until the sampling requirements proposed in the July 25, 2006, NOPR are finalized. 71 FR 72178, 72204. However, manufacturers are required to be in compliance with the standards in the meantime.

[15] Section 5.e of the EPA single-voltage EPS test procedure requires that ''Average efficiency shall also be calculated and reported as the arithmetic mean of the efficiency values calculated at Test Conditions 1, 2, 3, and 4 in Table 1,'' where the ''Test Conditions'' correspond to 100 percent, 75 percent, 50 percent, and 25 percent of nameplate output current. (EPA, Test Method for Calculating the Energy Efficiency of Single-Voltage External AC–DC and AC–AC Power Supplies,'' p. 9).

[16] Sampling requirements specifying the selection of units to be tested were proposed in the July 25, 2006, NOPR, but have not yet been finalized.

manufacturers to report the active mode efficiency, no-load power consumption (see section III.E.4), and output power for all EPSs to verify compliance with standards. This requirement is consistent with the existing paragraphs under 430.62(a)(4), which require manufacturers to report the capacity of covered products in cases where the standard levels depend on capacity.

However, the EISA 2007 standard levels do not depend on the output current, which is only necessary for calculating the active mode loading conditions [17] required by the test procedure. In most cases the output current can therefore be read off the nameplate of the EPS being tested; however, DOE does not require manufacturers to list the output current on the EPS nameplate and cannot rely on its presence. Therefore, DOE is requiring manufacturers to report output current in cases where it is absent from the nameplate.

Today's final rule also amends the definitions of the nameplate power and current (section 2 of appendix Z) to refer to this manufacturer-supplied output information, which means that the test procedure can still be used if these parameters are absent from the nameplate.

Although manufacturers would submit this output parameter information directly to DOE, external parties wishing to verify manufacturer tests could obtain it by visiting the Resource Room of the Building Technologies Program [18] or requesting it directly from manufacturers. These modifications will be inserted into sections (a)(4)(xxiii) and (xxiv) of 10 CFR 430.62 and sections 2.l and 2.m of appendix Z.

6. Definitions of ''Basic Model'' and ''Design Family''

In the August 15, 2008, NOPR, DOE noted that it was considering defining EPS design families as groups of basic models that share output power and ''fundamental electrical circuit design,'' but that vary by voltage. 73 FR 48054, 48074. (See sections II.D and III.E) Ecos, PG&E, and ACEEE commented that DOE should also specify design families on the basis of output cord resistance, not cord length, as length is not the only parameter that determines cord resistance and the resultant losses. (Pub. Mtg. Tr., No. 17 at p. 200; PG&E & ACEEE, No. 21 at p. 4).

Lacking additional stakeholder comments, today's final rule contains a definition of ''external power supply design family'' that is consistent with the discussion in the August 15, 2008, NOPR, 73 FR 48054, 48074, and which incorporates the above guidance on cord resistance:

External power supply design family means a set of external power supply basic models, produced by the same manufacturer, which share the same circuit layout, output power, and output cord resistance, but differ in output voltage.

Today's final rule will insert the above definition into section 2, ''Definitions,'' of 10 CFR part 430. Furthermore, today's final rule also requires that the compliance statement covering each design family be supported with test results for the highest- and lowest-voltage models within the design family. These requirements will be inserted into sections (a)(4)(xxiii) and (xxiv) of 10 CFR 430.62. Figure III.1 and Figure III.2 present suggested formats for the compliance statement and certification report that manufacturers can use to certify the compliance of EPS design families, based on the generic format found in appendix A to subpart F of part 430.

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[17] Section 5.b of the EPA single-voltage EPS test procedure requires that active mode efficiency be measured at 100 percent, 75 percent, 50 percent, and 25 percent of nameplate output current. (EPA, ''Test Method for Calculating the Energy Efficiency of Single-Voltage External AC–DC and AC–AC Power Supplies,'' pp. 6–7).

[18] The U.S. Department of Energy, Resource Room of the Building Technologies Program, is located at 950 L'Enfant Plaza, SW., Suite 600, Washington, DC, and is open between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at (202) 586–2945 to arrange a visit.

EPS DESIGN FAMILY COMPLIANCE STATEMENT

Design Family:_____
Manufacturer's or Private Labeler's Name and Address:
_____
_____
_____

This compliance statement and all certification reports submitted are in accordance with 10 CFR Part 430 (Energy or Water Conservation Program for Consumer Products) and the Energy Policy and Conservation Act, as amended. The compliance statement is signed by a responsible official of the above named company. The design family and basic model(s) listed in certification reports comply with the applicable energy conservation standard. All testing on which the certification reports are based was conducted in conformance with applicable test requirements prescribed in 10 CFR Part 430 Subpart B.

All information reported in the certification report(s) is true, accurate, and complete. The company is aware of the penalties associated with violations of the Act and the regulations thereunder, and is also aware of the provisions contained in 18 U.S.C. 1001, which prohibits knowingly making false statements to the Federal Government.

Name of Company Official:_____
Signature:_____
Title:_____
Firm or Organization:_____
Address:_____
Telephone Number:_____
Facsimile Number:_____
Date:_____

Third Party Representation (if applicable)

For certification reports prepared and submitted by a third party organization under the provisions of Sec. 430.62 of 10 CFR Part 430 the company official who authorized said third party representation is:

Name:_____
Title:_____
Address:_____
Telephone Number:_____
FacsimileNumber:_____

The third party organization submitting the certification report on behalf of the company is:

Third Party Organization:_____
Address:_____
Telephone Number:_____
Facsimile Number:_____

Figure III.1. Suggested Compliance Statement for EPS Design Families

EPS DESIGN FAMILY CERTIFICATION REPORT

Design Family:_____
Manufacturer:_____
Private Labeler (if applicable):_____
Name:_____
Title:_____
Address:_____
Telephone Number:_____
Facsimile Number:_____
Date:_____

For Existing, New, or Modified Design Families:
Provide specific product information for each design family, including the manufacturer's model numbers and the test results of the highest- and lowest-voltage models within the external power supply design family. The information required in Sec. 430.62(a)(4)(i) through (a)(4)(xvii) is included as data fields below.

Model numbers included within the design family (use additional sheets if necessary):
_____
_____
_____

Highest-Voltage Model Within the Design Family or Highest-Voltage Setting of Switch-Selectable EPS:
Manufacturer's Model Number:_____
Average Active-Mode Efficiency (%):_____
No-Load Mode Power Consumption (W):_____
Nameplate Output Power (W):_____
Nameplate Output Current (if missing from nameplate) (A):_____

Lowest-Voltage Model Within the Design Family or Lowest-Voltage Setting of Switch-Selectable EPS:
Manufacturer's Model Number:_____
Average Active-Mode Efficiency (%):_____
No-Load Mode Power Consumption (W):_____
Nameplate Output Power (W):_____
Nameplate Output Current (if missing from nameplate) (A):_____

For Discontinued Models:
Provide manufacturer's model number(s):
_____
_____

Figure III.2. Suggested Certification Report Format for EPS Design Families

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Manufacturers wishing to certify the compliance of individual basic models should treat them as a design family With one model.

IV. Effect of Test Procedure Revisions on Compliance with Standards

In amending a test procedure, section 323(e) of EPCA directs DOE to determine to what extent, if any, the test procedure would alter the measured energy efficiency of the covered product. If the amended test procedure alters the measured efficiency, the Secretary must amend the applicable energy conservation standard to the extent the amended test procedure changes the energy efficiency of products that minimally comply with the existing standard. (42 U.S.C. 6293(e)) On July 1, 2008, the energy conservation standards contained in section 301(c) of EISA 2007 regarding the active mode efficiency and no-load mode power consumption of Class A EPSs became effective. However, the test procedure amendments included in this final rule do not affect compliance with these standards because they do not substantively change the measurement of active mode efficiency and no-load mode power consumption.

Of the five amendments discussed in section III, only those pertaining to (1) standby mode test procedures; (2) test

procedure definitions; and (3) switch-selectable EPS testing could potentially affect compliance with standards. Although this final rule amends the current active and no-load mode test procedure so that it pertains to the ''measurement of standby mode (also no-load mode) energy consumption and active mode efficiency,'' there are no substantive changes that would impact testing in active or no-load mode. Similarly, although the rule amends and adds to the test procedure definitions, the amendments codify generally accepted industry definitions without impacting the active or no-load mode measurement results.

Finally, although today's final rule amends the EPS test procedure to specify how switch-selectable EPSs should be tested, these amendments do not affect standards compliance either. Whereas under the existing test procedure manufacturers would test switch-selectable EPSs at each output voltage setting, under the amended test procedure, as under the ENERGY STAR program, manufacturers need only test these EPSs at the highest- and lowest-voltage settings. Nonetheless, a switch-selectable EPS that was in compliance under the existing test procedure will be in compliance under the amended test procedure because the efficiencies measured at all the output voltage settings of a switch-selectable EPS will lie between those measured at the highest- and lowest-voltage settings. In other words, a switch-selectable EPS that was previously compliant when tested at each of its output voltage settings will be deemed compliant at either its highest- or lowest-voltage setting. Therefore, today's amendment does not impact compliance with EISA 2007 EPS standards.

Because none of the amendments contained in today's rule change the measurement of active mode efficiency and no-load mode power consumption, the rule has no impact on compliance with the EISA 2007 EPS standards. There are no existing standards for BCs. There were no stakeholder comments on the effects of test procedure amendments on compliance with standards.

V. Procedural Requirements

A. Executive Order 12866

Today's regulatory action is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the Department certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site, *http://www.gc.doe.gov.*

DOE reviewed today's final rule under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. DOE tentatively certified in the August 15, 2008, NOPR that the proposed rule would not have a significant impact on a substantial number of small entities. 73 FR 48054, 48077. DOE received one comment from Power Technology specifically regarding small business impacts. (Power Technology, No. 5 at p. 1). While it seems that Power Technology does not manufacture EPSs for consumer products, and is therefore not directly affected by this rulemaking, DOE would like to address the possible concerns of affected parties. While the EPS standards that became effective on July 1, 2008 were Congressionally mandated, today's rule mitigates their impact by requiring certification according to the design family approach. Because of the substantially lower burden resulting from this approach, DOE reaffirms that this rule will have no significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

This rulemaking imposes no new information or recordkeeping requirements. See August 15, 2008, NOPR, 73 FR 48054, 48078. Accordingly, OMB clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

D. National Environmental Policy Act

This rule is covered under the Categorical Exclusion found in DOE's National Environmental Policy Act regulations. This rule amends an existing rule without changing its environmental effect, and, therefore, is covered by the Categorical Exclusion A5 found in appendix A to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The final rule 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. Executive Order 13132 requires no further action.

F. Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 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; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Regarding 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, this rule meets the relevant standards of Executive Order 12988.

G. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and Tribal governments. Subsection 101(5) of title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose upon State, local, or Tribal governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary federal program. Title II of UMRA requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For proposed regulatory actions likely to result in a rule that may cause expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy. Section 204 of UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate.'' On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at *http://www.gc.doe.gov*). Today's final rule would modify the current test procedures for BCs and EPSs. Today's rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure by State, local, and Tribal governments, or by the private sector, of $100 million or more in any year. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

H. 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. Today's rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is unnecessary to prepare a Family Policymaking Assessment.

I. Executive Order 12630

Pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 15, 1988), DOE has determined that this rule would not result in any takings that might require compensation under the Fifth Amendment to the United States Constitution.

J. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action is not a significant regulatory action under Executive Order 12866 or any successor order; would not have a significant adverse effect on the supply, distribution, or use of energy; and has not been designated by the Administrator of OIRA as a significant energy action. Therefore, it is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91), DOE must comply with all laws applicable to the former Federal Energy Administration, including section 32 of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended by the Federal Energy Administration Authorization Act of 1977 (Pub. L. 95–70). (15 U.S.C. 788) Section 32 provides that where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. Section 32(c) also requires DOE to consult with the Department of Justice and the Federal Trade Commission (FTC) concerning the impact of commercial or industry standards on competition.

Certain of the amendments and revisions in this final rule incorporate testing methods contained in the following commercial standards: (1) CEC 2007 Appliance Efficiency Regulations, section 1604(u)(1), which directly cites ''Test Method for Calculating the Energy Efficiency of Single-Voltage External Ac-Dc and Ac-Ac Power Supplies''; (2) IEEE Standard 1515–2000, ''IEEE Recommended Practice for Electronic Power Subsystems: Parameter Definitions, Test Conditions, and Test Methods''; and (3) IEC Standard 62301 ''Household electrical appliances—Measurement of standby power.'' As stated in the August 15, 2008, NOPR, DOE has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the Federal Energy Administration Act, (*i.e.*, that they were developed in a manner that fully provides for public participation, comment, and review). 73 FR 48054, 48079. DOE has consulted with the Attorney General and the Chairman of the FTC concerning the impact on competition of requiring manufacturers to use the test methods contained in these standards, and neither recommended against incorporation of these standards.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule before its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 801(2).

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on March 11, 2009.

Rita L. Wells,

Acting Deputy Assistant Secretary for Business Administration, Energy Efficiency and Renewable Energy.

■ For the reasons stated in the preamble, part 430 of chapter II of title 10, Code of Federal Regulations, is amended as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

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

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

■ 2. In § 430.2 add, in alphabetical order, a definition for ''external power supply design family,'' to read as follows:

§ 430.2 Definitions.

* * * * *

External power supply design family means a set of external power supply basic models, produced by the same manufacturer, which share the same circuit layout, output power, and output cord resistance, but differ in output voltage.

* * * * *

■ 3. In § 430.23 revise paragraphs (aa) and (bb) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(aa) *Battery Chargers.* The energy consumption of a battery charger, expressed as the nonactive energy ratio, shall be measured in accordance with section 4(a) of appendix Y of this subpart. The energy consumption of a battery charger in standby mode and off mode shall be measured in accordance with sections 4(c) and 4(d), respectively, of appendix Y of this subpart.

(bb) *External Power Supplies.* The energy consumption of an external power supply, including active-mode efficiency expressed as a percentage and the no-load, off, and standby mode energy consumption levels expressed in watts, shall be measured in accordance with section 4 of appendix Z of this subpart.

■ 4. Amend appendix Y to subpart B of part 430 by:

■ a. Redesignating paragraphs 2.f, 2.g, 2.h, and 2.i as 2.g, 2.i, 2j, and 2.l, respectively;

■ b. Adding new paragraphs 2.f, 2.h, 2.k;

■ c. Revising newly redesignated paragraph 2.l;

■ d. Add new paragraphs 4(c) and 4(d);

The revisions and additions read as follows:

Appendix Y to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Battery Chargers

* * * * *

2. *Definitions:*

* * * * *

f. *Cradle* is an electrical interface between an integral battery product and the rest of the battery charger designed to hold the product between uses.

* * * * *

h. *Manual on-off switch* is a switch activated by the user to control power reaching the device. This term does not apply to any mechanical, optical, or electronic switches that automatically disconnect mains power from the device when a battery is removed from a cradle or charging base or, for products with non-detachable batteries, that control power to the product itself.

* * * * *

k. *Off mode* is the condition, applicable only to units with manual on-off switches, in which the battery charger is (1) connected to the main electricity supply; (2) is not connected to the battery; and (3) all manual on-off switches are turned off.

l. *Standby mode* (also *no-battery mode*) means the condition in which (1) the battery charger is connected to the main electricity supply; (2) the battery is not connected to the charger; and (3) for battery chargers with manual on-off switches, all such switches are turned on.

* * * * *

4. *Test Measurement:*

* * * * *

(c)(1) Standby Mode Energy Consumption Measurement. Conduct a measurement of standby power consumption while the battery charger is connected to the power source. Disconnect the battery from the charger and record the power (*i.e.*, watts) consumed as the time series integral of the power consumed over a 1-hour test period, divided by the period of measurement. If the battery charger has manual on-off switches, all must be turned on for the duration of the standby mode test.

(2) Standby mode may also apply to products with integral batteries. If the product uses a cradle and/or adapter for power conversion and charging, then ''disconnecting the battery from the charger'' will require disconnection of the end-use product, which contains the batteries. The other enclosures of the battery charging system will remain connected to the main electricity supply, and standby mode power consumption will equal that of the cradle and/or adapter alone.

(3) If the product also contains integrated power conversion and charging circuitry and is powered through a detachable AC power cord, then only the cord will remain connected to mains, and standby mode power consumption will equal that of the AC power cord (*i.e.*, zero watts).

(4) Finally, if the product contains integrated power conversion and charging circuitry but is powered through a non-detachable AC power cord or plug blades, then no part of the system will remain connected to mains, and standby mode measurement is not applicable.

(d)(1) Off Mode Energy Consumption Measurement. If the battery charger has manual on-off switches, record a measurement of off mode energy consumption while the battery charger is connected to the power source. Remove the battery from the charger and record the power (*i.e.,* watts) consumed as the time series integral of the power consumed over a 1-hour test period, divided by the period of measurement, with all manual on-off switches turned off. If the battery charger does not have manual on-off switches, record that the off mode measurement is not applicable to this product.

(2) Off mode may also apply to products with integral batteries. If the product uses a cradle and/or adapter for power conversion and charging, then ''disconnecting the battery from the charger'' will require disconnection of the end-use product, which contains the batteries. The other enclosures of the battery charging system will remain connected to the main electricity supply, and off mode power consumption will equal that of the cradle and/or adapter alone.

(3) If the product also contains integrated power conversion and charging circuitry and is powered through a detachable AC power cord, then only the cord will remain connected to mains, and off mode power consumption will equal that of the AC power cord (*i.e.*, zero watts).

(4) Finally, if the product contains integrated power conversion and charging circuitry but is powered through a non-detachable AC power cord or plug blades, then no part of the system will remain connected to mains, and off mode measurement is not applicable.

■ 5. Amend Appendix Z to subpart B of part 430 by:

■ a. Revising paragraphs 1 and 2;

■ b. Adding, to paragraph 3, after the introductory heading ''3. Test Apparatus and General Instructions'' the paragraph designation ''(a) Single-Voltage External Power Supply'';

■ c. Adding a new paragraph 3(b); and

■ d. Revising paragraph 4.

The revisions and additions read as follows:

Appendix Z to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of External Power Supplies

1. *Scope*: This appendix covers the test requirements used to measure energy consumption of external power supplies.

2. *Definitions*: The following definitions are for the purposes of understanding terminology associated with the test method for measuring external power supply energy consumption. For clarity on any other terminology used in the test method, please refer to IEC Standard 60050 or IEEE Standard 100. (Reference for guidance only, see § 430.4.)

a. *Active mode* means the mode of operation when the external power supply is connected to the main electricity supply and the output is (or ''all outputs are'' for a multiple-voltage external power supply) connected to a load (or ''loads'' for a multiple-voltage external power supply).

b. *Active mode efficiency* is the ratio, expressed as a percentage, of the total real output power produced by a power supply to the real input power required to produce it. (Reference for guidance only, see IEEE Standard 1515–2000, 4.3.1.1, § 430.4.)

c. *Active power (also real power)* (P) means the root-mean-square (RMS) value of the instantaneous power taken over one period. (Reference for guidance only, see IEEE Standard 1515–2000, § 430.4.)

d. *Ambient temperature* means the temperature of the ambient air immediately surrounding the unit under test.

e. *Apparent power* (S) is the product of RMS voltage and RMS current (VA).

f. *Instantaneous power* means the product of the instantaneous voltage and instantaneous current at a port (the terminal pair of a load).

g. *Manual on-off switch* is a switch activated by the user to control power reaching the device. This term does not apply to any mechanical, optical, or electronic switches that automatically disconnect mains power from the device when a load is disconnected from the device, or that control power to the load itself.

h. *Minimum output current* means the minimum current that must be drawn from an output bus for an external power supply to operate within its specifications.

i. *Multiple-voltage external power supply* means an external power supply that is designed to convert line voltage AC input into more than one simultaneous lower-voltage output.

j. *Nameplate input frequency* means the AC input frequency of the power supply as specified on the manufacturer's label on the power supply housing.

k. *Nameplate input voltage* means the AC input voltage of the power supply as specified on the manufacturer's label on the power supply housing.

l. *Nameplate output current* means the current output of the power supply as specified on the manufacturer's label on the power supply housing (either DC or AC) or, if absent from the housing, as provided by the manufacturer.

m. *Nameplate output power* means the power output of the power supply as specified on the manufacturer's label on the power supply housing or, if absent from the housing, as specified in documentation provided by the manufacturer.

n. *Nameplate output voltage* means the voltage output of the power supply as specified on the manufacturer's label on the power supply housing (either DC or AC).

o. *No-load mode* means the mode of operation when an external power supply is connected to the main electricity supply and the output is (or ''all outputs are'' for a multiple-voltage external power supply) not connected to a load (or ''loads'' for a multiple-voltage external power supply).

p. *Off mode* is the condition, applicable only to units with manual on-off switches, in which the external power supply is (1) connected to the main electricity supply; (2) the output is not connected to any load; and (3) all manual on-off switches are turned off.

q. *Output bus* means any of the outputs of the power supply to which loads can be connected and from which power can be drawn, as opposed to signal connections used for communication.

r. *Single-voltage external AC–AC power supply* means an external power supply that is designed to convert line voltage AC input into lower voltage AC output and is able to convert to only one AC output voltage at a time.

s. *Single-voltage external AC–DC power supply* means an external power supply that is designed to convert line voltage AC input into lower-voltage DC output and is able to convert to only one DC output voltage at a time.

t. *Standby mode* means the condition in which the external power supply is in no-load mode and, for external power supplies with manual on-off switches, all such switches are turned on.

u. *Switch-selectable single voltage external power supply* means a single-voltage AC–AC or AC–DC power supply that allows users to choose from more than one output voltage.

v. *Total harmonic distortion*, expressed as a percentage, is the RMS value of an AC signal after the fundamental component is removed and interharmonic components are ignored, divided by the RMS value of the fundamental component. THD of current is defined as:

$$THD_I = \frac{\sqrt{I_2^2 + I_3^2 + I_4^2 + I_5^2 + \ldots\ldots I_n^2}}{I_1}$$

where I_n is the RMS value of the nth harmonic of the current signal.

w. *True power factor* (PF) is the ratio of the active power (P) consumed in watts to the apparent power (S), drawn in volt-amperes.

$$PF = \frac{P}{S}$$

This definition of power factor includes the effect of both distortion and displacement.

x. *Unit under test* is the external power supply being tested.

3. * * *

(a) Single-Voltage External Power Supply. * * *

(b) Multiple-Voltage External Power Supply. [Reserved]

4. *Test Measurement:*

(a) Single-Voltage External Power Supply

(i) Standby Mode and Active Mode Measurement—The measurement of standby mode (also no-load mode) energy consumption and active mode efficiency shall conform to the requirements specified in section 5, ''Measurement Approach'' of the CEC's ''Test Method for Calculating the Energy Efficiency of Single-Voltage External Ac-Dc and Ac-Ac Power Supplies,'' August 11, 2004, (incorporated by reference, see § 430.3). Switch-selectable single-voltage external power supplies shall be tested twice—once at the highest nameplate output voltage and once at the lowest.

(ii) Off-Mode Measurement—If the external power supply unit under test incorporates manual on-off switches, the unit under test shall be placed in off mode, and its power consumption in off mode measured and recorded. The measurement of the off mode energy consumption shall conform to the requirements specified in section 5, ''Measurement Approach,'' of the CEC's ''Test Method for Calculating the Energy Efficiency of Single-Voltage External Ac-Dc and Ac-Ac Power Supplies,'' August 11, 2004 (incorporated by reference, see § 430.3), with two exceptions. In section 5.a, ''Preparing UUT [Unit Under Test] for Test,'' all manual on-off switches shall be placed in the ''off'' position for the measurement. In section 5.d, ''Testing Sequence,'' the technician shall consider the UUT stable if, over 5 minutes with samples taken at least once every second, the AC input power does not drift from the maximum value observed by more than 1 percent or 50 milliwatts, whichever is greater. The only loading condition that will be measured for off mode is ''Load Condition 5'' in Table 1 of the CEC's test procedure. Switch-selectable single-voltage external power supplies shall have their off mode power consumption measured twice— once at the highest nameplate output voltage and once at the lowest.

(b) Multiple-Voltage External Power Supply. [Reserved]

■ 6. In § 430.62 add and reserve paragraphs (a)(4)(xviii) through (xxii) and add new paragraphs (a)(4)(xxiii) and (a)(4)(xxiv), to read as follows:

§ 430.62 Submission of data.

(a) * * *

(4) * * *

(xviii)–(xxii) [Reserved]

(xxiii) External power supplies, the average active mode efficiency percentage, no-load mode power consumption in watts, nameplate output power in watts, and, if missing from the nameplate, the output current in amperes of the highest- and lowest-voltage models within the external power supply design family.

(xxiv) Switch-selectable single-voltage voltage external power supplies, the average active mode efficiency percentage and no-load mode power

consumption in watts at the lowest and highest selectable output voltage, nameplate output power in watts, and, if missing from the nameplate, the output current in amperes.

* * * * *

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket ID OCC–2009–0002]

RIN 1557–AD15

Risk-Based Capital Guidelines—Money Market Mutual Funds

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: On September 19, 2008, the Board of Governors of the Federal Reserve System adopted the Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility (the ''AMLF'' or ''ABCP Lending Facility'') which enables depository institutions and bank holding companies to borrow from the Federal Reserve Bank of Boston on a non-recourse basis if they use the proceeds of the loan to purchase certain asset-backed commercial paper (ABCP) from money market mutual funds. The purpose of this action was to reduce strains being experienced by money market mutual funds. To facilitate national bank participation in the program, the Office of the Comptroller of the Currency (OCC) adopted on September 19, 2008, on an interim final basis, an exemption from its risk-based capital guidelines for ABCP held by a national bank as a result of its participation in this program.

The AMLF was set to expire on January 30, 2009. However, to encourage the stability of money market mutual funds, the program has been extended to October 30, 2009. This rule finalizes the risk-based capital exemption and extends the risk-based capital exemption to ABCP purchased beyond the original January 30, 2009, date. This final rule applies the risk-based capital exemption to any ABCP purchased as a result of a national bank's participation in the facility. The risk-based capital exemption will continue to apply if the AMLF is extended beyond October 30, 2009.

DATES: *Effective Date*: March 27, 2009.

FOR FURTHER INFORMATION CONTACT: Margot Schwadron, Senior Risk Expert, (202) 874–6022, Capital Policy Division; Hugh Carney, Attorney; or Stuart Feldstein, Assistant Director, Legislative and Regulatory Activities Division, (202) 874–5090; Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Introduction

In light of the ongoing dislocations in the financial markets, and their impact on the functioning of the ABCP markets and the operations of money market mutual funds, the Board of Governors of the Federal Reserve System (FRB) adopted the AMLF on September 19, 2008.[1] Under the AMLF, depository institutions and bank holding companies (banking organizations) are able to borrow from the Federal Reserve Bank of Boston on a nonrecourse basis on condition that the banking organizations use the proceeds of the Federal Reserve credit to purchase, at amortized cost, certain highly rated U.S. dollar-denominated ABCP from money market mutual funds. The ABCP purchased must be used to secure the borrowing from the Reserve Bank. The purpose of the AMLF is to enable money market mutual funds to increase their liquidity by enabling them to sell some of their high-credit-quality secured assets at amortized cost. The AMLF was set to expire on January 30, 2009. However, to promote continued stability in the money market mutual funds, the FRB extended the program until October 30, 2009.

Description of Interim Final Rule

National banks that participate in the AMLF must acquire and hold ABCP on their balance sheet. These ABCP holdings are subject to regulatory capital requirements under the OCC's regulatory capital guidelines and rules.[2] To facilitate national bank participation in the AMLF, the OCC adopted, on an interim final basis, an exemption from its risk-based capital guidelines for ABCP purchased by a national bank as a result of its participation in the facility.[3] Specifically, the interim final rule amended the OCC's risk-based capital guidelines to permit national banks to assign a zero percent risk weight to ABCP purchased as a result of participation in the facility. The interim final rule applied to ABCP purchased between September 19, 2008, and January 30, 2009. The OCC received one comment from an industry trade group that supported the rule and encouraged its adoption without change.

Description of Final Rule

The OCC continues to believe that the ABCP acquired by a national bank pursuant to the AMLF does not expose the participating national banks to credit or market risk because of the non-recourse nature of the Federal Reserve's credit extension. Therefore, the OCC concludes that it would be appropriate—and consistent with the economic substance of the transactions—to continue to apply the risk-based capital exemption to a national bank that serves as an intermediary in the AMLF. In light of the Federal Reserve's extension of the AMLF program, the OCC has determined to extend the risk-based capital exemption to ABCP purchased beyond the original January 30, 2009 date. The risk-based capital exemption applies to any ABCP purchased as a result of a national bank's participation in the facility. The risk-based capital exemption will continue to apply if the Federal Reserve further extends the AMLF program beyond October 30, 2009.

Consistent with generally accepted accounting principles, the OCC would expect national banks to report purchased ABCP as an investment security (for example, held-to-maturity). These assets would be reflected at the time of purchase at the national bank's best estimate of fair value. The non-recourse nature of the transaction would impact the valuation of the liability to the Federal Reserve. After reflecting any appropriate discounts on the assets and associated liabilities, national banks are not expected to report any material net gains or losses at the time of purchase.

Effective Date

This final rule is effective immediately upon publication. An agency may publish a final rule with an immediate effective date if the agency finds good cause and publishes such with the final rule.[4]

The OCC finds that good cause exists for an immediate effective date. As previously described in this preamble, modification of the risk-based capital guidelines is critical to maintain the orderly functioning of financial markets, to provide market liquidity, and to encourage stability of the operations of money market mutual funds. In the current market environment, a 30 day delayed effective date is impracticable

[1] The OCC's interim final rule refers to the AMLF as the ''ABCP Lending Facility.''

[2] *See* 12 CFR Part 3.

[3] 73 FR 55704 (Sept. 26, 2008).

[4] 5 U.S.C. 553(d)(3).